

X.A.1. Trade and Environment in the World Trade Organisation - Experience and Lessons

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Interaction between international trade and environmental degradation can be of two types: effect of trade on environment, that is the problems associated with hazardous wastes and the effect of environmental degradation on the pattern of international trade. This paper looks at the second aspect only.

In this paper our focus is on the WTO and its relation to the environmental protection. The first section consists of the GATT laws and codes related to environment. The second section reviews the disputes in the World Trade Organisation in connection with environmental protection.

Different provisions in the GATT related to environmental protection were reviewed in this section. A quick look at them gives following findings: first, it is possible for a country to impose trade restrictions on the basis of differences in production methods, as stated in TBT agreement under the guise of technical regulations. Secondly, a country can impose offsetting duties to counter the alleged 'eco-dumping', that is, products which are produced under lower environmental standards and thus reducing the price. Third a country can impose restrictions on exports of products causing environmental degradation outside its territory if it thinks so, as the scope of Art. XX does not say anything. Fourth, a country, if it wishes so, can give subsidy to the domestic firms to meet the domestic regulations, which is allowed under subsidies agreement [Art. 6:7(F)]. Fifth, the rights of the indigenous people and communities were totally ignored in agreement on TRIPS, which is overwhelmingly biased in favour of the North, who wants to dismantle the community rights, to be replaced with private property rights. The arrangement then can benefit the latter.

Again, a quick look at the findings gives the following results: First, it must be made clear that these cases constitute a subset of the numerous cases of real discrimination. Only when there are serious interests involved, the potential benefits of which outweigh the cost of litigation in financial and political terms, do Southern countries go ahead in registering cases against the North. Second, there are three cases involving North and South on the opposite sides, which can give us some idea about the unequal positions. Incidentally in all these cases the North is represented by the US. In the two cases (Mexico-Dolphin and Brazil, Venezuela-Petroleum taxes) the ruling was against the North and they have taken their time to implement the decision. Till today, none of the decisions have been implemented. On the other hand, when the fuelling was against the South (Thailand-Cigarette) not only was there enough pressure on it to withdraw the trade restriction even before the panel report, but additional concessions were sought under Super 301 provisions. This clearly reflects the unequal position of the North vis-a-vis the South. Third, in almost all other cases the dispute is within the North itself over consumption pollution.

The dispute between the US and Canada over the export of Salmon (1988) yields an important conclusion. The conservation of natural resources is permissible only if the restriction is also on domestic use. Thus, if a country wants to use, say, tropical timber for its own use because it does not have any other kind of fuel to be used in rural areas, the export of the same cannot be restricted. Fourth, US-Thailand case is important too for our argument that the South even in the face of genuine environmental degradation can scarcely impose trade restrictions. The WHO ruled that price elasticity of demand for cigarettes is high in developing countries which means that fierce competition between domestic and foreign firms, if it reduces the price (which reduced in most cases), has serious effect on health of citizens. But, the panel overruled the WHO advice and decided against trade restrictions. However, the main reason seems to be elsewhere. Fifth, US-Tuna Panel II case demonstrates that unilateral restrictions can be justified even when the externality occurs outside the boundary of the imposing country. The panel also ruled that if the US measure was taken in connection to a Multilateral Environmental Agreement it could have ruled in favour of the restriction.

The paper is expected to have wider coverage, especially in the light of current shrimp case between US and four developing countries.