

## 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. However, an attempt is being made, mainly by the developed countries, to position international trade as a solution for environmental problems. 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: first, provide a legal basis to the developed countries for taking environment-related measures for restricting imports mainly from developing countries; and second, curtailing the policy space presently available to developing countries to implement catch-up policies to nurture their domestic producers and service suppliers, particularly of environmental goods and services. Overall, it is apprehended that the narrative of trade being a solution for environmental problems would result in not only diminishing the export opportunities of developing countries in some of the existing sectors such as steel, cement, agriculture etc., but also making these countries 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 World Trade Organization (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 Member states 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

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**Third World Network (TWN)** is an independent non-profit international research and advocacy organisation involved in bringing about a greater articulation of the needs, aspirations and rights of the peoples in the South and in promoting just, equitable and ecological development.

Published by Third World Network Berhad (198701004592 (163262-P))

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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 of Article XX(b) or (g) of the General Agreement on Tariffs and Trade (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 for these products. If countries are required to eliminate tariffs on these products, then most developing countries will become almost completely dependent on their 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, as 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 their 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 (MSMEs) 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 as well as 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 procurement by government 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 in 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 WTO 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.

Commitment to improve air quality: With the ostensible objective of improving air quality, countries could be required to collectively undertake a 30 per cent reduction in global methane emissions by 2030 over 2020 emission levels.

*Implications for developing countries*: The two main sources of methane emissions in many developing countries, including India and Indonesia, are methane from the intestines of cattle and paddy cultivation from stagnant water. A commitment on methane abatement with steep emission reduction would threaten the livelihood of small and marginal farmers in many developing countries. This might result in reducing their domestic agriculture production, changing dietary patterns and compelling them to increase imports of agricultural and dairy products from the developed countries.

Mining of natural resources: With the objective of promoting the values of responsible sourcing and mining, countries may be required to establish high standards of environmental protection for offshore oil and gas operations, and undertake an environmental impact assessment prior to granting authorisation for mining projects. In parallel, they may be required to treat foreign players from other countries on par with their domestic mining entities.

*Implications for developing countries:* As mining firms based in developed countries would have access to the latest technology, they would be able to comply with high standards of environmental protection. On the other hand, it is likely that most mining firms in developing countries would be hard put to comply with these stringent requirements. Thus, environmental conditionalities contained in trade agreements could create an almost insurmountable hurdle for developing countries, leaving the field open for firms from developed countries to explore and exploit the natural resources in developing countries. Ultimately, this could result in developed countries' firms acquiring de facto control of natural resources in 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 shutting down of fossil fuel power plants and fossil-fuelled transport; and severe pressure on foreign exchange to facilitate the energy transition 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. In this context, developing countries could consider the following options in respect of patents for green technologies: access to green technologies without patents; term of patent protection for green technologies to be limited to five years; cap on royalty payment for imported green technologies; and less complex mechanism for compulsory licensing of green technologies by developing countries.

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