

Trade and Environment: Seattle and Beyond

Today, after five years of intensive discussion and learning about the relationship between trade and environment, many continue to have mixed feelings about how to go about trade and environment. It seems that this relationship has become a puzzle to traders and environmentalists alike.

Both have many a time stood helpless and perplexed in front of this conundrum, turning around how to accommodate environmental concerns in trade policy, without tampering with the trade rules. How to strike the balance between the need for governments to protect and preserve the environment, the boundaries and limits of such protection on one hand, and avoiding its usage as a new protection measure, on the other hand, remains a sensitive and highly controversial issue.

This Briefing Paper arises from a deep concern with the issues of trade and environment and their inter-relationships. The concern stems from the observation that after years of debate and tedious work, the gap seems to persist, if not widen. The integration of trade with environment continues to an unlikely and strained goal prone with immense risks to developing countries.

Relationship between Environment and Trade

Though linking environment to trade has been relatively a recent relationship, it has gathered momentum throughout the last few years, which some would like to perceive as exceeding and going beyond the strong linkages established between environment, poverty and development. Whereas others, notably developing countries see the linkages made between environment, poverty and development forming the basis of the concept of sustainable development as transpired at the Earth Summit (the United Nations Conference on Trade and Development) held in Rio de Janeiro in 1992 after long years of debate.

Dealing with the relationship between trade and environment in the World Trade Organisation (WTO) has undergone various phases, taking at some point a leading priority among the numerous issues and problems addressed in the framework of the WTO work, where at some other time occupying a lower profile.

In all this, the central question remained how to reconcile the two systems, how to bring the trade and environmental systems closer together, without undermining any, knowing that they are not necessarily always compatible. The two regimes are even often conflicting, as the environmental regime allows taking measures that go beyond ones own borders for sake of protecting the

environment and the WTO does not usually allow for extra-territorial measures (exceptions are taken under Article XX entitled "General Exceptions") .

The Questions

Under the excuse that the WTO's principal role is providing a framework of rules that guarantee transparency and non-discrimination, and which should protect members, from the threat of unilateral measures, the WTO is being used by developed countries as a forum to dump all kind of issues in it. And that irrespective of how much the issues are trade-related. This should tempt us to raise the first set of questions as follows:

Are trade and environment conflicting concepts or are they mutually supportive? Do they entail different objectives or are they aiming at similar or even identical goals? Are the new controversies emanating from genetically modified food (GMF), relating environment to trade, health, and agriculture formed the basis for new potential disputes that could undermine the WTO and the multilateral trading system whose rules the Member countries have agreed to by consensus? Are Soya seeds developed recently by Monsanto (that increase the yield by five percent) good for food security desperately needed in the developing countries? Or, are they to be prohibited for their harmful environmental impact?

What we found here is again a flagrant clash in the relationship between Agriculture, Health,

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Environment and Trade Ministers. Power politics at the national level and international levels will find its way to decide on this highly sensitive issue. Is this yet another environmental problem that would be brought to the WTO in not such a distant future?

Who would set the rules for such a loaded and overburdened relationship—the Trade, the Health, the Agriculture or the Environment Ministers? Whose rights are we to protect—the Intellectual Property Rights or the Social and Development Rights? Whose interests are we to defend—those of the Industries, or the Consumers, the NGOs or the Governments’?

The Rio Declaration and Agenda 21 have managed to bring together a delicate balance in the complex relationship between development, the eradication of poverty, and the environment. Today, however, we are still grappling in the WTO with attempts for integrated approaches for the trade and environment interface in so-called synergies and win-win situations, where the trade and environment should be mutually supportive.

How to accommodate environment objectives in the multilateral trading system is still being ardently looked for, especially with the appearance of new issues such as genetically modified organisms and so-called environmental goods and services.

With all these and many other questions are we by any means closer to agreement than few years back? Why are we constantly being pressured to set rules for the sake of protecting the environment in the WTO, at a time when so many questions remain widely open and necessitate further in-depth study? Many developing countries, among which Egypt, India, Pakistan, and Mexico have clearly opposed any attempt to negotiate rules for the environment in the next round of trade negotiations. This is because, in the view of many developing countries, this will have the potential of erecting new disguised barriers to trade (WTO High Level Symposium on Trade and Environment held in Geneva, March 15, 1999).

It is to be mentioned that the Trade Ministers of the G-15 group of countries at their meeting in Bangalore, India in August 1999, in preparation for the Seattle Ministerial Conference of the WTO, expressed their views with attempts to give legitimacy to protectionism in the garb of environmental concerns. Ministers urged the Seattle meeting to recognise that environmental standards differ from country to country and that the solution lies in mutual recognition of only product-related standards rather than harmonisation of environmental standards.

Others feel that responding to pressures exerted by developed countries to accommodate environment in the trading system might have its merit. They believe that integrating environment in the multilateral trading system could be effective in enticing countries to negate the use of unilateral measures. This is a naïve assessment of the situation at hand.

Suffice to remind that one of the basic objectives of the entire Uruguay Round of multilateral trade negotiations was to do away with unilateral measures. Negotiators,

however, recognised that an open renunciation of unilateral measures could not be achieved as the US viewed such measures as part of its national sovereignty and was not ready to tamper with. This was also clearly demonstrated in the report of the first Ministerial Conference of the WTO held in Singapore in 1996.

The report in its factual part stated that “*all delegations except one*” consider that the provisions of GATT Article XX do not permit a Member to impose unilateral trade restrictions that are otherwise inconsistent with the WTO obligations for the purpose of protecting environmental resources that lie outside its jurisdiction.

In the Conclusions and Recommendations, instead of having clear reference stressing that WTO-inconsistent trade measures applied unilaterally to address extra-jurisdictional environmental problems were unacceptable, the US has certainly succeeded in diluting and weakening such reference. With this in mind one can but be sceptical about any presumption that including environment in the next round would help repeal unilateral measures.

How can developing countries, in general, and countries of the ESCWA region in particular, resist the continued pressures exerted on them, notably by the European Union and US to change WTO rules in order to accommodate environmental concerns? To be able to argue and guard our case on an informed basis, we have to understand the positions and views of the different countries.

The State of Play

For Egypt as well as many other developing countries, the Singapore report remains the benchmark in identifying the possibilities and the margins of maneuver available to the WTO in tackling the complex relationship of trade and environment. These margins are and should be limited by the competence of the WTO as a trade organisation, as stipulated in the fourth paragraph of the preamble of the Marrakesh Ministerial Decision on Trade and Environment (The Results of the Uruguay Round of Multilateral Trade Negotiations, The Legal Texts).

From the very beginning the negotiators have agreed on a clear and transparent framework within which the environment could be dealt with in the WTO. They were adamant in making clear that it should not exceed the competence of the multilateral trading system, whose policies are confined to trade and/or trade-related aspects, i.e. only those environmental measures with trade effects.

Concerning the consistency element, which negotiators were also keen to establish when accepting to debate the complex relationship between trade and environment, consistency with the development needs and requirements was explicitly referred to. This is reflected in the preamble of the Marrakesh Agreement Establishing the World Trade Organisation.

By asserting the importance assigned to the protection and preservation of the environment, it emphasised that this be done, in a manner *consistent with the countries’ needs and concerns at different levels of economic development*. What is of significance here is that the

importance given to environment was not absolute, but linked to the needs and concerns of the countries and their levels of development. The argument can be taken further by saying that priority is attributed to development, as the protection and preservation of the environment can only be done to the extent *consistent* with the level of development.

As for the conditionality aspect and for the purpose of discharging any possible fears of so-called “green conditionality” attached to market access opportunities, thus nullifying the benefits accruing from trade liberalisation within the context of the Uruguay Round, the Singapore Ministerial Report (1996) on Trade and Environment (WT/CTE/W/40, November 07, 1996, Report of the Committee on Trade and Environment) stressed the following:

- the WTO is not an environmental protection agency and that it is assumed that WTO itself does not provide an answer to environmental problems;
- environmental problems require environmental solutions, not trade solutions;
- no blank check for the use of trade measures for environmental purposes;
- trade liberalisation is not the primary cause for environmental degradation, nor are trade instruments the first-best policy for addressing environmental problems;
- GATT/WTO Agreements already provide significant scope for national environmental protection policies, provided that they are non-discriminatory; i.e. GATT/WTO rules provide significant scope for Member countries to adopt national environmental protection policies. GATT rules impose only one requirement in this respect, which is that of non-discrimination;
- secure market access opportunities are essential to help developing countries work towards sustainable development;
- increased national co-ordination as well as multilateral co-operation is necessary to adequately address trade-related environmental concerns.

From the above, it is worth stressing that the first WTO Ministerial Conference was keen on elucidating the reality of the relationship between trade and environment and its rightful stance in the multilateral system. Furthermore the WTO Committee on Trade and Environment (CTE) has succeeded on a number of accounts to clarify issues and study them in , thus thriving to identify one ground rule that trade is not at the root of environmental concerns.

This is of utmost significance, especially in the light of the common mistake by so many today attempting to seek solutions for environmental problems through restricting trade. Much remain to be done, however, to analyse and identify win-win situations as mandated by the Member states.

Preparations for the 1999 Ministerial Conference

If we look briefly at the various proposals put by a number of developed countries, it should not be difficult to disclose where they are heading. It should also not be difficult to see that their objectives are not necessarily concurring

with those of developing countries, which will only help deepen the North-South divide. To that end we will be considering proposals from the European Union, Switzerland, Norway as well as the US.

Proposal by the European Union

In its paper the European Union emphasises that the WTO already recognises the overall objective of sustainable development and proposes that Seattle Ministerial Conference reaffirm this as a central benchmark. There is certainly no harm in doing this as long as it is put in its right context. That is, as long as it is in conformity with the competence of the WTO, consistent with the development needs and requirements of the countries, and does not add new conditionality, as shown above. It was also clear from the ongoing debate that there was no quarrel at depicting the WTO as an environment-friendly organisation.

As a matter of fact, the GATT allows for any action to be taken at the national level to protect the environment, provided it is in compliance with its basic rules and regulations. Article XX of the GATT Agreement, the Agreement on Technical Barriers to Trade, the Agreement of Sanitary and Phyto-sanitary Measures are all cases in point giving each country the right to set the level of protection that it deems appropriate also in the sphere of environment, provided it does not act against the basic principles of the WTO as stipulated by Articles I (the most-favoured nation treatment) and III (the national treatment). In addition, it should not constitute an unnecessary barrier to trade.

If the European Union feels that such is the context of the overall objective of sustainable development in the WTO, no one would have any quarrel with the Seattle Ministerial Conference reaffirming this as a central benchmark. On the contrary, it will command all the necessary support.

Furthermore reference was made in the European Union paper to “environmental considerations” and “environmentally friendly consequences” as two terms, which should be borne in mind throughout the negotiations. Such terms cannot be thrown into the debate without any prior definition of their significance and meaning. It would be premature for the European Union to assume generally the existence of positive relationship between trade and environment, before the CTE concludes its work on identifying win-win situations, as mandated and ensuring that environmental considerations and environmentally friendly consequences result in effective market access.

This is the essence of win-win situations in the framework of the WTO where benefits to trade should not only be at the heart of any negotiations, but should also be quantifiable and substantial. This is all the more reason to continue work in the CTE to clear the win-win relationship between trade and environment.

It remains a puzzle to see that in spite of the extensive and lengthy debate undertaken for more than two years in the CTE on a number of highly controversial issues, they reappear in the European Union paper with a view to accommodating them in the WTO. This is in spite of the

fact that results were adopted by consensus in the Singapore Ministerial Conference. One cannot believe that countries would have changed their positions since then so that the European Union could perceive any late consensus emanating from negotiating these issues anew. They are the following:

- trade measures pursuant to Multilateral Environmental Agreements (MEAs);
- certain standards based on non-product-related process and production methods (PPMs), in particular Eco-labels based on life-cycle analysis;
- the precautionary principle;
- sustainability assessment of the new round;
- co-operation between the WTO and other institutions, including the United Nations Conference on Trade and Environment and the United Nations Environment Programme.

As regards the first three issues, they are definitely non-consensual issues where their accommodation in the WTO, seems quite remote in an organisation where the practice has been so far to reach decision by consensus. The fourth and fifth issue, however, could certainly be addressed in the CTE for further clarification and position taking.

Proposal by the US

As for the US suggestion that the CTE confines itself to report its discussions in identifying issues and links between elements of the negotiating agenda and the environment and public health to the relevant negotiating groups, this would amount to undermining the role of the CTE. Many consider the role of the CTE not only as essential in clarifying the complex relationship at hand, but should also serve to reaching clear convergence between Member countries on various issues on the agenda before any attempt is made to move to the stage of negotiations.

Furthermore it is to note, as stipulated by the last indent of the Marrakesh Decision on Trade and Environment, that the CTE is invited to provide input to the relevant bodies only in respect of appropriate relations with inter-governmental and non-governmental organisations referred to in Article V of the WTO. Such a mandate could not be extended—as attempted by the US—to making the CTE to report generally on its discussions on all items included in its programme of work.

If the divergence of views in the CTE were to be transmitted to the negotiating groups, it would undoubtedly complicate matters and render the work in those groups futile. The CTE has a specific task and Member states should have sufficient trust that this forum—established by consensus after strenuous efforts—is able to accomplish its work programme before being undercut.

The US then goes on enumerating a number of issues that should be pursued as providing win-win opportunities, such as subsidies in agriculture and fisheries, the elimination of restrictions on trade and environmental goods and services. One can only presume that such a list is not exclusive, in view of the absence of issues such as:

- transfer of environmentally sound technology and ensuring a positive relationship between the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement) and the environment;
- the elimination of unilateral environmental measures that affect trade negatively, especially in sectors of interest to developing countries etc.

Such issues are of considerable interest to the largest group of countries in the WTO and represent sound win-win opportunities, which have to be considered thoroughly and *a priori* by the CTE. Dealing substantially with these issues would also restore the lopsided balance, which has so far been evident in the CTE debate.

In addition the issues proposed by the US are of a more limited nature as they address win-win opportunities in specific sectors. One feels that it is still premature to go into specific sectors, especially in the light of the fact that the CTE has not yet identified or studied any win-win situations in general, as reflected in the issues suggested above.

As for the US proposal of “Eliminating Restrictions on Environmental Goods and Services”, it should necessitate some additional attention from developing countries, as many tend to perceive it as a pure win-win opportunity for developing and developed countries alike. Others go on arguing that developing countries may accept negotiating the elimination of such restrictions, if developed countries deflect the pressure on environment in other areas, such as Article XX, PPMs, trade measures pursuant to MEAs etc. It is of utmost importance to understand the essence and even more the implications behind such a proposal. In this context, the following arguments are important for further discussion:

- To date there has been no agreement on the definition of what should constitute environmental goods and services. This should be the point of departure for any future debate. Should the classification of environmental services take up the larger definition as stipulated by the US, so that it includes all kind of services to all sectors, such as forestry, mining, energy etc. Or should we confine ourselves to the GATS Agreement, which stands for a narrower definition, as it simply deals with cleaning up human waste, waste disposal, clean water etc. As for environmental goods, the US went on listing at least 30 HS of goods with more than 300 products.
- Assuming, as said, that these are pure win-win opportunities, in so far as they liberalise trade and protect the environment. A closer look, however, denotes a more subtle purpose, i.e. that of making developing countries an open market for those highly technology-intensive products, as the markets of developed countries tend to become saturated. It is true that cleaning the environment is a noble cause and developing countries should be helped in this domain. The problem at stake, however, is much more profound. Not only does it go beyond the financial means and capacities of developing countries, but also it brings about a production dilemma and a clear

structural imbalance in their demand and supply side, which they cannot, under any circumstances, uphold. Developing countries can no longer be caught in the straitjacket of the paradigm of the developed countries, as even the 'additional' resources once promised are inclined to be forgotten immediately thereafter.

- It is a well-known fact that these goods and services are high technology-intensive products. The question, which arises then, is how to transfer the technology to developing countries. Applying the Trade in Services Agreement would be easy for the environmental services, as this could be negotiated under joint venture in the framework of market access rights and conditions. But what about environmental goods, where the TRIPs Agreement prevails and thus constraints the transfer of technology.

Proposals by Norway and Switzerland

As regards the proposal by Norway that the CTE should look into win-win situations as well as situations in which economic and environmental gains do not occur from trade liberalisation, many fail to understand the essence of such a proposal. The question, which arises, is whether Norway feels that the WTO as a trade organisation whose prime task is to promote trade should consider situations of negative-sum game, in the sense that protection of the environment should be at the expense of trade.

Furthermore Norway feels (and rightly so) that the concerns of developing countries must be taken into account. It then proceeds, however, by saying that the principle of differential and more favourable treatment of developing countries will be addressed separately in Seattle Ministerial Declaration. Norway fails to refer to Principle 7 of the Rio Declaration stipulating Common and Differentiated Responsibilities for countries, which is at the heart of any environmental debate. Principle 7 should be addressed as an integral part of any trade and environmental debate irrespective of dealing with special and differential treatment as a cross cutting issue or separately in the Seattle Declaration.

As regards to the proposal by Switzerland, it hastens to suggest negotiations on specific trade and environment issues, without paying any attention to all the existing problems, which are of a systemic nature. One cannot discern any intention or desire among the largest group of countries in the WTO, of which the majority are developing countries, to change the system in order to accommodate the environment.

Future Prospects for Developing Countries and Countries of the ESCWA Region

Against this background, it is necessary to consider what could be the future strategy for developing countries, in general and the ESCWA region in particular. A number of options avail themselves, which one should study carefully so as to adapt the most suitable and responsive to developing countries' needs and requirements.

First option (Ruggiero's option): It should be wise to regard Renato Ruggiero's (former Director General of the WTO)

option as the first line of defence. It was obvious after years of deliberations that all efforts exerted and all attempts pursued to incorporate environment within the WTO system were to no avail. Having realised that, Renato Ruggiero was brave enough to come up with a solution, which is a straightforward and simple one.

He explained that all we need is a WTO-similar multilateral rules-based system for the environment—a World Environment Organisation, which is to be the institutional and legal counterpart to the WTO. Such a proposal was put forward on a number of occasions, the last being the High Level Symposium on Trade and the Environment in the WTO in March 15, 1999. This view finds even some sounding today. "Indeed, nothing would advance 'trade and environment' harmony more than the creation of a Global Environmental Organisation to work alongside the WTO," writes Daniel C. Esty from Yale University in his presentation to the High Level Symposium.

Second option, agreeable to the overwhelming majority of the members, is to continue work in the CTE. The reasons for that are numerous from which the following are noteworthy.

The Issue of Genetically Modified Organisms

Developing countries cannot remain absent or largely spectators and leave the playground solely to the US and the European Union to set the rules for the future game in this arena where rules and disciplines are yet to be defined. Developing countries have much at stake in such a debate. The educational process should continue to enable them to participate actively for any balance or choice to be made between precautionary principal or scientific evidence in regard to genetically modified organisms (GMOs) in the debate. Developing countries should pursue this irrespective of where such a highly sensitive debate might eventually end, whether in the WTO itself or outside its framework.

The US is the biggest producer with 74 percent of the world total genetically modified plants, followed by Argentina. The European Union, however, offers the biggest resistance to genetic modification due mainly to consumer opposition to GM foods. While genetic modification may provide a solution to feeding the world's growing population, many non-governmental organisations in developing countries fear the control of intellectual property over such as the terminator seeds, which may further marginalise these countries.

Developed countries currently hold 97 percent of all patents world-wide, yet developing countries are the source of 90 percent of the world's biological resources, says the 1999 Human Development Report of the United Nations Development Programme. Among the main crops subject to genetic modification are soybean, maize, cotton, and banana—all very important food crops or foreign currency earners in many developing countries.

Five years ago the US led the GM revolution with the approval of the first genetically modified food, a tomato. There are now 56 genetically modified farm products on the US domestic market and industry experts predict that within five years all of US agricultural products will either

be genetically modified or mingled with genetically modified products. But they remain the property of a few major transnational corporations such as Monsanto that are developing them.

Developing countries do not have the financial capacity or human resources to keep abreast of such cutting edge technology. For developing countries, new technology becomes a question of survival. It is about their farmers losing control over their production and seeds. Initially the costs of production will go down and the acquired new technology will increase the yields of crops, but later the farmers will face giant monopolies, and become prisoners of a chain of ever-increasing prices.

Synergies between Trade and Environment

It is important to look for synergies in the trade and environment interface and identify situations where trade and environment are mutually supportive. This is necessary for careful study of possible win-win situations. In the aftermath of the Singapore Ministerial Conference, the CTE was given the explicit task to identify the potential for synergies between open trading system and environmental improvements.

Price distorting policies and subsidies particularly in the area of agriculture were identified as encouraging over-use of resources and exploitation of the environment by promoting inappropriate activities at the expense of environmental values. Such situations remain largely debatable by the countries that subsidise agriculture heavily, the majority of which are environmental conscious and highly protective of their environment. To name but a few, Norway, Japan and the countries of the European Union.

Other countries, like Korea, feel that the effectiveness of environmental policies should be judged by each country according to its development priorities and based on country-specific conditions. Whereas other countries like Australia and Argentina continue incessantly to argue against subsidising the agricultural sector as being detrimental and most harmful to the environment.

The CTE should address thoroughly this issue, as it is quite obvious that the issue at stake here goes beyond the environment. It is also being said that artificially low agricultural prices discouraged sustainable farming practices and encouraged migration to urban centres, placing further environmental stress on heavily populated areas.

Have all this been studied carefully? Has it been accepted at the multilateral level so that it could form the basis for new rules in the multilateral trading system? Does that

not provide sufficient ground for the CTE to undertake further studies in this respect? Furthermore, what about biological resources and traditional knowledge of indigenous communities that should be respected in WTO rules and benefits arising out of their use be equitably shared.

Public Health and Environmental Standards

The US in its communication presented to the WTO General Council on August 6, 1999, referred explicitly to the fact that we must pursue trade liberalisation in a way that is supportive of high public health and environmental standards. It continues that in our efforts to open markets and develop effective rules to address trade protectionist actions, we must be vigilant not to constrain inappropriately the ability of Member countries to pursue other important and legitimate policy goals.

This means, for instance, that we must continue to recognise the right of Member countries to take science-based measures to achieve those levels of health, safety and environmental protection that they deem appropriate – even when such levels of protection are higher than those provided for by international standards.

Issues such as this raise only more doubts and controversies. Are health considerations not by far more important than trade and narrow transnational interests? What should take precedence, health and environmental considerations or trade and fierce transnational competitions? Is this a WTO or a non-WTO issue? Should that not be discussed properly in the CTE prior to any negotiations on rules in the WTO, be it a new committee affiliated to the agriculture as suggested by Japan or elsewhere? Is environment clashing with trade and health?

Conclusions

The foregoing discussions attempt to raise questions and endeavour to answer a great deal of them. Yet, many questions continue to remain unanswered and open for a wide range of controversies and conflicting views, which necessitate further in-depth work and empirical studies. Whether these should be explored in the WTO or elsewhere remains still an open question.

Facing all these issues and others still remaining widely open, the next round of negotiations can but mandate the CTE to continue its work and study further these issues with a view to proposing clear win-win opportunities where developing and developed countries alike will stand to benefit. In this regard, developing countries cannot accept less than a balanced relationship between trade, environment, and development where their concerns are also taken.

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