

CIVIL SOCIETY FORUM LDC MINISTERS FORUM, LIVINGSTONE

TRADE AND ENVIRONMENT LINKAGES AND IMPLICATIONS FOR SUSTAINABLE DEVELOPMENT

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Project Name: Trade Policy and Multilateral Environment Agreements

Background and Rationale

The complex linkage between trade policy and multilateral environment agreements is a growing global debate. The “trade and environment” theme was brought to the Doha negotiations with much resistance from the South and consequently is part of the Doha Declaration. The South perceives inclusion of environment in trade related policy as working against developing countries because environmental measures imposed may restrict market access and promote protectionist measure by the North. Nonetheless environment has become a significant issue in international trade policy and environmentally related themes are linked to a number of WTO rules the key one’s been market access, agriculture and domestic subsidies, sanitary and phytosanitary (SPS) measures, technical barriers, subsidies and countervailing duties, trade related intellectual property rights particularly related to Article 27.3 on patency of life forms and the Convention on Biological Diversity, liberalisation of environmental goods and services and trade and environment with regard to 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 demanders of trade and environment and postulating the need to bring this theme in the negotiating arena and adopt policy initiatives with real or potential impacts of trade flows. The South continued to resist introducing environment in the WTO, based on their view that they are targets for potential trade restrictions based on environmental concerns. With regard to trade and environment, the Northern countries would like see a WTO waiver for the STO’s the MEA’s - including so-called obligations de résultat, whose implementation is left by a MEA in the hands of the Parties should be considered automatically compatible with WTO rules (Veiga 2003). The South rejects a priori assumption that STO’s of MEA’s conform to WTO rules and supports the concentration of negotiations on a limited number of MEA’s (Veiga 2003).

Substantive issues for discussion

The Doha round was seen as a “development round” and the Doha Declaration set out a number of provisions to “benefit” developing countries. The preamble of the Marrakesh Agreement and the Doha Declaration reaffirms a commitment to sustainable development. Although there has not been much clarity on how to approach implement the paragraph on sustainable development in the WTO committees.

The Trade and Environment section (paragraphs 31 to 33) of the Doha Declaration refer to the relationship between WTO trade rules and environment. Paragraph 32 of the Doha Declaration instructs the Committee on Trade and Environment (CTE) to pay particular attention to:

- The effect of environmental measure on market access and the reduction and situations in which reduction or elimination of trade restrictions and distortions would benefit trade, environment and development
- The Agreement on TRIPS
- Labelling requirements for environmental purposes

Two challenges are important to consider, the ambiguous nature of sustainable development as this concept means different things to different people and the environment issue of trade goes far beyond the paragraphs on trade and environment. It has implications for agriculture, intellectual property rights, service, etc. This will be discussed in more detail under these headings.

If sustainable development is based on the principles of fairness, justice, peace, safety and security for the common good and benefits for all living beings on this planet and takes into account the understanding and value of maintaining the ecological systems that support present and future generations, then effectively the WTO trade rules should be based on these principles. These principles stem from the a number of UN agreements such Universal Human Rights Declaration, the Bruntland Commission, the Rio Declaration, Agenda 21, Multilateral Environmental Agreements and more recently the World Summit of Sustainable Development. However sustainable development has gained little support in the last 30 years compared to globalisation. The architecture of global governance is riddled with many contradictions when it comes to finance, trade and sustainable development. Sustainable development requires significant shifts relevant to change the global regime in regard to poverty eradication are:¹

- From the general trends of resource degradation to more location- specific diverse, differentiated and dynamic understanding of environmental change, i.e. understanding the local environmental degradation in context the other problems local people are faced with.
- From availability of natural resources (land, water, genetic, resources) to what influence people's access, control and management of them.
- From inadequate income or consumption and a lack of assets to rights and access to resources and services.
- From the assumption that poverty cause environmental degradation to the recognition that environmental degradation arises from the consumption patterns from the middle and upper income groups and from production systems to meet their needs.

Multi-lateral Environment Agreements (MEAs) and WTO Trade Rules

The debate on the relationship between MEA's and WTO rules is centred on specific trade obligation (STOs) that may impact on the WTO rules. Developing countries fear a blanket approval by the WTO of trade measures adopted by MEAs could lead to abuse and protectionism.² It needs to be questioned why a focus on STO of MEAs in the WTO when these STO are explicit in the MEA's. Focusing a discussion on STO's to promote positive and support measures is important. But equally important is that measures and policies to solve environmental problems should be negotiated in international environmental forums and agreements supported by the UN.

One of the recommendations in the UNCTAD Trade and Environment Review is an analysis in those STOs in MEA's that lack clarity, are inflexible, ineffective and are highly insufficient and potentially incompatible with the WTO rules³. But both

¹ IIED....

² Views from the South,... Martin Khor...

³ Trade and Environment Review 2003, UNTAD

agreements have different purposes; MEA's protect the environment and in many cases promotes sustainable use of the natural resource base. MEA's promotes equitable and benefit sharing of biodiversity resources (CBD), protects ozone depletion (Montreal protocol), regulate hazardous chemicals and waste (Basel), promote local livelihood and sustainable agriculture production (CCD) etc. WTO principles promote "free" trade, commodification of natural resource and environment services; decreased regulation of corporations and encourages privatisation.

Introducing text says "the WTO advocates the scope for countries to implement sound environmental measure, including trade measures taken pursuant to MEA, which are consistent with the objectives of the MEA's while adhering to established WTO rules and obligations"⁴, need to be carefully considered by developing countries so that the implication are understood.

Intellectual Property Rights (IPRs), Indigenous Knowledge Systems (IKS) and Trade Related Property Rights (TRIPs)

The TRIPs agreement under the WTO has serious implications for developing countries. Intellectual property rights (IPRs) give credence to the argument that the South is likely to have greater losses because inevitably the rights that are protected favour the North. These include the impact of indigenous knowledge system, patency of genetic resources and "ownership" of technology transfer.

Many developing countries particularly in Africa are rich in biodiversity and rural communities depend on these natural resources for their livelihoods. Therefore developing countries have an explicit interest in protecting their environment and natural resources, its indigenous knowledge systems, access to genetic resources and ensuring that equitable sharing of benefits that arise out of their use. The Convention on Biological Diversity (CBD) makes provisions to establish national mechanisms and regulatory arrangements for prior informed consent and benefit sharing for the collection and use of biological resources and the knowledge associated with them. The TRIPs Agreement of the WTO establishes that all inventions are patentable, including inventions base on the exploitation of the biological resources⁵. This has significant implications for member states, who are now obliged to implement minimum IPR standards, and to allow patents and other forms of IPRs to enter the realm of agriculture, food production and healthcare⁶. Article 27.3(b) of TRIPS, which deals with the patentability of plant and animal inventions and the protection of plant varieties. The TRIPs Agreement limits that right to use varieties for further development by plant breeders other than, the patent holder, unless the patent holder has paid royalties⁷. This will have direct implication on "seed saving" and the food security. There has been a call to review this Article to exclude the patentability of plants and animals as well as micro-organisms and al other living organisms⁸. The TRIPS Council is required to examine the relationship between TRIPS and the CBD; the protection of traditional knowledge and folklore; and the review of Article 27.3(b).

Trade and technology transfer is another important area that needs to be examined under the TRIPs Agreement. Principle 9 of the Rio declaration on Environment and

⁴ Trade and Environment Review 2003, UNTAD

⁵ Stephen Greenberg....

⁶ Rachel Wynberg...

⁷ Stephen Greenberg

⁸ Stephen Greenberg...

Development supports the cooperation for capacity building through exchanges of scientific and technical knowledge and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies. Opening up markets on goods and services will likely not fulfil capacity building and technology transfer and exchange on the basis this principle. This is because the whole point of the WTO and free trade agreements is to protect and not exchange knowledge. Technology is transferred in a way that the control, ownership and benefits remain with the “owner”⁹.

Although theoretical assumptions is that technology transfer through trade will allows technology import of goods and improved input into decisions, opens export goods, allowing learning by doing and increases a set of accessible technologies, thereby increasing the scope of imitation¹⁰. However empirical evidence shows that human capital is important for technology the spillover from trade n particularly in developing countries is unclear¹¹.

Developing countries are concerned that TRIPs hinders access to appropriate and environment sound technology and products. A synergy between liberalisation, environment and development would be clearer if TRIPs were amended to an exemption of ‘environmentally friendly products’¹².

Services

There is no agreed definition of environmental *goods* within the WTO. The working definition is based primarily on a list compiled by the OECD and put into practice by the APEC countries¹³. It focuses on goods used to clean the environment or prevent pollution. The definition also include a second category that consist of goods that are *environmentally preferable*, i.e. products that cause significantly less harm to the environment, these would include goods that are superior to petroleum-based products like biofuels or goods that are produced in an environmentally friendly way, for example organic coffee, tea, cocoa, chemical free cotton, timber from sustainable forests or goods that contribute to the preservation of the environment, for example bio-pesticides¹⁴.

Defining what constitutes an environmental *service* is also contested. 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 elsewhere¹⁵.

Issues on climate-related and other ecosystem services, have yet to be considered as environmental services. In the present economic system the calculation of renewable and non-renewable resources (‘natural capital’) is calculated as income and contribution to economic growth the destruction of the natural capital like forests

⁹ Jessica Wilson

¹⁰ Mombert Hoppe, 2005, Technology transfer through trade,

¹¹ Mombert Hoppe, 2005, Technology transfer through trade,

¹² Martin Khor, Views from the South...

¹³ ICTSD/IISD *trade and environment*, Doha Round Briefing Series: Cancun Update, vol 2 no. 9, Aug 2003.

¹⁴ Vikhlyayev, A. 2004., Article 2: Environmental Goods and Services: Defining Negotiations or Negotiating Definitions? in UNCTAD’s Trade and Environment Review 2003.

¹⁵ WTO, *Environmental issues raised in the services negotiations*, April 2003. WT/CTE/GEN/11

the 'services' it provides (such as its capacity to absorb CO₂, stabilise soil, shelter species, etc.) is not taken into account. In other words the environmental 'goods' like air, water and soil are regarded as free and their scarcity value is not calculated in the economic system.¹⁶

LDCs, particularly in Africa are rich biodiversity and natural resources and the threat posed by international trade rules on the environmental goods (in the broader context) of this country, which are assets (like indigenous plants, traditional medicines, indigenous woods, rivers.etc.) would need to be considered. Trade relating to the movement of our natural resources is not protected. For example, the "real" value of Amazon Tropical Rain Forest (i.e. the opportunity cost of losing a global green lung because hard wood trade is a good short term hard currency earner) is not really taken into consideration from economic perspective. This reveals the need to protect those goods and services by assessing their environmental, social and economic significance through formal environmental, social and economic assessments. Deep thinking needs to be done in terms of valuating the country's environmental assets. Tourism is considered an important part of our economic development, the impacts and the decisions made in trade negotiations and commitments if not carefully considered, we may trade away our natural resources leaving nothing for tourist see or experience¹⁷.

Presently negotiations on environmental services raise the following issues: increase country coverage and reduction of barriers, especially for mode 3 & 4; updating the classifications for environmental services for negotiation purposes; common understanding of what is meant in a commercial sense, by some proposed new categories of services such as biodiversity protection, remediation and clean-up of soil and water; a need for a clearer picture of the extent and scope of subsidization of environmental services; government procurement, qualification and certification requirements for individual service providers; tied aid; and technology transfer.¹⁸

Reasons why you don't have to open EGS to meet sustainable development needs

- Existing technology transfer commitments under Agenda 21 and several MEAs (i.e. developed countries are already obliged to provide technology transfer, and the WTO is not the best (is possibly the *worst*) institution to oversee this).
- Environment often presented as a carrot in exchange for developed countries' vague commitments to reduce agricultural subsidies. *This does not work!* Developing countries give up more and more without solid gains. EGS should not be used as a pawn in these circumstances.

Liberalization of environmental goods and services will impact on national sovereignty and regulation

Once you have offered a service to be opened up under the General Agreement on Trade in Services (GATS) you can't withdraw it. Vikhlyaev recommends in his paper WTO members that want to rely on domestic service and service suppliers in particular sector, or who want to open these sectors to foreign suppliers but maintain

¹⁶ Information from the Lugano Report: On Preserving Capitalism in the Twenty-first Century, 1999.

¹⁷ Arend Hoogervorst personal communication

¹⁸ Vikhlyaev, A. 2004....

a maximum degree of regulatory flexibility, may consider remaining unbound in that sector – that is, not making any commitments.

Countries been drawn into unintended commitments in professional and environmental support services

Caution is also raised in the paper Vikhlyaev on professional and environmental support services, if a country has made fully liberal commitments in these environmental sector in all modes of supply they may find themselves committed, as a consequence to liberalization in the construction, engineering, legal, accounting, auditing and management consulting service.

Impact on the provision of basic services to people like water

Opening and privatisation of water services is likely to be disastrous, given the track record of private company water provision. It will impede South Africa's ability to provide clean, affordable water to *all*. This is possibly the most dangerous angle of Environmental Service negotiations and warrants further investigation. There is growing evidence that water privatisation impedes, rather than advances the provision of water to poor people. These negative impacts would be strengthened and given teeth by a trade-related agreement on water.

For example the EC are very serious about prising open developing country water markets. They want no obstacles in their way and will push for this through various WTO negotiations (not just on services, but for example on government procurement) as well as through bilateral and plurilateral agreements.

Protecting biodiversity and landscape

Under the category "protection of biodiversity and landscape", the EC has requested: "South Africa to remove the restriction on consultancy services. South Africa to take full commitments in Modes 1 (where technically feasible), 2 and 3, under market access and national treatment in the following: (1) Nature and landscape protection services."¹⁹ Australia, New Zealand, Norway and the United States have made similar requests.

To someone who is used to working through the UN system of Multilateral Environmental Agreements, these requests appear alarming. They mean that South Africa must provide the same treatment (not discriminate) to foreign companies as to domestic companies. There should be no limits to foreign companies wanting to provide nature and landscape protection services. What does this mean for community based natural resource management initiatives, trans-border conservation areas or indigenous knowledge systems? It is not clear. And while it is not clear, a strong precautionary approach is called for. There should be further research into possible conflicts with national priorities, policies and laws related to resource management, livelihoods security, environmental protection, participatory processes and upliftment of marginalized and poor people.

Environmental Measures and Standards related to Market Access

Environmental requirements with particular effect on market access includes standards which are voluntary like ISO standards and mandatory technical regulations, labeling requirements like eco labeling, packaging regulations and certain sanitary and phytosanitary (SPS) measures. Most of these require proof of compliance through certification.

¹⁹ *Ibid.*

Studies carried out by UNCTAD raise a number of concerns on the effect of market access for developing countries exports. One concern relates to the imposition of external standards that lack transparency, are overly stringent or complex, have no appropriate scientific justification or fail to take into account the production conditions of developing countries.

While environmental requirements in production and manufacturing have clear advantages in national economies of developing countries (like greater resource efficiency, higher occupational efficiency, increased health conditions and less environmental pollution). For example while South Africa has set the target date of 2008 to implement the Globally Harmonised System (GHS) of Chemical Hazards, the problem lies with compliance of external environmental requirements that would have adverse environmental and developmental benefit to the country of production. Developing countries also have to weary of hegemonic countries that have manipulated the shift in agricultural subsidies on the basis of environmentally sound practice. While in principle supporting environmental practice is positive. The subsidies are not directly linked to production but the sheer size of productivity increase the supply. Therefore farmers continue to produce surplus and are able to sell at lower prices because the subsidies.

In the WTO the clause on Special and Differential Treatment (SDT) implies that developing countries have special needs and allows differential obligations based on those needs to enhance development. For example export tariffs could be reduced for small-scale farmers to have access to the export markets. So application of this principle should have direct benefits for developing countries. In the present system distinguishing developed from developing countries for SDT acquiescence is by Gross Domestic Product (GDP). This approach does not take into account the disparities and inequalities in income within a country, so for example small-scale or emerging producers in country like South Africa would not benefit from this clause.

To operationalise the SDT clause, further negotiations on agriculture and market access has to ensure that there be a permanent special and differentiated treatment in trade related issues for developing countries and least developed countries (LDCs) –with SDT defined on the basis on agreed social indicators and not only on GDP.

End with

The need to continue to be defensive on environment within WTO, need explain why, eg. Access of to basic services, protection of IKS, protection of biodiversity and landscapes

Start developing offensive positions....

More clearly understand the implications

More active in standard setting