Overview of WTO Trade and Environment Disputes

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Aik Hoe LIM
Director, Trade and Environment Division
WTO
**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

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

Public Morals

- Seal welfare
  - EC - Seals

Protection of human, animal and plant life

- Against the consumption of cigarettes
  - [GATT] Thailand – Cigarettes

- Protect the life and health of dolphins
  - [GATT] US – Tuna (EEC)

- Against air pollution
  - US – Gasoline

- Reduce health risks linked to waste tyres
  - Brazil - Tyres

- Against health risks linked to asbestos
  - EC – Asbestos

Conservation of natural resources

- Conservation of tuna stocks
  - [GATT] US – Canadian Tuna

- Conservation of salmon and herring
  - [GATT] Canada – Herring and Salmon

- Conservation of dolphin stocks
  - US – Tuna II (21.5)

- Conservation of petroleum
  - [GATT] US – Automobiles

- Conservation of sea turtles (using greener technology)
  - US – Shrimps

- Conservation of clean air (less pollutant fuel)
  - US – Gasoline
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**.
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.

**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

<table>
<thead>
<tr>
<th>Minimum Required Domestic Content requirements under the FIT Programme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wind (FIT)</td>
</tr>
<tr>
<td>Minimum Domestic Content</td>
</tr>
</tbody>
</table>

**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)

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

![Solar Modules](source.png)

Rio declaration on sustainable development

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

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

hoe.lim@wto.org