

Risks in trade as a solution for environmental problems

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Trade measures may not represent the best available option to address global environmental problems and climate change issues. There are divergent views among Members on how trade–sustainability linkages should be addressed at the WTO. An attempt is being made, mainly by the developed countries, to position international trade as a solution for environmental problems. It is apprehended that at MC13 attempts could be made to convince trade ministers to support a multilateral negotiating mandate on trade and environment at the WTO. These negotiations, if launched, would do little for the environment, but would instead promote the commercial interests of the developed countries.

At the WTO, a few initiatives are being undertaken, without a multilateral mandate, by some Members on trade and environment issues. An initiative called Trade and Environmental Sustainability Structured Discussions (TESSD) seeks to “launch dedicated discussions on how climate-related trade measures and policies can best contribute to climate and environmental goals consistent with WTO rules and principles”. Under the Fossil Fuel Subsidy Reform initiative, some WTO Members are seeking elimination of subsidies on fossil fuels. Negotiations for an Agreement on Climate Change, Trade and Sustainability (ACCTS) seek liberalisation of trade in environmental goods, new and binding commitments for environmental services, disciplines to eliminate harmful fossil fuel subsidies, and best practice guidelines to inform the development and implementation of voluntary eco-labelling programmes and mechanisms. The Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (IDP) seeks to “explore how improved trade cooperation, within the rules and mechanisms of the WTO, could contribute to domestic, regional and global efforts to reduce plastic pollution and transition to a more circular and environmentally sustainable global plastics economy”.

Based on some of the obligations on trade and environment as contained in some of the recent free trade agreements (FTAs) of the developed countries, it is apprehended that these countries would seek to pursue the following two broad objectives at the WTO: first, provide a legal basis to the developed countries for taking environment-related measures for restricting imports mainly from developing countries; and second, curtail the policy space presently available to developing countries to implement catch-up policies to nurture

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their domestic producers and service suppliers, particularly of environmental goods and services. The possibility cannot be ruled out that under the narrative of trade being a solution for environmental problems, many of these obligations would get integrated into agreements at the WTO, to the disadvantage of most developing countries. It is apprehended that this would change the rights and obligations contained in many of these agreements, including the General Agreement on Tariffs and Trade (GATT) 1994, Agreement on Agriculture, Agreement on Subsidies and Countervailing Measures, Agreement on the Application of Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, General Agreement on Trade in Services etc. *Overall, it would not only diminish the export opportunities of developing countries in some existing sectors such as steel, cement, agriculture etc., but also make them overwhelmingly dependent on imports of green products and green technologies in their trajectory to a low-carbon-emission economy.*

What issues are being pushed by some countries under trade and environment and what could be their likely implications for developing countries?

Exploring options for making agreements at the WTO and multilateral environmental agreements (MEAs) mutually supportive: During the Doha Round at the WTO, some developed countries argued that the multilateral trading system and the environmental regime are mutually supportive. Pursuant to this approach, they sought endorsement by the WTO Members of the following: measures taken by a WTO Member to implement specific trade obligations in MEAs should be recognised as legitimate by the WTO; all the trade-related measures provided for in any of the MEAs are presumed to be necessary for the protection of the environment, and may be deemed to be consistent with the WTO rules; if parties to an MEA have agreed specific trade obligations, they should have no reason or ground to challenge them afterwards at the WTO; and when a Member, pursuant to an MEA, prohibits the sale of a product for environmental reasons, this ban would be considered to be WTO-compatible and the Member would no longer have to show that its measure is covered by the exceptions under Article XX(b) or (g) of the GATT 1994, namely that it is necessary to protect the environment and neither arbitrarily discriminatory nor protectionist.

Implications for developing countries: Treating agreements at the WTO and the MEAs as being mutually supportive is sought to be used to make it easier, and also provide a legal justification, to impose restrictions on trade on grounds of environmental concerns. This would make it extremely difficult for developing countries to legally challenge these measures, even if these restrictions do not have a significant positive impact in addressing environmental problems. This is likely to adversely impact exports of developing countries in many sectors, including agriculture, steel, cement etc. It may be noted that if the “mutually supportive” approach of the developed countries had been accepted by WTO Members, the European Union (EU)’s Carbon Border Adjustment Mechanism (CBAM) and deforestation regulation would have escaped legal challenge at the WTO.

Eliminating tariffs on environmental goods, goods related to waste management, goods required for sustainable cooling and equipment required for the production and storage of renewable energy, and liberalising environmental services: It could be argued that in order to enhance the use of products that reduce pollution, avoid waste, facilitate waste processing and waste management and enhance environmental sustainability, countries should eliminate tariffs on these goods. It may be noted that negotiations to eliminate tariffs on environmental goods during the Doha Round at the WTO did not succeed. Developing countries could also be required to open up service sectors relevant for optimising resource use and minimising waste, including the following: sewage services, refuse disposal services and sanitation and similar services.

Implications for developing countries: In their transition to a low-carbon economy, the demand for environmental goods and other goods related to waste management and production and storage of renewable energy in most developing countries is likely to surge. Most developing countries do not have a vibrant domestic industry for manufacturing these products. However, many of them may be able to use tariffs as an effective policy instrument to create a viable domestic industry. But if countries are required

to eliminate tariffs on these products, then most developing countries will become almost completely dependent on imports. Similarly, most developing countries will be unable to create vibrant domestic suppliers of environmental services. Thus, liberalisation of trade in environmental goods and services will provide significant commercial opportunity to the businesses of developed countries for exporting to the developing countries. This will put severe pressure on foreign exchange of many developing countries and could precipitate balance-of-payments crises in some of them.

Prohibiting restrictions on remanufactured goods: A circular economy is a model of production and consumption which involves sharing, leasing, reusing, repairing, refurbishing and recycling existing materials and products as long as possible. In order to encourage countries to increase the use of refurbished and remanufactured goods, and also to reduce the use of primary raw materials, WTO Members may be prohibited from imposing restrictions on trade in remanufactured goods.

Implications for developing countries: The availability of imported remanufactured goods, which are likely to be cheaper than similar new goods, would make it very difficult for the existing producers in developing countries to compete in the market. This would have an adverse impact on employment in the manufacturing sector in many developing countries. Increase in imports of remanufactured products by the developing countries is also likely to saddle them with less-efficient, and also obsolete, technologies. Further, the use of remanufactured goods, particularly those with old or obsolete technology, may compel consumers to become overwhelmingly dependent on the original suppliers of spare parts. This may substantially increase the cost to the consumer in the overall life-cycle of the product. It may also be noted that many products consume more resources during the process of remanufacturing and subsequent usage, compared with similar new products manufactured from primary raw materials. Thus, the perceived benefits of the remanufactured products, including their contribution to environmental sustainability, may be far less than what has been claimed by proponents.

Harmonisation of technical regulations on the basis of environmental performance: Using the argument that lack of harmonisation of technical regulations would raise costs for micro, small and medium enterprises exporting to many countries, there could be a move towards a more binding commitment for harmonisation of technical regulations across countries on the basis of environmental performance of certain products. In the absence of relevant international standards, harmonisation could be sought with the technical regulations prevailing in some of the developed countries.

Implications for developing countries: A commitment by WTO Members to harmonise their standards/technical regulations on the basis of environmental performance as prevalent in the developed countries would set the bar too high for most manufacturers in developing countries. As technical regulations of a country apply equally to imported goods and domestically manufactured products, manufacturers in developing countries would need to comply with these stringent regulations. As most of them might not be able to meet the requirements of these regulations, they would not be able to sell even in their domestic market. If this were to happen, most of the demand in developing countries would shift away from domestic producers to imported products. This would pose a substantial threat to employment creation and income generation in developing countries.

Non-discriminatory treatment of renewable energy generation equipment: Countries may be required to extend non-discriminatory treatment to domestic and foreign suppliers in government procurement of renewable energy generation equipment.

Implications for developing countries: As developing countries seek to decarbonise their economies, the demand for renewable energy generation equipment is likely to surge. Non-discriminatory treatment could prevent developing countries from bending in favour of their domestic producers in government procurement of renewable energy generation equipment. This would deprive most developing countries of using government procurement as an effective policy instrument for creating and nurturing a vibrant domestic industry for manufacturing such equipment. Consequently, most of the commercial opportunities in this sector would be tapped by the producers from the developed countries.

Fossil fuel subsidy reform: With the ostensible objective of hastening the transition to renewable energy sources, subsidies provided to fossil fuels and electricity generated from fossil fuels could be prohibited.

Implications for developing countries: Prohibiting subsidies on electricity generated using fossil fuels could erode the policy space available to developing countries under Article 6.2 of the Agreement on Agriculture. This would constrain developing countries from providing input subsidies for electricity to their low-income or resource-poor farmers. Further, in the absence of the input subsidies, farmers in many developing countries may not be able to face competition from highly subsidised imports originating in the developed countries. This could have a devastating impact on farm incomes and rural livelihoods in many developing countries.

What could be the positive agenda of developing countries?

The transition to a low-carbon economy poses triple challenges for most developing countries – the need to significantly enhance energy access for households, agriculture and industry; preventing economic, political and social disruptions that may be caused by premature shutdown of fossil fuel power plants and fossil-fuelled transport; and severe pressure on foreign exchange to facilitate the energy transition being based on imported products and technologies. Further, most of the technologies that are relevant for green transition are patent-protected and originate in the developed countries. Most developing countries are not likely to be able to have the foreign exchange from their existing exports to pay for the imports of green technologies and green products which can facilitate their transition to a low-carbon economy. In this context, developing countries could consider the following options in respect of patents for green technologies: access to green technologies without patents; limiting the term of patent protection for green technologies to five years; a cap on royalty payments for imported green technologies; and a less complex mechanism for compulsory licensing of green technologies by developing countries.

Likely scenarios at MC13

Scenario 1

The most ambitious scenario from the perspective of the proponents of trade–environment linkage could be to secure a comprehensive mandate for negotiations on trade and environment.

Scenario 2

A slightly less ambitious scenario (compared with Scenario 1) from the perspective of the proponents of trade–environment linkage could be to secure a work programme for “discussions” and making recommendations on trade and environment in some of the WTO committees along the following lines:

- Committee on Trade and Environment to explore and make recommendations on mutual supportiveness or coherence between trade and environment legal regimes;
- Committee on Subsidies to explore and make recommendations on how WTO rules on environmental subsidies need to be clarified and further developed;
- Committee on Technical Barriers to Trade to explore and make recommendations on how legal concepts such as “like products” need to be clarified and further developed for decarbonising economies and promoting a circular economy;
- Committee on Trade and Development to clarify and make recommendations on how the WTO principles on special and differential treatment could be made fit for purpose for WTO rules.

Scenario 3

The least ambitious scenario from the perspective of the proponents of trade–environment linkage would be that the MC13 outcome document merely acknowledges or notes the work being undertaken by some WTO members on trade and environment outside the multilateral track.

Abhijit Das is an international trade expert and former Head of the Centre for WTO Studies at the Indian Institute of Foreign Trade. The above is a revised and updated version of a TWN Briefing Paper published in November 2023.