

**Trade, the Environment and Labour Standards: The Linkage Debate in WTO  
A Developing Country Perspective**

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The WTO came into existence in 1995. Ironically however, barely six years into its existence, the WTO started generating mixed responses. The criticisms are wide-ranging. At one level, there is growing skepticism that integration into the global economic system through trade liberalization per se would result in greater economic prosperity and enhanced human welfare. At another level, it is being strongly argued that the functioning of the WTO is not fair. This suggests that the legitimate and genuine concerns with regard to the enormous asymmetries in the economic situation in the rich and poor countries need to be recognized. Sen<sup>2</sup> argues that doubts about the global economic order, which extend far beyond organized protests, have to be viewed in the light of the dual presence of abject misery and unprecedented prosperity in the world in which we live. The central issue in other words, is inequality. Indeed, the growing perception among poor and developing countries is that the distribution of gains through trade liberalization is unfair and unequal.

The WTO is essentially about market access. While developed countries have succeeded in forcing open the markets in developing countries, they have succeeded in denying access to their own markets through tariffs and quotas. Indeed, the total share of exports from Least Developed Countries is barely 0.25% of total world trade.<sup>3</sup> Even developed countries acknowledge today that it would be fair to say that the Uruguay Round Negotiations were unfair on the developing countries, since these countries conceded far more than they received in return. The reasons behind this are fairly straight-forward and had to do with stronger negotiating skills of the developed countries and furthermore, the enormous clout that the richer countries wield in terms of both carrots and sticks. However, both at Seattle and at Doha, developing country delegations were much better prepared compared to earlier years. With an agreement on the dismantling of tariffs and the EU proposal for duty-free and quota-free access to their markets for products from LDCs, non-tariff barriers have emerged as the new form of protectionism and control of market access.

Two of the most powerful non-tariff barriers are environmental standards and labour standards. Discussions related to both these subjects tend to be highly emotive and

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<sup>2</sup> Sen, Amartya (2001); 'A World of Extremes', *The Times of India*, July 16<sup>th</sup>.

<sup>3</sup> Moore, Mike *A Balanced Agenda for Seattle*, The World Trade Brief, Agenda Publishers, 1999.

the debate has become increasingly contentious and politicized, especially in recent times.

In the case of environmental standards, there are basically two opposing perspectives. On the one hand, there are those that advocate a clear linkage between trade and environmental issues and hence, on the expansion of the trade agenda to incorporate environmental concerns. This is argued on two grounds, firstly on what may loosely be termed as 'a moral position' and secondly, through an economic argument. The moral position argues that enhanced environmental degradation is an inevitable consequence of rapid trade liberalization because of a single-minded focus on profits and thus, the neglect of the 'public good'. There is need therefore, for a collective, moral obligation on the part of the global community to 'save the planet' for the future generation. This is essentially the position taken by environmentalists and NGOs.

The environmentalists also argue that many national or domestic actions have an international spillover effect and it would be incorrect therefore, not to think in terms of a global responsibility. Aerosol sprays, for instance, are not merely considered to be damaging for the environment where they are used but rather, are seen as endangering the planet. In this regard, issues such as global warming, acid rain, ozone depletion etc which are now in the forefront of global concerns has commanded support from consumers.

The economic argument is business-led and argues that since they are required to follow higher environmental standards, it adds to their overall costs and they accordingly suffer a competitive disadvantage because of lower environmental standards adopted in developing countries. The business lobby puts pressure on governments in developed countries to advocate that an intrinsic linkage exists between trade issues and environment protection. The moral and economic arguments sustain one another.

The view put forward by the developing countries on the other hand, is that placing trade issues and environmental concerns in the same basket would be counter-productive, as it would harm both trade and environment. This group argues that a trade-environment linkage in WTO is nothing but a protectionist measure aimed at denying market access to products emanating from developing countries. They stress that the concept of sustainable development cannot be achieved unless environmental issues are viewed in the context of poverty and development<sup>4</sup>.

The arguments on labour standards are much the same. There is a moral dimension to the argument and an economic one. The moral dimension essentially is that it is immoral to use child labour and that there is a moral compulsion for collective efforts to eradicate child labour. Children, it is argued, should be in school and not part of the labour force. It is further argued that trade expansion would result in increased exploitation of children in developing countries as a result of increased

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<sup>4</sup> This was agreed to in Rio de Janeiro in 1992 at the Earth Summit.

competition. This view is supported by consumer organizations and NGOs. The economic argument is that developing countries enjoy an unfair competitive advantage because of cheap labour.

As a result, both environment and labour standards have emerged as principal non-tariff barriers to market access. In both cases, the threat of sanctions has also been suggested and even, justified on moral grounds. Developing countries have argued that linking trade with either environment or labour would only harm the cause of both environment and of labour. Bhagwati<sup>5</sup> had argued that you cannot use the same stone to kill two birds. Labour standards (as also, environment) and trade cannot be simultaneously addressed by the stone of trade sanctions. If you do, both birds would be lost. Neither would the issue of child labour (or environment) be meaningfully addressed nor would trade liberalization.

Developing countries also argue that both environmental standards and child labour need to be seen in the overall context of poverty and the developmental dimension. Unless development is put at the heart of the global trading regime and the distribution of gains directly addressed, developing countries argue that poverty which is at the root of environmental problems and of child labour cannot be effectively dealt with.

It would however, be churlish to dismiss the importance of the moral argument or the fact that a large cross-section of the population in industrialized countries has genuine concern for the welfare of children and the environment and further, that this is driven by purely humanitarian considerations. However, overwhelming evidence suggests that trade ban or trade restrictive measures do more harm than good.

The debate has only intensified over time and has, so far, not shown any signs of compromise between the different sides. Indeed, many argue that it was the insistence on including labour standards in the trade agenda by the US President at Seattle, that was the last straw to break the camel's proverbial back. Seattle's collapse is being squarely put on the US initiative by many. This is despite the clear understanding at Singapore that labour standards were a subject best dealt with in ILO and not the WTO. Doha did not see the resurrection of the debate but this is possibly because Mike Moore in particular and the developed countries did not want a repeat performance of Seattle. At the same time, this is not to suggest that the labour standards-trade linkage has been abandoned. Indeed, through various subtle and not-so subtle means efforts are underway to establish the linkage.

In the case of environment, it may be recalled that unlike GATT which does not carry any direct references to environmental matters<sup>6</sup>, the Preamble to the WTO

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<sup>5</sup> Bhagwati, Jagdish 'Labour Standards and the WTO: The Case for Separate Agendas' World Trade Brief, Agenda Publishers, 1999.

<sup>6</sup> While there are no references in the preamble, GATT allows for action 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 states that its objective of "raising standards of living and ensuring full employment" by "expanding the production of and trade in goods and services". This is to be achieved by making "optimal use of the world's resources in accordance with the principles of sustainable development, seeking both to protect and preserve the environment....in a manner consistent with....needs and concerns at different levels of economic development." The Marrakesh Declaration also carries a separate decision to begin a comprehensive work programme on trade and environment through the Committee on Trade and Environment (CTE) to look at ten identified issues<sup>7</sup>.

The Doha Ministerial Declaration however, has agreed to negotiations *without prejudicing their outcome*, with a view to enhancing the mutual supportiveness of trade and environment. The CTE has been instructed to pursue work on all items within its current terms of reference but that it should give particular attention to the effect that environmental measures have on market access; the relevant provisions of the TRIPS Agreement; and labeling requirements for environmental purposes. The concerns of developing and Least Developed Countries need to be taken into account and furthermore, the importance of technical assistance and capacity building was recognized.

While this is a clear indication that work on the trade-environment linkage is to be taken forward with greater impetus, the WTO needs to be cognizant that a global

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Agreement, the Agreement on Sanitary and Phytosanitary Measures, and the Agreement on Technical Barriers to Trade all permit each country the right to set the level of environment protection that it deems necessary, provided it does not violate the principles of Article I (Most Favoured Nation Treatment) and Article III (National Treatment). In addition, it should not constitute a barrier to trade. Countries may therefore, take recourse to Article XX and adopt trade measures for the attainment of environmental objectives, if the conditions laid down are met. The Article permits use of prohibition or other restrictions not otherwise allowed under the GATT 1994 provisions provided they (i) are necessary to protect human, animal or plant life and health [Article XX (a)], and (b) relate to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production and consumption [Article XX (g)]. Such measures may be invoked only if, they do not constitute means of unjustifiable discrimination where the same conditions prevail (GATT principle of non-discrimination) and second, they are not a disguised restriction on trade.

<sup>7</sup> The ten issues are: (1) the relationship between the provisions of the MTS and trade measures for environmental purposes, including those pursuant to Multilateral Environmental Agreements (MEAs); (2) the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provision of the MTS; (3) the relationship between the provisions of the MTS and (a) charges and taxes for environmental purposes and (b) requirements for environmental purposes relating to products including standards and technical regulations, packaging, labeling and recycling; (4) the provisions of the MTS with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects; (5) the relationship between the dispute settlement mechanisms in the MTS and those found in MEAs; (6) the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions; (7) the issue of exports of domestically prohibited goods; (8) environment-related provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights; (9) the work programme envisaged in the 1994 Uruguay Round Decision on Trade in Services and the Environment; and (10) appropriate arrangements for relations with non-government organizations referred to in Article V of the WTO and transparency of documents.

trading system can succeed only when it is truly global. Any system that marginalizes or seeks to isolate a cluster of countries, especially when the cluster constitutes the majority of membership, is bound to face serious difficulties. Indeed, the WTO today is at the cross-roads. If it is not to suffer irreparable damage, the grievances and the concerns of the developing countries need to be addressed upfront in the first instance before overloading the agenda and making it unmanageable.