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International Trade and Environment Standards

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Abstract:

Environmental standards largely determine the flow of the international trade. There has always been a debate about whether trade liberalisation and environment protection should be integrated or should there be free trade where the two agendas of trade liberalisation and environment protection are independent of each other. However, it turns out that what is actually needed is an efficient and effective policy instrument to deal with the environment protection issues. Although there is no doubt that that environmental standard does play a role in deciding the flow of international trade but just focusing on the trade policy implies ignoring other market failures that affect the environment. There is therefore a need to integrate the two agendas of trade liberalisation and environment protection. This paper explains the various challenges faced in integrating the two agendas and the further work that needs to be done in this area.

Keywords: *Environment standards, trade liberalisation and international trade*

1. Introduction

There is a need to “adopt more efficient policies to enact positive change by supporting the use of direct financial incentives, tied aid and capacity-building exercises in developing countries.”(Copeland and Taylor, 2004).

There are many transboundary externalities which cause harm to the environment and hence this renders the economic system ineffective. Therefore it is important to form policies which integrate the two agendas of environmental protection and international trade. (Esty and Geradin, 2001)

Now, until and unless the environmental costs are internalised all gains from trade will not be reached. Further due to trade liberalisation income levels increase and the pollution amount decreases and there is economic growth. (Copeland and Taylor, 2004)

Therefore “the two agendas of trade liberalisation and environment protection should be integrated in a systematic and efficient way. The environmental standards help reduce market failures and pollution level and therefore the economists together with the environmentalists should formulate the policies smartly”. (Esty 2001)

Organisations such as WTO, GATT and many NGO’s play a catalytic role in attaining effective integration between the two agendas of trade liberalisation and environment protection. Though there are problems with the rules of WTO and GATT and the rules for these organisations need to be modified a bit. “WTO should become more transparent and democratic” for instance. (Esty 2001)

This paper contains 3 main sections:-

The first section explains the various challenges faced in the functioning of the organisations such as WTO and GATT. Three main cases of shrimp-turtle, tuna-dolphin and beef-hormone are discussed in detail. The next section explains the further work that is needed in this area and the last section leads us to the conclusion.

2. Section 1

2.1. Shrimp-Turtle Case

This is one of the cases involving environment and India under WTO.

Under this case the United States imposed a very heavy import restriction on the shrimp and shrimp products from 4 Asian countries India, Pakistan, Malaysia and Thailand. The main idea behind the trade barriers was to protect the sea turtles. Here one can note the application of the GATT rules on the trade disputes over process and production methods. The four Asian countries did not use the TED’s (turtle excluder devices) while fishing and this led to the killing of the endangered sea turtles¹. (World trade organisation)

The Appellate body’s judgement was that the United States measure fulfilled the rules under Article XX (g) exception “the measure relating to the conservation of exhaustible natural resources.” However the complainants (4 Asian countries) argued that “the “exhaustible resources” referred only to non-biological natural resources such as minerals until only later on when the Appellate body confirmed that “exhaustible resources” includes the protection of the living and endangered species.” (Shaffer 1999)

¹For detailed explanation see the *WTO case Nos. 58 (and 61). Ruling adopted on 6 November 1998*

However in the end the United States lost the case. The Appellate body found out the following problems in the US application of section 609.

- Firstly, it is not justified for the United States to expect all the other exporting countries to adopt the same policy as the United States, if they wanted to use their GATT rights. (Shaffer 1999)
- Secondly, the United States continued to impose the trade barriers even after the countries harvested shrimp using the United States prescribed policy, if it came from those countries where the TED's (turtle exporter devices) was not used. This implied that United States was less concerned about preserving the endangered sea turtles. (Shaffer 1999)
- Thirdly, the United States did not try and negotiate with the four Asian countries (India, Pakistan, Malaysia and Thailand) and reach a multilateral trade agreement. Therefore, the United States measure was unilateral in this sense. (Shaffer 1999)
- Lastly, the United States discriminated between the WTO members since it did not provide enough time to the 4 Asian countries to adopt the turtle excluder devices, but on the other hand offered the Caribbean countries longer phase-in period to adopt the TED'S (turtle extraction devices). (Shaffer 1999)

Therefore despite the fact that the United States sought to protect the environment it lost the case since it was biased between the WTO members and the Appellate body's decision was criticised by the environmentalists since they called the "Appellate body's decision death blow of the sea turtles."² They also called the "Appellate body's approach "dangerous" and fearing the ruling "will result in explosive growth in unilateral, discrimination, trade related environmental measures."³(Shaffer 1999)

Under the GATT rules there is a product / process difference which is useful but it should not be too tight or stringent. There is therefore a need to modify GATT rules a bit. There is also a problem of institutional structure and the decision would have been better if it was taken among the negotiators than by the Appellate body. (Jackson 2000)

2.2. Tuna-Dolphin Case

This case involved United States to impose a ban on the imports of fish from countries that did not meet the dolphin protection standards that were implemented in the US law. This case created a process versus product issue. The Appellate body concluded that the ban on the import of the tuna from any country simply because it did not produce tuna the way it's produced in United States is not justifiable.⁴(World trade organisation)

Under the GATT rules a country cannot impose trade barriers in order to implement its own domestic laws on any other country. The reason the Appellate body gave a decision against the United States was because otherwise any country could take the trade action to impose its own social and domestic norms on another country even if it was to protect the environment this is in some sense unilateralism and this would lead to a failure of a multilateral trade system. (World trade organisation)

The United States attempt to impose a ban on the fish imports was unilateral in many senses. The attempt to protect the dolphins was not at an international level since the dolphins are not extinct species and therefore the GATT panel found the United States ban on the imports of fish as not meeting the GATT rules. However in the shrimp-turtle case at least the United States attempted to protect the sea turtles that were endangered but on the contrary in the tuna-dolphin case the very policy to protect the dolphins is a unilateral one. (Bodansky 2000)

Moreover whenever any environmental problem involves many countries it is generally difficult for just one country to alone deal with it and it is better for many countries to together collectively solve it therefore multilateral agreements are very useful in the long run. But even the unilateral agreements are useful in certain cases when there is not enough time to take a decision and it gets difficult to involve many parties or "when multilateralism is nonexistent and the real choice is between unilateralism or doing nothing instead of the choice being between unilateralism and multilateralism." (Bodansky 2000)

Therefore, unilateralism to some extent does imply dismantling of internationalism and therefore multilateral agreements are preferred. But which kind of agreement is needed depends on many different factors and a serious costs and benefits analysis is needed. (Bodansky 2000) "The decisions should be based on the science and education of the fishers to see the change." (Hall 1998)

There are 2 main ways to control for tuna-dolphin problem

First is to completely reduce the dolphin mortality

Second is to adopt a scientific technique whereby the dolphins will continue to be caught but in the long run the overall effect on the dolphin mortality would be negligible.

The first way of completely reducing the dolphin deaths will lead to school and log fishing which is very harmful as in this case the tuna caught are very small and immature. This method also creates another problem of by catching of other species. (Joseph 1994)

All the other countries in the western pacific area have collectively adopted policies to control for dolphin deaths in a way that does not affect the tuna industry. On the other hand the United States adopted a policy to reduce dolphin deaths but without taking other things into consideration. Therefore till all the other countries and the United States can form an agreement about a system to control dolphin deaths the controversy will continue and it is also possible that other countries that were earlier cooperating would stop cooperating now and find the program ineffective. Therefore nations should work together to protect these resources. (Joseph 1994)

² CNN, WTO rejects U.S. ban on shrimp nets that harm sea turtles, Oct. 12, 1998, available at <<http://www.cnn.com/US/9810/12/world.trade.ruling>> (visited February 8, 1999).

³For further details See Complainants in WTO Shrimp Case Slam Appellate Report at DSB, INSIDE U.S. TRADE, Nov. 13, 1998, at 78 .

⁴A case brought by Mexico and others against the US under GATT. The panel report was circulated in 1991, but not adopted, so it does not have the status of a legal interpretation of GATT law. The US and Mexico settled "out of court"

.circulated on 3 September 1991, dispute 4

2.3. Beef-Hormone Case

This case is a classic example of how the cultural differences in food safety standards in different countries can challenge the policies and rules of the WTO that are formed to regulate trade.

In this case the European Union imposed a ban on the import of the meat and the meat products from Canada and the United States. The main aim was to protect the consumers from the hormone-treated beef. The European Union was afraid of the mad cow disease and so decided to ban the import of the beef containing the hormone that could cause cancer. However European Union lost the case since the WTO panel decided that under the SPS rule (Sanitary and phytosanitary measure) in the WTO a proof is also needed that the "beef" hormone could actually cause cancer else it is merely seen as a policy for regulation of the food safety.⁵ (World trade organisation)

Excessive protective policies can lead to a welfare loss and is also considered ill-legal. Therefore, it is better for countries to remove such policies. The need is to have a transparent and consultative approach. (James 2000)

Kerr (1999) cited that consumer preferences have started to play a major role in restricting the trade. (James 2000) However risk management is a better place to discuss about the economic and social interests. The SPS agreement mainly aims at protecting animals and human from health risks and it is different from other barriers to trade in the way that it can correct for externalities. Therefore, to ensure gains from trade and better protection of health it is important to include economic analysis while making the risk management decision since this will make the SPS policies efficient. (James 2000)

Under the beef-hormone case the bilateral negotiations could not reach a common decision and therefore the matter was resolved by the WTO/GATT. However the GATT could not solve this case since the debate on the PPMs (production and process management) was still unsolved and moreover United States did not offer any scientific justification to impose the ban and therefore did not fulfil or meet GATT rules. The dispute settlement understanding (DSU) helps solve the case in a more transparent and effective way since it focuses on 'rule oriented' procedure whereby the countries are made to focus on the fact that whether they meet the rules and this therefore creates more predictability and leads to an efficient decision in the long run.⁶(Josling, Roberts and Hassan 1999)

However many environmentalists criticise the WTO's ruling for the case and argue that the WTO puts corporate interests above the environmental concerns and that the members on the panel are not scientific experts. (Josling, Roberts and Hassan,1999)

3. Further Work

Firstly and most importantly the WTO and GATT rules need to change and WTO should become more transparent. "NGO's should also work effectively and should put a strong message across to the WTO members that efficient management of the environment is absolutely necessary to ensure integration between the 2 agendas of trade liberalisation and environment protection."(Neumayer 2000) There is a need to do a very serious cost benefit analysis and it is also important to consider the fact that who will decide and make the final judgement that is should it be the appellate body or the countries whonegotiateamong themselves and decide. (Jackson 2000)

Whenever a country behaves in a unilateral manner it is important to figure out whether it is necessary to take a unilateral action, what will its impact be on the other states and does it reflect a general rule that is whether it is universalised. (Bodansky 2000)

Moreover there is a need to define the WTO rules more precisely. (Josling, Roberts and Hassan,1999)

Further work is needed to study the ecological characteristics thoroughly and there is need to study ecological costs and evaluate alternative if efficient outcome need to be attained. All the costs should be taken into consideration and therefore optimal outcome should be reached with the multilateral agreement. (Hall 1998)

Further the GATT follows a policy to ensure that the "green trade barriers are least trade restrictive" and this will lead to a system where trade interests are valued more than the environmental concerns. (Dunoff 1992) therefore there is a need to change the GATT rules to some extent.

4. Conclusion

There are administrative differences and political economy is also different for different countries and therefore all these differences in environmental standards between countries make international trade useful and lead to gains from trade. "What matters from the point of view of the gains from trade are the prices at which nations trade and not the forces behind those prices" (Krugman 1997).

Moreover in many countries the government is harsh towards organisations such as WTO (Anderson 1997)

Now the trade barriers imposed must fulfil the GATT rules they should be non-discriminating, transparent and very important to meet the environment objective. (Anderson 1997)

Therefore, the efforts should be made to attain multilateral trade agreements and there is a need for further empirical research on how the interdependence between trade liberalisation and environment protection can be attained more effectively.

WTO deals with the trade regulation however, now even the other disputes related to the environment are also being dealt with under WTO. However for this to be successful and effective it is important to have more public participation. It also noted that in majority of the cases the WTO rules against the environment whenever the conflict is between the environment and commerce therefore WTO rules need to be modified and made transparent. In all the three cases above the Appellate body's judgement was against the party that was taking actions to protect the environment since they violated the rules under the WTO and GATT and the trade barriers imposed by the countries were too rigid. The need is to lay down the Rules under WTO and GATT more precisely.

⁵For further details go to WTO site and the case of Korea DISPUTE DS391

⁶Jackson, Chapter 4.

Environment protection should be given more importance and efforts should be made to reach the multilateral agreements between the countries. The integration between trade liberalisation and environment protection should be done in a very smart and systematic way. Role of NGO'S should also increase and a proper costs and benefits analysis should be done. The main focus should be on environment protection and cooperation between all nations is needed and should be effectively attained. The rules under the GATT and WTO should be non- discriminatory no country should discriminate between exporting nations and no country should try to impose its production policy on any other country. Efforts should be made to reach a negotiation and form policies which focus on environment protection and at the same time the policies should not be too rigid or very stringent that is not too trade restrictive. Further empirical research is needed to formulate better policies and create a better institutional structure and organisation to resolve disputes.

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