

Environmental Standards in International Trade - Disguised Protectionism?

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Part I: Environmental Standards in GATT & WTO

- GATT: Environmental standards
- GATT: Article XX
- WTO: Environmental standards
- WTO Committee on Trade and Environment
- Excursion: Eco-Labeling
- WTO: SPS & TBT
- GATT & WTO Ruling
- GATT & WTO Conclusion

GATT: Environmental standards

- Article XX of the 1994 GATT introduces exceptions to binding trade rules
- Two main environment-related exceptions
 - Allows governments to act on trade in order to protect human, animal or plant life or health
 - Allows governments to act on trade in order to conserve exhaustible natural resources
- Condition: these exceptions don't discriminate or are used as disguised protectionism

GATT: Article XX

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:...

(b) necessary to protect human, animal or plant life or health;...

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

GATT: Article XX, chapeau

- Countries that want to use exceptions have to show that they are justified
- All environment-related measures must be consistent with the opening paragraph of article XX
- They cannot be:
 - arbitrarily discriminatory
 - unjustifiably discriminatory
 - constituting a disguised restriction on trade.

GATT: Article XX, paragraph (b)

- Countries must show that measure is necessary to protect environment
- Required to
 - demonstrate the necessity to protect its own environment
 - demonstrate the need to use a trade-impact measure to do so
 - ensure it is the least trade-restrictive measure available to achieve the objectives
- Objective is to reduce potential trade impacts from environmental measures and prevent environmental measures from being used as disguised protectionism
- But justification hard to prove if only hypothetical alternatives

GATT: Article XX, paragraph (g)

- Natural resources include living and non-living, renewable and non-renewable resources
- Countries must show that
 - law relates to conservation of exhaustible natural resources
 - law is accompanied by domestic level restriction on management, production or consumption of resource
 - law is primarily aimed at conservation objectives

WTO: Environmental standards

- No specific WTO agreement dealing with the environment, but acknowledges countries' rights to take measures for environmental protection if certain conditions are met
- Since it is the World **Trade** Organization, only those environmental issues are being dealt with that have an impact on international trade

WTO: Committee on Trade and Environment

- Established as comprehensive work programme on trade and environment in the WTO
- Principles of Committee:
 - WTO only competent with trade
 - Solutions to problems according to the rules of WTO
- Main topics: Trade-environment relationship, eco-labelling, definition of environmental goods and services, climate change

Excursion: Eco-Labeling

- Labelling of environmentally-friendly products important environmental policy instrument for sustainable development
- Enables consumers to exercise preference for products whose production, use and disposal are less harming for the environment than competing products
- Distinction between product-related and non-product-related criteria of labelling
- Different degrees of labelling: from producers' labels to independent certifiers with multi-stakeholders
- Under WTO trade rules labels are not allowed to discriminate between trading partners or between domestically-produced goods and services and imports

WTO: Sanitary and Phytosanitary Measures Agreement (SPS)

- Problem: How to provide consumers with 'safe' food according to the health standards while ensuring that health and safety regulations are not used as protectionism?
- Countries allowed to set own standards, but:
 - Must be scientifically based
 - Must aim at the protection of human, animal or plant life and health
 - Cannot be arbitrarily or unjustifiably discriminating
- WTO encourages countries to use international standards and recommendations which are unlikely to be legally challenged

WTO: Technical Barriers to Trade Agreement (TBT)

- Problem: Technical regulations and standards are necessary but vary, so how to ensure useful standards that are not used as protectionism?
- Countries allowed to set own standards for human, animal or plant health and life, environmental protection or consumer interest, but should not be discriminatory:
 - Must not discriminate between domestic and foreign products
 - Must not discriminate between 'like' products from WTO-Members
- Procedures if product meets standards have to be fair and equitable
- WTO encourages countries to use international standards
- Committee set as forum for trading information on regulations and standards of products

GATT & WTO: Ruling

- Only three cases where relation environment-trade was tested under article XX
 - Tuna-Dolphin case (USA – Mexico 1991), ruling against USA (article XX did not apply here but decision was not accepted)
 - Son of Tuna-Dolphin (EU, NL 1994), ruling against USA (same argumentation)
 - Shrimp-Turtle case (USA – India, Malaysia, Thailand 1996), ruling against USA but at appellate body ruling was reversed (article XX (g) applied and ruling was accepted thus WTO-law)
- ➔ Twice non-discrimination was ruled as more important than environmental protection since eco-protectionism was feared
- ➔ Precedent ruling for future environmental protection?

GATT & WTO: Conclusion

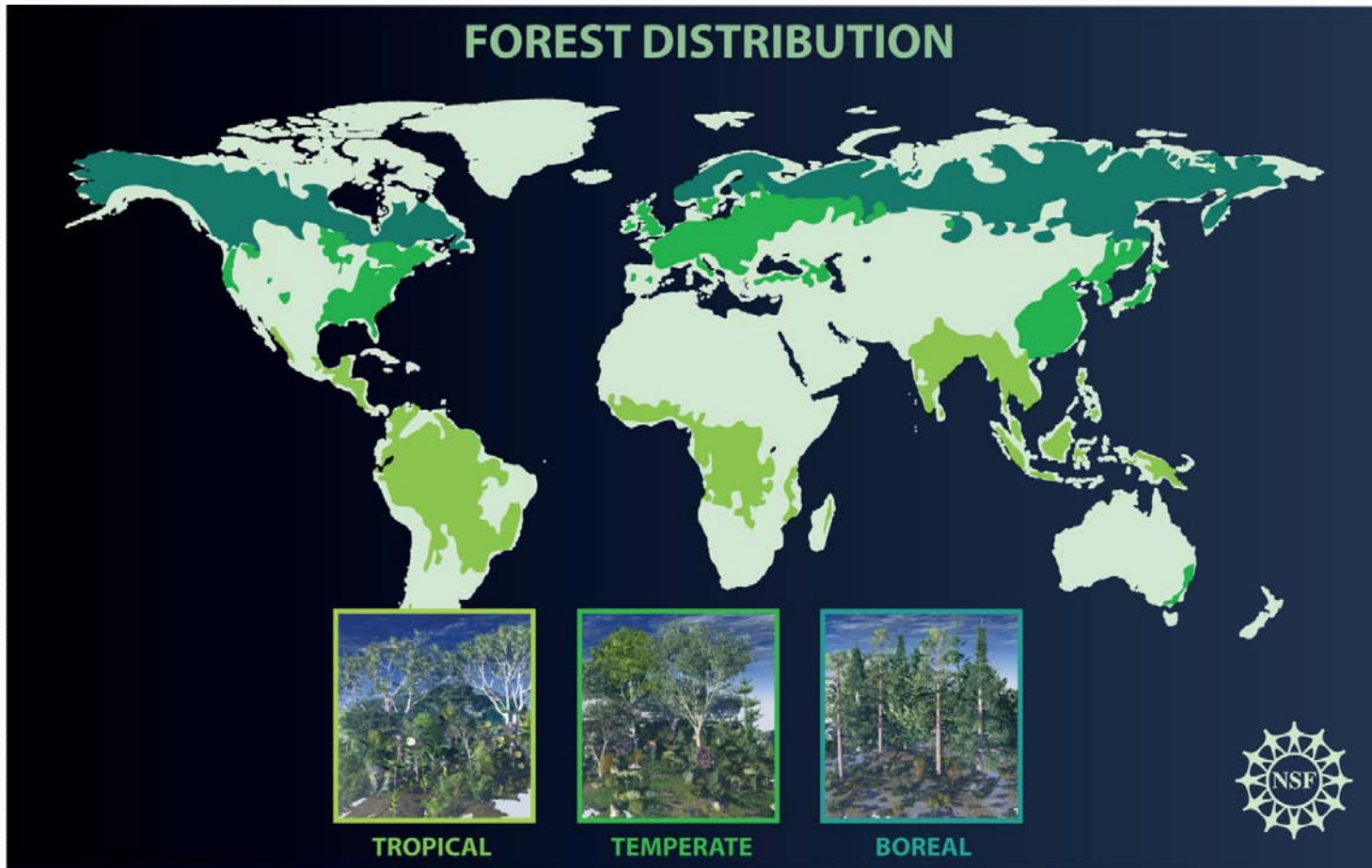
- WTO is not an environmental organization, but acknowledges need to protect environment
- Capability to act is limited, only where relationship between trade and environment is concerned, WTO acts
- Exceptions from WTO trade rules on the basis of article XX (b) and (g) must be justified and cannot be discriminatory or protectionism
- Rhetoric higher than few numbers of dispute settlements based on article XX

Part II: A Case of Timber & Wood Product

- Type of Woods
- Disguised Protectionism?
- Ban and Restriction
- Case (1): Austria Timber Import Ban
- Case (2): Forest Certification & Eco-Labeling
- Protectionism?

Type of Woods

- Tropical forest: hardwoods, from tropical area, mainly produced in developing countries
- Temperate & Boreal/Taiga forest: softwoods, mainly produced in developed countries
- Discriminative trade restrictions on tropical timber usually seen as favorable policies for temperate & boreal timber (& vice versa)



Picture from: <http://forestscienceworld.blogspot.com>

Disguised Protectionism?

- Yes, if violate GATT & WTO
- especially TBT
 - Government-sponsored technical regulation and standard must not national treatment
 - Must not MFN
 - Must not constitute obstacle to trade
 - Central government standardizing bodies: improve transparency, involve interested parties, harmonize technical rules
- Any scheme that affects trade is by definition a Non-Tariff Measure (NTM)

Ban and Restriction

- Ban:
 - Austria Timber Import Ban
 - Dutch Tropical Wood Import Ban
 - Nematode Pine Ban (EU vs Canada)
- Restrictions:
 - Forest Certification
 - Eco-labeling

Case (1): Austria Timber Import Ban

- Mandatory regulation in 1992: requiring labels on all tropical timber imports and a tariff of 70 percent.
- This eco-labeling law was protested by major tropical wood exporting countries.
- GATT is uncomfortable: partly because it is mandatory and partly because temperate timber is excluded.
- Although environmentally noble, the Austrian 'eco-labeling' law did contain two major flaws: (1) it is discriminatory because excluding temperate timber; and (2) it provides no positive incentives to halt the abuse of deforestation.
- The Austrian parliament rescinded its law on the 70 percent tax on tropical timber (December 4, 1992) and its tropical timber labeling requirements (March, 1993).

Case(2): Forest Certification & Eco-labeling

- Forest certification
 - Process of certification to identify well managed forests and the products coming from them
 - Only forest management issue
- Eco-labeling
 - Label to any product
 - Throughout lifecycle: from mining raw materials to production, distribution, use, and waste management
- In case of timber & wood products: very close related

Protectionism?

- Yes if (again), violate GATT & WTO
- May bias, ex:
 - not applied to all forests (tropical v.s. temperate; restrict old growth forest),
 - applied to country level,
 - recycled paper issue in eco-label for sanitary paper products,
 - specific region or standard setter bias (ex. Australian Forest Standard (AFS) is rejected by FSC)

Market based & voluntary

- Is a market based incentive to help consumers exercise preference for products whose production, use, and disposal impose a lighter burden on the environment and natural resources
- Most existing schemes are private and voluntary:
 - Forest Stewardship Council (FSC)
 - The Forest Conservation Program (FCP) of Scientific Certification System (SCS)
 - Sustainable Forest Management (SFM) of The Canadian Standard Association (CSA)
 - Program for the Endorsement of Forest Certification (PEFC)
- Industry-lead: African Timber Association, Sustainable Green Ecosystem Council (SGEC, Japan), Lembaga Ekolabel Indonesia (LEI)

Pros

- Consumer: get better information
- Producer: expanded market share & price premium
 - Green market found in developed countries
 - Developing countries need foreign exchange from timber export
- Environmentalist: increase forest protection
- Protectionist motivations are unlikely:
 - FSC is composed of 120 NGO and companies from 28 developed and developing countries
 - Most schemes are market based & voluntarily
- Implemented to all forests

Cons

- Additional direct & indirect cost for producers
- National or regional standard may work for the advantage of domestic or regional producers
- Require technical expertise, which are likely to be less available in developing countries
- If structured identically for all types producers, may unfair for small producers

**Thank you for your
attention!**

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