

CLIMATE CHANGE AND TRADE RULES

On the eve of the recently concluded COP27, the World Trade Organization (WTO) unveiled its report highlighting the importance of global trade rules for arresting global warming. Coincidentally, three decades back, WTO's predecessor organisation, the General Agreement on Tariffs and Trade (GATT), did likewise to showcase the relevance of trade rules for protecting the environment when the United Nations Conference on Environment and Development (UNCED) or the 'Earth Summit' was drawing up a comprehensive set of environmental regulations. The UNCED had unveiled 'Agenda 21', an expansive plan for environmental governance that required every country to undertake economic and social development sustainably. The UNFCCC is the outcome of one of the several decisions taken after the Earth Summit and is among the several multilateral environmental agreements (MEAs) in place.

One of the major outcomes of the UNCED was the establishment of a regulatory regime for ensuring that environmental resources are not freely available and the users would pay a price for accessing them. The objective of this regime is to end the over-exploitation of these resources and to also promote their sustainable use. For example, the UNFCCC includes the 'Polluter Pays principle', implying that every signatory to the Convention occupying the carbon space must take steps to limit Earth's temperature from exceeding 1.5°C as compared to pre-industrial levels by 2050.

Many would wonder how the WTO, as did the GATT then, argued its case for applying global trade rules for protecting the environment when the *raison d'être* of these rules is to deregulate markets, allowing market forces untrammelled access to the world's resources, including environmental resources. Votaries of free trade have generally argued that trade openness is a magic bullet and that once an economy is freed from all distortions (read "regulations"), there would be an all-round improvement, including the promotion of goods and services that are environment-friendly. The GATT/WTO rules are not generally supportive of trade restrictions for environmental protection since impediments to the free flow of trade are generally deemed to be harmful to the environment. In fact, multilateral trading system allows imposition of trade restrictions for protecting the environment only under two circumstances, namely, when they are "necessary to protect human, animal or plant life or health" and for the "conservation of exhaustible natural resources".

Although the GATT/WTO intends that

any form of trade restriction that its members use, including for environmental purposes, must conform with its rules, concerns that free trade was responsible for environmental degradation in several areas changed the discourse to a significant extent. With the sudden spurt in global trade post-World War II, its impact on environmental resources began to be felt. Among the several MEAs that include specific trade obligations (STOs) is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which played a key role in restricting ivory trade from Africa, besides preventing the extinction of several critically endangered



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species. The Montreal Protocol for protecting the ozone layer also banned trade in ozone-depleting substances. WTO members were mandated to negotiate the relationship between existing WTO rules and STOs of the MEAs to enhance mutual supportiveness. These negotiations have remained inconclusive for the past two decades.

In the absence of proper appreciation on the part of the WTO on the need to fulfil the objectives of MEAs, the former has been trumpeting the importance of its own rules for protecting the environment. This is also the substance of WTO's latest report on 'Climate change and international trade'. The report makes at least two claims that WTO rules are furthering the objectives of UNFCCC, which are completely unfounded.

First, it claims that "well-functioning markets are important to address climate-related food security challenges" and that

WTO's Agreement on Agriculture (AoA), particularly its rules on production-related subsidies (or domestic subsidies), are improving the functioning of the markets. The reality is that the advanced countries liberally subsidize their resource-intensive agricultural practices, excessively using fossil fuels to produce largely for the export market. Thus, besides being environmentally damaging, advanced country agriculture has also been squeezing out farmer-centric agriculture in developing countries.

Secondly, the report claims that the cost of solar panel systems has plummeted in the last three decades, largely due to scale economies, made possible in part by international trade and production networks. In other words, trade liberalisation via the WTO rules has made solar energy more affordable. However, India's push for promoting solar power projects provides a counterfactual. While promoting the Jawaharlal Nehru National Solar Mission in 2010-11, the Indian government had included a condition that solar power developers must purchase and use solar cells and solar modules of domestic origin. This was intended to ramp up domestic production of cells and modules and lower the cost of production as the National Solar Mission had set ambitious targets for increasing solar energy, which would have required large-scale production, giving rise to benefits from scale economies. However, the United States initiated a dispute against India, arguing that its policy was against the WTO rules of free trade. India lost the case in the WTO, making it a large importer of solar panels and dependent on China to boot.

Finally, the report argues erroneously that WTO facilitates access to technologies to developing countries through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The facts are far from this claim. The TRIPS Agreement provides enhanced protection to intellectual property owners, largely giant corporations, who rarely share their technologies with developing countries. The climate change negotiations have witnessed little forward movement on sharing of climate-friendly technologies, which is hardly unexpected as these corporations had denied technologies for producing vaccines and medicines in developing countries during the Covid pandemic.

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