



UN-ESCWA UNITED NATIONS - Economic and Social Commission for Western Asia



General Principles of International Trade related to the Environment

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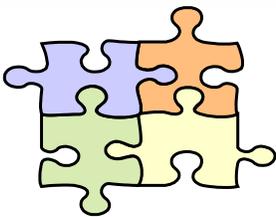


Outline of Presentation

Part I Theoretical Framework

Part II General Principles of International Trade

- Dispute resolution



PART I: Theoretical Framework



Brief History of International Trade

In practice: 1700s Mercantalism

- **Protectionism, export-oriented** (more exports, more gold), **zero-sum trade benefits**

In theory: 1800s Free Trade concepts emerged

- **Adam Smith – Invisible Hand/Laissez-Faire Economics**
- **David Ricardo – Law of Comparative Advantage** (including natural resources)

In practice through mid-1900s

- **Most countries maintained protectionist trade policies**
- **Import Substitution core tenant: Belief that imports were threats to domestic industries and should be kept out**
 - **Common in many developing countries** (Egypt, Syria, Latin America)
 - **Supply side view of trade and the market place**
- **TARIFFS and QUOTAS used as primary barriers to trade**
 - **Employment generation through maintenance of state-run enterprises and large public bureaucracies more politically important than efficiency, productivity and innovation.**
 - **Food security concerns relative to dependency on food imports**

Brief History of International Trade



In pursuit of trade liberalization (mid-1900s to present)

- Development paradigm switched to focus on promoting trade liberalization as the means by which competitiveness can be enhanced and efficiency gains can be generated for the benefit of consumers (demand-driven approach to trade).
 - Export-led economic growth has since become a key tenant of most national development strategies as a means to reap the benefits of globalization.
 - GATT (1947, 1994); WTO (1995)
 - Global Trade in 2000 was 22 times larger than 1950 levels.



In response, concepts of Sustainable Development emerged in 1980s alongside trade liberalization moves

- Provided the foundations for debate and discussions on the inter-relationships between trade and the environment

Sustainable Development & Trade



➤ Sustainable Development Approach

- Trade not an end in and of itself, but means to advance SD
- Social, economic and environmental aspects and impacts of trade liberalization should be considered
- Standards and technical regulations should be instruments to protect public health, safety and welfare
- Raising consumer awareness and changing consumer preferences can influence consumer decisions and foster niche markets (demand-side view)



➤ Trade liberalization critiques:

- As quotas and tariffs are removed and reduced, non-tariff barriers to trade (technical regulations & private standards) emerged as new trade barriers.
- Limited access to reliable information on markets and poor information dissemination reduces market access and competitiveness of smaller producers – information necessary for the adequate functioning of free and competitive markets, otherwise transaction costs increase and limit opportunities presented by trade liberalization.
 - Small and Medium Sized Enterprises (SMEs) are less able to adjust to new competitive pressures & less able to secure info needed to access new markets & trade opportunities.
- Resource constraints – natural resource limitations, increased environmental degradation in absence of adequate regulation, enforcement and preventive measures.

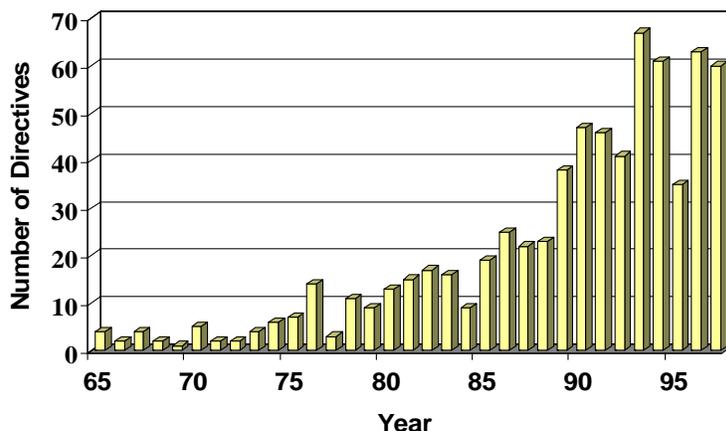
Implications for Developing Countries



- Trade liberalization initially focused on the elimination of “tariff barriers,” e.g., customs duties, quotas and import taxes.
- As trade liberalization advanced, it became evident that “non-tariff barriers” were emerging as alternative means for limiting imports.
- Non-tariff barriers include national regulations aimed at protecting the environment, human health and safety.

Sustainable Development/Trade Liberalization difference in perspective regarding the use and justification of standards and regulations.

European Union Legislation on Environment, Health and Safety



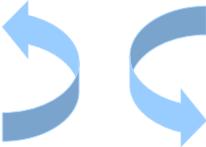
From: David Cadogan, Director, European Chemical Industry Council (CEFIC),
“Phthalates and the European Regulatory Framework,” November 1999,
<http://www.ecpi.org/technical-papers/ECPIseminar-nov99/cadogan.ppt>

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Previous Thinking on Trade and Environment Relationships

Previous views on trade and environment relationships:

1. Impact of environmental measures on international competitiveness; OR
2. Impact of trade liberalization on environmental quality.

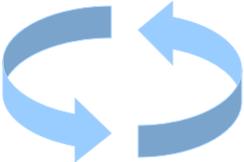
Trader and Exporters  Environmentalists

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New Thinking on Trade and Environment Relationships

Today, with a view to moving towards sustainable development, global efforts underway to examine trade and environment relationships in an integrated manner so as to:

1. Maximize benefits to trade & competitiveness, and
2. Protect environmental quality & human health.

Trade  Environment

➤ Estimating the costs of environmental degradation and the cost of environmental compliance are means to inform decision-makers on issues affecting these relationships.



Implications for Trade & Environment Decision-Making

- **Nothing wrong with environmental strengthening and trade liberalization for the purpose of protecting & enhancing public welfare**
- **However, developing country exporters generally have a harder time complying with more stringent environmental, health & safety standards than producers in developed countries, particularly SMEs.**
 - Challenges/costs related to technical capacity;
 - Technology transfer;
 - Access to investment capital;
 - Adequate information on standards, markets, consumer preferences, etc.
- **Non-conformity with environmental regulations in export destination markets means reduced market access and losses to competitiveness.**



Challenges

- **Reconciling international trade and environment principles**
- **Non-conformity with environmental regulations may negatively impact market access & competitiveness for exports**
- **Poor enforcement of environmental standards may result in influx of lower quality imports that may threaten public health or local environment.**
 - Developing countries do not necessarily have sophisticated environment regimes, enforcement mechanisms and conformity assessment procedures that can protect citizens from potential adverse impacts of trade liberalization
- **Small and medium sized enterprises (social and economic backbone of the MENA region) may face greater challenges posed by more stringent environmental standards and conformity assessment than larger, export-oriented firms.**

Opportunities

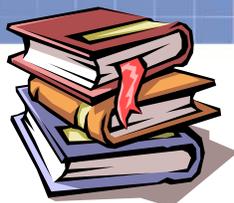


- **Efficiency gains** – economizes resources, which are oftentimes stimulated through market based instruments & consumer driven production.
- **Price Premiums** – garnered from niche markets/eco-labeling schemes/organic and high quality produce, which can help producers secure returns from environmental investments
- **Agreement on a national approach to trade and environment policy-making could provide a framework for meeting challenges and securing opportunities.**



Questions?





PART II:

General Principles of International Trade

Public International Economic Relations



- **The General Agreement on Tariffs and Trade (GATT)**
 - Post World War I, entered into force in 1948
 - Purpose: To negotiate tariff concessions between signatories and provide a mechanism for dispute resolution. No formal institution.
- **World Trade Organization (WTO)**
 - Operational January 1995; Secretariat based in Geneva
 - 148 Members (not yet Algeria, Iraq, Lebanon, Libya, Syria, Yemen)
 - Purpose: To facilitate trade between nations (via trade rounds); is the only international organization responsible for negotiations on global trade rules.
- **GATT/WTO Agreements** provide the basic legal framework governing international trade among Member States.
- **Regional and Bilateral trade agreements** often include similar framework provisions.

Selected WTO Agreements

(with environmental implications)



WTO Agreements affecting standards and regulations:

- Agreement on Technical Barriers to Trade (TBT)
- Agreement on the Application of Sanitary & Phytosanitary Measures (SPS)
- Trade-Related aspects of Intellectual Property Rights (TRIPs)
- General Agreement on Trade in Services (GATS)
- Agreement on Pre-shipment Inspection
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures

WTO Agreements related to specific sectors:

- Agreement on Agriculture
- Agreement on Textiles and Clothing

GATT/WTO General Principles



Article I	Most Favored Nation Clause
Article III	National Treatment Clause
Article VIII	Fees & Formalities Connected with Importation & Exportation
Article X	Publication & Administration of Trade Regulations
Article XI	Elimination of Quantitative Restrictions Clause
Article XX	General Exceptions

Product standards v/s Production methods

Transparency

Dispute Settlement

Non-Discrimination Principle



Most Favored Nation Clause

- Countries must not discriminate between like imported products from different sources.
- Ensures that imports from all sources are subject to the same treatment.

National Treatment Clause

- Countries must not discriminate between imported and like domestically produced products.
- Ensures non-discrimination between domestically produced and imported goods.

Implications for environmental enforcement, customs, consumer protection and standard-setting

Product Requirements



- Countries are allowed to differentiate between products based on product characteristics, and adopt national regulations on product standards.
- **Conditions:**
 - Same standards must be applied to like domestic products
 - Same standards must be applied to like imported products from different WTO Member States
- **Sample product standards (should be able to be tested):**
 - Composition, ingredients
 - Packaging requirements
 - Labeling requirements
- ISIC, HS classification systems help to classify products.

Process and Production Methods (PPMs)



- Countries are generally **not** allowed to pass regulations that differentiate between products based on their process or production methods.
- Accordingly, even if two items are produced differently (one in a polluting manner and the other in a non-polluting matter), they are still considered **LIKE** products.
- Sample PPMs (which usually can not be tested for by testing the product itself, since it involves certification of the way a product is produced):
 - Organic agricultural products
 - Use of genetically modified organism (GMO) seeds
 - Highly energy intensive production v/s more energy efficient production.

Article VIII: Fees & Formalities Connected with Import & Export

Commitment to avoid use of customs procedures as non-tariff barriers to trade

(e.g., customs analysis, inspection, documentation, certification)

Article X: Publication & Administration of Trade Regulations

Notification & Transparency Principles

(e.g., reporting planned and new technical regulations to the WTO, requirements or prohibitions on imports or exports; detailed further in TBT Agreement, Code of Good Practices)



Article XI

Elimination of Quantitative Restrictions

- Policy shift from quotas to tariffs.
- Prohibits countries from banning the import of any product because only duties, taxes or charges “shall be instituted or maintained on the importation or exportation of any product.”
- Effectively means that no WTO Member State can ban the export or import of harmful substances, e.g, toxic materials, hazardous waste, illicit drugs, sensitive military equipment, etc.



Implication for MEAs

Some Multilateral Environmental Agreements (MEAs) conflict with the GATT/WTO principle seeking elimination of quantitative restrictions:

- Basel Convention on Hazardous Waste Trafficking
- Convention on Prior Informed Consent (PIC)
- Convention on International Trade of Endangered Species (CITES)

But allowable under “General Exceptions” to the GATT Rules.

***Note: International trade agreements do not have supremacy over international environmental agreements signed by the same Member States.**

General Exceptions – Article XX



Allows States **NOT** to apply WTO rules for measures:

- a) Necessary to protect public morals;
- b) Necessary to protect human, animal or plant life or health;**
- c) Relating to the importation or exportation of gold/silver;
- d) Necessary to secure compliance...[for] customs enforcement, monopolies, protection of patents, trademarks, copyrights and the prevention of deceptive practices;
- e) Relating to the products of prison labor;
- f) Imposed for the protection of national treasures or artistic, historic or archaeological value;
- g) Related to the conservation of exhaustible natural resources** if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- h) Etc.

International Standards/ National Regulations



- **Governments may adopt standards (environmental, health, safety) that are ABOVE international standards as mandatory technical regulations, provided that they are:**
 - **Scientifically justified and**
 - **Provide for the least intrusive impact on trade.**
- ★ **Kindly recall:** WTO Agreements do not contain specific standards, but provide the rules that govern how standards and regulations that may impact trade may be developed and enforced.



Dispute Resolution



- **WTO Dispute Resolution Understanding (DSU) provides the legal framework for enforcing the trade agreement.**
- **Countries are encouraged to engage in consultations to settle trade disputes amicably through bilateral negotiations.**
- **If bilateral efforts are not fruitful, a country (or group of countries) may request the WTO to establish a dispute resolution panel or then an appellate body to rule on the dispute.**
- **WTO can not force countries to change their laws, but non-compliance with decisions of a panel or appellate body allows country to secure compensation or impose retaliatory measures (sanctions, countervailing duties, etc.)**

Dispute Resolution



- **Several trade and environment related cases have been brought to the WTO.**
- **Thailand-US Cigarettes Case (ban to protect health)**
 - Thailand's 1966 Tobacco Act prohibits import of cigarettes and other tobacco items, while authorizing the sale of domestic cigarettes; Taxes were also imposed on cigarettes. Thai sought justification under XX(b) because claimed the government measures could only be effective if cigarette imports were banned. Thai also claimed that chemicals/additives in US cigarettes might make them more harmful than Thai cigarettes.
 - United States claimed the import ban was not consistent with Article XI:1 and XI:2(c) (quantitative restrictions), **nor justified under Article XX(b)**
 - The Panel found that the import restrictions were inconsistent with Article XI:1 and concluded that the import restrictions were not "necessary" within the meaning of Article XX(b).
- **Tuna-Dolphin Case (Mexico v. US Marine Mammal Protection Act)**
- **Egypt-Thailand Consultations on GMO corn oil used in Canned Tuna**

Dispute Settlement and GMOs



- **EC, Egypt, Saudi Arabia and others initially imposed a ban on the import of products containing GMOs based on the precautionary principle & concern that GMOs may adversely impact human health & the environment**
 - **Temporary EC ban allowed, but reasonable time expired for collecting scientific evidence needed to justify the ban**
 - **EC forced to withdraw ban – EC imported GMO maize for the first time in July 2004**
 - **Algeria maintains ban / WTO Accession stalled**
 - **KSA only requires labeling since 2001**
 - **Egypt settled case with Thailand on use of GMO-derived oil for canned tuna exports to Egypt**
- **Debate in WTO Committee on Trade & Environment thus focuses on the legality of requiring the Labeling of GMO-derived food products and in view of informing consumers and giving them the right to chose.**



PRIVATE International Economic Relations



- **Bear in mind that only WTO Member States and their GOVERNMENTS are subject to WTO Agreements & rules.**
- **COMPANIES are not members of the WTO.**
 - **International Contract Law governs international commerce between firms (not the WTO Dispute Settlement Understanding).**
 - **Private importers and exporters must thus respect government regulations, but may require standards that are MORE stringent than those required by governments without running against the WTO non-discrimination principle.**
 - **TBT Code of Good Practices can be subscribed to by private entities.**
- **COMPANIES can be represented in international standard-setting bodies recognized by the WTO.**
 - **Larger companies with R&D capacities may thus have an advantage over smaller firms, particularly those in LDCs, in the development of international standards and issuance of technical regulations.**



Thank you.



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