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Title: Environment in the International Trade Agenda: Implications for Development and Employment.

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Abstract

The contradictions between international trade, environment and sustainable development agenda have caused developing countries to view environment in the international trade with much sensitivity at the multilateral, regional and bilateral level. This is because environment text in trade agreements like the Doha Declaration and Free Trade Agreements are perceived to work against developing countries because environmental measures imposed may restrict market access, be disguised as non-tariff trade barriers and promote protectionism by the North.

The North seen as the *demandeurs* of bringing *environment* into the multilateral trade and bilateral trade negotiations see this as positive in that it will encourage higher environmental standards, improve eco-efficiency in production process, transfer of cleaner technologies and increase competitiveness. However the South argues that they are targets for potential trade restrictions based on external environmental standards and opening up their environmental goods and services may subject them to dumped products and import surges.

The paper will express a view that an environment focus in the international trade agenda in the current global economic context may pose *more harm than good* for developing countries and least developed countries (LDCs) in terms of development and employment. This view is substantiated by assessing the rationale, the current debates and negotiations on trade and environment in the Doha Declaration with specific reference to trade in environmental goods and services. The paper explains challenges of trade liberalisation in environmental goods and services for developing countries in terms the costs arising from structural change fall on the poor (for example the impact of privatisation of water, waste and power utilities) and, crowding out of infant industries, local production and technology. The paper concludes with suggestions for negotiating approaches that guarantees developing countries flexibility and policy space and strengthen the of the UN as the multilateral institution to address trade and environment matters.

1. Introduction

The complex linkages between international trade and environment form the basis of a growing global debate. On one level trade liberalisation has increasingly shown to have a serve impact of the environment and natural resources in terms of access, affordability, use and maintenance of these resources. Trade liberalisation as a result of the dominant neo-liberal paradigm has led to the commodification of environmental goods like plants and animal genetic resources, pollution and waste management technologies and services such as water and waste management services, which are largely public goods and services. Trade liberalisation also places immense strain on natural resources like energy, fisheries and soil to meet export-led growth and increase trade¹. Promoting export-led economic growth also has implications for fossil fuel depletion in terms of transport and production in the manufacturing sector as the world is facing a possible peak in oil production in the next 5 to 10 years².

On another level the multi-lateral trade agenda in the World Trade Organisation (WTO) has expanded from dealing with tariffs on goods into non-trade matters like environment, intellectual property rights, aid, services, labour and so forth. This paper will focus on bringing in environment into trade agreements and the implications for development and employment. Bringing *environment* into the multilateral trade and bilateral trade negotiations could be positive in that it should encourage higher environmental standards, improve eco-efficiency in production process, transfer of cleaner technologies and increase competitiveness. However because of the nature of trade negotiations, i.e. *getting the best deal*.³ It not designed to promote sustainable development or altruistic intentions towards its trading partner. Therefore the intentions of bringing *environment* into trade negotiations should be critically viewed and it implications carefully understood.

A number of contentious issues in the sphere of trade and environment pose serious challenges to achieving higher levels of development in developing countries:

- Trade agreements are reciprocal by their nature so that whatever a country of the North gives the equivalent offer must be given by the country of the South. This sounds fine in theory but in practice inevitably results in the country of the South giving more than the North. This is because of a number of factors such as the lack of technology, capacity

¹ UNEP, 2002, Integrated assessment on trade liberalisation and trade-related policies Country Studies

² Wakeford J. 2006, A Troika of Threats to Global Trade: Oil Depletion, Climate Change and Monetary Imbalances, Global Dialogue, Volume 11

³ Konrad van Molkte in a discussion at DEAT 2003 on “Understanding the Global and Environmental Debates in June 2004

- deficits, the decrease in competitiveness in the South due to cheap imports, and so on.
- Hegemonic countries have well developed environmental goods and services sectors and have high environmental standards so the more environmental conditions they put on trade, the greater advantage they have in trading. While developing countries would need to reach these standards, it requires access to these technologies, usually owned and controlled by developed countries.
 - The North inevitably demands environmental standards, which often act as disguised non-tariff barriers and impact on the South's ability to access the North's market. This raises the concern that through the imposition of external standards by the North, environmental measures in trade are overly stringent or complex, fail to take into account the production conditions of the South, and therefore ultimately affect market access for developing countries' exports.

This paper expresses a view that an environment focus in the international trade agenda in the current global context may pose *more harm than good* for developing countries and least developed countries (LDCs). This central tenet will be based the rationale of bringing environment text into trade agreements in the first place. It will draw attention to potential development and employment implications with regard to the challenges posed by trade liberalisation of environmental goods and services in terms of costs arising from structural changes. Furthermore potential impact environmental goods liberalisation on infant industries, local production and technology development is discussed. Possible market access restriction through environment standards disguised as non-tariff barriers is also highlighted.

The paper concludes with suggestions on negotiating approaches that allows developing countries the flexibility and policy space and strengthening the UN as the multilateral institution to address trade and environment matters.

2. Background

One of the main reasons for advocating that environmental issues are dealt with in the WTO from Northern countries was that trade and environmental disputes could be better handled under the WTO dispute-settlement mechanism. The landmark shrimp-turtle case is seen as a catalyst for North to use trade as lever to control the environmental behaviour of South⁴.

The "trade and environment" theme was brought to the Doha negotiations by developed countries mainly from the European Union, and despite much resistance from the South, found itself included in the Doha Declaration. The South perceives inclusion of environment in trade-related policy as being against the interests of developing countries because imposed environmental measures may restrict market access, be disguised as non-tariff barriers and promote

⁴ Down to Earth 2000

protectionism by the North. Nonetheless, environment has become a significant issue in international trade policy and environmentally-related themes are found in a number of WTO rules. These include market access, agriculture and domestic subsidies, sanitary and phytosanitary (SPS) measures, technical barriers, trade-related intellectual property rights (TRIPs) particularly related to Article 27.3 on patenting life forms, liberalisation of environmental goods and services and the relationship between specific trade obligations (STOs) of multi-lateral environment agreements (MEAs) and WTO rules.

The North-South polarisation is an ongoing debate characterised by the North seen as *demandeurs* of trade and environment who brought this theme into the negotiating arena and adopted policy initiatives with real or potential negative impacts on trade flows for developing countries.

The preamble of the Marrakech Agreement, which established the WTO in 1994, and the Doha Declaration, outlining the mandate of the WTO in the post-2001 Doha Development Round, reaffirms a commitment to sustainable development. However, there has not been much clarity on how to approach the implementation of the paragraph on sustainable development in the WTO committees.

Paragraphs 31 to 33 of the Doha Declaration refer to trade and environment. Paragraph 31 focuses on enhancing the mutual supportiveness of trade and environment. Paragraph 32 of the Doha Declaration instructs the Committee on Trade and Environment (CTE) to pay particular attention to the following:

- The effect of environmental measures on market access and the reduction or elimination of trade restrictions and distortions would benefit trade, environment and development
- The agreement on Trade related intellectual property rights (TRIPS)
- Labelling requirements for environmental purposes (WTO, 2001).

The trade and environment section also includes a reference to fisheries subsidies and the importance of technical assistance and capacity building in the field of trade and environment for developing and least developed countries (LDCs).

Paragraph 31(iii) of the Doha Declaration agreed to negotiations on *“the reduction or as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services”* with a view of enhancing of enhancing mutual supportiveness of trade and environment (WTO, 2001). This insinuates potential gains for both developed and developing countries in that developed countries are looking for better market access for their goods and services and developing countries are purported to gain from accessing environmental goods and services. However when it comes to negotiations the uncertainty in defining environmental goods and services (EGS) remains contested and this begs some questions with respect to the implications for developing countries.

3. The challenges posed by trade liberalisation of environmental goods and services (EGS)

3.1 Defining Environmental Goods & Services

There is no agreed definition of environmental goods within the WTO. The working definition is based primarily on a list compiled by the Organisation of Economic Co-operation and Development (OECD) and the Asian Pacific Economic Co-operation (APEC) countries⁵. However the emphasis of these categories falls on capital-intensive technologies, including goods used to clean up or prevent pollution. A further category of goods consists of environmentally preferable products (EPPs), which cause less harm, to the environment (Singh, 2005). EPPs include non-timber forest products (NTFPs), natural fibres, eco-labelled or certified products, organic agricultural produce and biofuels.

NTFPs and other naturally-occurring products hold great export potential from developing countries with high levels of biodiversity. However, the consideration of eco-labelled and certified organic products have implications related to debates on process and production methods (PPMs) at the WTO. The latter products may put developing countries at a disadvantage, because the standards for labelling and certification are often set with conditions of developed countries in mind⁶. Furthermore the TRIPS Agreement of the WTO fails to provide mechanisms to protect traditional knowledge. Certain non-tariff barriers impede trade in natural products and pose obstacles to small industries from developing countries wanting to enter global markets⁷.

To date there is no agreement on a clear definition of what constitutes environmental services. It is loosely based on a 1991 Services Sectoral Classification List, which has four areas: sewage, refuse disposal, sanitation and 'other'. 'Other' is presumed to include remaining elements of the United Nations Provisional Central Product Classification (CPC), namely, cleaning of exhaust gases, noise abatement services, nature and landscape protection services and other environmental protection services not included elsewhere⁸. Present negotiations raise the following issues: the updating of the classifications; developing a common understanding of what is meant by environmental services in a commercial sense; and the creation of new categories such as biodiversity protection, remediation, and clean-up of soil and water pollution. Other areas of negotiations include a need for a clearer picture of the extent and scope of the subsidisation of environmental services; government procurement, qualification

⁵ ICTSD/IISD *Trade and environment*, Doha Round Briefing Series: Cancun Update, vol 2 no. 9, Aug 2003.

⁶ Vikhlyayev, A.2004, "Article 2: Environmental Goods and Services: Defining Negotiations or Negotiating Definitions?" in UNCTAD's Trade and Environment Review 2003.

⁷ Stephens A, 2006, *The Natural Products in Southern Africa: Key Issues for Trade in Environmental Goods*, in Trade liberalisation and Environment: Implications for Sustainable Development, published by IGD

⁸ WTO, *Environmental issues raised in the services negotiations*, April 2003. WT/CTE/GEN/11

and certification requirements for individual service providers; tied aid; and technology transfer⁹.

The list of environmental services was derived from provisional UN CPC statistical classification. There are potential overlaps with other services such as technical analysis, business and engineering. These are classified elsewhere in the General Agreement in Trade in Services (GATS). A feature of the GATS classification system is that each sector is mutually exclusive, so that services under one category should not be covered elsewhere¹⁰.

3.2 Developed Countries seeking new markets

Since OECD countries' firms account for 90% of the total market in EGS, and the increasing development of standards has also promoted opportunities for these firms¹¹. They have taken advantage of growing market access opportunities in developing countries. Privatisation of water, waste and power utilities and deregulation of markets have created enormous opportunities for these firms. This raises issues of control of essential services by international firms whose objectives may not be congruent with national development priorities.

Although the WTO justifies its special focus on EGS negotiations by explaining that it should lead to a business-environment *win-win* situation. It is argued that the removal or reduction of barriers on the trade of EGS will benefit those businesses that deliver them, and their greater and more efficient application will result in a net benefit to the environment. EGS is notable amongst the most rapidly growing industries in the world and access to new markets is vital for the developed countries¹². This fact is likely to influence the position and negotiations of the developed countries in WTO engagements.

Regarding trade in EGS, some important questions arise:

- measuring the ability of imported EGS to make a positive difference to the receiving environment
- managing environmental goods imported free of tariffs but later used for non-environmental applications (such as pumps and compressors)

Currently EGS negotiations at the WTO are deadlocked over the question of definition: exactly what constitutes EGS as opposed to other types of goods and services? The EGS definition debate is driven by each country trying to protect its domestic EGS industry while at the same time attempting to gain maximum market access for their EGS exports. Developing country negotiators need to keep in mind that these negotiations are largely supply-driven (i.e., propelled by

⁹ ICTSD/IISD *Trade and environment*, Doha Round Briefing Series: Cancun Update, vol 2 no. 9, Aug 2003.

¹⁰ Alice Palmer, *Environmental Services and Developing Countries*, April 2001 p 6

¹¹ Barbour T, 2006, Overview of Environmental Goods and Service in in Trade liberalisation and Environment: Implications for Sustainable Development, published by IGD

¹² Vikhlyaev, A. "Article 2: Environmental Goods and Services: Defining Negotiations or Negotiating Definitions?" in UNCTAD's Trade and Environment Review 2003.

developed countries seeking increased market access for goods) rather than demand driven (i.e., proceeding from a set of challenges and assessing how trade can assist in solving the problem).

3.3 Implications of tariff reduction/removal on environmental goods

Three approaches are on the table at the WTO, the “List Approach”, the “Environmental Project Approach” and the “Integrated Approach to address tariff reductions or removal. The list approach is most favoured by developed countries, requests members to compile a list of products for tariff reductions. The Environmental Project Approach proposed by India, is based on establishing national projects to improve environmental performance and tariff cuts will be allowed for those goods required for the project. This proposal attempts to ensure that trade liberalisation of environmental goods achieve environmental objectives and long-term sustainable development goals based on local-specific needs. The Integrated Approach proposed by Argentina, attempts to develop a list through the multi-lateral trade system under various categories and the goods identified could be used within a national environmental project. While each approach may have its merits and demerits, for the purpose of this paper the potential implications of the list approach will be illustrated.

Nine members of the WTO (Canada, Chinese Taipei, EC, Japan, Korea, New Zealand, Qatar, Switzerland and US) submitted initial lists of 480 environmental goods, of which almost 200 were submitted by more than one country. The goods were categorised according to the OECD and APEC’s typology and more broadly under four categories proposed by Switzerland and backed by the EU, namely pollution management, cleaner technology and products (CTP), resource management, and environmentally preferable products (EPPs).

The advantages of this approach are that – while debates occur – the listing system based on OECD definitions and UN codes provide a reasonable basis for the listing of products. Some countries (US, Chinese Taiwan and New Zealand) propose making lists more flexible and amenable for developing countries. However, a number of problems are associated with this approach.

One of these is the use of the EPP category, in which process and production methods (PPMs) raise definitional problems. Here Brazil stresses that the definition should cover products which give developing countries a comparative advantage. It supports the UNCTAD approach to EPP’s as a basis for building a definition mindful of developmental concerns¹³.

A second problem is the nervousness of some countries like Thailand and Chile about the dual-use of many environmental goods, in that they can be utilised for purposes which contribute nothing to sustainable development. These countries are proposing that lists should only consist of products clearly linked to environmental objectives. Unless this occurs there will be negative

¹³ *Ibid.*

consequences for many firms in the South where these sectors are dominated by SMEs.

A third problem area is that of eco-labelling, where there are no agreed international standards. Eco-labelling is usually voluntary, and criteria for certification vary between countries. Eco-labels differentiate between products based on their environmental impact in the course of the manufacturing process or life-cycle, and therefore raise PPM-related issues.

Under the list approach, transfer of technology may be restricted because of considerations of protecting intellectual property and other conditionalities. This will further disadvantage SMEs in the South which lack the resources to invest highly in research and development. Many of the listed products have been developed to meet conditions and standards in developed countries and may be inappropriate when applied in the South.

Finally there are problems associated with tariff reduction. Rapid reduction or elimination of tariffs on environmental goods may result in dumping and import surges, as well as loss of revenue. Market access criteria need to be offset against the question of environmental sustainability of products.

3.4 Implications of GATS on environmental services

Opening privatising environmental services like water services is likely to have a major impact on the provision of basic services. There is growing evidence that water privatisation impedes rather than advances the provision of water to poor people.¹⁴ The serious implications for environmental services warrant further research and investigation before developing countries and LDC's make any further offers.

Liberalisation of environmental services is also likely to impact on national sovereignty and regulation because once a member country has made an offer to open up a service under the General Agreement on Trade in Services (GATS) it cannot be withdrawn. Therefore, if a WTO member wishes to rely on domestic service and service suppliers in a particular sector, or wants to open these sectors to foreign suppliers but maintain a maximum degree of regulatory flexibility, they may consider not binding themselves in that sector, that is, not making any commitments¹⁵. In addition countries drawn into unintended commitments in professional and environmental services and support sectors in all modes of supply may find themselves committed as a consequence of liberalisation in the construction, engineering, legal, accounting, auditing and management consulting services.

Any requests to remove restrictions and open the category 'protection of

¹⁴ *Op. cit*

¹⁵ Vikhlyaev, A. 2004. Article 2: Environmental Goods and Services: Defining Negotiations or Negotiating Definitions? in UNCTAD's Trade and Environment Review 2003.

biodiversity and landscape' to foreign companies should be viewed with caution. This means a member country would have to give foreign companies the same treatment as domestic companies wanting to provide nature and landscape protection services. The implications for community-based natural resource management initiatives, trans-border conservation areas or indigenous knowledge systems need to be clearly understood. Further research is required into possible conflicts with national priorities, policies and laws related to resource management, livelihoods security, environmental protection, participatory processes and upliftment of marginalised and poor people¹⁶. In the meantime a strong precautionary approach should be taken¹⁷.

3.5 Non-tariff barriers, environmental measures and standards related to market access

Environmental requirements with particular effects on market access include voluntary standards, like ISO standards, and mandatory technical regulations and labelling requirements like eco labelling, packaging regulations and certain sanitary and phytosanitary (SPS) measures. Most of these require proof of compliance through certification. A key concern is the effect the potential imposition of external standards that lack transparency and are overly stringent or complex might have on market access for exports from developing countries. There is often no appropriate scientific justification for these measures and they do not take into account the conditions of production in developing countries and LDCs.

Any national laws or regulations that restrict market access are considered to be non-tariff barriers (NTBs) to trade. The EGS negotiations have not resolved the issue of NTBs, often because environmental and health laws and standards are often seen as NTBs. Friends of the Earth International (FOEI) have identified 212 challenges by over 25 countries to environmental and health standards within the WTO. These include labelling and certification measures, restrictions on foreign investment, and measures to promote national economic development¹⁸.

So developing countries face a genuine concern that market access for their products may be affected by NTBs. Yet many countries have patiently developed more stringent environmental regulations to meet MEA commitments. It is essential that the WTO does not use trade rules to dilute environmental protection measures. Therefore support systems need to be put in place to assist developing countries to address questions of technology, capacity building and cleaner production processes. Instead of a race to the bottom, trade rules should assist countries to embrace environmental objectives without jeopardising productivity and developmental goals.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Friends of the Earth International, Summary of analysis of notification on non-tariff measures in Non-Agriculture Market Access (NAMA) negotiations of the World Trade Organisation, May 2005

These challenges provide a number of reasons why developing countries and LDCs should not have to liberalise their environmental goods and services to comply with WTO trade rules in order to meet sustainable development goals. Furthermore developed countries are already obliged to provide technology transfer under existing technology transfer commitments of Agenda 21 and several MEAs. The WTO is not the best institution to oversee this as it is not equipped to address supply side needs, capacity building and technology transfer¹⁹.

4. Supporting a Developmental Agenda

4.1 *Maintaining flexibility and policy space*

Because of the contentious nature of the WTO rules, ideally environmental matters should not have been part of WTO. However as discussed they have become part of the WTO negotiations and negotiating outcomes need to ensure that developing countries have sufficient flexibility and maintain their policy space. An approach for tariff reduction for instance must have flexibilities in place for developing countries to use within their existing levels of development and domestic capacity²⁰. In the case of environmental goods liberalization, for example, developing countries require flexibilities so that their local firms can build and maintain competitive capabilities.

These negotiations are tough and may fall short of achieving a “win-win-win” scenario where trade, environment and development benefits are realised. In the absence of an agreed definition of environmental goods it will be difficult to arrive at tariff reductions for specific goods. The challenge is to agree on an approach that translates into a political deal that guarantees developing countries flexibility and policy space. The final outcome needs to ensure that market access of EGS supports (i) transfer of clean technologies to developing countries; (ii) assists them to meet their MEA obligations and goals; (iii) respects the principles of special and differential treatment and less than full reciprocity; (iv) improves market access for developing countries’ EGS; and (v) allows developing countries adequate mechanisms to protect their markets from dumped products and import surges

4.2 *Strengthening and reforming of the UN multilateral environment*

There is need to strengthen the role of United Nations (UN) organisations to support a sustainable development agenda in trade. The Group of 77 and China at UNCTAD XI²¹ placed significance on strengthening the United Nations

¹⁹ Jessica Wilson. “Negotiating Environment Goods and Services in Cancun”, Briefing Paper for the Department of Environmental Affairs and Tourism, 2003

²⁰ Rashid Kaukab, Benchmarking development for Hong and Beyond,

²¹ G77 Statement at UNCTAD XI

Conference on Trade and Development (UNCTAD) mandate as the focal point within the United Nations system for trade, development, and the interrelated areas of finance, investment, technology and sustainable development.

Furthermore, the debate on WTO is very narrow and focuses on environment as an impediment to trade rather than the impact of trade liberalisation on the environment and development. WTO principles promote “free” trade, commodification of natural resource and environment services and decreased regulation of corporations encourages privatisation, and these principles are at odds with sustainable development.

To prevent and mitigate contradictions, trade discussions should be encouraged in the UN system within a sustainable development framework. Further, decisions and agreements made at the UN needs to set precedence for the other multi-lateral institutions. The Johannesburg Declaration on Sustainable Development for instance endorses the leadership role of the UN as the most universal and representative organisation in the world, which is best, placed to support sustainable development²².

Conclusion

Understanding the implications and comprehending what trade text means for jobs, food security or environment is extremely complex. The linkages between trade and environment have become more apparent. Developing countries capacities need to be strengthened in understanding and participating in international trade and environment debates. Of foremost importance is the development of national policy on the linkages between trade, environment and sustainable development so that engagement in international debates is carried with on the basis of sound national priorities.

The experience of participating in the WTO Cancun and Hong Kong Ministerial exposed the deeper implications and raised fundamental policy questions on the decisions to pursue free trade agreements to gain greater market access to developed countries markets. In the current context of global trade, especially in light of the *de facto* barriers imposed by environmental factors in trade as discussed in this paper, a critical consideration is the “real costs” to local development and the livelihoods communities’ dependant on natural resources in the South

²² Johannesburg Declaration on Sustainable Development, WSSD 2002