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WTO: HOW GREEN

KALPANA AGRAWAL

Assistant Professor, Prestige Institute of Management and Research, Indore, Madhya Pradesh, India

ABSTRACT

The increased emphasis on environmental policies is relatively recentyears in the history of the multilateral trading system although shrimp-turtle and Venenzula-U.S. gasoline case is quite old. Still the WTO Committee on Trade and environment do not interfere to a great extent if environment agreement is not signed by the countries doing trade.Then the WTO would provide the only possible forum for settling the dispute. The preference for handling disputes under the environmental agreements does not mean environmental issues would be ignored in WTO disputes. The WTO agreements allow panels examining a dispute to seek expert advice on environmental issues. The objectives of sustainable development and environmental protection are important enough but there is no specific agreement dealing with the environment in WTO.The present paper delves in to same.

KEYWORDS: Green, WTO

INTRODUCTION

The WTO has no specific agreement dealing with the environment. However, the WTO agreements confirm governments' right to protect the environment, provided certain conditions are met, and a number of them include provisions dealing with environmental concerns. The objectives of sustainable development and environmental protection are important enough.The whole world is witnessing a paradigm shift in the way the businesses have been carried over the years and the way in which they are being designed in the present scenario. After the Second World War, the whole world was divided into two regional blocks, one that was led by the USA and the other which was headed by the then USSR. During the cold war scenario, the trade and business related to the international trade was done with the political interest being given more weightage than the business development plans. At the end of the Uruguay Round in 1994, trade ministers from participating countries decided to begin a comprehensive work programme on trade and environment in the WTO. They created the Trade and Environment Committee. This has brought environmental and sustainable development issues into the mainstream of WTO work. The 2001 Doha Ministerial Conference kicked off negotiations in some aspects of the subject.Today 160 countries are WTO members and they have to follow these norms.

Environment refers primarily to the things which are around us and infact the liberalization, globalization cannot achieved by neglecting the environment which is the prime reason for the development of mankind and a healthy environment is a must for the growth and survival of the mankind and for the coming generation. The developed countries of the world have always raised the environmental issues. Developed countries, particularly EU, were very keen on negotiations on environment related issues to accommodate concerns of their civil society. They wanted environmental considerations integrated throughout the negotiations in the new Round ('mainstreaming') which will also dilute the focused mandate of the Committee on Trade and Environment (CTE) to that extent. USA was further keen that Members right to set high environmental standards was not undermined by trade rules. US and CAIRNS Group countries also called

for the removal of environmentally damaging subsidies such as agricultural subsidies and fishery subsidies that contributed to over capacity. Developing countries sought adjustments in the TRIPS Agreement for preservation of biological diversity and reward for traditional knowledge. The proposal to mainstream environment dilute the role of CTE and the US proposal regarding environmental standards were opposed by some developing countries including India while there was considerable support for removal of environment- related subsidies. The TRIPS related proposals were supported by some, but there was no consensus.

Objectives of the Study

To understand the limitation of WTO regarding environment.

RESEARCH METHODOLOGY

The study focuses on extensive study of secondary data collected from various books, national and International journals, government reports, publications from various websites which focused on various aspects of WTO and Environment.

Examples of Provisions in the WTO Agreements Dealing with Environmental Issues are

Intellectual Property: Governments can refuse to issue patents that threaten human, animal or plant life or health, or risk serious damage to the environment (TRIPS Article 27).

Subsidies and Countervail: Those firms which adapt new environmental laws, will get subsidies, up to 20% of firms' costs.

Sanitary and Phytosanitary Measures: Explicit recognition of environmental objectives through Animal and Plant health and hygiene.

GATT Article 20: Policies affecting trade in goods for protecting human, animal or plant life or health are exempted from normal GATT disciplines under certain conditions.

GATS Article 14: policies affecting trade in services for protecting human, animal or plant life or health are exempted from normal GATS disciplines under certain conditions.

WTO Suggests

- **First, Cooperate**: The countries concerned should try to cooperate to prevent environmental damage.
- **If the other country has also signed an environment agreement**, then what ever action the complaining country takes is probably not the WTO's concern.
- **When the issue is not covered by an environmental agreement, WTO rules apply**. The WTO agreements are interpreted to say two important things. First, trade restrictions cannot be imposed on a product purely because of the way it has been produced. Second, one country cannot reach out beyond its own territory to impose its standards on another country.

- **The complaining country can act (e.g. on imports) to protect its own domestic environment, but it cannot**

discriminate. Under the WTO agreements, standards, taxes or other measures applied to imports from the other country must also apply equally to the complaining country's own products ("national treatment") and imports from all other countries ("most-favoured-nation").

- **What if the other country has not signed?** Here the situation is unclear and the subject of debate. Some environmental agreements say countries that have signed the agreement should apply the agreement even to goods and services from countries that have not. Whether this would break the WTO agreements remains untested because so far no dispute of this kind has been brought to the WTO. One proposed way to clarify the situation would be to rewrite the rules to make clear that countries can, in some circumstances, cite an environmental agreement when they take action affecting the trade of a country that has not signed. Critics say this would allow some countries to force their environmental standards on others.

The committee notes that actions taken to protect the environment and having an impact on trade can play an important role in some environmental agreements, particularly when trade is a direct cause of the environmental problems. But it also points out that trade restrictions are not the only actions that can be taken, and they are not necessarily the most effective. Alternatives include: helping countries acquire environmentally-friendly technology, giving them financial assistance, providing training, etc.

Nature of Environmental Barriers

These barriers focus on areas, which have been the subject of environmental campaigns to: (Aserkar andVyas, 2007)

- Eliminate use of toxic, substances - chemicals and heavy metals in particular
- Recycling of waste product and packaging;
- Protect wildlife;
- Raise food safety standards;
- Promote organic food and oppose genetically modified organisms(GMOs).

Critical Environmental Issues

- Eco-labeling
- Effluent Emission Norms
- Standards regulating (maximum residue) levels of toxic substances in products
- Standards for product harvesting
- Packaging and labeling requirements
- Standards mandating energy efficiency/emissions reductions
- Regulations pursuant to MEAs and other international treaties

Under the Doha Development Agenda, the regular committee is also looking at the effects of environmental

measures on market access, the intellectual property agreement and biodiversity, and labelling for environmental purposes. It provides an enabling environment through its objectives, institutions and monitoring of potential trade protectionism, enforcement mechanism, toolbox of rules, and growing case law in the environment area.

The Basic Objective of Environment is Harmonization of Environmental Standards

The above said objective gives a required platform for the developing and the developed counties of the world to provide a level playing field which would ensure that no one who is a part of the WTO agreement would suffer either economically and environmentally.Harmonization refers to the process through which environmental standards in different countries are brought to similar levels. This process can become an issue in trade, because higher environmental standards may impose costs on manufacturers or other goods producers. Trade disadvantages could result for countries where more stringent standards increase the price of goods compared to that in countries with less restrictive environmental standards. The Organization for Economic Cooperation and Development (OECD) and the European Union (EU) have both actively promoted harmonized environmental standards (Joshi and Srinivas, 2007).

During 1950-60s the value of world exports became more than doubled. During the 1970s the value of the world exports increased by about five and half times. During the1980-90, the value of world exports increased by 80 per cent. In the first half of the 1990s, it increased by about 47 per cent. *By* the end of the 1990s, the combined value of the world trade in good and services reached $ 7 trillion and in achieving this growth the WTO has a leading role to play.Butat the same time this growth of international trade in the recent past has come under attack for ignoring environmental and social issues in promoting global trade.There are ample evidence that it has undermined health, safety,environmental standards,and human rights in making trade policy worldwide.The Tuna-Dolphin and Shrimp Turtle case reveal the same.There thus exists an undesirable effect of rapid increase in trade on deforestation,depletion of Ozone layer,climate change,hazardous waste and exploitation of natural resources.

Three Famous Cases on Environment and Trade

Tuna/Dolphin Case

Trade and environment issues started gaining mainstream attention in the beginning of the 1990s, in the wake of the now (in) famous General Agreement on Tariffs and Trade (GATT) Tuna/Dolphin decision. In this particular case, the WTO ruled the US policy of banning imports of tuna from states that used purse seine fishing techniques to catch tuna, and subsequently kill dolphins, violated the terms of GATT. The ruling struck a raw nerve among the flipper generation and provided the impetus for bringing the issues associated with trade and the environment to national attention.

The topic stayed in front of the public throughout the 1990s because in1998, the WTO gain ruled against a US ban on shrimp imports caught without Turtle ExcluderDevices (TEDs) , equipment developed to help save endangered sea turtles.In the ruling the Appellate Body made clear that under WTO rules, countries have the right to take trade action to protect the environment (in particular, human, animal or plant life and health) and endangered species and exhaustible resources. The WTO does not have to "allow" them this right. So, this action of US to ban the imports of shrimps on environmental protection ground was acceptable.

Still, the US lost the case, on the grounds of practicing discrimination among the members. It provided countries

in the western hemisphere mainly in the Caribbean - technical and financial assistance and longer transition periods for their fishermen to start using turtle-excluder devices, though the same were not provided to the four Asian countries (India, Malaysia, Pakistan and Thailand) that filed the complaint with WTO.

The US Clean Air Act and the Gasoline Rule

Following a 1990 amendment to the Clean Air Act, the US Environmental Protection Agency (EPA) promulgated the Gasoline Rule on the composition and emissions effects of gasoline, in order to reduce air pollution in the US.

From 1 January 1995 (coincidentally the date when the WTO came into being), the Gasoline Rule permitted only gasoline of a specified cleanliness ("reformulated gasoline") to be sold to consumers in the most polluted areas of the country. In the rest of the country, only gasoline no dirtier than that sold in the base year of 1990 ("conventional gasoline") could be sold.

The Gasoline Rule applied to all US refiners, blenders and importers of gasoline.It required any domestic refiner which was in operation for at least 6 months in 1990, toestablish an individual refinery baseline, which represented the quality of gasoline produced by that refiner in 1990. The statutory baseline was assigned to those refiners who were not in operation for at least six months in 1990, and to importers and blenders of gasoline. Compliance with the baselines was measured on an average annual basis.

The illegal GE rice scandal continues to ragejust as the WTO has finally published a ruling on a case broughtagainst the EU by the US, Canada and Argentina over Europe imposingrestrictions on the importing of GE food. At its heart, the dispute isabout whether trade laws trump environmental laws - and surprise,surprise, to the WTO it is trade law rules.

Thelatest GE contamination scandal shows that once GE organisms arereleased into the environment, the consequences for consumers, farmersand traders are enormous. The WTO has no place determining what peopleshould eat and illegal GE rice has no place on the dinner tables ofconsumers anywhere in the world.

These three cases showed how process, the issue of how goods are produced, can stir up trade and environmental problems. However, trade and environment issues encompass a much broader and complicated set of issues than merely the issue of process.Environmentalists express concern that years of work negotiating environmental treaties could be disrupted if WTO rules of trade are used to nullify those environmental enforcement measures under the assumptions that they violate free trade principles.

Why is the Environmental Topic Important for the WTO?

First of all, the WTO itself calls it a "new high profile". The trade and environment debate is complex and varied, and it involves some of the most fundamental WTO principles and rules, such as the concept of non-discrimination and the definition of "like products". It is a horizontal issue that cuts across many disciplines in WTO. For example, Multilateral Environmental Agreements have consequences for trade which may come into conflict with the general aim of the WTO to reduce trade barriers.In addition, the recent WTO round is marked by great cleavages and drifts and has more than once been at the brink of failure. Although they are not the main focal point of the internal cleavages, environmental issues bear the potential of worsening the North-South drift in the WTO, which could possibly escalate and eventually undermine the

global trading system.

Nordström and Vaughan (1999) regret that, “One of the unfortunate features of the trade and environment debate is that at times it has generated more heat than light”: too many generalizations have been made both from the trade and the environmental communities. Trade and environment, as an issue, is by no means new. The link between trade and environmental protection both the impact of environmental policies on trade, and the impact of trade on the environment was recognized as early as 1970.

Growing international concern about the impact of economic growth on social development and the environment led to a call for an international conference on how to manage the human environment. The 1972 Stockholm Conference was the response.Even technical assistance is also provided by WTO as detailed below.

Advanced Course on Trade and the Environment

The Advanced Course on Trade and Environment takes place every 2 years at the WTO headquarters in Geneva. Government officials from LDCs, developing countries and economies in transition are selected to participate in the two-week course, whose main objective is to consolidate their knowledge on trade and environment issues and facilitate their participations in the work of the WTO Committee on Trade and Environment.

A wide range of environment-related topics are discussed, such as environmental requirements and market access, disputes involving environmental issues, environmental technologies, environmental provisions in regional trade agreements as well as trade and climate change.

The immediate objective is to raise awareness on the linkages between trade, the environment and sustainable development, to promote greater dialogue between trade and environment policy makers and to make it easier for member governments within a region to share their experiences.

REVIEW OF LITERATURE

Environmental Issues as Non-Tariff Barriers

With the progress of liberalization process, that is, gradual reduction of tariff levels and removal of quantitative restriction, mainly from agricultural and textile products, the developed countries are resorting to the alternate trade restricting measures. These new era barriers include the non-tariff barriers such as environment standards, food safety regulation, labeling requirement and quality standards. The trade and environment have are closely related to each other in free trade regime. This focus on trade and environment in the international trade framework helps promoting environmental protection and ensures an open, equitable, multilateral trade system.

Environmental and health-related standards and regulations in developed-country markets are creating hurdles for the exports of products from developing countries like India. The environment-related non-tariff barriers (ETBs) generally cover all barriers that have been introduced by the importing country to protect the environment, as well as the health and safety of wildlife, plants, animals and humans. Developing countries have to adjust their production processes in response to changing environmental regulations in developed countries. Measures such as pesticide maximum residue levels (MRL) permitted in foodstuffs, emission standards for machines, and packaging eco-labeling

Requirements have created operational hurdles for our exporters. These barriers mainly have distorting effects on

our small sector exporters because huge costs are involved in adhering to the standards set.

It is assumed that when a single country or a limited number of countries enforce an ETB it is more likely that these countries have simply enforced a non-tariff barrier. Such trade restrictive measures are bigger threat for the trading environment.

At the global level, 185 products have been identified, which face environment-related trade barriers in at least one importing country. These environmental based issues are of great concern for India because these are largely affecting the vibrant export sectors of the Indian economy. They are mainly leather and leather products, textiles, chemicals, marine products, tea and other agricultural products and are mostly concentrated in SME sector. The nature of NTBs faced by these sectors ranges from technical standards and product content requirements to mandatory labeling, eco-labeling. Packaging requirements and other SPS-related measures.

The Trade Liberalization and Environment

In theory, the objectives of trade liberalization and environmental protection are compatible: they both aim for the reduction of distortion and thus optimization of efficiency in the use of resources. From a normative, welfare-theoretical point of view, free trades and environmentalists have a common goal: the increase of social welfare. There are possible win-win situations in which trade liberalization and environmental protection interact positively, for example in the case ofelimination of trade subsidies that increase environmental degradation such as agricultural over-use of resources, deforestation or the depletion of fisheries. Trade encourages the economy to develop - from primary resource extraction to manufacturing and eventually to (less polluting) services. If poverty is the core of the problem of environmental degradation, economic growth will be part of the solution of a shift from more immediate concerns to long-run investment into the future resources. Furthermore, an improvement in production techniques through international dissemination of technological knowledge helps reduce pollution.

Yet there are as well areas of conflict between trade and environment. Most importantly, trade increases economic growth and with the rise in quantities produced (and given market failures), pollution increases. Furthermore, trade liberalisation opens up the possibility of firms moving their production to countries with lower environmental standards in order to save costs. This can lead to “eco-dumping” in less regulated countries or to a “race to the bottom” of standards, if more regulated countries want toattract or keep business. The net environmental outcome of trade is difficult to evaluate precisely, but Brack (2000) evaluates that the structural effects and win-win situations are most likely to be offset by the large negative scale effects from the expansion of economic activity, and smaller aggregate negative distribution effects.

LimitedRole of the WTO Regarding the Environment

There is no international consensus on which role the WTO is supposed to play in environmental issues. Many free-traders world argue that the WTO should have nothing to do with environmental concerns, as its sole purpose is to promote free trade and that environmental protection should be left to another body, possibly the MEAs’ secretariats or a new body. It is claimed that the WTO is not the appropriate institution for environmental concerns, as it is arguably overloaded. This trade round is arguablyoverburdened, and by advancing another the contentious issue such as environment and trade, this might contribute to the failure of the already-fragile round.

Similarly, developing countries are very skeptical about an expanded role of the WTO in maintaining

environment standards. They accuse the EU of pushing for the WTO's further development in its own environmental terms. This in turn decreases the capacity for developing countries to capitalise on their own comparative advantages and it could be seen as "green protectionism" or "protectionism in disguise", . In this sense, many suspect that environmental standards would not serve as market correction, but as disguised non-tariff trade barrier. There is the danger that pressure groups find it advantageous to support environmental claims in order to provide an additional, socially respectable, reason for unilateral import restrictions. Hence, although environmental issues have gained some legitimacy as an element of global trade policy, many economists remain unconvinced of the benefits from systematic linkages.

But at the same time"The WTO cannot operate in isolation from the world in which it exists": In the absence of a parallel organisation, with inclusive membership and a built-in mechanism for dispute resolution with sanctions, the WTO has emerged as a platform for debate on environment and trade issues over the last decade. In the need for cooperation, trade measures through the WTO are a powerful stick-and-carrot method to conform to international environmental standards. The theory of the second best suggests that one distortion (i.e. the environmental spill-over) can often be best met by another distortion (i.e. a trade ban) to enhance welfare on the whole.

Though while trade policy is clearly a second-best means to achieve environmental objectives, in practice it has become difficult to justify the exclusion of environment from negotiation on trade. Morici (2001) states that whether one is in favour or against it, the WTO participation in environmental issues is already a practical fact and not a theoretical proposition - an inevitable outcome of the recent trends. To Esty (1996), responding to environmental concerns is a political necessity for the trade community: "If the momentum for trade is to be maintained, the already-narrow coalition in favour of freer trade" is risked. As an influential institution of global governance, the WTO should to promote environmentally sensitive trading regimes and show responsibility to the common global goods. (Gnath 2008).

Developing Countries and Environment

The issue of environmental protection based on PPM-discrimination has great consequences for the developing countries. These countries often find themselves on thereceiving end of environmental regulation: due to structural weaknesses they are standard-takers, and not standards makers. Thus, many developing countries are very suspicious about high-income countries' motives and condemn this form of disguised protectionism vigorously. Krueger (2000) criticises: "Those seeking protection have no hesitation in cloaking their aspiration with the legitimacy of other issues." It is thus vital that environmental concern do not become an alibi for reintroducing unilateral trade barriers, which have been reduced elsewhere. Recently, rather than tackling these difficult issues, discussions have concentrated on the win-win situations on agriculture and fishery, where trade liberalization could play a positive role for the environment.The width of existing decisions on the WTO has favoured free trade but there is no closure on these issues, as can be seen from the second shrimp ruling. Thus, Brack and Branczik(2004) claim that, "The story of the trade and environmental debate in the world trade organization is one continued failure to make any substantial progress in rewriting WTO rules- but significant changes in the way in which existing rules have been interpreted."(Gnath 2008)

Trade Can Play a Positive Role

Trade could play a positive role in this process by facilitating the diffusion of environment-friendly technologies around the world. Of course, this would require that countries are ready to scrap trade barriers on modern technologies and

suppliers of environmental services to reduce the cost of investing in clean technologies and environmental management systems. A new round of trade liberalization negotiations could make a contribution here. Another potential contribution of such a round would be to address subsidies that harm the environment, includingenergy, agricultural and fishing subsides. This would yield a double dividend by benefiting the environment and the world economy at the same time. In short, trade is really not the issue, nor is economic growth. The issue is how to reinvent environmental polices in an ever more integrated world economy so as to ensure that we live within ecological limits. The way forward, it would seem to us, is to strengthen the mechanisms and institutions for multilateral environmental cooperation, just like countries 50 years ago decided that it was to their benefit to cooperate on trade matters(Gnath 2008).

CONCLUSIONS

While the net effect of trade on the environment is not clear-cut, the implications from the recent literature are that trade expansion through liberalisation is likely to affect the environment negatively.Thus, it is necessary to offset the effects, especially by adjusting global environmental policies upwardly through international coordination. The stance of the WTOon this is not entirely clear: WTO is not an environmental organisation but it is getting greener. In particular, WTO case law has developed in favour of environmental protection. Yet, in spite of the political recognition of the importance of environmental aspects and the link with trade and the WTO and the recent rulings, environment issuesare still sidelined or treated as a residual issue.

Although WTO is not the right forum to raise environmental issues,developed countries are using this forum for protecting their economies. Still tough actions are needed to be taken for overcoming environmental barriers successfully.WTO is looking after the implementation of the ETBs in international trade, still the members are skeptical about the issue that whether it is the right forum to discuss these issues or not. Though WTO advocates the clause of free trade, the developed nations are using the ETBs as trade restrictive measures against the developing nations. Thus, WTO needs a more focused approach towards the implementation of the environmental issues so as to ensure more liberal and competitive trade environment.

Presently the Trade and Environment Committee is more concerned about what happens when one country invokes an environmental agreement to take action against another country that has not signed the environmental agreement. "The WTO is clearly unqualified to deal with complex scientific and environmental issues, and yet, when there is a conflict between trade and environmental considerations, it is the WTO that gets to decide which rules rule; it's like putting the fox in charge of the chickens," said Daniel Mittler, Trade Policy Advisor at Greenpeace International

WTO needs to address environmental concerns in a way that does not increase the inter-organizational drifts and that strengthens the WTO as part of the global governance architecture.There should beconsideration of all for developing standards.The standards should to be framed for the better trade and development relations among the member countries should be based after taking into consideration all the practical limitations of the member countries. This would ensure that there is no conflict among the member countries and that they could understand the importance of safer environmental standards. And thus WTO will become more green without conflicts.

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