

Environment Related Trade Barriers and the WTO

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The present paper titled **Environment Related Trade Barriers and the WTO** was presented at the Regional Conference on "*Trade, WTO and Sustainable Development: A Cause for Concern?*" organised by the *Asia WTO Research Network* from 23-24 APRIL 2007 at Kuala Lumpur, Malaysia. It has been prepared under the CPD programme on *TRRPD*. This programme aims at strengthening institutional capacity in Bangladesh in the area of trade policy analysis, negotiations and implementation. The programme, *inter alia*, seeks to project the civil society's perspectives on the emerging issues emanating from the process of globalisation and liberalisation.

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Acronyms

CTE	Committee on Trade and Environment
ESCAP	Economic and Social Commission for Asia and the Pacific
EU	European Union
FAO	Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
LCA	Life-cycle Analysis
LDCs	Least Developed Countries
PPM	Process or Production Method
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
WTO	World Trade Organization

1. Introduction

There is a growing concern that environmental issues may create both direct and indirect opportunities to introduce new barriers to trade. A number of environmental policies are considered as trade barriers by many countries notwithstanding the fact that these policies are formulated to achieve sustainable development by maintaining a balance between economic growth and resource exploitation. For example, environmental measures such as standards, taxes, subsidies, charges and eco-labeling sometimes play a discriminatory role in terms of having an impact on international competitiveness. Domestic producers may be forced to adopt measures that impose additional costs on their foreign competitors due to environmentally motivated production process standards.

Hence it is apprehended by developing and least developed countries (LDC) that environmental measures may have adverse effect on their trade as they are not always able to meet up the requirements of the developed countries. It has been noted that environmental measures affect market access of foreign suppliers, particularly those from developing countries. These, along with lack of infrastructure; inadequate access to technology, environment friendly raw materials and information restrict the market access opportunities and competitiveness of developing and least-developed countries.

Environmental issues made their way onto the negotiating agenda of the World Trade Organisation (WTO) for the first time at the Doha Ministerial Meeting in November 2001 notwithstanding strong opposition from both developed and developing countries. The importance of the effect of environment related trade measures on market access has been recognized in the WTO and concern has been expressed on the issue.

Paragraphs 32(i) and (iii) of the Doha Ministerial Declaration in paragraph 32 describe that:

“32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) The effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed countries among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;”*
- (iii) Labeling requirements for environmental purposes.”*
(WT/MIN/(01)/DEC/W/1, 2001).

During the post Doha period discussions on paragraph 32(i) are being made in the regular Committee on Trade and Environment (CTE) where countries have been expressing their concerns on the issue of market restriction on environmental grounds.

This paper looks at some of the environment related trade measures which may appear to be trade barriers at times in the context of the WTO. It also briefly discusses WTO Agreements on environmental measures and the use of environment related trade measures. The paper finally articulates the interests of LDCs in the area of trade and environment and how their concerns can be protected.

2. Trade-Environment Nexus

Trade is considered to be beneficial for the economy since trade liberalisation-induced accelerated growth potentially makes more resources available for the protection of the environment. Trade liberalisation may also precipitate changes in product composition entailing less resource-intensive and less environmentally damaging production processes. For example, if production of manufactures moves to developing countries there may be a shift towards more labour-intensive and less capital and energy intensive technologies that are beneficial to the environment. Not only more resources are available to protect the environment, the willingness among citizens to pay for environmental improvement is also expected to rise with the increased income gained through the trade liberalisation process. The transfer of cleaner technology through international trade makes environment friendly production possible. Trade policy is also considered to be one type of 'carrot' or 'stick' that can be used to encourage participation in international environmental agreements to deal with trans-boundary environmental problems. Proponents of the view that free trade is beneficial to all countries argue that trade is not considered to be a direct cause of environmental problems and therefore, trade policies are not the best instruments to use in dealing with environmental problems (Anderson and Blackhurst 1992; Anderson 1992; GATT 1992).

On the other hand, trade may be responsible for environmental degradation in a number of ways. Increased economic activity requires more materials and energy, which is the growth effect of trade (Daly and Cobb 1989). This results in faster depletion of natural resources and introduces new pollutants. International trade gives access to a larger market, which needs larger production units and thus needs more resources. For example, intensive agriculture requiring more fertiliser may be needed to meet increased demand on the international market. Trade may also bring in different production and consumption patterns as well as technology, which could be harmful to the environment, human health, and the long-run development prospects of the importing country. This might include trade of environmentally damaging goods, such as hazardous wastes, which

are sometimes exported from developed countries to developing countries. Thus social and environmental costs may outweigh the economic benefits gained through trade in which case trade liberalisation may not be desirable. In such circumstances a critical assessment of the impact of trade on the environment has been proposed (Daly 1991). In developing countries, increased growth due to trade has been accompanied by short and long-term environmental problems (Ropke 1994).

As opposed to these two extreme views, arguments have been made in favour of free trade with adequate environmental safeguards. How far trade in natural resources is a matter of concern depends on several circumstances, such as: (i) the balance between trade and the resource endowments of the individual countries, (ii) the extent to which revenues from exported resources are converted into other forms of capital, (iii) the extent to which trade takes place at international prices that reflect the true social costs of resource depletion in the exporting country. Trade restriction is not the appropriate policy even when trade results in environmental degradation in some sense. It has been suggested that trade accompanied by environmental policy is better than increased protection without appropriate environmental policies (Pearce and Warford 1993; Markandya 1994).

3. WTO Agreements on Environmental Measures

There are two standards related agreements - Agreement on Sanitary and Phytosanitary (SPS) Measures and Agreement Technical Barriers to Trade (TBT). Under SPS and TBT Agreements countries are encouraged to adopt international standards though they are given flexibility in introducing more rigid or more lax regulations. Scientific justification is required for more rigid regulations.

SPS measures are border control measures necessary to protect human, animal and plant life or health which aims to prevent domestic sanitary and phytosanitary standards from being trade restrictive and protectionist. It focuses on protecting human, animal and plant life and saving country from risks arising from the entry of pests, toxins, diseases and additives. The Agreement covers all measures which aim to protect (i) human or animal health from food-borne risks arising from additives, contaminants, toxins or disease-causing organisms in their food; (ii) human health from animal- or plant-borne diseases; and (iii) animals and plants from pests, diseases or disease-causing organisms. SPS measures may include steps such as inspection of products, permission to use only certain additives in food, determination of maximum levels of pesticide residues, designation of disease-free areas, quarantine requirements and import bans (WTO 1999; Zarrilli 1999).

The Agreement on TBT relates to trade restrictive effect arising from the application of technical regulations or standards such as testing requirements, labeling requirements, packaging requirements, marketing standards, certification requirements, origin marking requirements, and health and safety regulations. The TBT Agreement acknowledges the right of each individual government to set environmental protection standards at the level which it considers appropriate. However, the Agreement attempts to ensure that regulations, standards, testing and certification procedures, which vary from country to country, do not create unnecessary obstacles to trade.

Under the TBT Agreement, governments are not bound to use international standards if it is deemed inappropriate due to, for instance, technological or geographical reasons.

4. Environment Related Trade Barriers

Types of Environmental Barriers

Environment related trade measures which may pose to be trade barriers and can have impact on market access are mainly of the following types: (i) Environmental regulations and standards (ii) Environmental labeling, and (iii) Economic instruments.

(i) Environmental Regulations and Standards

There can be two types of standards related to products: *Product Standards* and *Production Standards*. Product standards refer to characteristics that goods must possess, such as performance requirements, minimum nutrient content, maximum toxicity or noxious emissions while *Production Standards* refer to conditions under which products are made.

These types of measures are legally binding and relate to: (a) the composition of products, that is what exactly the product contains, (b) the quality of the product, that is, what is the longevity of the product, and (c) the performance of the product, that is, what is for example, the energy consumption and what is the emission level.

Trade Bans on products: Due to widespread public concern over hazardous substances bans on products on environmental grounds are increasing. These bans are used on products in the export sector of developing and least developed countries such as textiles, leather and footwear. For example, azo dyes used in colouring in leather and textile industries in developing countries are prohibited for use in the leather and textile industries in the European Union.

The purpose of bans of products containing hazardous substances aims at protecting the domestic environment and public health in the importing country against the harmful effects of the consumption or disposal of domestically manufactured and imported

products. WTO rules allow countries to impose bans as long as such bans apply equally to domestic products.

Admission and registration procedures: This may be applied to pharmaceuticals, food, fertilisers, and pesticides. Certain substances may require a specific authorization before they are made available in the market.

Take back obligations: This obligation is an agreement between producers and retailers to take back and refuse or dispose of used products and packaging. Take back obligations exist in case of products such as waste oil, cars, batteries, cans and consumer electronics. Such obligations involve costs. For example, shipping imported products back to the country of origin could involve high costs and would generally not be desirable from an environmental point of view. Trade effects may arise when importers or foreign producers face administrative and procedural problems in discharging their legal responsibilities or when the associated costs have significant effects on the competitiveness of imported products.

(ii) Environmental Labeling

Environmental labeling is providing information to producers and consumers on the health and environmental impact of products. It enables consumers to be informed about a product's characteristics or its conditions of production. It can be compulsory or voluntary. Compulsory labeling provides information on one aspect of a product and is normally required by the government. These labels may give negative warning such as flammable and eco-toxic or indicate positive environmental characteristics such as biodegradable.

The issue of labeling in the context of WTO rules is horizontal since concern on labeling may also arise with regard to general product safety or performance, including food safety. Disciplines on labeling are provided for both in the TBT Agreement and in the SPS Agreement. So reporting on labeling may have implications for both the SPS and TBT Committees.

Poorly designed labeling measures, whether voluntary or mandatory could have market access effects on all countries, particularly on developing and least developed countries. Labeling requirements to indicate the country of origin or geographical indicators can also affect trade and implicate intellectual property rights provisions in trade agreements.

Labeling that describes how a product is produced is termed as labeling based on a process or production method (PPM). PPM can be classified into two types: (a) product related PPMs, and (b) non product related PPMs.

- a) Product related PPMs refer to process and production methods which affect the nature, properties or qualities of the product itself and its ability to have direct impact on, for example, the environment in the country of use. It typically describes a process or production method which changes the characteristics of the final product and that PPM is discernible in the change. Product related PPMs are normally dealt with through product specifications. This type of PPM is most frequently found in the case of industrial process requirements to ensure a product's quality or fitness for use, for example, rules for metalising practices to prevent corrosion or ensure strength or pasteurisation of milk.
- b) Non-product related PPMs describe a process or production method which does not affect or change the nature, properties or qualities of a product. For example, harvesting of fish. A fishing vessel that uses a net with mesh size larger than another fishing vessel could catch the same fish in the sea. The final product (e.g. fish) is not affected by the production method (e.g. mesh size of fishing net). However, the mesh/net size or catch method more generally can affect other sea-life and shared living resources (e.g. an impact on the ability of non-target species or to escape capture). Other examples of non-product related process and production methods not related to the environment include labour standards or the welfare of animals in farming practices for agricultural products.

Labeling is also used for the sole purpose of describing life-cycle analysis (LCA). LCA is used to analyse the full environmental impact of a single product, including, for example, water and energy use and release of various pollutants. An LCA would combine and consider all the environmental impacts of a product's production, use and disposal.

Though labeling is less trade restrictive than many other regulatory measures labeling can still have impact on trade on the basis of its content, scope and nature. Since labeling requirements vary from market to market, producers may face difficulties to comply with such requirements, particularly in developing and least developed countries.

Increasing awareness of environmental issues has led to a situation where environmental characteristics of products have become increasingly important to consumers resulting in a growing market in developed countries for what are called "green products". Eco-labels that highlight their environmental attributes are placed on these products. In order to protect consumers' interests, governments and non-governmental organisations have organised, adopted and verified eco-labeling programmes.

(iii) Economic Instruments: Product Taxes and Charges

Product taxes can be based on some characteristics of the product, for example, on the sulphur content in mineral oil or on the product itself, for example, mineral oil. Product charges may be imposed in order to increase revenues and to discourage the production and consumption of products on which the tax is levied.

5. Use of Environment Related Trade Barriers

The requirements on environmental measures have been increasing over time. It has been reported that the share of environment related notifications under the WTO Agreements on TBT increased from 9.7 percent in 1991 to 11.1 percent in 2001. Since the entry of the TBT Agreement into force on 1 January 1995, a total of about 2300 notifications have been received. The majority of the trade related environmental measures have been notified under the TBT Agreement (Nordström and Vaughan 1999). The TBT Agreement is of particular importance for highly perishable products such as fish and fish products for which inspection, testing procedures and stringent import requirements are needed. The introduction of stricter import requirements by major international markets has increased the importance for an unbiased and correct application of rules, standards and procedures

In developing countries environmental requirements are highest in those sectors which has export potentials and which have comparative advantage, such as textiles and clothing, leather and leather products, footwear, forestry products and food products. The cost of compliance is more on the small and medium-sized entrepreneurs in developing and least developed countries.

From this point of view environmental measures work against the objective of sustainable development as these also act as obstacles to market access. It has been demanded by developing and least-developed countries that a longer time frame is required to achieve standards of sustainable development. Market access during this period should not be denied to products from these countries since economic growth and employment in such countries are dependent to a great extent on the export of their products.

The complex requirements covered by SPS and TBT measures represent threats to existing exporters and barriers to new entrants. SPS measures are far more serious for developing than developed countries (UNCTAD 1998, 1997; UNCTAD/Commonwealth Secretariat 1996; FAO 1999; Singh 1994). SPS and TBT measures affect trade in agriculture and food products (Digges *et al* 1997; Hillman 1997; Jaffee 1999; Thilmann and Barrett 1997; Unnevehr 1999). Countries with improved infrastructure and greater resources are in an advantageous position to deal with stringent quality standards

(Greenhalgh 2004). Developing countries find it difficult to trade with developed countries as quality requirements differ (Murphy and Shleifer 1997). The SPS measures can impact a country's trade in three ways (Henson *et al.* 1999): (i) prohibiting trade by imposing an import or by prohibitively increasing production and marketing costs; (ii) diverting trade from one trading partner to another by imposing regulations that discriminate between potential suppliers; and (iii) reducing overall trade flows by increasing costs or raising barriers for all potential suppliers.

It has also been established in various studies that SPS measures have negative impacts on fisheries resources (ESCAP 1996; Josupeit 1997; Cato 1998). The case of the EU ban on imports of shrimp from Bangladesh in 1997, imposed on the grounds of health safety and hygiene, is an example of the use of SPS measures (Cato and Lima dos Santos 1998; Rahman 2002; Khatun 2004).

6. The Role of the WTO in Removing Environment Related Trade Measures

It is clear that various environmental measures are used for trade restrictions and market distortions. The WTO is engaged in devising policies to remove environmentally harmful restrictions and distortions. Recognising the interface between trade and environment the WTO has given attention to the issue through various agreements most of which contain exceptions from the trade liberalisation rule in order to legitimise the efforts of its members to protect the environment (WTO 2001). For example, Article XX of the General Agreement on Tariffs and Trade (GATT), which is the General Exceptions Article, allows WTO member countries to use trade measures to protect the environment even when the measures are inconsistent with GATT. However, these measures have to meet certain conditions such as (i) that the measure be necessary for the protection of the environment, or be related to the conservation of exhaustible natural resources, and (ii) that it be applied in a way that does not constitute arbitrary or unjustifiable discrimination between countries, or acts as a distinguished restriction on international trade.

Since the mandate of the WTO is to liberalise trade, it can contribute towards trade and environmental improvements by identifying and removing those barriers. The CTE, which is the forum for trade and environment discussions in the WTO, has expressed clearly that for trade and environmental policies to complement each other, appropriate environmental policies need to be out in place. The CTE has emphasised the importance of market access opportunities to assist countries. The CTE has also been examining trade and environment related WTO rules to ensure that they do not unjustifiably stand in the way of environmental protection initiatives.

Developing country Members have made submissions highlighting how environmental measures act as a barrier for exporting goods from them. They have also made a number of proposals to the CTE in order to minimise the adverse effects of environmental measures on the market access of developing countries.

Developing countries are concerned that eco-labeling could stand as a barrier to their market access. If a label is developed only on the basis of local environmental conditions, there is a risk that goods that are not the cause of the problem may be excluded. Products from developing countries are unlikely to qualify for eco-labeling schemes in developed countries because of the lack of “green technologies” – that is technologies that are environmentally sound and advanced.

The EU has very stringent rules on labeling requirements which demand provision of information to consumers on social and health safety. Even developed countries such as Canada and the USA are wary of eco-labeling requirements as they consider that it is equivalent to ban on their products. The EU wanted the precautionary principle to be one of the issues under discussion but could not get it included either in paragraph 31 or in 32 since there was strong resistance to it. Precautionary principle is closely connected to the issues raised in paragraph 32(iii) that is, labeling. Many countries have introduced PPM for their imports. The Dutch government has made it mandatory that there should be labeling on imported timber. That is, in the case of timber, written information should be provided as to whether it comes from a sustainably managed forest or not. The Belgian parliament has also announced that all products have to be labeled. Such requirements have created tension among developing countries.

The issue of environmental measures has not been resolved since the Doha Declaration. Trade-environment issue has not acquired sufficient momentum in the WTO. Report has been presented to the Cancun Ministerial held in September 2003 and to the Hong Kong Ministerial held in December 2005 on the development on trade and environment and the Ministers reaffirmed their commitment to negotiations on trade and environment

7. Implications for LDCs

For LDCs the challenges with regard to trade and environment are twofold: (i) how to get market access without degrading the environment, and (ii) how to protect the environment without adversely affecting economic growth and progress in the trade liberalisation process (Tussie 2000). As these countries are graduating towards trade expansion the obligations under the WTO rules are also becoming binding for them. Market access has been an issue of concern for LDCs since economies of these countries have been integrating with the global economy at a fast pace. The shift in the trade policy

regime in these countries towards liberalisation has contributed to a significant growth of the export sector during the 1990s. On the other hand, they are grappling with several environmental problems such as land degradation, water, air and noise pollution, degradation of natural forests, wetland and coastal environments, depletion of fisheries and unregulated dumping of hazardous wastes.

Therefore, environment related trade measures have an important role in market access opportunities for LDCs. Though in some cases environmental requirements may improve market access by reinforcing consumer confidence and boosting demand, there is lack of adequate capacities in LDCs to ensure compliance with the required standards. It is difficult for these countries to respond to such requirements as it involves additional costs which may reduce competitiveness.

In order to deal with environmental requirements LDCs need to establish a clearer guidance for the development of environmental requirements. Delivery of effective technical assistance is a prerequisite for compliance to various requirements by developed countries. Resources may be utilized for this purpose from the proposed 'Aid for Trade' package of the WTO. It is also important to have access to information timely on the proposed and existing requirements and schemes. Participation of LDCs in the international standards setting bodies will also help to overcome environment related trade obstacles in many ways.

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