

Green protectionism: Nuisance or Catalyst for Cross-border trade (With reference to India)

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Abstract: This paper aims to provide an overview of the firing debate of protectionism vs environmentalism and its serious effect on the developing countries. The research objective of this research paper is to understand the relationship between trade and environment in general and then closely analyzing the current scenario of using the environmental concerns for trade distortion and discrimination to the various emerging, developing and least developed nations in the form of non-tariff barriers. The objective of this paper is also to understand whether the unilateral agreements of various developed countries are acting as a nuisance or catalyst for the cross border trades which are supported by case studies. The research is completely based on authenticated secondary data and case study method and the conclusion is completely based on the interpretations of the literature review of the authors.

Keywords: Discrimination, Environmentalism, Green-Protectionism, Trade-distortion, Unilateral agreement,

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I. INTRODUCTION

With the growing concerns of sustainable development world over, the question of economic growth and environmental protectionism going hand in hand becomes imperative. Much of the existing institutional framework and policy structure of WTO makes it difficult to differentiate between legitimate environmental policies and illegitimate green protectionism. The ambivalent policy framework has been a point of contest between environmentalists and economists.

In the last two decade, there has been a paradigm shift in the climate throughout the world. The effect of the climate change is quite evident in every aspect of our lives. There is a major shift in the perception of the countries as a whole towards the environment and environmentalism. This change in the climate has raised an alarm to implement global environment agreement with a view to protect our mother Earth as a whole.

In order to protect the environment, various trade blocks have imposed limitations on the goods, be it plant products or animal products, to be traded in the form of export or import. These are the goods or items which are considered polluted or harmful for the inhabitant of the specific countries. Considering the other side of the coin, the products made from the ingredients of the extinct species of plants or animals are also getting banned from global trade, which is to be appreciated as it is a great contribution towards sustaining the ecological balance. But to some extent, it is creating a gap in the trade development of the country specific.

Exhibit 1: Tuna Dolphin case

One of the most debated case in the trade-environment tussle was the US ban on tuna imports from Mexico under the Marine Mammal Protection Act (MMPA) , 1972. In a wider effort to protect dolphins while fishing tuna, the MMPA provided the US unwarranted unilateral trade advantages in the name of environment protection. Though challenged under the GATT Article XX , the ruling of the case was never legally binding internationally.

Source: Secondary Data

The concept of green protectionism is more evident in the developed economies naming the European Union, United States and the Australia. The developed countries, EU in particular, often attempts to justify such protectionist measures on fabricated environmental grounds.

As per the literature review, green protectionism can be understood as the protection shield used by the various trade blocks such as the European Union, US based industries and environmental campaigners and other developed nations against the export of various products by the developing or emerging economies. According to a World Growth Report, June 2010, many environmental constraints have been imposed on a number of industries by the EU at the cost of the developmental obligatory of many developing and emerging economies [1].

The EU and the US based environmentalist have imposed green measures to curb the imports of certain goods on the basis environmental sustainability issues. Behind the mask of green protectionism the developed economies are ruthlessly suppressing the developing countries that are dependent on trade or export to feed their growing population. This practice of trade restrictions has given birth to industry lobbying. Industry lobbying, together with constraints of certifications of the products as per the standards of the developed economies of eco - labeling, is creating havoc for export percentage and revenue generation of the developing economies. This has hugely targeted the agricultural sectors of the developing countries.

Exhibit 2: Shrimp-Turtle Case

A successor of the dolphin-tuna case, the shrimp-turtle case of 1997 came into light when India, Pakistan, Malaysia and Thailand raised voices in the WTO. The dispute arose because of the US ban on shrimps and shrimp products under its **Endangered Species Act (ESA)** of 1973. The ESA violated the WTO rules of free trade as the US banned all the foreign products that did not comply with methods that protect marine turtles from drowning in shrimp trawling nets. Again, the ruling was against the US for imposing discriminatory trade policies on frivolous grounds of environment protectionism.

Source: Secondary Data

As per the literature review, protectionism adopted by the First World economies can be classified in two categories among which the first is the old school practice of imposing tariff barriers such as anti-dumping and countervailing duties against the organic industries of the developing countries and the second is the imposition of the environmental regulation^[2]. The countries such as EU, US and Australia are using the second way of protectionism to control the imports of the organic products from the developing countries or the emerging economies. In the past two decades with the help of environmental regulations on the product standards, the developed economies have successfully vilified the green industry of the developing countries. This practice is often addressed as environmental politics which has encouraged the environmental campaigners to protest and debate against the commercialization of the organic consumerism either by banning the trade of specific organic products or imposing restriction on organic agricultural practices of the developing and emerging countries.

Exhibit 3: Case study

According to an article, the continuous rise in the environmental product standard in the global trade by WTO and Northern trade blocks, have pernicious effect on the Third world producers. According to a study conducted by UNCTAD, it has been revealed that the impact of such measures on Indian industry is adverse. For instance, it has been found that in the leather tanning and textile industries, which are the key contributors in the export, the cost of the eco-friendly dyes required to meet the international standards are approximately three times higher than the costs of the dyes currently being used.

Source: Secondary data

According to the Northern environmental campaigners there are four main issues which are the major concern for implementing environmental regulations naming, illegal logging, climate change, biodiversity and ethical and indigenous people^[3]. These issues have exaggerated the promotion of the environmental protectionism and hence restricting the global trade of the green products from the developing countries^{[4][5]}(Greenpeace USA, 2000; Investment and financial flows to address climate Change, UNFCCC, 2007). The recent surge in green protectionism has translated into a handicap for technologically backward third world countries, particularly for developing countries of Asia and Africa.

II. LITERATURE REVIEW

Green protectionism can be defined as various non-tariff measures implemented to safeguard or support the growing “green” industry. It is the use of environmental policies in the form of packaging laws, eco-labeling, production methods and many more to reduce the access of foreign markets with an intention to safeguard the domestic industry, organic or synthetic.^[6] According to CEPR conference, Brussels, the increasing crisis in the form of climate change, bio-diversity, water scarcity etc. has pressed the alarm for green industry and protectionism thereafter. This also meant that the developed countries like EU and US needs to reduce the import of the foreign products which are not ecofriendly. It is evident from many surveys and reports that the developed countries have used the concept of green protectionism to distort the market structure by raising the boundaries of trade for the southern developing or emerging countries in the name of environment protection. Environmental standards are dominating the world trade and production these days, particularly in sectors such as food and agricultural exports^[7]. Most of the nations and regional trade blocs apply their own environmental standards and regulations which are termed as unilateral agreements that are often more hard to bent in comparison to the international agreements^[8]. The developed countries like the US and the EU have introduced new barriers for the exporters of the sprouting countries. According to a study, with the liberalization of international trade, there have been growing concerns regarding its negative import on the environment and global climate^[9].

According to World Growth Report June 2010, environmental campaigners such as Greenpeace, Worldwide Fund for Nature, Friends of the Earth and the Rainforest Action Network have proposed and constantly campaigning strategies justifying trade restriction on the ground of environmental safeguard and restoration to the WTO.

Reports are evident that NGOs wants WTO to reframe its agreements and policies under the following grounds:

1. Countries should have the rights to limit the imports from other countries if the exporter's does not comply with the environmental standards of the importing countries.
2. Introduction of the environmental agreements to pressurize the trade parties to comply with.
3. The WTO should amalgam eco-balance and conservation of the ecology as one of its foremost objectives and makes it an inseparable part of its other trade agreement.

After a long tug of war between trade and environmental protection, WTO has enforced the environmental measures through exception provided under Article XX of the General Agreement on Trade and tariffs. Being the most affected by unilateralism and green protectionist measures of the developed nations, the developing countries favor multilateral negotiations at international fora such as WTO and the GATT for environmental agreements.

According to the Marrakesh Agreement(1995), WTO considered sustainable development as its primary objective for framing strategies for international trade and thus established a Committee on Trade and Environment (CTE) with the objective of making international trade and environmental policing go hand in hand^[10].

According to a research, the enforcement of the environment protection measures has proved to be a blessing in disguise for the developed nations as it has opened new doors of trade opportunities in both domestic and international markets and secondly will help to decline trade proposals from countries that are non-compliant with the environment protection of their standards.

Exhibit 4:- Case Study : Forest Stewardship Council Certification

According to WWF and Greenpeace, all the companies involved in forest products especially of developing companies will require FSC certification to export forest products such as timber and timber products and paper and pulp to meet the sustainability standards of the FSC. According to literature, FSC certification is a serious threat to the trade of the developing countries as the voting system of FSC priorities social and environmental interests over business interest, its high significance values restricts places or countries that are not permissible for forestry and trade in forest products and the most important factor is the ability of the FSC secretariat to change the rules of association at will.

Source: -A World Growth Report, June 2010

According to a research report, the key strength of the environmental campaigners are a "sympathetic media and a vocal support base" which means that they can attract easy attention of the audience and a large number of people who are concerned with the issue. These assets are not used to reduce the sales of the companies but to pressurize them to change their sustainability and environmental policies^[11].

As per the literature review, it has been clearly mentioned that green protectionism is not only about environmental conservation and protection but also about including non-environmental objectives that are implemented with an intention to discriminate and restrict trade from the emerging markets in the disguise of environmental policy^[12].

Exhibit 5:- European Union towards Biofuels-Biggest manifestations of "Green Protectionism"

As per the literature review, biofuels in Europe is highly subsidized and support has also been increased to approximately, EUR 4 Billion. Statistics reveals that the production of biofuels has significantly increased in Europe. According to the Renewable Energy Directive, EU must adopt technical regulations and production method standards of biofuels. Companies producing biofuels that are not meeting the standards will not be able to avail tax exemption. EU policies towards biofuels are costly and the policies are also at risk of violating EU obligations towards WTO.

Source: ECIPE Occasional Paper, 2009

The ECIPE Occasional paper, 2009, reveals the contradictory nature of the concept green protectionism saying that "***The structure of support and protection for [biofuels] is not economically sustainable. It is rather close to madness to pursue the sort of self-sufficiency or industrially policy ambitions that have guided EU policy towards this sector.***"

There are two contradicting faces of the concept of green protectionism. One is an angelic face that supports environmental conservation and protecting Mother Nature by promoting environmentally sustainable products. The other face is monstrous which will potentially and gradually diminish the global trading system. Market oriented agricultural policies are the need of the hour and reform towards production support for the survival in the domestic markets of the developing countries and competitive advantage for global trade which is increasingly justified as desirable and essential for environmental safeguard.

GREEN PROTECTIONISM:-ENVIRONMENTAL CONSERVATION ORTRADE DISTORTION POLICY FOR DEVELOPING COUNTRIES (WITH RESPECT TO INDIA)

Unilateral agreements of trade will not be successful unless all other countries have introduced similar standards with immediate effect. As the costs of standards to comply with different regulations are extremely high, it has resulted in prevention or closure of the international trade.

With the current scenario of trade policies advocating environmental protection, the conflicting part is its unilateral approach and lack of international agreements between the countries dealing or trading in similar products. Every country has different regulatory standards and it becomes difficult for the developing countries to match the standards of the developed nations such as the EU because of the high cost associated with the regulatory discrepancies. Moreover the standards are started by the developed countries and are focused on their developmental profile and techniques which are suitable only for economically sound countries. Though the developed countries are not in any authority to develop standards which the other emerging countries are forced to adopt, but it becomes an indirect pressure on the latter to adopt the policies for the fear of being dismembered from the trade.

The environmental conditions of the developed countries are completely different from those of the developing countries, which is also a concern for the implementation of the regulatory standards of the environmental policies of the developed countries. Since the regulatory standard of the developing countries are generally weak compared to that of the developed countries, the emerging markets are at losing end. According to the various research reports it has been found that the unilateral agreements adopted by various developed nations such as the EU are at the risk of violating the GATT, Article XX. In the article XX has clearly mentioned the environmental regulation the trading countries should comply with but also seeks to ensure that these environmental protection measures should not give rise to any discrimination or protectionism^[13]. Though the environmental and health related standards are strong enough to create trade barriers among the countries, the issue of concern is that the distinction between the environmental, health and quality standards are unclear or vague which makes the differentiation and implementation more difficult for the developing countries like India.

Table 1: Number of rejection of trade for US Food and Drug administration import detention, August 2000-July 2001

Reasons for Rejection	India	Pakistan	Sri Lanka	Bangladesh	Nepal
Food Additives	159	12		1	
Pesticide residues	41				
Heavy metals	13	4			
Mould	9				
Microbiological contamination	329	49		12	
Decomposition	7				
Filth	568	12	2	12	
Low acid canned foods	87	25	9	3	
Labeling	338	50	3	1	
Others	597	744	4	4	1
Total	2148	896	18	33	1

Source: US Food and Drug Administration Import Detention report, 2001

According to the above table, there were noteworthy rejections of trade from South Asian countries on account of microbiological contamination and filth. The table shows that these countries are unable to meet the requirement of food safety and quality. The table also reveals that the South Asian Countries have problems in meeting the labeling requirements of the developed countries^[14].

According to discussion paper, various incidents have come across stating the adverse effects of environmental, health and quality standards faced by the developing countries. A large number of agricultural products of India are at the fathom of declined trade. This is evident as the degree of protection imposed by the EU on various agricultural products such as peanuts, fresh fruits and vegetables are higher than the Codex recommendation. An evident example of the trade discrimination in the name of green protectionism is the case when China banned the grapes for a Mediterranean fruit fly which does not even exist in India. Evidences supporting the green protectionism are more of a bane than boon for the third world countries include the fact that the estimated costs of upgrading the sanitary condition in Bangladesh frozen shrimp industry to comply with the EU and the US hygiene standards is approximately \$ 17.6 million. As per the discussion paper, a 90 out of 404 plants in India are approved for fishery exports to the EU which has built domestic pressure on other exporters of similar products to upgrade their facilities costing up to approximately US\$ 25 million to meet the regulation. This huge expense of upgradation forced to close factories for a long period of time^[15]. On analyzing the trade pattern of environmentally sensitive goods of developing countries, it has been revealed that most of

the South Asian countries have suffered fall in the exports of food and agricultural products. In the case of India, the export of tea has suffered the most with a fall of 3%¹¹ (International Trade statistics Yearbook, United Nations). According to the report, the Indian manufacturing sector, especially the leather industry, is suffering the most with a negative growth rate which could be due to the overly strict standards of the developed nations. The imports from Indian leather industry has been banned by the EU countries on account of use of a chemical called “*pentachlorophenol*”(PCP). India also struggling with the decreasing rate of trade of textiles, beverages, iron and steel, metal manufactures and dyes and color products in the name of environmentally sensitive goods. According to Saquib and Kaushik 2001, it has been discussed that though India has profuse scope of organic farming, there also exists a huge number of constraints for the farmers as well as for the exporters and the industries that are willing to process and export these products. They are facing hurdles mainly in the area of production, marketing and infrastructure. Product certification and labeling is also a challenge for Indian industries. Above all these limitations, the environmental standards are set too high by the developed countries, creating unnecessary barriers to production and trade¹⁶.

Exhibit 6:- Case studies

The available literature supports the fact that these environmental standards are more as barriers than accelerator of trade, especially for the developing countries. For example, It has been found that several developed countries restricts import of poultry products from developing countries by having zero tolerance for salmonella but is lenient with the domestic supplies for the same or like products which has made WTO raise its eyebrows¹⁷. Similar evidences of discrimination of trade has been found by another research where Australia prohibits imports of sauces from the Philippines on the basis of using benzoic acid in the content but permits New Zealand for similar products¹⁸.

Source: Secondary Data

III. SUGGESTIONS AND RECOMMENDATIONS

- Any interventionist policy measures must be assessed with respect to its impact on both development and environment. These developmental and environmental impacts must be assessed from individual nation's as well as global perspective. This would lead to transparent goal setting, policy framing and decision making at multi-lateral fora such as the WTO.
- Policies should aim at facilitating technology transfer of more environment friendly production processes from developed countries to the developing and emerging economies. This would encourage higher product standards globally and seek to achieve the two- fold objective of economic trade and environment protection.
- Financial assistance and investment in indigenous research for development of environmentally friendly technology that upgrades the quality standards of products targeted in the name of green protectionism.
- International cooperation in certification, harmonization of risk and mutual recognition could be few other ways of solving the issue of trade abuse in the name of green protectionism.
- WTO should consider framing more formal environmental responsibilities, even though details such a closer engagement with the global environmental agenda remains sketchy.
- The relationship between eco-labeling and technical barriers to trade (TBT) should be cleared which will invite government participation in such schemes ensuring greater transparency in the working.
- Mutual Recognition Agreements (MRAs) could be another way to deal with the threat of green protectionism which has already been adopted by a couple of OECD countries. The MRAs would initiate the process of removing duplicate testing and certification requirements in a number of product sectors.

IV. CONCLUSIONS AND REMARKS

Though the protectionism vs environmentalism debate is highly complicated and interdisciplinary in nature and difficult to conclude, the majority of evidences found through an intensive literature review supports the definition of “green protectionism as the measure that is not environment driven but which encashes the environmental concerns to pursue non environmental objectives”. Counter arguing the definition and evidences, there are various studies that believe that high standard trade can benefit developing countries as it is also high value trade and thus provides better returns for those who can participate. There are studies which inadvertently state that the developing countries must increase the awareness about green standards and adopt regulatory practices or lose markets, which is positively supported by the arguments that the environmentalism will be more fuelled with the progress of globalization of markets. The study also argues that the openness to investment and trade will help the developing countries to adapt to the changing policies of cross border trade which in turn might diffuse the protectionist abuse of environmental standards. According to a study, these environmental standards act as bridge between producers in developing countries and consumer preferences in high income markets which in turn will improve their competitive capacity¹⁹. As far as India is concerned, India would also have to upgrade its system for testing, certification and laboratory accreditation so that it can meet the requirements of global trade demands. Though India has launched an Eco-labeling program but increased

attention is required in this regard focusing on the technical assistance to develop and strengthen the certification procedures.

V. LIMITATIONS

Due to the competitive factor, many of the government institutions and agencies were not willing to share their data and those who have provided their opinions, their identity were not disclosed on their request. Therefore, the study has to depend a lot on the data obtained through literature review and reliable secondary sources as archives of WTO and various occasional papers with related issues. The conclusions and the recommendation are completely on the basis of the researchers interpretations of the data available.

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