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Promoting Sustainable Trade: The Case of Environmental Requirements

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Promoting Sustainable Development: The Case of Environmental Requirements

Introduction

1. The study of the effects of environmental measures on market access of developing countries has been an inevitable component of the sustainable development debate. Sustainable development is a larger issue encompassing efficient allocation of world's resources, domestic environmental imperatives based on the extent of contribution to national and global environmental degradation, poverty alleviation, creation of additional wealth for environmental protection in developing countries, and so on. Thus, the relationship between trade and sustainable development depends on macro-economic and environmental policies. Even so, increase in trade increases resources, which can make a positive contribution to sustainable development. This is particularly applicable to developing countries, whose responsibility towards environmental protection could be discharged better through increased resources, generated through increased trade, particularly exports.

2. As compared to developed countries, developing countries are more vulnerable to the adverse effects of environmental measures on market access and competitiveness. Various reasons have been identified. Lack of infrastructural and monitoring facilities, limited technology choices, inadequate access to (and relatively more expensive) environmentally friendly raw materials and information are one set of reasons identified. Secondly, small and medium enterprises (SMEs) face more formidable compliance costs and there is an increasing emergence of environmental standards of export interest to them. Thirdly, developing country enterprises lack the skill and technology required for exploiting the positive trading opportunities generated by environmental measures. Fourthly, developing country exports are more vulnerable to market access barriers on account of their scale and sectoral composition. A connected problem is the diseconomies of scale on account of small domestic markets. Finally, while developed markets are more amenable to harmonization efforts, developing countries have widely differing environmental standards in accordance with their national priorities, rendering harmonization both difficult and inadvisable as compared to mutual recognition and equivalence.

Environmental Requirements and India's Exports

3. Environmental requirements cover a broad spectrum and include, inter-alia, charges and taxes for environmental purposes, requirements relating to products including standards and technical regulations, eco-labelling, packaging and recycling requirements for achieving environmental objectives. Such requirements have significant effects on market access of developing countries like India into markets that prescribe them. These effects could be positive or negative. Positive effects, or opportunities, are not always

easy to exploit and require expertise, technology and resources that may not always be available. Negative effects relate to expenditure incurred to adapt to new standards etc., to acquire necessary technology and expertise, to non-availability of materials for meeting requirements (like packaging requirements) and the administrative apparatus required in exporting countries.

4. Studies have identified many environmental requirements that need to be addressed for increasing India's export performance.

- ◆ Regulations on dyestuffs affect textile and leather sectors. For example, 20 azodyes are banned, mostly based on rodents' studies showing carcinogenic implications. The national ban is based on the original German Standards involving use of certain azodyes based on 'precautionary principle'. Of the 20 azodyes, 4 had confirmed carcinogenic effects and 16 were banned on the basis of 'precautionary principle'. Also the German ban applied only to those textiles etc., which touch the skin. Since then, Germany has amended its standards five times, removing some of the azodyes from the banned category. However, the Indian law applies to all textiles and all azodyes even now.
- ◆ Presence of formaldehyde, glyoxal and PCP residues in cotton T-shirts led to denial of market access to exporters. According to some exporters, the reason for the ban is that some western companies have developed alternatives like Busan-30, which are 30 times costlier than PCP or equivalent chemicals or they had got patents on the new chemicals and had to create markets for them.
- ◆ The effect is more significant on SMEs, as cost of compliance could be prohibitive. SMEs found it prohibitive to shift from PCP to Busan-30, latter costing seven times the former. They also found it unviable to install effluent treatment plants in the tanneries sector and the Government had to come in to help.
- ◆ Tea exports have been affected due to developed countries' concerns about pesticide content. Although Indian exporters adhered to maximum pesticide residue levels recommended by US EPA, stricter limits (e.g. 0.01 mg of tetraflon and 2 mg of ethion per kg of tea) imposed in some European countries became insurmountable, there being, apart from other problems, a cost of \$ 234 per analysis.
- ◆ Effective 1.1.1999, EU has revised its standards on the aflatoxin levels in peanuts to 10ppb (5ppb B1) for raw material and 4ppb (2ppb B1) for consumer ready products, a standard which varies from the Codex standard. The sampling plan is similar to the 3 test Dutch code methodology, which is much more rigorous. According to an analysis, an EU citizen is at risk of eating a nut contaminated with aflatoxin every 27.4 years. Such high standards could easily be perceived as trade protectionist measures rather than real health concerns.

5. Strict regulations in the food processing and agro products sectors in some developed countries throw up questions not only regarding viability of compliance costs but also on their justification on environmental grounds.

- ◆ Ban on use of all hormones, natural and synthetic, in livestock production by EU is an example. The ban is pervasive, not based entirely on scientific principles and may entail trade restrictions of proportions much higher than the risks that non-fulfillment may create. India may not be affected on this account as there is little use of hormones, but restrictions on milk/milk products from animals not being stall-fed has led to problems in market access.
- ◆ Marine products have been facing market access barriers on account of metallic, pesticide and antibiotic content (e.g. more than 0.2% of benzoic content in shrimps from India compared to 0.6% from elsewhere) or handling, processing and storage regulations, (e.g. strict EU regulations on packaging, treatment systems and transport arrangements).
- ◆ Another case relates to mangoes. The EU standard demands maintenance of a record of each mango – from farmer to processing unit to exporters. The compliance cost for this could be immense, apart from the sheer wastage of resources.
- ◆ In an egg export case, Japan found BHC (beta isomer) level in excess of the permitted .01ppm. VIMTA labs in Bangalore and ECCA labs in Belgium investigated and found contamination below the detectable limits of ppm. In another case, Bostel Institute labs in Stuttgart found 2ppm levels in a particular egg powder but VIMTA found .01ppm. The same sample was then taken to Bostel and now the level detected was .3ppm. How does one make sure his consignment will pass muster anywhere?
- ◆ In some European markets texturised yarn has to be supplied in equal length packages. The legitimate objective of such a condition may be questionable.

6. Market access barriers on account of environmental concerns and non-product related production methods having little transboundary effects is an emerging area of concern.

- ◆ India has faced unilateral restrictions on import of shrimps harvested without the use of turtle excluder devices. While the WTO has ruled against the restrictions, global environmental concerns are sought to be enforced through unilateral trade measures, which may neither be at the root of the environmental problem nor may be the most efficient means for environmental protection. It may also given rise to protectionist tendencies much against the understanding of the applicability of non-product-related processes and production methods to the multilateral trading system.
- ◆ Many of Codex as well as EU standards link up quality of the product with production processes, irrespective of whether the PPM concerned has any transboundary implications or implications on the product itself. Effluent treatment is one example.
- ◆ One company reported extremely stringent environmental laws in Australia and New Zealand regarding usage of wood dunnage. To overcome this they had to use expensive and scarce treated wood, or wood substitutes, and fumigate containers at a high cost. There was no concession in the standards on the basis of availability or sustainable use of the wood in the suppliers' market.

7. One set of regulations having cross-sectoral effects concern packaging materials, product charges, deposit-refund systems and take-back obligations. The European Packaging and Packaging Waste Directive, for example is based, inter-alia on 'polluter-pays-principle' a concept that automatically acts in favour of the local producers, in addition to imposing on foreigners a cost that may not be necessary based on their local conditions. As applied today, these are perceived more as restrictive trade practices than as tools for achieving global environmental objectives.

8. In addition to mandatory environmental requirements, voluntary measures affecting market access of Indian products have also been studied. The most extensively studied voluntary measure is eco-labelling. Costs of compliance with eco-labelling criteria in the textile and leather sectors have been found to be prohibitive, compounded by the difficulties in accessing technologies, developing testing facilities and problems in verification of compliance. For example, cost of compliance with eco-labeling schemes by Indian footwear exporters may be 33% of the export price. Voluntary arrangements emerging in recent times also may need to be analysed for their market access impacts.

9. UNCTAD is sometimes quoted to the effect that existing evidence does not bring out any widespread adverse effects of existing environmental requirements on market access, significant trade effects were noted in certain sectors, and on small and medium enterprises. The examples quoted above hardly support this, and these are based only on anecdotal studies. Environmental policies are evolving rapidly, particularly in the developed world. Consequently, environmental requirements are increasing by the day. It is believed that emerging environmental policies and environmental requirements can, and increasingly will, affect India's market access significantly. This will happen despite the increasing environmental awareness within India, and despite international trade rules that seek to facilitate increased market access, particularly for developing countries. It is for the Indian Government and industry to take advantage of the competitive advantage of its products, particularly environmentally friendly products, to increase their share in the environment conscious markets on the one hand and to safeguard existing market access against unjust environmental requirements on the other.

The Way Forward

10. Environmental requirements need to be addressed with a sense of urgency by the Indian Government and industry. Aid agencies, bilateral and multilateral mechanisms also have a significant role to play. Clearly, environmental factors play an important role in India's effort to achieve rapid and sustained export growth. The way forward could be identification of sector specific examples of environmental requirements impacting export performance. Some requirements may generate positive spillovers in the form of new trading opportunities, either through niche markets for environmentally friendly products or through competitive advantage arising out of factor endowments. These provide the win-win cases. Other requirements may affect exports adversely, if not addressed properly. Better policy choices may need to be identified here, along with

increased awareness on the part of the business community and bilateral and multilateral initiatives.

11. Having identified the sectors and products that enable analyses of the trade-environment interface for export performance, improvements at various policy and practice levels could be horizontally studied. First and foremost is availability of information. Information relating to environmental requirements abroad and available means of meeting them is of paramount importance. This will also involve transparency of requirements, including effective participation in their design and implementation. Harmonization where possible, and mutual recognition or equivalence where not, need to be addressed in this exercise.

12. Second, positive measures like capacity building, technology transfer and technical assistance could be strengthened nationally, bilaterally and multilaterally. Costs of compliance for SMEs need special consideration including collective initiatives for cost effective solutions. Similarly, technical assistance can be focussed on mechanisms that internalize externalities without putting too much stress on monitoring capacities of the government.

13. Third, infrastructural investment required to mitigate pressing environmental problems could result in a double benefit – capacity building from development point of view as well as broad-based environmental protection measures resulting in better access to developed markets. A study of areas where price and other premiums are more likely to accrue could help in better focusing infrastructural investments.

14. Fourth, standard setting efforts have to be informed by their impact on trade and competitiveness, high cost of adaptation and irrelevance of many foreign standards to local conditions. Where environmental objectives could be met in a more trade facilitative way, unilateral trade measures should be avoided, and challenged through the supremacy of the multilateral trading system.

15. Fifth, international trade rules, particularly those in the WTO, need to be examined. This could include tightening of existing disciplines; clarification of concepts like “precautionary principle” and “risks that non-fulfillment may create”; fully factoring trade principles like non-discrimination, least trade restrictiveness and special and differential treatment; and guidelines for dispute settlement, specially in the wake of emerging jurisprudence.¹

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