

Committee on Trade and Environment

ANNOTATED BIBLIOGRAPHY OF SELECTED LITERATURE CONCERNING COMPLIANCE AND DISPUTE SETTLEMENT IN THE WTO AND IN MULTILATERAL ENVIRONMENTAL AGREEMENTS

Note by the Secretariat

This Note has been prepared as background information to complement the paper on compliance and dispute settlement provisions in the WTO and MEAs, WT/CTE/W/191. This Note contains an annotated bibliography of selected literature concerning compliance and dispute settlement in the WTO and MEAs. Listed below are books, articles and papers which discuss issues relevant to that subject matter. This body of literature has been selected on the basis of its usefulness in the Secretariat's research with respect to improving the understanding of compliance and dispute settlement both in MEAs and the WTO. Copies of this literature can be consulted in the Trade and Environment Division of the WTO Secretariat.

This Note is divided into two main sections. The first part of the Note lists all references to compliance and/or dispute settlement in MEAs; the second part lists those references that deal with compliance provisions and/or dispute settlement provisions in the WTO. Each part is further divided into references for books, articles and papers/speeches.

I. COMPLIANCE AND/OR DISPUTE SETTLEMENT IN MEAs

A. BOOKS

▪ **Author:**

Fijalkowski, Agata & Cameron, James (eds.)

Title:

Trade and the Environment: Bridging the Gap

Publishing Information:

Cameron May (1998), London

Abstract:

This book constitutes a selection of essays based on presentations that were given at a conference held in The Hague in 1997. The first part of the book includes essays on recent developments in dispute settlement in the MEA and WTO regimes. The following parts focus on implications of WTO law on environmental policies and contain case studies on the implementation of MEAs at the national level and the use of trade and non-trade measures. Observations are also made related to the Biosafety Protocol, such as with respect to the use of trade-related and other measures to achieve the objectives of the Protocol and the role of trade measures in treaties in general. The last part of the book deals with the Basel Convention, the climate change regime and commodity markets.

▪ **Author:**

Hunter, David; Salzman, James & Zaehlke, Durwood

Title:

International Environmental Law and Policy

Publishing Information:

Foundation Press (1998), New York

Abstract: This very extensive book describes the law-making process, moving beyond the traditional focus on state actors to assess the critical role of transnational actors, citizens, NGOs, scientists and business. The first part of the book deals with the creation and development of international environmental law and addresses basic issues of environmental law. In this context, the topics of compliance and dispute resolution in MEAs are examined. The second part of this publication concentrates on specific environmental problems and the treaties and mechanisms created to address them. The following part of the book examines the interrelation of international environmental law with other fields, such as human rights, trade and investment. This section also discusses the trade and environment debate and addresses the WTO dispute settlement system. The book includes annexes on researching international environmental law, on international organizations active in international affairs, and with a chronology of international environmental agreements.

▪ **Author:**

Sands, Phillip; MacKenzie, Ruth & Shany, Juval

Title:

Manual on International Courts and Tribunals

Publishing Information:

Butterworths (1999), London

Abstract:

The book gives an overview of the jurisdiction and procedures of existing dispute settlement bodies in international law. Its purpose is to act as a practical guide for processes before these international institutions. While the first part of the book focuses on general bodies, such as the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS), the second part deals, among others matters, with the WTO dispute settlement system. Other bodies relating to human rights, regional economic integration and development banks are addressed in the further chapters. The last part treats the issue of non-compliance procedures, particularly under the Montreal Protocol.

B. ARTICLES

▪ **Author:**

Ausubel, J.H. & Victor, D.G.

Title:

Verification of International Environmental Agreements

Publishing Information:

Annual Review of Energy and Environment 17 (1992), p. 1

available at: <http://phe.rockefeller.edu/verification/>

Abstract:

The article addresses the question of whether verification is a subject that should be of more social concern. Specifically, it examines how verification is conducted both at the international and domestic level. Further, the authors question whether social science can explain the demand for, and character of, verification in existing regimes and how the response influences proposals with respect to environmental regimes, such as climate change, biodiversity and forests. The arguments are illustrated through a description of nine MEAs, including a discussion of the application of the issues to them.

▪ **Author:**

Brunnee, Jutta

Title:

A Fine Balance: Facilitation and Enforcement in the Design of a Compliance Regime for the Kyoto Protocol

Publishing Information:

Tulane Environmental Law Journal (2000), p. 223

Abstract:

This article focuses on the development of non-compliance systems under the Kyoto Protocol. It identifies the building blocks of a compliance system and develops a compliance regime for the Kyoto Protocol. The author examines the role of facilitative approaches with respect to compliance, the spectrum of consequences and approaches to these consequences, and institutional requirements, as well as linkages to dispute settlement. The article further discusses possible ways towards a balance between facilitation and enforcement.

▪ **Author:**

Churchill, Robin R. & Ulfstein, Geir

Title:

Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little Noticed Phenomenon in International Law

Publishing Information:

American Journal of International Law (2000), p. 623

Abstract:

The article draws attention to the development of so called "autonomous institutional arrangements" (such as the Convention of the Parties (COP), and the Meeting of the Parties (MOP)) as compared to traditional intergovernmental organizations. The first two parts of the paper describe and explain the autonomous institutions created by MEAs. The following parts examine the scope of the decision-making power of these arrangements, as well as the relationship between the "host" and the institutions established by the MEA. Further parts compare the autonomous institutional arrangements of MEAs with the arrangements in other areas of international law. The authors conclude that the self-governing, treaty-based, autonomous institutional arrangements may be considered to be intergovernmental organizations.

▪ **Author:**

Craik, Neil

Title:

Recalcitrant Reality and Chosen Ideals: The Public Functions of Dispute Settlement in International Environmental Law

Publishing Information:

Georgetown International Environmental Law Review (1998), p. 550

Abstract:

The author describe the distinction between legal and non-legal dispute settlement mechanisms and then focuses on the public nature of international environmental disputes. The author emphasizes the issues of multilateralism and the global environment, as well as the importance of the participation of non-state actors. Further issues, such as the role of science, soft law and soft responsibility of States are addressed.

▪ **Author:**

Fletcher, Charles R.

Title:

Greening World Trade: Reconciling GATT and Multilateral Environmental Agreements within the Existing World Trade Regime

Publishing Information:

Journal of Transnational Law & Policy (1996), p. 341

Abstract:

The article explains the growing awareness of the necessity of mutually reinforcing trade policy and environmental policy, and describes the history of international environmental agreements relating to international trade. The article examines how the GATT/WTO addresses environmental protection initiatives, mainly focusing on Article XX of GATT. At the end, the author proposes several ideas for reconciling environmental policy and free trade with regard to the MEA-WTO relationship, multilateral coordination and unilateral enforcement of environmental policy.

▪ **Author:**

Gardner, Allison F.

Title:

Environmental Monitoring's Undiscovered Country: Developing a Satellite Remote Monitoring System to Implement the Kyoto Protocol's Global Emission Trading Program

Publishing Information:

New York University Environmental Law (2000), p. 152

Abstract:

The author's intention is to demonstrate the utility of new technology in ascertaining compliance with international environmental agreements, particularly the Kyoto Protocol. The author discusses the structure of the emissions-trading program upon which the analysis of compliance monitoring is based. The paper also explains the theoretical framework within which compliance-monitoring mechanisms can be analysed. The author describes some of the traditional mechanisms for monitoring compliance with MEAs and examines their usefulness for the Kyoto emissions-trading system. According to the author, the effectiveness of international environmental agreements can be improved by the use of new technologies in monitoring compliance.

▪ **Author:**

Handl Gunther & Deutsch Eberhard

Title:

Compliance Control Mechanisms and International Environmental Obligations

Publishing Information:

Tulane Journal of International and Comparative Law (1997), p. 29

Abstract:

The Article starts with general considerations on non-compliance procedures in MEAs. The authors then elaborate on the advantages of non-compliance systems and set out the typical features of the non-compliance procedures. Finally, the critical relation between dispute settlement and non-compliance is addressed.

▪ **Author:**

Rest, Alfred

Title:

The Indispensability of an International Environmental Court

Publishing Information:

Review of European Community and International Environmental Law (1998), p. 63

Abstract:

The paper discusses the question of whether the environment needs a judicial instrument or whether existing dispute settlement mechanisms and institutions already meet this aim. While the author mainly focuses on the role of national and international courts, he also describes the existing systems that are found in MEAs.

▪ **Author:**

Sands, Philippe

Title:

International Environmental Litigation and its Future

Publishing Information:

University of Richmond Law Review (1999), p. 1619

Abstract:

The author describes the development of the subject of international environmental law and its recognition by the International Court of Justice, as well as by the European Court of Justice. The article considers the practice in other international courts and tribunals before turning to the question of whether a specialized tribunal is necessary or desirable. He concludes that, while the possibility of creating an international environmental court should be considered, in the meantime, non-compliance procedures should be strengthened.

▪ **Author:**

Sand, Peter H.

Title:

International Economic Instruments for Sustainable Development: Sticks, Carrots and Games

Publishing Information:

Indian Journal of International Law (1996), p. 1

Abstract:

The author examines the types of economic instruments found in MEAs to implement sustainable development. According to the author, there are three types of instruments: disincentives, such as quantitative limits to trade; incentives, such as financial contributions from the GEF or the Multilateral Fund; and, a third type of instruments, which is not beneficial to any particular party at first, but may have net beneficial results, such as joint implementation. These types of instruments hold a level of uncertainty for the countries involved, leading the author to label them "games".

▪ **Author:**

Werksman, Jacob

Title:

Compliance and the Kyoto Protocol: Building a Backbone into a "Flexible" Regime

Publishing Information:

Yearbook of International Environmental Law (1999), p.52 (eds. Brunnee, J. & Hay, E.)

Abstract:

The paper outlines options that may be available to Parties in designing responses to the non-compliance of Parties with their commitments under the climate regime. The author gives a general overview of international law and focuses on treaty-specific mechanisms for non-compliance. This article is an elaborated version of the paper "Responding to Non-Compliance under the Climate Change Regime", that was produced for the OECD.

▪ **Author:**

Werksman, Jacob

Title:

Compliance and Transition: Russia's Non-Compliance Tests the Ozone Regime

Publishing Information:

Zeitschrift für Ausländisches Recht und Völkerrecht (1996), p.750

Abstract:

The article describes the evolution of Russia's obligations under the Montreal Protocol and gives a detailed overview of the Montreal Protocol's procedures for non-compliance and financial assistance. The article outlines Russia's legal arguments with regard to non-compliance and elaborates on the issues of succession, *force majeure*, *rebus sic stantibus*, and common but differentiated responsibility.

It also addresses the question of how the Protocol's institutions responded to Russia's non-compliance, including issues such as grace periods, trade restrictions and financial assistance.

C. PAPERS/SPEECHES

▪ **Author:**

Bjerke, Siri, Minister of Environment, Norway

Title:

Enforcement and Compliance of Multilateral Environmental Agreements

Publishing Information:

Speaking Notes , Nairobi, 9 February 2001, available on the Web page of the Norwegian Ministry for Environment, <http://odin.dep.no/md/engelsk/aktuelt/taler/022021-990051/index-dok000-b-f-a.html>

Abstract:

The speech addresses the issues of compliance and enforcement in multilateral environmental agreements. It states that compliance with MEAs also requires action against non-compliance. The Minister stresses the importance of finding a balance between deterrence and over-stringent enforcement. Furthermore, the necessity of capacity building and the development of guidelines with respect to compliance is emphasized.

▪ **Author:**

Brack, Duncan

Title:

International Environmental Disputes

International Forums for Non-Compliance and Dispute Settlement in Environment-Related Cases

Publishing Information:

Energy and Environmental Programme of the Royal Institute of International Affairs (2001) available at www.riia.org

Abstract:

This paper was prepared for the UK Department of Environment, Transport and the Regions and gives a brief introduction on environment-related disputes. A list of notable examples of dispute settlement systems, together with the most important environment-related cases that have been settled under them is provided in the second section. The third section focuses on non-compliance mechanisms and notes examples of such mechanisms in various MEAs. Finally, the author suggests how non compliance regimes in MEAs would be likely to be more effective.

▪ **Author:**

Brown Weiss, Edith

Title:

Getting Countries to Comply with International Agreements

Publishing Information:

Environment, July-August 1999, available at http://www.findarticles.com/cf_0/m1076/6_41/55237739/print.html

Abstract:

The paper is based on the results of an international and multidisciplinary collaborative project with 40 scholars from ten countries who examined the factors that affect national compliance with international agreements. The author clarifies the difference between implementation, compliance and effectiveness, and introduces a model that explains compliance. She further discusses strategies to strengthen and stimulate compliance and emphasizes the need to develop different strategies for different countries, according to their profile. Finally, the author deals with policy descriptions for the negotiation of the agreement, the involvement of institutional arrangements, and country specific measures.

▪ **Author:**

Brown Weiss, Edith

Title:

National Compliance with International Environmental Agreements

Publishing Information:

Remarks for the Plenary Session on Implementation, Compliance and Enforcement
American Society of International Law, Proceedings of the 91st Annual Meeting (1997), p.56

Abstract:

The author focuses on national compliance with international agreements and notes the importance of viewing compliance within an international system consisting of networks related to nation-states. Secondly, she considers the concept of change as central to understanding national compliance. Further issues, such as the intent and capacity to comply, strategies for compliance, and the linkage of compliance strategies with intent and capacity, are addressed.

▪ **Author:**

Butler, Jo Elizabeth

Title:

The Establishment of A Dispute Resolution/ Non-Compliance Mechanism in the Climate Change Convention

Publishing Information:

American Society of International Law, Proceedings of the 91st Annual Meeting (1997), p. 250

Abstract:

The paper describes the background of the mandate that is found in Article 13 of the UNFCCC. It explains the process of introducing a non-compliance mechanism, as well as the problems that have been faced with regard to the use of certain language. The author concludes that environmental treaties are strongly moving toward the creation of non-compliance mechanisms and away from total dependence on dispute settlement procedures. The author expresses the hope that the climate change regime will also adopt a very effective non-compliance and dispute resolution system.

▪ **Author:**

Chayes, Abram

Title:

Compliance without Enforcement

Publishing Information:

Remarks for the Plenary Session on Implementation, Compliance and Enforcement
American Society of International Law, Proceedings of the 91st Annual Meeting (1997), p. 53

Abstract:

The author explains the state of compliance with international regulatory agreements and discusses the issue of sanctions. In this context, the so-called "Managerial Approach" is noted. The author also distinguishes between self-interested non-compliance versus wilful breach of treaty terms, citing the Russian CFC case in the Montreal Protocol as an example.

▪ **Author:**

Goldberg, Donald M.; Wiser, Glenn; Porter, Stephen J. & Lacosta, Nuno

Title:

Building a Compliance Regime under the Kyoto Protocol

Publishing Information:

Study of the Center for International Environmental Law (CIEL) & Euronatura
available at <http://208.244.94.218/euronatura2/Cepap3.htm>

Abstract:

The paper considers compliance in a broad sense, which means ensuring and enabling Parties to implement their obligations under the Kyoto Protocol with the aim of achieving the objectives of the UNFCCC. It discusses and suggests a dual approach to compliance based on facilitation and

enforcement and describes measures that can be taken in this respect. Finally, the paper provides an annex setting out a wide range of responses that are available to address non-compliance, ranging from informal negotiations and financial assistance to fines and trade measures.

▪ **Author:**

Herman, Steven A. & Verkerk, Pieter J.

Title:

Closing Remarks for the Fourth International Conference on Environmental Compliance and Enforcement

Publishing Information:

Fourth International Conference on Environmental Compliance Enforcement (1996), available at www.inece.org/4thvol2/closing.pdf

Abstract:

The paper deals with environmental compliance and enforcement and addresses issues related to establishing international cooperation, regional networks and capacity building. Firstly, the article focuses on the driving forces for environmental compliance and enforcement and the application of those principles. Further, the paper addresses the establishment of international cooperation, regional networks and international capacity building. The paper also includes a summary of workshops that were held on several special topics related to environmental compliance and enforcement. The paper draws the conclusion that the principles of environmental compliance and enforcement are clear and understandable, and that this must be used to carry the knowledge, expertise, training and regional networks to an even more effective level.

▪ **Author:**

Intergovernmental Committee for the Cartagena Protocol on Biosafety – Note by the Executive Secretary

Title:

Compliance (Article 34) – Development of Compliance Procedures and Mechanism under the Cartagena Protocol on Biosafety

Publishing Information:

UNEP/CBD/ICCP/1/7, 19 September 2000, Intergovernmental Committee for the Cartagena Protocol on Biosafety, First Meeting, Montpellier France, 11-15 December 2000, Item 4.5 of the agenda.

Abstract:

The paper offers a very useful review of existing compliance regimes in multilateral environmental agreements, such as CITES, the Montreal Protocol and the UN-ECE Convention on Long-Range Transboundary Air Pollution. It describes recent initiatives to address the issue of compliance with, and implementation and enforcement of, MEAs, as well as the development of non-compliance procedures in other processes and institutions, such as UNEP, the Basel Convention, the UNFCCC and the Kyoto Protocol. The paper also discusses some elements and options for compliance regimes and finally issues some general recommendations. The annex contains a questionnaire regarding the development of compliance procedures and mechanisms under the Cartagena Protocol on Biosafety.

▪ **Author:**

Jeffery, John (Rapporteur)

Title:

Compliance Monitoring

Publishing Information:

Resume, Fourth International Conference on Environmental Compliance and Enforcement available at <http://www.inece.org>

Abstract:

The document summarizes the discussion that were held on compliance monitoring at the International Conference on Environmental Compliance and Enforcement. It deals with the key elements in the development of a compliance monitoring programme and focuses on the conduct of

multi-media inspections, source self-monitoring, citizens' complaints, data collection and targeting inspections.

▪ **Author:**

Marceau, Gabrielle & González-Calatayud, Alexandra

Title:

The Relationship between the Dispute Settlement Mechanisms of MEAs and those of the WTO

Publishing Information:

To be published in "The WTO and Multilateral Environmental Agreements: Facets of a Complex Relationship", Böll Foundation Washington, NWF and the Woodrow Wilson Center (2001)

Abstract:

This paper deals with the conflicts that could arise due to the parallel dispute settlement mechanisms of MEAs and the WTO and the "forum shopping" between regimes that could result. The authors identify some of the issues and arguments that arise in that context, and which may ensure that WTO Members and other States use the most appropriately equipped forum. They examine the conflicts between the substantive provisions of MEAs and those of the WTO Agreement, as well as the relationship between the WTO dispute settlement mechanism and those in MEAs. Finally, the authors suggest different approaches to improve the WTO dispute settlement mechanism with respect to trade-related cases. The authors conclude by stressing the importance of strengthening compliance and dispute settlement mechanisms in MEAs to provide an important source of mutual supportiveness.

▪ **Author:**

OECD Environment Directorate

Title:

Key Features of Domestic Monitoring Systems under the Kyoto Protocol

Publishing Information:

OECD and IEA Information Paper (2000), COM/ENV/EPOC/IEA/SLT(2000)4

Abstract:

The main aim of the paper is to identify key functions, processes and institutions to ensure high data quality under the Kyoto Protocol monitoring systems. It provides general information on monitoring systems and further tries to identify priorities for capacity building programmes or for international review processes. Therefore the paper focuses on a wider range of issues such as the characteristics of monitoring systems, the core technical functions of domestic systems, the features of the management process and finally the institutional context of monitoring systems.

▪ **Author:**

OECD Environment Directorate

Title:

Monitoring, Reporting and Review of National Performance under the Kyoto Protocol

Publishing Information:

Paper prepared for discussion at the 10 and 11. September meeting of the Annex I Expert Group on the UNFCCC (1999), ENV/EPOC(99)20/FINAL

Abstract:

The objective of the paper is to consider ways of adapting the existing UNFCCC compliance system to the substantive commitments developed under the Kyoto Protocol. The paper deals with wider compliance systems and describes elements, such as monitoring, reporting, review and related issues. In addition, it shows the interrelation between international compliance and national systems of implementation.

▪ **Author:**

OECD Environment Directorate

Title:

Ensuring Compliance with a Global Climate Change Agreement

Publishing Information:

OECD Information Paper (1998), ENV/EPOC(98)5/REV1

Abstract:

The paper analyses and assesses possible procedures to facilitate and secure compliance with the UNFCCC and the Kyoto Protocol. Although the paper mainly deals with approaches to ensure compliance with targets and timetables, it also examines further measures such as reporting, adoption of mitigation policies and financial obligations. It offers compliance approaches that might be used in connection with emissions trading and transfer mechanisms.

▪ **Author:**

OECD Environment Directorate

Title:

Responding to Non-Compliance under the Climate Change Regime

Publishing Information:

OECD Information Paper (1999), ENV/EPOC(99)21/FINAL

Abstract:

The paper outlines options that may be available in designing responses to the non-compliance of Parties with their commitments under the climate regime. The paper gives a general overview of international law and then focuses on treaty-specific mechanisms for non-compliance.

▪ **Author:**

OECD Environment Directorate

Title:

Kyoto Mechanisms, Monitoring and Compliance: From Kyoto to The Hague

Publishing Information:

OECD and IEA project for the Annex I Expert Group on the UNFCCC (2001), COM/ENV/EPOC/IEA/SLT(2001)9

Abstract:

The paper is a compilation of the summaries of papers that were prepared by the OECD and International Energy Agency (IEA) Secretariats at the request of the ANNEX I Export Group of the UNFCCC. The paper deals with the Kyoto Mechanism, as well as monitoring and compliance under the Kyoto Protocol and the UNFCCC.

▪ **Author:**

Osakwe, Chiedu

Title:

Implementing MEAs: Trade and Positive Measures

Publishing Information:

Conference on the Implementation of Multilateral Environmental Agreements (1997)

Paper available at <http://ictsd.org/html/review4.5.htm>

Abstract:

The paper builds on the combination and balance between coercive trade and incentive-driven positive measures. The author mainly focuses on positive measures, such as the building of expert capacity, granting of grace periods, transfer of environmentally-friendly technology, joint project implementation, environmentally-friendly project subsidies and improved market access. The author refers to an UNCTAD paper which proposes an agenda for positive measures. The paper concludes that while positive measures are important, a balance between coercive and positive measures needs to be found.

▪ **Author:**

Széekely, Alberto

Title:

Compliance with Environmental Treaties: the Empirical Evidence – A Commentary on the Sovereignty of International Environmental Law

Publishing Information:

American Society of International Law, Proceedings of the 91st Annual Meeting (1997), p. 234

Abstract:

The author analyzes what he calls "disturbing signals that appeared in the realm of international environmental law". Further, he addresses the issue of today's soft international law. In this context, he elaborates on MEAs that allow for Parties to provide financial assistance to developing countries.

▪ **Author:**

United Nations Conference for Trade and Development (UNCTAD)

Title:

Positive Measures to Promote Sustainable Development, Particularly in Meeting the Objectives of Multilateral Environmental Agreements

Publishing Information:

UNCTAD paper, 26 August 1997; TD/B/COM.1/EM.3/2.9

Abstract:

This reports provides a description of the range of incentives that are used in MEAs, and addresses capacity building, financial mechanisms and technology transfer. These measures are illustrated within the context of various MEAs. There is also a discussion regarding additional or innovative financial mechanisms, for example, private sector funding for the creation of investor pools.

▪ **Author:**

United Nations Environment Programme (UNEP) Global Environment Outlook (GEO) Team

Title:

Global Environment Outlook 2000

Publishing Information:

GEO 2000/Global Environment Outlook, by the United Nations Environment Programme available at www.grida.no/geo2000

Abstract:

The five chapters of the Global Environment Outlook deal with global perspectives, the state of the environment, policy responses, future perspectives and recommendations. Chapter three, which deals with policy responses in different regions, includes a section on MEAs and non-binding instruments to address environmental problems. It addresses the issues of implementation, compliance and effectiveness and explains the differences.

▪ **Author:**

Victor, David G.

Title:

The Use and Effectiveness of Non-Binding Instruments in the Management of Complex International Environmental Problems

Publishing Information:

American Society of International Law, Proceedings of the 91st Annual Meeting (1997), p. 241

Abstract:

The author focuses on the effectiveness of non-binding legal instruments. The article refers to the project "Implementation and Effectiveness of International Environmental Commitments" carried out by the International Institute for Applied Systems Analysis (IIASA), Austria. He explains and emphasizes the important distinction between compliance and effectiveness and discusses the role of legally-binding commitments. The author concludes by citing a case and argues that it has

demonstrated that non-binding approaches that are backed up by review and political will can be a good tool to force states to implement their obligations.

▪ **Author:**

Wasserman, Cheryl E.

Title:

Building International Networks, Cooperation, and Capacity for Environmental Compliance and Enforcement: A Progress Report

Publishing Information:

Fourth Conference on Environmental Compliance and Enforcement (1996)

available at <http://www.inece.org/4thvol1/wasserma.pdf>

Abstract:

The paper provides a brief overview of the importance of capacity building for the success of environmental compliance and enforcement. It also examines what international collaboration has achieved in the past and what might be needed to continue to make progress. Issues that are addressed are the international consensus regarding the importance of environmental compliance, the accomplishments of international conferences and related networking, and institutional arrangements and regional and international networks. The paper also includes an annex providing detailed definitions of the terms compliance and enforcement, and that discusses specific issues related to those terms.

▪ **Author:**

Wasserman, Cheryl E.

Title:

Principles of Environmental Enforcement

Publishing Information:

Third International Conference on Environmental Enforcement (1994)

<http://www.inece.org/report/REP24.html#PrinciplesofEnvironmentalComplianceandEnforcement>

Abstract:

The first part of the paper explains the different bases for enforcement and compliance and elaborates on the creation of environmental laws that are enforceable. The second part deals with the design of compliance strategies and enforcement programmes and includes issues ranging from promoting compliance, and monitoring compliance to responding to violations. The last part is on experiences with implementation and includes five case studies in various environmental sectors in different countries.

▪ **Author:**

Werksman, Jacob

Title:

Five MEAs, Five Years Since Rio: Recent Lessons on the Effectiveness of Multilateral Environmental Agreements

Publishing Information:

FIELD Paper; Rio+5 Special Focus Report (1997)

available at www.ecouncil.ac.cr/rio/focus/report/english/field.htm

Abstract:

The paper provides an analytical framework on compliance and effectiveness. The author explains the issues of compliance information systems and the so-called "non-compliance response systems". The main part of the paper concentrates on recent lessons in compliance and effectiveness from selected regimes, such as CITES, the Montreal Protocol, the Basel Convention, the Climate Change Convention and the Convention on Biological Diversity.

▪ **Author:**

Wiser, Glenn M.

Title:

Compliance Systems under Multilateral Agreements – A Survey for the Benefit of Kyoto Protocol Policy Makers

Publishing Information:

Center for International Environmental Law (CIEL) (1999)

Abstract:

This paper primarily focuses on the compliance systems under the climate change regime. Furthermore, it surveys other MEAs, as well as regimes that regulate different activities, including arms control, human rights, labour relations, commodities, and international trade and finance. The survey examines the rules, procedures, and institutions established under the various agreements. The paper mainly builds on the distinction of compliance information and compliance response systems.

▪ **Author:**

Young, Oran

Title:

Two Models of Effectiveness

Publishing Information:

Remarks in Plenary Session on Implementation, Compliance and Effectiveness, American Society of International Law, Proceedings of the 91st Annual Meeting (1997), p. 50

Abstract:

The author seeks to break apart the issue of compliance and effectiveness and to compare two models of effectiveness. Firstly, he elaborates on the interrelationship between compliance and effectiveness. Secondly, he proposes a standard regulatory model of effectiveness and an alternative "social practice model," which takes into account institutional frameworks that give rise to social practices.

II. COMPLIANCE AND/OR DISPUTE SETTLEMENT IN THE WTO

A. BOOKS

▪ **Author:**

Cameron, James & Campbell, Karen (Eds.)

Title:

Dispute Resolution in the World Trade Organization

Publishing Information:

Cameron May (1998) London

Abstract:

This book compiles several essays on different aspects of dispute settlement. It is divided into five parts. The first part gives an overview of the DSU; the second part focuses on the form and function of the Appellate Body and the third part includes cases and sectoral analysis. The next part concentrates on perspectives. The last part incorporates international trade law reports, summaries and commentaries.

▪ **Author:**

Croome, John

Title:

Guide to the Uruguay Round Agreements

Publishing Information:

Kluwer Law International (1999), The Hague

Abstract:

This book is the official and comprehensive WTO explanation of the Uruguay Round treaties. It explains each agreement with cross-references to associated decisions, as well as concise introductory

notes explaining each Agreement's purpose and providing background information. The book includes the WTO Secretariat's analysis of the significant impact of the commitments in the goods and service schedules.

▪ **Author:**

Petersmann, Ernst-Ulrich

Title:

The GATT/WTO Dispute Settlement System

Publishing Information:

Kluwer Law International (1997), London-The Hague-Boston

Abstract:

The book gives an introduction to the GATT and the WTO dispute settlement systems. Firstly, it explains the GATT dispute settlement system and describes the case law on trade-related environmental measures. The author then elaborates on non-violation complaints and situation complaints and questions their legitimate function. After introducing the dispute settlement system of the WTO Agreement, the future of the dispute settlement system is focused on. The Annexes include a useful collection of relevant texts and tables of GATT and WTO case law.

▪ **Author:**

Weiss, Friedl (ed.)

Title:

Improving WTO Dispute Settlement Procedures

Issues and Lessons from the Practice of Other International Courts and Tribunals

Publishing Information:

Cameron May (2000), London

Abstract:

The book consists of a collection of essays and follows the idea that the insights and lessons to be derived from the practice of other international courts may contribute to a reform of the GATT/WTO system. The essays, written by specialists, academics and legal practitioners, examine a wide range of procedural aspects of the dispute settlement system in the WTO.

B. ARTICLES

▪ **Author:**

Bello, Judith H.

Title:

The WTO Dispute Settlement Understanding: Less is More

Publishing Information:

American Journal of International Law (1996), p. 416

Abstract:

The article addresses the question of whether the WTO dispute settlement provisions subordinate non-trade policy objectives. The author focuses on the flexibility of the new system and concludes that the less the WTO requires any real transfer of power from national governments to the Secretariat, the more effectively it encourages international economic cooperation.

▪ **Author:**

Bello, Judith H. & Holmer, Alan F.

Title:

U.S Trade Law and Policy Series No. 24: Dispute Resolution in the New World Trade Organization: Concerns and Net Benefits

Publishing Information:

The International Lawyer (1994), p. 1095

Abstract:

The article identifies the major concerns about the WTO dispute settlement procedures and explains the reasons why the United States should benefit from them. Firstly, it describes the background of the dispute settlement system, and illustrates some domestic concerns in this respect. Further, the authors emphasize the net benefits of an effective dispute settlement system, and reach the conclusion that economic interests benefit substantially from the dispute settlement system.

▪ **Author:**

Bourgeois, Jacques H.J.

Title:

Some Reflections on the WTO Dispute Settlement System from a Practitioner's Perspective

Publishing Information:

Journal of International Economic Law (2001), p. 145

Abstract:

The author advocates the establishment of a standing body or standing WTO Dispute Settlement panels. The article also discusses some deficiencies with regard to a procedural nature, such as standing, preliminary rulings, scope of disputes, judicial economy and appeals, and the review of factual findings on appeal. The paper suggests specific improvements to the dispute settlement system and raises the question of whether interim relief should be provided.

▪ **Author:**

Bütler, Monika & Hauser, Hans

Title:

The WTO Dispute Settlement System: A First Assessment from an Economic Perspective

Publishing Information:

Journal of Law, Economics & Organization (2000), p. 503

Abstract:

The authors discuss the incentives that countries face in trade litigation within the WTO dispute settlement system. They offer various predictions and base them on empirical evidence. The authors conclude that the current WTO dispute settlement system makes trade restrictions less attractive than under the old system. The article also focuses on the effects of the possibility of appealing a panel decision, as well as the implementation system, which they consider to be too weak. The authors also state that bilateral settlements are more likely at an early stage in the process, and would be biased toward the expected outcome of the formal dispute settlement procedure.

▪ **Author:**

Davey, William J.

Title:

The WTO Dispute Settlement System

Publishing Information:

Journal of International Economic Law (2000), p. 15

Abstract:

The author, who served as the Director of the Legal Affairs Division of the WTO between 1995 and 1999, reviews the first four years of the WTO dispute settlement and gives some of his preliminary judgements about the new WTO dispute settlement procedures.

▪ **Author:**

Dunoff, Jeffrey L.

Title:

Institutional Misfits: The GATT, the ICJ and Trade-Environment Disputes

Publishing Information:

Michigan Journal of International Law (1994), p. 1043

Abstract:

This article addresses possible tensions between international trade, sustainable development and the environment. The author concludes that neither trade bodies nor adjudicatory bodies like the International Court of Justice (ICJ) ought to resolve this issue. An alternative mechanism for the resolution of trade-environment conflicts is proposed, according to which international environmental disputes, including conflicts involving international trade issues, should be resolved in a non-adjudicatory way.

▪ **Author:**

Kohona, Palitha T.B.

Title:

Dispute Resolution under the World Trade Organization – An Overview

Publishing Information:

Journal of World Trade (1994), p.23

Abstract:

The author, who was a member of the Uruguay Round team of the Australian delegation, describes the negotiations and development of the WTO dispute settlement system. Further, he focuses on issues, such as the limits on law-making through interpretation, restraints on the use of the dispute settlement process, as well as the position of the developing countries and least-developed countries. The article also explains the functioning of the dispute settlement system, starting from a description of good offices and conciliation, through the panel and Appellate Body processes to further issues such as compensation and retaliation.

▪ **Author:**

Jackson, John H.

Title:

The Role and Effectiveness of the WTO Dispute Settlement Mechanism

Publishing Information:

Brookings Trade Forum (2000), p. 219, available at <http://muse.jhu.edu/demo/btf/2000.1jackson.html>

Abstract:

The article explains the structure of the WTO and its dispute settlements system. In this context, it also deals with the caseload of the system and the difficulties regarding implementation. The second part of the article continues to examine the role of the system within a "WTO constitution". Finally, the author gives some reform proposals and prospects.

▪ **Author:**

Jackson, John H.

Title:

Dispute Settlement and the WTO: Emerging Problems

Publishing Information:

Journal of International Economic Law (1998), p. 329

Abstract:

Firstly, the author explains the developing jurisprudence of the WTO dispute settlement system and then deals with the Appellate Body approach. In this context, the author addresses the issue of deference to national government regulatory decisions. Further, the author expresses the dangers with respect to relying too much on the WTO dispute settlement system.

▪ **Author:**

Kuijper, Pieter-Jan

Title:

The New WTO Dispute Settlement System

Publishing Information:

Journal of World Trade, Vol. 28 No. 2 (April 1994), p. 50

Abstract:

The article outlines the possible impact of the WTO dispute settlement system on the European Community. At the outset, the author explains the character of the dispute settlement system and focuses on the compulsory and binding system, the deadlines, the possibilities to appeal and the clear rules on implementation. In addition, he elaborates on the issue of access to the system, as well as the issues of prevention of panels against the EC and the handling of "lost panels". The paper also describes the impact on intra-EC dispute settlement and, in this context, discusses the problem of direct effects and exhaustion of local remedies. Finally, the article deals with the relation with member State legislation.

▪ **Author:**

Marceau, Gabrielle

Title:

A Call for Coherence in International Law

Publishing Information:

Journal of World Trade (1999), p. 87

Abstract:

This article treats the complex issue of WTO trade disputes involving environmental policies. Section II of the article discusses environment-related disputes under the GATT system and examines the interpretation and reach of Article XX of GATT. The third Section addresses cases in which WTO Members do not take any further negotiated action to address trade and environmental issues at the WTO. The article raises arguments for and against using principles of public international law to interpret WTO rights and obligations. The last section examines the different legal instruments that could be negotiated by WTO Members with a view to reducing the potential for disputes involving environmental policies.

▪ **Author:**

Mavroidis, Petros C.

Title:

Remedies in the WTO Legal System: Between a Rock and a Hard Place

Publishing Information:

European Journal of International Law (2000), p.763

Abstract:

The author examines the effectiveness of the WTO dispute settlement system. By using representative case law from the WTO, the paper concludes that the effectiveness of the WTO remedies also depends on the relative persuasive powers of the WTO Member threatening the countermeasures.

▪ **Author:**

Palmeter, David & Mavroidis, Petros C.

Title:

The WTO Legal System: Sources of Law

Publishing Information:

The American Journal of International Law (1998), p. 398

Abstract:

The article discusses the sources of law in the WTO. The dispute settlement system under the WTO is explained in brief and the reports of prior panels and the Appellate Body are discussed. Furthermore, reference is made to other sources of international law. The authors conclude that the WTO legal system cannot be considered to be entirely self-contained, but constitutes an important part of the larger system of public international law.

▪ **Author:**

Petersmann, Ernst-Ulrich

Title:

From the Hobbesian International Law of Coexistence to Modern Integration Law: The WTO Dispute Settlement System

Publishing Information:

Journal of International Environmental Law (1998), p.175

Abstract:

The article seeks to address the WTO dispute settlement system in the broad context of international law and to discuss some of the interrelationships between international law, international economic law and WTO law.

▪ **Author:**

Rosas, Allan

Title:

Implementation and Enforcement of WTO Dispute Settlement Findings : An EU Perspective

Publishing Information:

Journal of International Economic Law (2001), p. 131

Abstract:

The article discusses various alternatives for enhancing implementation and enforcement, including the possibility of strengthening the rights of private parties and shortening and re-designing the deadlines for implementation and compliance panel procedures. The article concludes that while in the present global trade system the intergovernmental character of the WTO must be preserved, there is room for some shortening of deadlines, for making the panel system more permanent and professional, and for increasing the resources of the Appellate Body.

▪ **Author:**

Trachtman, Joel P.

Title:

The Domain of WTO Dispute Resolution

Publishing Information:

Harvard International Law Journal (1999), p. 333

Abstract:

This article addresses the question of where in the WTO institutional structure power should be exercised and suggests the reasons why dispute resolution would be the appropriate place to determine the relationship between trade and the environment. It first analyzes the function of a vocation of WTO dispute resolution and examines analytical techniques of law and economics in an attempt to suggest the reasons for the assignment of competence to WTO dispute resolution. Finally, the author applies the proposed techniques to the conflict exemplified in the Shrimp/Turtle case and the problem of non-violation in the Japan Film dispute.

▪ **Author:**

Winter, Ryan L.

Title:

Reconciling the GATT and WTO with Multilateral Environmental Agreements: Can We Have Our Cake and Eat It Too?

Publishing Information:

Colorado Journal of International Law and Policy (2000), p. 223

Abstract:

The article describes the nature of the trade and environment conflict. It concentrates on issues such as the effect of the GATT/WTO on environmental protection, the construction of Article XX of the GATT, the trade and environment conflict in the WTO, and the decisions in the Shrimp-Turtle case. Finally, the article presents approaches to reconciliation and addresses reinterpretation of substantive

GATT provisions, exemptions for MEAs through waivers, amending the GATT, the development criteria to guide adjudication, procedural changes under GATT/WTO. The issues of a change of forum and the development of a global environmental organization are also discussed.

C. PAPERS/SPEECHES

▪ **Author:**

Davey, William J.

Title:

Issues of WTO Dispute Settlement

Publishing Information:

American Society of International Law, Proceedings of the 91st Annual Meeting (1997), p. 279

Abstract:

The author addresses several important issues of WTO dispute settlement, including the selection of panelists, fact-finding, multiple Parties, interim stage reviews and transparency. Further, he discusses the drawbacks of merely ordering compliance for the future and the effectiveness of compensation and suspension of concessions. Finally, he raises the issue of internal remedies and addresses the situation in which laws, decrees or EU regulations or directives have been declared incompatible with WTO law.

▪ **Author:**

Hoekman, Bernard M., World Bank and CEPR & Mavroidis, Petros C.

Title:

WTO Dispute Settlement, Transparency and Surveillance

Publishing Information:

World Bank, November (1999), available at <http://www.cid.harvard.edu/cidtrade/Issues/dispute.html>

Abstract:

The authors of this paper argue that although there is a general sense of satisfaction with the WTO dispute settlement system, there is a need to ameliorate the ability of developing countries to use the mechanisms to enforce market access and to enhance incentives for compliance. The paper deals with developing country concerns regarding enforcement, the strengthening of enforcement, the issue of resources and the enhancement of transparency.

▪ **Author:**

South Center

Title:

Issues Regarding the Review of the WTO Dispute Settlement Mechanism

Publishing Information:

Trade-Related Agenda, Development and Equity (T.R.A.D.E.) Working Papers (1999)

Abstract:

The paper attempts to analyse problems that have been encountered by developing countries in relation to the operation of the WTO Dispute Settlement Understanding (DSU). The paper starts with a review of the experience of developing countries under GATT 1947 in respect of dispute settlement, and points out the differences and similarities between the past and present situation. The text then focuses on issues of process related to the operation of the current DSU.
