

Overview of WTO Trade and Environment Disputes

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WTO RULES AND NON-ECONOMIC POLICIES

- ☞ The WTO is not an environmental protection agency.
 - ☞ Limited to trade policies and trade-related aspects of environmental policies.
- ☞ However, WTO's founding Agreement (Marrakech) included the concept of sustainable development.
 - ☞ Sustainable development “informs” all WTO Agreements.
- ☞ Throughout WTO agreements, there is significant scope for the adoption of non-economic policies.
 - ☞ Provided some requirements are respected, mainly to avoid **abuse and protectionism**



WTO AS A SET OF TRADE RULES

WTO Basic Principles

Non discrimination
(among partners and between imported
and domestic products)

Prohibition of quantitative restrictions

No unnecessary barriers to trade

Transparency



ENVIRONMENTAL MEASURES AND RELEVANT WTO RULES

Key Policy Instrument	Key Objective	Key WTO Agreement
Environmental requirements (e.g. Product/production specifications, voluntary/mandatory, characteristics/ performance, labelling)	Improve resource use & reduce pollutants (e.g. for energy efficiency)	TBT Agreement
Price & market mechanisms (e.g. carbon or energy taxes, ETS)	Internalize environmental costs (e.g. for GHG emissions)	GATT
Support programmes (e.g. R&D, fiscal, price and investment measures)	Promote development & deployment of green technologies	SCM Agreement



WTO AS A SET OF TRADE RULES

Exceptions

Even when contrary to WTO rules, may be justifiable if it pursues a legitimate objective and if certain conditions are fulfilled, including:



Should be tailored to the legitimate objective (necessary to accomplish or related to it)

Best reasonably available option (least trade restrictive)

Should be applied in a manner which is even-handed and not unjustifiably arbitrary

- E.G. the discrimination must be justified by the objective

Should not be a disguised restriction to trade

GATT ARTICLE XX – GENERAL EXCEPTIONS

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; (...)



WTO RULES MAINTAIN A DELICATE BALANCE



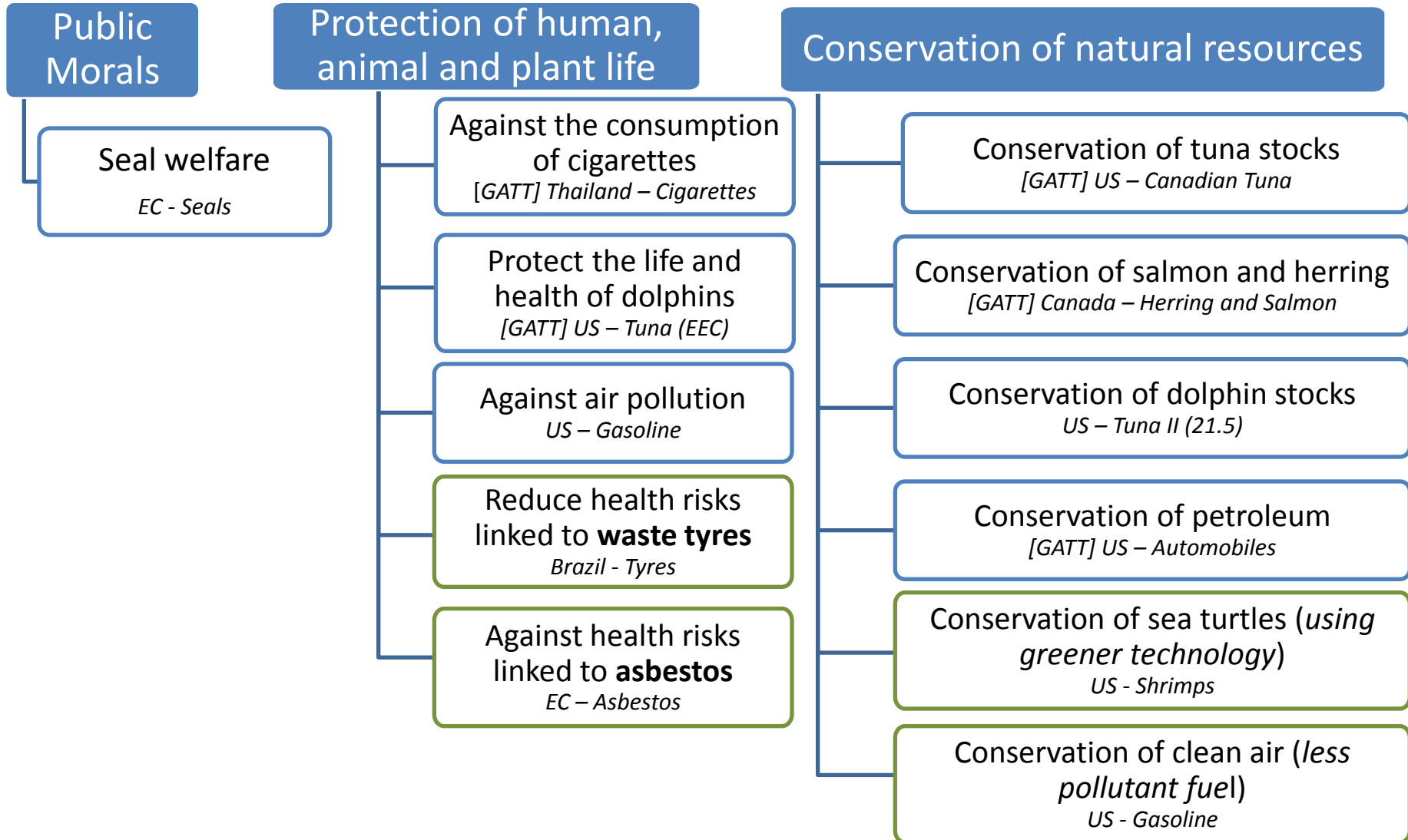
Right to adopt
measures to achieve
legitimate objectives



Rights of others
under basic trade
rules

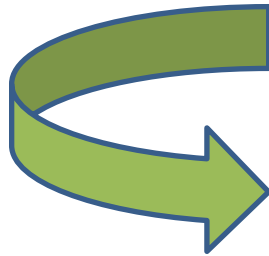


EXAMPLE OF POLICIES THAT HAVE BEEN PROVISIONALLY JUSTIFIED



POLICY SPACE FOR ENVIRONMENTAL MEASURES RELATED TO TRADE

WTO jurisprudence has confirmed that WTO rules do not trump environment, as long as...



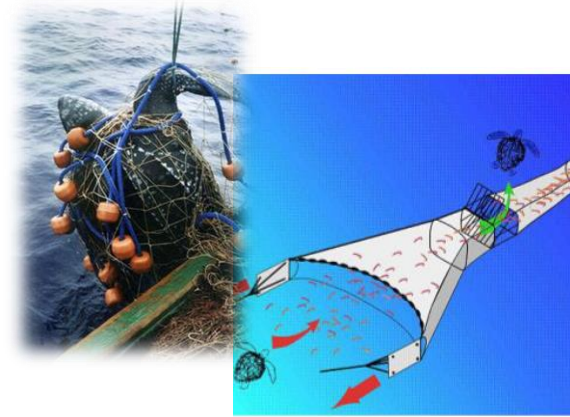
these carefully crafted conditions are respected

conditions seek, among other things, to ensure that green measures are not applied arbitrarily and not used as disguised protectionism.



WTO DISPUTES INVOLVING EGTS

☞ US – Shrimp/Turtle (India; Malaysia; Pakistan; Thailand)



To address the harmful effects of shrimp trawlers on marine turtle populations, US initially requires the use of Turtle excluder devices (TEDs) for shrimps to be exported to the US

→ Conserve the turtle population

☞ **Decision:** One issue with the measure was its lack of flexibility by requiring the use of only one technology (TEDs).

☞ Once the US changed its measure to also accept protection programmes with the same degree of protection and efficiency, the measure was considered as justifiable

WTO DISPUTES INVOLVING EGTS

☞ Canada – Renewable Energy (Japan/EU)



20 or 40 year contracts
guaranteed price per kilowatt
hour to certain generators of
renewable electricity in Ontario
(Feed-in Tariffs)



Increase supply of renewable sources of energy



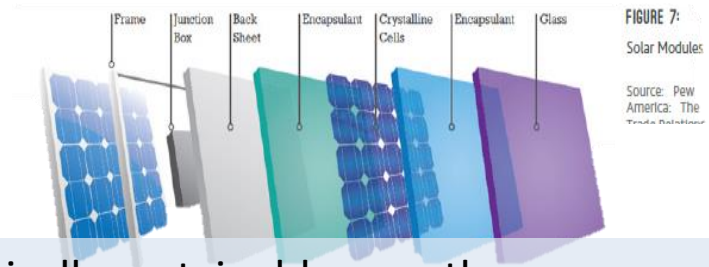
Stimulate local investment in production of
renewable energy generation equipment

Minimum Required Domestic Content requirements under the FIT Programme

	Wind (FIT)		Solar PV (FIT)		Solar PV (microFIT)	
Milestone Date Commercial Operation	2009-2011	2012	2009-2010	2011	2009-2010	2011
Minimum Domestic Content	25%	50%	50%	60%	40%	60%

☞ **Decision:** The domestic content requirements were considered against WTO rules.

WTO DISPUTES INVOLVING EGTS



☞ India – Solar Cells (US)

25 years contracts guaranteed price for electricity generated by Solar Power Developers selected (Power Purchase Agreements)

- ➡ Ecologically sustainable growth
- ➡ Energy Security
- ➡ Climate change mitigation



Rio declaration on sustainable development



Phase & Batch	Project selection period	Foreign c-Si modules	Foreign c-Si cells	Foreign Thin-film modules or PV cells	Total # PPAs	Using foreign cells and/or modules	Using Indian cells and/or modules
Phase I (Batch 1)	2010-2011	No	Yes	Yes	28	14 PPAs (70MW)	14 PPAs (70MW)
Phase I (Batch 2)	2011-2012	No		Yes	27	19 PPAs (260MW)	8 PPAs (70MW)
Phase II (Batch 1-A)	2013-2014	No			22	0	22 PPAs (375MW)

☞ **Decision:** The domestic content requirements were considered against WTO rules.

LESSONS?

- ☞ In such disputes, the measures were found to violate WTO rules not because of their objectives, but rather due to discriminatory aspects (**local content requirements** and lack of flexibility)
- ☞ Whenever a measure does discriminate, it should not do so unjustifiably or as a disguised manner to protect the domestic industry (even-handed application)
- ☞ Questions:
 - ☞ What is the best policy to promote EGST?
 - ☞ Are LCRs needed or efficient for climate change purposes?
 - ☞ Will we see more disputes involving EGST?



OTHER AVENUES: EXAMPLE OF STC IN TBT COMMITTEE



STC 271

Korea – KS C IEC61646:2007 Standard for Thin-Film Solar Panels

- ☞ **Objective:** Environmental protection from toxic substances used in solar panels
- ☞ Government certification scheme based on the solar panel design:
 - ☞ ‘amorphous silicon’ solar panels were able to be certified (Korean producers)
 - ☞ ‘cadmium telluride’ and ‘copper indium gallium selenide’ solar panels were not due to higher environmental risks (foreign producers)
- ☞ International standard for solar panels did not differentiate between such types
- ☞ Trade issues raised by Members (US and EU):
 - ☞ voluntary, but de facto mandatory
 - ☞ standard impairs market access for foreign solar panels, favours Korean prods.
 - ☞ contrary to international standard – disagreement on envir. justification



Thank you

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