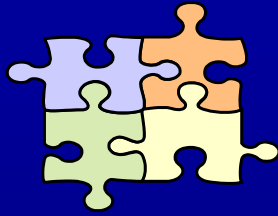

General Principles of International Trade related to the Environment

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Outline of Presentation

- Part I Theoretical Framework**
- Part II General Principles of International Trade**
- Part III WTO Agreement on Technical Barriers to Trade (TBT)**



PART I: Theoretical Framework

Brief History of International Trade

In theory (1800s)

- Adam Smith – Invisible Hand/Laissez-Faire Economics
- David Ricardo – Law of Comparative Advantage

A country's natural resource endowments accepted as a source of comparative advantage in international trade.

In practice (up until mid-1900s)

- Most countries maintained protectionist trade policies due to the belief that imports were threats to domestic industries and should be kept out (supply-driven approach to trade).
 - Import substitution policies common in many developing countries with planned economies (e.g., Yemen, Egypt, Syria, Latin America).
 - 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 enhance and efficiency gains can be generated for the benefit of consumers (demand-driven approach to trade).
- Export-led economic growth has since become the major tenant of most national development strategy
 - Trade considered the way to benefit from globalization
 - Trade considered the way to achieve economic growth
- **General Agreement on Tariffs & Trade = 1947**
- **World Trade Organization = 1995** (Secretariat Established)
 - Global Trade in 2000 was 22 times larger than 1950 levels.

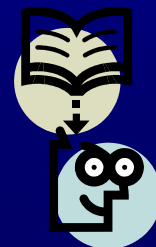
Link to Environment & Sustainable Development

- Concepts of Sustainable Development emerged during the 1980s partially in response to economic growth and trade liberalization advocates

- Bruntland Commission = 1986
- Rio Convention on Environment & Development = 1992
- World Summit for Sustainable Development (WSSD) = 2002

People started Questioning Trade Liberalization concepts

- **Why engage in Trade Liberalization?**
 - For Economic GROWTH?
 - For Economic DEVELOPMENT?
 - For SUSTAINABLE DEVELOPMENT?
- This question provides the foundation for debate and discussions on the inter-linkage between trade, the environment and sustainable development



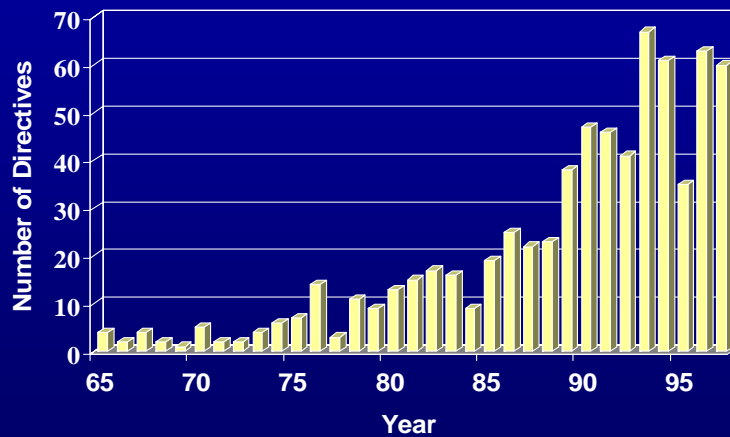
What is Sustainable Development?

- Cited in Rio, WSSD, Marakesh Agreement
- Offers framework for examining inter-linkage between
 - ECONOMICS
 - ENVIRONMENT
 - SOCIAL
 - GOVERNANCE
- Cross-sectoral / Inter-disciplinary approach to Development
- Inter-ministerial / Public and Private Stakeholders
- **GOVERNANCE COMPONENT = How the policy process works , including establishment of the Committee on Environment & Trade**

Implications for Developing Countries

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

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>

Implications for National Trade & Environment Decision-Making

- **Nothing wrong** with environmental strengthening and trade liberalization for the purpose of protecting the environment & public health.
- **However, firms in developing country generally have a harder time formulating and complying with stronger environmental, health & safety standards than producers in developed countries**
 - Challenges & costs related to human & technical capacity;
 - Technology transfer;
 - Access to investment capital;
 - Adequate information on standards, markets, consumer preferences, etc.

Some Obstacles Preventing Free Trade from supporting Sustainable Development

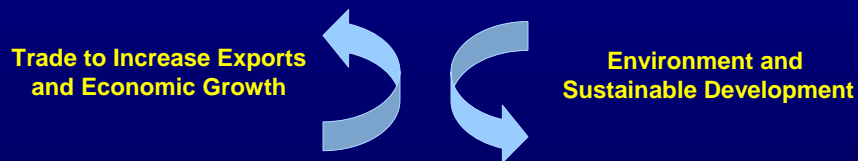
- **Poor access to reliable information and information dissemination slows the “free market” process:**
Access to information requires time, cost & capacity and is necessary for the proper functioning of free and competitive markets, these transaction costs limit opportunities presented by trade liberalization.
- **Small and Medium Sized Enterprises (SMEs) less able to access information & adjust to new competitive pressures to take advantage of trade opportunities without assistance.**
- **Non-conformity with environmental standards may negatively impact market access and competitiveness.**

Related Challenges to Consider

- **Developing countries do not necessarily have strong environment regulations, enforcement or conformity assessment procedures that can protect citizens from potential adverse impacts of increased production & trade**
- **Should trade liberalization increase industrial activity and change production and consumption patterns, environmental degradation may increase in the absence of adequate policies**
- **Lack of strong national regulations & enforcement may make the domestic market and citizens subject to the influx of lower quality imports, or imports that are less safe**
- **Domestic Consumption may be adversely impacted by the diversion of national products to export markets that can pay higher prices.**
- **Small and medium sized enterprises (social and economic backbone of Developing Countries) may face greater challenges posed by more stringent environmental standards and conformity assessment than larger firms.**

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.

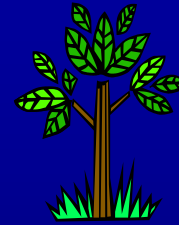


New Thinking on Trade and Environment Relationships

- Today, agreements say goal is to move towards sustainable development
- To do so, need to examine trade & environment relationships in an integrated manner so as to:
 1. Maximize benefits to trade, competitiveness and development
 2. Protect environmental quality & human health.



Opportunities



- Freer Markets are more efficient – when they are Free, thus free trade can increase welfare if Impact Assessments are conducted and the proper Flanking Measures are adopted
- Efficiency gains – economizes resources, which are oftentimes stimulated through market based instruments
- 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 priority setting and policy-making provides a framework for overcoming these 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
 - Accession process for Lebanon, Syria, Algeria, Libya, Yemen, Iraq
 - Purpose: To facilitate trade between nations (via trade rounds); only international organization 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 for types of 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 for 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

Most Favored Nation Clause

Countries must not discriminate between like imported products from different sources.

National Treatment Clause

Countries must not discriminate between imported and like domestically produced products.

= Non-Discrimination Principle

- **Most Favoured Nation (MFN)** clause ensures that imports from all sources are subject to the same treatment.
- **National Treatment (NT)** clause ensures non-discrimination between domestic and imported goods.

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

Product Requirements in TBT Agreement

- 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 goods 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
 - Energy intensive v/s more energy efficient production.
- **Exception is the SPS Agreement for Human Health Considerations (HAACP, sanitation, inspection)**

Article VIII: Fees & Formalities Connected with Import & Export

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

- For example, can not use the following procedures as way to restrict imports or exports:
 - Sampling & testing of goods at customs (conformity assessment)
 - Inspection and pre-inspection
 - Documentation requirements
 - Certification of customs declarations and documents

Article X: Publication & Administration of Trade Regulations

Applies to:

- Transparency of rule-setting process
 - Notification of rules when adopted
- = Transparency & Notification Principles**

**Details in TBT and SPS Agreements +
Code of Good Practice
(Annex to TBT Agreement)**

Article XI Elimination of Quantitative Restrictions

- 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 WTO Member State can not ban (impose a quota of “zero”) on the export or import of harmful substances
 - *But what about toxic materials? hazardous waste? illicit drugs? sensitive military equipment? etc.*

Implications for Multilateral Environmental Agreements

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

- Basel Convention on Hazardous Waste Trafficking
- Convention on International Trade of Endangered Species (CITES)
- Preventing trade of Domestically Prohibited Goods

* **REMEMBER:** International trade agreements do NOT have supremacy over international environmental agreements.



General Exceptions to GATT – 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.

How does a Member State Claim Art XX?

- ✓ **Transparency** of process of adopting a technical regulation
 - ✓ **Notification** of expected regulation under Article XX
 - ✓ **Opportunity for Comment** by other Member States, including possible request Clarification regarding the draft regulation
 - ✓ **Justification** of regulation in response to questions, if asked
 - ✓ **Other procedures under “Code of Good Practice” for standard-setting**
- OR – if challenged (and ONLY if challenged) through
- ✓ **Dispute Resolution**



IMPORTANT RULES

National Governments have the right to legislate...

BUT, as a WTO MEMBER

- 1) Any measure taken by a country must be the **LEAST TRADE RESTRICTIVE** way to achieve the policy's objective.
- 2) All measures should be firmly **justified based on SCIENCE**
- 3) The country seeking to **ADOPT** the law bears the **BURDEN OF PROOF**, not on the country challenging the law (although the case still needs to be prepared and presented)



Dispute Resolution

- **WTO Dispute Resolution Understanding (DSU)** provides the legal framework for enforcing the trade agreement agreed to by its Members.
- **Three Levels of Dispute Resolution:**
 1. Countries are encouraged to engage in **consultations** to settle trade disputes amicably through bilateral or multilateral negotiations.
 2. If consultation is not fruitful, a country (or group of countries) may request the WTO to establish a **dispute resolution panel**
 - Countries in Dispute must Agree on the Panel Members
 3. If decision of Panel not accepted by one of the parties to the dispute, Member can request an **appellate body** to rule on the dispute.
 - But can only rule on the arguments made by the panel, not present or examine new information regarding the case.



But, Enforcement How?

- In the end, Members are Sovereign Countries
- WTO Secretariat can not force countries to change their laws or obey the rules
 - The WTO is only as strong as its Members
- **BUT** non-compliance with decisions of a panel or appellate body allows a country to **secure compensation or impose retaliatory measures** (for example, sanctions, countervailing duties, etc.) to offset financial loss suffered due to the other country's non-compliance with a DSU ruling
 - *Thus, Member needs to decide, is the dispute worth it?*



Dispute Resolution

- Several trade / environment / health related cases have been brought to the WTO.
- **Thailand-US Cigarettes Case (ban to protect health)**
 - Thailand enacted 1966 Tobacco Act prohibiting import of cigarettes & other tobacco items, while authorizing the sale of domestic cigarettes. Taxes were imposed on local cigarettes. Thai sought justification under XX(b).
- What do you think??**
 - Thailand claimed the government measures (to limit smoking) could only be effective if cigarette imports were banned (quota). Thai also claimed that chemicals/additives in US cigarettes might make them more harmful than Thai cigarettes (scientific proof).
 - 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).
 - Thailand withdrew the law.
- **Tuna-Dolphin Case (Mexico v. US Marine Mammal Protection Act) – MEXICO WON**
- **Egypt-Thailand Consultations on GMO corn oil in Canned Tuna – CONSULTATION ONLY**

PRIVATE International Economic Relations

- Bear in mind that only WTO Member States and their GOVERNMENTS are subject to WTO Agreements and rules.
- COMPANIES are not and can not be members of the WTO. Accordingly, International Contract Law governs international commerce between firms (not the WTO DSU).
 - **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.
- 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.



PART III: WTO Agreement on Technical Barriers to Trade

WTO Agreement on Technical Barriers to Trade

- TBT Agreement recognizes the right of Members to set product requirements, as long as technical regulations:
 - Do not create unnecessary obstacles to trade;
 - Are not more restrictive than necessary; and
 - Are legitimate (e.g., based on science, available technology, etc.)
- Applies to industrial and agricultural goods
- Exception for government procurement
- Exception for Sanitary & Phytosanitary (SPS) measures (since these are addressed under the SPS Agreement)

Technical Regulations

- “Document which lays down **product characteristics** or their **related processes and production methods**, including the applicable administrative provisions, with which compliance **is mandatory**.”
- “It may also include or deal exclusively with terminology, symbols, packaging, marking and labelling requirements as they apply to a product, process or production method.”
 - TBT Agreement, Annex 1.1
- **Technical regulations should be based on performance, rather than design or descriptive characteristics** (TBT Agreement, Article 2)

Standards

- “Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or **characteristics for products or related processes and production methods**, with which compliance is **not mandatory**.”
- It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

- TBT Agreement, Annex 1.2

WTO Preference for Harmonization

- The TBT Agreement strongly encourages Members to adopt regulations that are the same (or *nearly* the same) as standards formulated by international standard-setting bodies
 - Calls on countries to “play a full part, within the limits of their resources,” to the work of international standardizing bodies for which they have adopted, or plan to adopt, technical regulations.
- Encourages, but does not require, harmonization with international standards.
- ★ **Remember: WTO Agreements do NOT contain standards, but provide the rules governing how standards might be adopted and applied with respect to trade.**

Equivalence

- “Members shall give positive consideration to **accepting as equivalent technical regulations of other Members**, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.” - TBT Agreement, Article 2.7
- Has important implications for conformity assessment, including accreditation, inspection and testing
- Facilitates trade
- Multilateral Agreement (MLA) for Recognition of Equivalence particularly difficult to achieve between developed and developing countries.

Conformity Assessment

- “Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.”
- “includes, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity, registration, accreditation and approval as well as their combinations.”
- TBT Agreement, Annex 1.3
- TBT Agreement solicits the harmonization of conformity assessment procedures as extensively as possible, taking into consideration limits to Member State resources (e.g, difficulties faced by developing countries).

Conformity Assessment

Components:

1. Standards
2. Technical Regulations
3. Accreditation (governmental/non-governmental)
4. Certification
5. Testing and Monitoring
6. Inspection (including customs)

* Trade facilitation enhanced if technical regulations are harmonized or approximated regionally/globally, including conformity assessment procedures;
Reduces risk of non-tariff barriers to trade.

Transparency and Information Dissemination

- Members must **NOTIFY** the WTO about any technical regulation that they intend to adopt that:
 - May have a significant impact on trade;
 - Are proposed under the terms of Article XX (exceptions)
- Member States generally have **2 months to comment on draft regulations prior to adoption**
 - Discussion on whether time should be lengthened to 6+ months given difficulty for developing countries.
- **WTO Secretariat maintains a Central Registry for Notifications & WTO Members must maintain a WTO Enquiry Points to provide access to that info**
 - Problem is only Member State Governments have the right to directly access these services.

Notifications to the WTO (2000)

Objectives and Rationales	Notifications received in 2000
Consumer Information, Labelling	59
Prevention of Deceptive Practices and consumer protection	55
Protection of Human Health or Safety	254
Protection of Animal or Plant Life or Health	10
Protection of the Environment	58
Quality Requirements	61
Harmonization	74
Adaptation to New Domestic Law and Technology	80
Lowering or Removal of Trade Barriers	13
Trade Facilitation	6
Cost Saving and Increasing Productivity	6
Others	43
Not specified	6
Total	725

Source: WTO

- ## Notification & Transparency Principles
- In preparing, adopting or applying a technical regulation:
 - ✓ Effort will be made to use international standard as basis for the technical regulation – unless inappropriate based on local circumstances (e.g., geography, climate, technological capacity)
 - ✓ Provide notification of initiation of standard development process and notification of adoption of a standard or technical regulation
 - ✓ Make available copies of the proposed regulation
 - ✓ Allow Members time to comment on proposed regulation prior to its adoption
 - Part of the Code of Good Practices (TBT Annex)

Agreement on Sanitary and Phytosanitary Measures (SPS)

- Allows adoption of SPS measures “only to the extent necessary to protect human, animal or plant life or health” (Art. 2.2)
- Strongly based on need for justification under scientific principles and evidence (Art. 2.2).
- While Agreement supports harmonization with international standards, more rigorous measures can be adopted if scientifically justified (Art. 2.3)
- SPS measures may be adopted on a temporary basis when scientific evidence is *not* fully available and is being sought to conduct a risk assessment within a reasonable period of time. (Art. 5.7)
- Allows for Special and Differentiated Treatment for Developing Countries (Art. 10).

Thank you.



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