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WTO and Environmental Standards Issues concerning Trade in India

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ABSTRACT

Much environmental damage is caused due to the increased scale of global economic activities. Trade and environment are closely related to each other. There are certain areas where liberalization of trade aids environmental protection. Liberalized trade will also enable nations to overcome resource constraints, which may have previously limited their growth potential. As a result, the economic activity expands and the resources available for protection of environment will also expand. However, an increase in income, especially of the third world countries is necessary to improve the quality of environment. Another method by which trade liberalization may benefit environment is through exchange of environmentally clean products, services and technologies. Trade and environment are two areas which are intertwined. Trade has both advantageous and disadvantageous impact on environment. Trade helps the environmental cause by increasing the income levels of countries, so that they can spend more on environment related matters. Moreover competition in trade, as created by the WTO can result in both environment friendly products as well as methods of production. But trade can harm the environment as increased trade will always result in an indiscriminate use of natural resources.

I. INTRODUCTION

International Law addresses environmental issues at several levels. Trans boundary problems, such as air or water pollution, or conservation of migratory animals, provide examples of the earliest and most developed use of international law to regulate environmental concerns.

The relationship between trade and environment will come under two different branches of international law viz., International Environmental Law and International Trade Law. Under the first branch comes, a series of Multilateral Environmental Agreements and secondly a majority of International Trade Law comes under the WTO rules. The relationship between these two different sets of agreements underlines the inseparable relationship between trade and environment. Much environmental damage is due to the increased scale of global

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economic activities

Trade and environment are closely related to each other. There are certain areas where liberalization of trade aids environmental protection. The environment benefits from free trade, owing to the fact that it allows individuals and nations to specialize in those areas where they are relatively more efficient.

WTO is morally responsible for environmental damages because such damage is inextricably linked to increased trade promoted by it. Moreover, the member states have given the WTO significant powers over trade. As a corollary they could also be held responsible for the environmental effects of its actions

II. MAJOR WTO/GATT NORMS RELEVANT TO THE ENVIRONMENT²

The WTO now provides the Principal Forum for negotiations on Multilateral trading relations among member states, and for the binding settlement of disputes arising under WTO Agreement. A policy of free trade will inevitably involve some conflict with International Environmental Agreements or environmental protection requirements in National law which has the effect of restricting trade in certain commodities.

When we link environmental protection and free trade in the framework of environmentally sustainable development, we necessarily need a long-term perspective. Sustainable development is inherently intergenerational. This, too, imposes limits on the extent to which we are able to maximize consumption today without concern for the legacy we pass to future generations.

While the World Trade Organization (WTO) does not have as its primary objective the protection of the environment, the importance of this policy goal is clearly acknowledged in its Preamble and various Agreements. The WTO places no constraints on governments implementing within their borders whatever legitimate policy options they wish with respect to the environment. Notwithstanding that, it has been argued that there is a natural or in-built potential for conflict between trade policy and policies relating to the environment

Environment related issues are already being discussed in various WTO bodies, viz. the TBT³, SPS⁴ and Agricultural Committees and the TRIPS⁵ Council. Environmental services

² GAIT is composed of 37 Articles and a number of explanatory understandings and addenda. This section reviews a few selected articles that are of key environmental importance.

³ The preamble of the TBT Agreement provides: " ... recognizing that no country should be prevented from taking measures necessary to ensure the quality of exports or for the protection of human animal or plant life or health of the environment".

⁴ The SPS Agreement recognized the member's right to adopt SPS measures, but stipulates that they must be based on science and should not create unnecessary obstacles to trade and should not arbitrarily or unjustifiably

are also taking a considerable economic importance leading to increased discussion in the framework of the GATS.

The Key Agreements, with a Special Consideration of those related to the Environment

- Three key agreements under the WTO umbrella related to environment and trade issues:
 - . The General Agreement on Tariffs and Trade⁶
 - Agreement on Technical Barriers to Trade.⁷
 - Agreement on Sanitary and Phytosanitary Measures.⁸

Both in the GATT⁹ and in the WTO Agreement, we find direct or indirect references to the environment. The preamble to the WTO talks of allowing for the optimal use of the world's resources in accordance with the objectives of sustainable development.

III. CHALLENGES AHEAD

In the past decade or so, environmental concerns have proliferated, encompassing a large section of trade. This emanates from international commitments such as the Cartagena Biosafety Protocol and the Kyoto Protocol. Apart from these, there are some emerging issues posing severe policy challenges to governments in developing countries, such as the growing electronic trade and the subsequent waste being generated out of it. However, along with these challenges are emerging opportunities in terms of the growing market size of environment - friendly products (EFPs). As many of the South Asian economies, especially India, are still engaged in 'organic production' of agricultural commodities.

The electronics industry was traditionally thought to be a relatively clean industry. But with greater realization of ecological hazards emanating from this sector. The ecological hazards come not only from the processes of electronic commodity production, but there are also

discriminate between members. The Agreement allows members to adopt sanitary and phyto-sanitary measures for environmental protection but subject to proper risk assessment, non discrimination and transparency

⁵ TRIPS permit members to make certain inventions ineligible for patenting which includes plants and animals and other inventions which may cause damage to Human, animal, or plant life or health.

⁶ The General Agreement on Tariffs and Trade (GATT), signed on Oct. 30, 1947, by 23 countries, was a legal agreement minimizing barriers to international trade by eliminating or reducing quotas, tariffs, and subsidies while preserving significant regulations.

⁷ These can include technical performance standards that a product must meet, to be imported or exported . For example, energy efficiency standards for washing machines

⁸ The Agreement on Sanitary and Phytosanitary Standards deals with standards "necessary" to protect humans, animals and plants from certain hazards associated with the movements of plants, animals and food stuffs in international trade

⁹ The General Agreement on Tariffs and Trade (GATT), signed on Oct. 30, 1947, by 23 countries, was a legal agreement minimizing barriers to international trade by eliminating or reducing quotas, tariffs, and subsidies while preserving significant regulations.

increasing worries about the disposal of electronic waste.

One of the major challenges Indian exporters face relates to multiplicity of products and other standards. Though international efforts have been made to harmonize standards across the board a lot has yet to be achieved. Recently, Italy and Germany have detained Indian spices consignments on the ground of pesticide residue. These countries failed to convince Indian exporters on the changes they had made on their existing regulations on microbial contaminations and contamination due to pesticide residue. This is a blatant denial of facilities offered under Article 7 of the SPS¹⁰ regulations and is causing not only difficulties for India in its regular exports but also leading to loss of opportunities elsewhere.

A lack of environmentally sound technologies could be disastrous for this sector. It would be impossible to sustain production and hence trade if ecologically friendly practices are not adopted. Lack of information about the various requirements and standards in importing countries could pose very serious hurdles to trade.

The electronics industry is one of the fastest growing industries today. It has emerged as one of the major sectors in India's export basket in recent years. Exports from this industry have been growing slowly over the past few years. The Indian electronic sector consists a few large companies, some small and medium size enterprises (SMEs) and a large number of tiny and household enterprises.

Just as technical standards may create non-tariff trade barriers, eco labeling schemes may inadvertently or deliberately create impediments to trade. Product categories eligible for labels may be selected to favor domestic over foreign producers. Discrimination may also exist in product classification system. Austria imposed a mandatory labeling requirement for tropical timber and products but did not impose similar requirements for temperate forest products.

Indian Eco-mark

In India, the government launched the eco-labeling scheme known as 'Eco-Mark' in 1991. Any product which is made, used or disposal of in a way that significantly reduces the harm it would otherwise cause the environment could be considered as an environment- friendly product. There are three stages involved in the Eco-Mark scheme. The first stage is to determine product categories for the scheme, which is done by a steering committee, set up

¹⁰ The SPS Agreement recognized the member's right to adopt SPS measures, but stipulates that they must be based on science and should not create unnecessary obstacles to trade and should not arbitrarily or unjustifiably discriminate between members. The Agreement allows members to adopt sanitary and phyto-sanitary measures for environmental protection but subject to proper risk assessment, non discrimination and transparency.

the by ministry of environmental and forests. The committee also formulates strategies for promotion, implementation, future development and improvements in the working of the scheme. The second stage involves the identification of a specific product and recommendation of individual criteria to be adopted. A technical committee set up in for this purpose carries this out. Finally the Bureau of Indian Standards (BIS) assesses and certifies the products and draws up a contract with the manufacturers.

The Indian Eco-Mark has not achieved the desired results so far. The response from Indian companies for the award of Eco-Mark was very poor. In 1998, Madhya Bharat Paper Mills successfully completed the formalities and received the Indian Eco-Mark license for producing writing and printing paper.

IV. AMENDMENTS TO WTO TO RESOLVE TRADE AND ENVIRONMENTAL CONFLICTS

WTO member - states have taken efforts to. Make amendments to the WTO rules to incorporate more provisions directly aiming at environmental protection. In fact, this was an important entry in the agenda of the Committee on Trade and Environment of the WTO. But till date, the CTE could not suggest any amendment. Due to lack of consensus among members, especially the developed and developing countries no specific amendments could be brought to the WTO.

The WTO rules, as such, do not require any amendment. The requirement is purposeful interpretation of the existing provisions...

The needs of the developing countries should also be addressed by the WTO. Both developed and developing countries should be treated equally when it comes to environmental matters as it is common to both developed and developing countries. Preference should be given to positive measures to encourage developing countries to adapt processes and methods which are supportive of environmental protection. In particular, these would expand market access in the developed countries for the goods of developing countries. This will increase the resources available to developing countries for development of new and environmentally more appropriate processes and methods. In addition, financial assistance should be made available to the developing countries to facilitate conversion to environment friendly processes and methods. There should be easy availability of relevant technology which can be absorbed and adapted by developing countries for this purpose.

Trade sanctions must serve as an effective tool for achieving environmental ends in order to justify the potentially crippling impact of trade barriers on the world economy. The efficiency

of trade sanctions, therefore, ought to be decision maker's initial focus and must ultimately be the bottom line. Otherwise, the combination of legitimate environmental concerns with strong trade protectionist pressures at home could lead to an undisciplined and discriminatory use of trade sanctions.

Indian context:

With poverty, overpopulation and illiteracy forming a vicious circle of challenges to development, the South Asian Countries tend to prioritize the use of their scarce resources most immediately towards tackling these fundamental problems that afflict their societies, than on improvement of the quality of environment.

In 1976, the Constitution (Forty-Second Amendment)¹¹ Act was passed which expressly incorporated in to the Constitution of India¹² specific provisions for environmental protection and improvement in the form of Fundamental Duties and the Directive Principles of State Policy.

India has come to establish probably the most comprehensive framework of legal and institutional mechanisms in the region to respond to the tremendous challenges to the environment it is facing, owing to population explosion, poverty and illiteracy augmented by urbanization, industrial development..

Research and Development forms a vital element or even the heart line for any industry to flourish and this has become obvious with the birth of WTO¹³. So far Research and Development in India has not been able to take off due to poor attention and allocation given to this department. Since, till now India was a socialist economy, it was able to pull through. Now that it has entered the group of free trade, Research and Development cannot be neglected.

It is suggested that, to encourage Indian Scientists, Research and Development, the government must allocate substantial Environmental Impact Assessment be undertaken along with trade opening so that effective measures may be undertaken. There should be greater public participation in India with regard to WTO dispute settlement for realizing environmental concerns thereby respecting International Environmental treaties.

¹¹ The Forty - Second Amendment, 1976 inserted two new parts IV A and XIV A and nine Articles- 39-A, 43-A, 48-A, 13 1-A, 114-C, 226-A, 228-A, and 257-A and also amended 50 Articles of the Constitution which includes the preamble, Directive Principles and Fundamental Duties

¹² The Constitution of India came into force on 26th January, 1950. At the time of its adoption, the Constitution contained 395 Articles and 8 Schedules and was about 145,000 words long, making it the longest national Constitution to ever be adopted.

¹³ the World Trade Organization (WTO) is an international institution that oversees the global trade rules among nations.

In the last 15 years alone several Multilateral Environmental Agreements have entered into force, dealing with issues like ozone depletion, transport of hazardous waste and migratory species

It is emphasized that India is a signatory to almost all the International Treaties and Conventions. India was an active participant in the Stockholm Conference of June 1972. India actively participated in all the international negotiations on sustainable development. India became party to the Convention on Biological Diversity in 1994 and was among the early signatories to the UN Convention to combat desertification. India had actively participated in the 22nd Special Session of the General Assembly and also at the Global Conference on Sustainable Development of Small Island Developing States held in Barbados in 1994.

V. CONCLUSION

The present system of environmental protection under the WTO regime is not satisfactory. Still it is meaningful and relevant as it lays down a framework. It could be treated as a basic frame-work upon which the entire system for environmental protection could be created in future. If developed properly, the present system offers a promising and bright future. A harmonious relationship of the trade and environment can promote sustainable development. The tension between trade and environment is not because they are contradictory but because trade and environment policies are misused by developed nations .It is generally not an easy task to integrate and support trade and environment policies in fulfilling their respective objectives. It become still more difficult to balance these two areas for a developing country like India. A broader understanding and awareness of these linkage will be the foundation for a fair and environmentally sustainable policies, along with trade development.
