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# UNIT 17 INTERNATIONAL TRADE AND ENVIRONMENT

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## 17.0 OBJECTIVES

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After studying this unit, you should be able to:

- describe the growing importance of the environmental factor on the course of international trade
- explain the developments occurring in GATT/ WTO in the context of the trade vs. environment debate
- describe the provisions of the important international environmental agreements and the trade provisions contained therein
- explain the varying perceptions of the developed and the developing nations on the trade vs. environment issue
- explain the regulatory and economic instruments associated with the environmental regulations and its possible repercussions on exports from developing countries
- outline the implications of the environmental factor on India's export effort.

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## 17.1 INTRODUCTION

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You are by now already familiar with the genesis and growth of the multilateral trading system and the functions of the GATT and its successor, the WTO. Some exposure has also been obtained by you on the areas wherein trade disputes could arise and the forum for settlement of such disputes. In this unit, you will learn about one of the contemporary and very often contentious issue, in the form of the environmental factor increasingly influencing the course and direction of International Trade. You will also appreciate how developing nations like India, which has placed such a high degree of emphasis on the export effort need to gear up their strategies. The intense effort is needed to deal with a fast changing international trading scenario where "the Environment Agenda" has assumed top priority in multilateral trade negotiations.

## 17.2 TRADE VS. ENVIRONMENT—GENESIS OF CONFLICT

The interface between trade and environment is not entirely a new phenomenon. Way back in the late 1960's environmental problems generated by industrial pollutants surfaced as a major issue in the developed world calling for stricter environmental and product standards. As consumer awareness grew, so did the degree of general concern for environment and all that it implied. In the developed markets of the West, particularly in countries like Germany more and more consumers started to demand that the product they consumed should not cause unnecessary health risks or damage the environment. The demand for harmful chemicals to be excluded from the production process has been slowly extended from articles of daily necessity such as foodstuffs and detergents to items like clothing and footwear and a host of other consumer articles. It is expected that several new industries will come under greater consumer scrutiny in the near future.

The concern for preserving the sanctity of the domestic environment has extended to a greater regard for safeguarding the global environment. Contemporary issues like the degradation of natural resources, conservation of wild life, depletion of the ozone layer and health and safety standards have begun to dominate the trade and environment debate in recent years. The seeds of the conflict originate from the varying perceptions of the **environmentalists**, who are now a powerful lobby in the Western countries and the **trade economists**. Environmentalists have argued that there is a definite lacuna in the present system of International Trade, governed by GATT (now WTO) regime. They say that the GATT has mostly ruled out trade measures or has been totally ineffective in taking appropriate action against countries which run down natural resources, destroy endangered species and establish pollution prone industries. Trade economists on the other hand, feel that it would be far better to tackle the environmental problem separately, through International Agreement on Environmental Standards and Policies rather than looking at it as a trade related issue. In fact many economists have pointed out that free trade is the best method to ensure that developing countries are enabled to absorb the most recent technologies and production methods which are cleaner and far more efficient. The major task before the global policy makers is how to reconcile the interests of the trade economists on the one hand and the environmental lobby on the other and determine the extent of changes needed to be made in the new WTO trade regime.

The 1992 Earth Summit at *Rio*, had rightly stressed the need for international cooperation to promote *Sustainable Development* through trade. Trade is needed for more efficient allocation of resources and is a key instrument for rapid economic development. Economic development in turn is essential for more effective environmental protection. There is now a better realisation that trade and environment are not incompatible and in fact can be mutually complementary contributing effectively to the goal of "Sustainable Development", which has assumed high priority in global objectives. Disputes have nevertheless surfaced in this context between the developed and the developing countries because of absence of transparency and lack of objectivity in countries adopting trade measures to safeguard environmental objectives.

## 17.3 INTERNATIONAL INSTITUTIONS DEALING WITH ENVIRONMENT

### 1 The United Nations (UN) — General Assembly

The General Assembly of the United Nations, as the highest level intergovernmental mechanism, is the principal policy making and appraisal organ on matters relating to the follow-up of the United Nations Conference on Environment and Development (UNCED).

It was the UNCED which had adopted the celebrated Agenda 21 at Rio-de-Janeiro on June 14, 1992. Agenda 21, represents a comprehensive programme of action to be implemented by Governments, development agencies, United Nations organisations and independent sector groups in every area where economic activity affects the environment.

The General Assembly is assisted by the Economic and Social Council (ECOSOC) which coordinates activities of all United Nations agencies and makes recommendations.

## 2 The UN Commission on Sustainable Development (UNCSD)

This high-level commission is the main subsidiary organ of the General Assembly and ECOSOC for the integration of environment and development issues. The UNCSD's terms of reference include:

- monitoring progress on the implementation of Agenda 21 and the activities related to the integration of environmental and developmental goals by governments, ENGOs and other UN bodies.
- monitoring progress towards the target of 0.7 per cent of GNP from developed countries for Overseas Development Assistance (ODA).
- reviewing the adequacy of financing and transfer of technologies as outlined in Agenda 21.
- providing recommendations to the General Assembly through the Economic and Social Council.

## 3 The UN Environment Programme (UNEP)

The United Nations Environment Programme was created as a result of the United Nations Conference on the Human Environment convened in Stockholm in 1972. UNEP actively promotes environmentally-sound development, i.e. development which maintains and improves economic progress without damaging the environment and natural resource based upon which the future development depends.

In the field of Trade and Environment UNEP's activities concentrate on the following areas:

- International environmental law:** Because of its varied experience and background in matters relating to environmental laws and regulations on global basis, the UNEP is in a unique position to work with other international organisations and national governments to clarify legal issues. UNEP also functions as secretariat for a number of international environmental agreements which use trade provisions to achieve their objectives.
- Environment and economics:** In May 1993, the Governing Council of UNEP approved the creation of an Environmental Economics unit in UNEP. In accordance with its present work priorities, the unit will look into four core areas: (i) the promotion of environmental impact assessment; (ii) environmental and natural resource accounting; (iii) economic evaluation of environmental goods and services; and (iv) the role of market based instruments as a means to help achieve environmental goals. UNEP will be specifically focussing on two areas which are considered to be relevant in the context of trade and environment. The first deals with environmental impact procedures for trade policies. The second deals with the trade effects of market-based instruments.
- Environment and scientific information:** UNEP is also looking into the possibilities of feeding scientific data into the discussions on trade and environment. Such data refer to scientific information, monitoring and assessment techniques, risk assessment, and information related to best available environmental technologies and environmental management.

## 4 The UN Conference on Trade and Development (UNCTAD)

The United Nations Conference on Trade and Development (UNCTAD) is the main organ of the UN General Assembly in the field of trade and development. It was established as a permanent intergovernmental body in 1964 and has 186 member states.

UNCTAD's special role in the trade and environment field lies in policy analysis and debate, conceptual work, the building of consensus among the member states on the interaction between environmental and trade policies, the dissemination of information to policy makers and encouragement and provision of assistance in capacity-building.

Particular attention is to be given to the problems and special circumstances of the developing countries, including the least-developed among them.

It had been agreed that "UNCTAD, at both the intergovernmental and secretariat levels, taking into account the other relevant fora, should undertake in-depth work on the clarification of linkages between trade and environment and the need for environmental protection to co-exist with liberal trade policies and free market access, as well as contribute to consensus building with regard to appropriate rules."

The work programme of UNCTAD's intergovernmental bodies is carried out by a Trade and Development Board and its various subsidiary bodies.

## 5 The World Trade Organisation (WTO)

The World Trade Organisation, which is the successor organisation to the GATT, has now emerged as the focal point in the ongoing and multipronged work programme on trade and environment. The WTO General Council has established a new Committee on Trade and Environment, with specific terms of reference and an extensive work programme.

The Committee's terms of reference provide it with a broad-based remit covering all areas of the multilateral trading system — goods, services, and intellectual property. It is given both analytical and prescriptive functions: to identify the relationship between trade measures and environmental measures in order to promote sustainable development and to make appropriate recommendations on whether any modifications of the multilateral trading system are needed.

Two important parameters will guide its work. One is that WTO competence for policy coordination in this area is limited to trade. The second is that if problems of policy coordination to protect the environment and promote sustainable development are identified through the Committee, they are to be resolved in a manner that upholds and safeguards the principles of the multilateral trading system. The terms of reference of WTO Committee specifically try to address some of the more recent problems which have surfaced in the area of trade and environment.

On the interface between Environment and International Trade, WTO has virtually assumed a pivotal role by the range and depth of its proposed operations.

### Check Your Progress A

1. What are the objectives of UN Environment Programme?

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2. Enumerate three special roles of UNCTAD in the trade and environment field.

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3. Enumerate three terms of reference of UN Commission on Sustainable Development.

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Before describing some of the important environmental agreements, especially those with trade measures and also the global disputes which have surfaced on trade related environmental issues, it would be pertinent to mention briefly, how the environmental agenda came to assume almost centrestage in GATT negotiations.

Firstly, as mentioned earlier, with increasing consumer awareness in Western Countries on the harmful effects of environmental pollution and degradation, there was also a greater consumer resistance to purchase of products which were considered as environmentally unclean or buying goods from countries which continuously degraded or destroyed scarce natural resources. There was almost spontaneous reaction to the worldwide debate on the destruction of tropical forests or reduction of the ozone layer by Western consumers through reducing the consumption of furniture from tropical timber or refusal to buy products like aerosol sprays etc, which made use of CFCs. In other words, environmental considerations began to exert increasing pressure on international trade, and GATT could no longer consider sidelining such important issues in its deliberations.

It needs to be mentioned that GATT, has never seen itself as an institution specifically geared to the protection of the environment. Its main purpose has been to make and keep international trade as open as possible and impose a certain discipline on the trade policies of the contracting parties. They should avoid protectionist methods, in particular quantitative restrictions, and they should reduce and eventually remove trade barriers. In case of conflict, they should avoid unilateral measures and follow the GATT rules for dispute settlement.

This does not imply that GATT has been insensitive to the growing environmental concerns or that it had no specific mandate in this regard. GATT had felt that by fostering the integration of developing countries into the open trading system and with this the economic development of the third world, it would contribute to the improvement of environment also. Developing nations which become prosperous as a result of freer trade, would be able to allocate more resources to environmental protection. In addition by preventing the developed nations from resorting to protectionist measures for environmental reasons, the GATT would necessitate the search for better alternatives which would be both more efficient and equitable for the protection of the environment.

A GATT Report on Trade and Environment has mentioned that "its rules place no constraints on a country's right to protect its own environment against damage from either domestic production or the consumption of domestically produced or imported products. Generally speaking, a country can do anything to imports that it does to domestically produced products."

Some environmentalists however were of the opinion that GATT rules do in several cases stand in the way of environmental protection. Some of their objections to GATT were as follows:

- Trade liberalisation under GATT encourages economic growth, and so damages the environment.
- GATT does not allow countries to keep out a product because of the way it is produced or harvested.
- GATT prevents a country imposing countervailing duties on imports produced under lower environmental standards than its own.
- GATT prevents countries from imposing export bans, which they may want to invoke to protect for example, their own forests or some other resource.
- GATT disapproves on the use of trade measures to influence environmental policy outside a country's territory.
- GATT may be detrimental to international environmental agreements through its prohibition of trade measures that are considered discriminatory against individual nations. Nevertheless such measures may be the most effective way for countries that play by the rules of an international agreement to penalise others that do not.

- GATT's dispute settlement measures are never very transparent and does not provide sufficient opportunities for the environmentalists to plead their case or obtain access to the relevant papers.

Apart from the environmental lobbies many developing countries have also perceived a threat from the environmental factor for a different reason. They felt that their trade interests might be placed in serious jeopardy by the efforts of their industrialised country trade partners to raise and enforce worldwide environmental standards which they could neither afford nor comply with, due to technology lags. Developed nations on the other hand, with higher standards of environment were apprehensive about the impact of stricter standards on their relative cost-competitiveness in the world markets.

Apparently therefore, there were a number of discordant views and perceptions on the trade vs environment issue which needed to be properly addressed. The process of reconciliation and consensus was bound to be long and difficult. Despite certain limitations imposed by the scope of its functioning, GATT was still perceived as the most suitable fora, to tackle such sensitive issues in view of its vast experience in International Trade and the number of countries and interests it could represent.

It is only in the last few years that there is greater recognition by all governments of the importance of forging a viable relationship between the functioning of the multilateral trading system and better environmental protection and the promotion of Sustainable Development. The UNCED in Rio de Janeiro in 1992 captured effectively the view of GATT contracting parties at this stage of negotiations, that liberal trading conditions on world markets, along with financial and technology resource transfers, held the key to accelerating sustainable development and that the conclusion of the Uruguay Round negotiations was the single, most important contribution that governments can make through the GATT to implementation of the UNCED programme.

The newly created World Trade Organisation (WTO) has gone much further and introduced a preamble, which specifically supports the need to protect the environment and the goal of Sustainable Development. In future, it should no longer be possible to overrule environmental concerns with the free trade argument. A GATT working group was established to sort out the potential conflicts between environmental policies and trade on the one hand, and the conditions under which trade measures might be utilised to achieve environmental policy objectives on the other. New rules have to be worked out to make trade and environment mutually supportive. Environment is now well and truly entrenched in the GATT/WTO Agenda and no trading nation can afford to ignore this fact.

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## **17.5 MULTILATERAL ENVIRONMENTAL AGREEMENTS**

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There are presently about 140 International Environmental Agreements, of which 17 contain some trade provisions. We are considering here four of the more important environmental agreements with trade provisions, as illustrative examples. These are as follows: (i) The Montreal Protocol (ii) The Basel Convention (iii) The London Guidelines (iv) The Cites Convention. Let us now discuss them in detail.

### **17.5.1 The Montreal Protocol**

The convention to protect the depletion of the ozone layer was among the earliest of the spate of environmental conventions. The Convention, known as the Vienna Convention for the protection of the Ozone Layer, 1985 has since been followed up by the Montreal Protocol on Substances that Deplete the Ozone Layer, which was signed by the United States, the European Community and 22 other countries.

The Protocol was necessitated by the discovery by scientists that the ozone layer, which acted as an effective shield for the earth against harmful ultraviolet radiation (UV-B) from outer space, was being depleted far more rapidly than had been forecast, and that the cause for all this was the presence of human made chemicals mainly chloro fluorocarbons (CFCs) in the upper reaches of the stratosphere. It is apprehended that increased penetration of

ultraviolet rays, as a result of ozone depletion would only serve to increase cases of skin cancer, cataracts and depress the human immune systems.

CFCs have been used in a wide variety of applications, including refrigeration and airconditioning, foam production and aerosol propellants. There has also been a significant increase in the use of halons, another group of major ozone-depleting substances employed in fire extinguishers.

The Vienna Convention provided that the parties should adopt a Protocol on "measures, procedures and standards" to protect the ozone layer. The Montreal Protocol on Substances that Deplete the Ozone Layer was adopted in 1987 and signed by 24 countries. The agreement however came into force only from 1st January 1989 by which time countries representing about 90 percent of the world's CFC consumption had ratified it. According to the agreement, parties committed themselves to reduce the emission of the substances by at least 50 per cent of 1986 levels by 1999. The Protocol was amended substantially at the second meeting of the Parties held in London in June 1990. The strengthened protocol called for the phase-out of CFCs by 2000 and of other major ozone-depleting substances by 2005.

## Trade Provisions

The Protocol lays down a schedule for the reduction in stages of production and consumption of such substances. It has been assumed that, as a consequence, trade of controlled substances among parties will be reduced and eliminated automatically. Trade provisions apply to non-parties only.

The trade provisions with regard to non-parties were as follows:

- Imports of controlled substances from nations not members of the protocol were banned from January 1990.
- By 1993 the ban was extended to developing countries from exporting any controlled substances.
- Within three years of the agreement, a ban was introduced on products which contain controlled substances from nations which are not members of the protocol (products such as refrigerators, freezers, aerosol products, insulation boards, panels and pipe covers)
- Parties signatory to the protocol are expected to discourage the export of technologies used for controlled substances to nations not members of the protocol.

The trade provisions in relation to non-parties were incorporated into the protocol ostensibly to prevent the transfer production facilities to countries which are not parties of the Protocol. They were also intended to induce countries to join the agreement.

### 17.5.2 The Basel Convention

The basic objective of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is to control transboundary movements of hazardous wastes and their disposal in other countries, notably the developing world. The convention seeks to ensure the environmentally sound management of the wastes and their disposal as close as possible to the sources of generation.

The main obligation of the parties are :

- to reduce to a minimum the generation of hazardous waste;
- to dispose of it adequately and within the territory of the country where the waste has been generated ;
- to ensure that transboundary movement of hazardous waste only takes place if (i) the State of export does not have the technical capacity and the necessary facilities to dispose of the wastes in an environmentally sound manner (ii) the wastes in question are required as raw material for recycling or recovery industries in the State of import (iii) the transboundary movement is in accordance with other criteria to be decided by

the parties, provided those criteria do not differ from the objectives of the Convention.  
(iv) industrialised countries have an obligation to assist developing countries in technical matters related to the management of hazardous wastes.

### Trade provisions

- The Basel Convention states that every country has the sovereign right to ban the import of hazardous wastes or other wastes, and as a consequence, no state should allow any transborder movement of hazardous wastes or other wastes to a state which has prohibited their import.
- The export of hazardous wastes to a state which is not a party to the Basel Convention and the imports from a non-party state are prohibited, unless an agreement (establishing requirements no less environmentally sound than the Basel Convention) is reached between parties and non-parties.
- Exports of waste for disposal in Antarctica are prohibited.
- Before permitting exports of wastes, the export country has to make sure that the importing country has agreed in writing to the specific import. (prior informed consent procedure)

The Basel convention does not call for an outright ban on the trade. It only seeks to regulate the trade by insisting that companies wishing to export wastes "have to notify the government of the country importing the waste or located enroute". Only when the importing country gives the company its prior consent can the government of the exporter, permit the deal. In the event that the shipment is found to be illegal, the exporter is required to reimport the waste within 30 days. If this is impracticable, the waste is to be disposed off in an "environmentally friendly way".

### 17.5.3 The London Guidelines

The London Guidelines for the Exchange of Information on Chemicals in International Trade were elaborated to assist Governments in increasing chemical safety through exchange of scientific, technical, economic or legal information on chemicals in international trade. It also contains procedures for prior informed consent which regulates trade in chemicals that are banned or severely restricted.

The general obligations of the parties are to establish and strengthen legislative and regulatory systems for improving control and management of chemicals and create national registers of toxic chemicals. Each time action is domestically taken to ban or severely restrict the use of a chemical, parties have to notify other parties.

The UNEP International Register of Potentially Toxic Chemicals (IRPTC) is the institution entitled to receive notifications of banned or severely restricted chemicals and is in charge of informing all parties of the notifications received.

### Trade provisions

A country which receives a request to allow imports of a chemical which is under the notification procedure, may: permit importation, prohibit importation, or permit importation only under specified conditions. As a general rule, importing countries should ensure that actions taken with regard to a specific chemical are not more restrictive than those applying to the same domestically produced chemical or to the same chemical imported from another country.

### 17.5.4 The CITES Convention

The basic objective of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is to provide guidelines and procedures to protect endangered species of wild flora and fauna against over-exploitation through international trade. The degree of control that is exercised over trade is related with the degree of threat of extinction.



each animal or plant faces. For this reason species covered by the Convention are categorized into three Appendices.

1. **Species threatened with extinction.** In this category are included animals and plants such as whales; several bears, leopard, jaguar and tiger; all rhinoceroses; elephants of Asia and Africa, all sea turtles; many cacti and orchids are also included.
2. **Animals and plants that may become endangered unless trade is regulated.** Appendix 11 covers all cetaceans, cats, parrots, and crocodiles that are not in Appendix 1, plus stony corals, cyclamen and many other plants.
3. **Appendix 111.** This appendix includes species which a party has identified as being subject to regulation within its jurisdiction and for which cooperation of other parties in the control of trade is needed.

## Trade provisions

- Trade in species that are, or could become, threatened with extinction is regulated through a system of import and export permits. As far as species in Appendix 1 and 11 are concerned, exports can be totally banned (e.g. elephant products) or permits can be issued in exceptional cases, i.e. only if a Scientific Authority has determined that the import and export of a specimen "will not be detrimental to the survival of the species"
- For species included in Appendix 111 an export permit should be granted by the states which have listed the species in the Appendix, on the basis of recommendations of a Management Authority. Exports by other states are allowed on the basis of a certificate of origin.
- Where export is to a state not a party to the Convention, or where import comes from a state not party to the Convention, the import and export permits issued by the competent authorities in the non-member state may be accepted by any Parties. These permits must substantially conform with the requirements of CITES. The Convention, thus, impose the same restrictions on trade with non-parties as on trade with parties.
- The provisions of the Convention do not affect the right of Parties to adopt stricter domestic measures regarding the conditions for trade, the taking, possession, or transport of specimens of species, both included and not included in Appendices 1, 11 and 111, or the complete prohibition thereof.

The Multilateral Environmental Agreements have not been to the entire satisfaction of the environmental lobbies and some of the developing countries. For instance, as regards the Basel Convention — Greenpeace, a leading environmental group felt that by providing a legal framework with which to trade waste, it legitimises what should be considered a criminal activity. "The Basel Convention's greatest danger is that "it creates the illusion that the international waste trade is now under control". Similarly the Montreal Protocol sought to allocate quotas for further consumption of CFC's by individual nations without taking into account the fact that the developed nations have been the largest consumers of such chemicals and they should have borne the brunt in any formula of future allocations. Also the projected use in developing countries of CFC's is generally for food, refrigeration and airconditioning — considered crucial in hot climates. If there are limits to growth, then these factors should have been taken into account and fair quotas assigned.

The preceding section illustrates the kind of difficulties that can be encountered in reconciling the interests of the various pressure groups in the international trading arena particularly wherever trade is impacted by relatively new issues like the environment.

There is also enough evidence which points to a serious risk of environmental concerns being exploited by protectionist lobbies in the West for their own benefit. This can occur at any of several stages: by promoting policies that discriminate against imports as part of the solution to environmental problems; by biasing the choice between positive and negative incentives in favour of trade sanctions and by pushing for the inclusion of unnecessary trade provisions in multilateral agreements.

In the following section we will examine how certain countries have exploited the environment argument to shut out specific imports, as also GATT's response to such conflicts brought to its notice.

### Check Your Progress B

1. What is Montreal protocol?

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2. What is the basic objective of the convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

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3. What do you mean by Basel conventions?

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4. State whether following statements are **True** or **False**.

- i) The interface between trade and environment is an entirely new phenomenon.
- ii) UNEP also functions as secretariat for a number of international environmental agreements.
- iii) GATT is the successor organisation of WTO.
- iv) Developing countries have also perceived a threat from the environmental factor.
- v) The Basel convention seeks to ensure the environmentally sound management of the wastes and their disposal.

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## 17.6 TRADE VS. ENVIRONMENT—GLOBAL CONFLICTS

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The manner in which GATT rules have operated in the environment arena, including their role in preventing protectionist abuses and their attempts to impose standards on unilateral basis on other countries, become more apparent while considering the following trade disputes.

**Mexico/United States (US restrictions on imports of Tuna):** The United States Administration, under pressure from domestic environmental lobbies had placed an embargo on imports of tuna fish from Mexico. The embargo prohibited the sale of tuna in the US, if a certain number of dolphins are killed in the process of catching the tuna. In the Pacific Ocean, dolphins swim above schools of yellow-fin tuna and are caught in the tuna fishing nets. According to the US environmentalists, this has led to an 80 per cent reduction in dolphin population in the eastern Pacific ocean.

Mexicos termed the embargo as arbitrary and discriminatory. The country stood to lose not only its export business to the US, but also the bulk of its markets to canneries in Italy, France and Japan as the US law also stipulated a secondary ban on countries buying

Mexican tuna and re-exporting it to America. At Mexico's request, GATT had set up a panel to study the validity of the tuna ban.

Mexico's main argument was that the ban was not for ecological but economic reasons, as it primarily sought to protect American fishermen and not the dolphins. US conservationists however argued that they were protecting the dolphins from senseless slaughter.

The GATT panel which looked into the dispute ruled that the US embargo of Mexican tuna was against the canons of free trade and that the United States could not embargo imports of tuna from Mexico simply because Mexican regulations affecting the production of tuna did not satisfy the US regulations.

**United States/Thailand (Thai restrictions on importation of internal taxes on cigarettes):** Thailand sought to justify a virtual ban on imported cigarettes under Article XX(b) of the GATT as a measure "necessary to protect human, animal or plant life or health". The GATT panel's report, adopted in 1990, accepted that "smoking endangers human life and that measures to reduce cigarette consumption were permissible". It agreed that Article XX(b) permitted a contracting party to put health goals above its trade obligations. The panel however did not see any reason why it was necessary to ban cigarette imports while leaving domestic production and sales of cigarettes unrestricted. The panel held the view that other, non-discriminatory measures could meet the health goals.

**Canada/European Community, Mexico vs United States:** A GATT panel report adopted in 1987 dealt with a complaint brought by Canada, the European Community and Mexico against the US taxes on petroleum and certain imported substances, the proceeds of which were used to help finance a "Superfund" for cleaning up toxic waste sites. The European Communities had argued that with respect to one of the taxes, special rules, including the OECD's "polluter pays principle" (PPP) had to be applied because the tax concerned pollution (According to the PPP, the polluter, in this case the United States has to bear the cost of compliance with environmental standards deemed necessary by the authorities). The GATT panel however felt that GATT rules on border tax adjustments apply in this case, regardless of the purpose of a tax and that the PPP had never been adopted as policy by the GATT. On the other hand, the panel found that another tax, imposed on imported petroleum at a higher rate than domestic petroleum was inconsistent with GATT rules on national treatment.

In essence, therefore, GATT rules place no constraints on a country's right to protect its own environment against damage from either domestic production or the consumption of domestically produced or imported products. Generally speaking, a country can do anything to imports or exports that it does to its own products, and it can do anything it considers necessary to its own production processes. It is only when the foreign products and processes are subjected to a more stringent treatment than domestic products, that potential conflicts surface (because of GATT's national treatment provision).

Another possible source of conflict with the GATT rules occurs when an environmental agreement specifies a difference in the trade measures affecting parties and non-parties. For instance, the trade provisions of the Montreal Protocol, the Basel Convention, and CITES (for those species in which managed trade is permitted) require parties to apply more restrictive trade provisions to non-parties than to parties.

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## 17.7 REGULATORY MEASURES AND ECONOMIC INSTRUMENTS—ISSUES OF CONCERN TO DEVELOPING COUNTRIES

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Environmental standards and regulations in industrialised countries generally formulated to protect their local environment may also have an impact on developing countries by altering their trading opportunities. Thus a relatively innocuous product packaging standards, designed primarily to reduce waste generation in developed countries, may reduce the competitiveness of products packaged elsewhere which do not follow the same norms. On the other hand, it is possible that such trade may also provide an opportunity for the acquisition of environmentally sound technology.

### 17.7.1 Regulatory Measures

**Product standards and regulations:** Product standards refer to technical specifications such as performance, quality, safety or dimensions of a product. Normally the term regulation is used when compliance is mandatory while the term standard is used when compliance is voluntary.

Product regulations may refer, among other things, to pesticide residues, toxicity, energy efficiency, emission of pollutants, recyclability etc.

Product standards and regulations may sometimes act as major obstacles to trade. Domestic producers can more easily influence their development and implementation than can foreign producers; and standards which lack transparency may constitute obstacles to trade.

The developing countries in particular are concerned that stricter product standards in the developed countries may act as obstacles to trade or even be intentionally used to protect the domestic industry. In certain cases, even internationally agreed-upon product standards, as well as national standards which are applied equally to domestically produced and imported products, may result in high compliance costs for developing countries. Besides, the developing countries will find it difficult to absorb, through subsidies, the cost of compliance with higher standards, not only because of scarcity of funds in general, but also due to competing usage of funds for other, more urgent, local environmental problems.

**Process standards and regulations:** Process standards can be direct or indirect. Technology standards are essentially direct controls, as they dictate the production process at the plant level. Process standards e.g., emission controls, can also be achieved through an environment tax or tradeable-permit system (quotas or ceilings on pollution emission levels which can be traded internationally) in which case they are indirect controls.

Process standards and regulations may adversely affect the competitiveness of domestic industry because of their impact on the production costs. Process standards may also have an impact on industrial location decisions, i.e. industries may move from countries which have higher standards to those which have lower standards. This could have implications for developing countries in terms of relocation of pollution-prone industries.

### 17.7.2 Economic Instruments

Economic instruments have been broadly defined as tools which take advantage of market principles to achieve their objectives. Some of the economic instruments applied to products are mentioned below.

**Product charges:** Product charges are taxes levied upon the price of products which are polluting. Product charges can be based on some characteristics of the product (e.g. charge on sulphur content in mineral oils) or the product itself.

Product charges could affect developing countries relatively more than other countries if they were levied more than proportionally on products of export interest to them (such as a fossil fuel tax) or when charges are levied at a specific rather than an ad valorem rate (a specific rate would lead to a proportionally higher price increase for low-cost products imported from developing countries)

**Subsidies:** Subsidies imply financial assistance to polluters in order to give them incentives to alter their environmental behaviour or help them to comply with environmental standards. There are many types of subsidies, such as grants, soft loans, and tax allowances etc.

A firm or sector receiving a subsidy may obtain a competitive advantage vis-a-vis competitors not receiving a subsidy (to the extent that the subsidy goes beyond the costs of compliance with standards which are more stringent than those which the competitors have to comply with). Subsidies in other countries may mean that imports are favoured over domestically produced goods. Such subsidies are considered to be trade distortive and are not normally allowed under existing international trade rules.

Subsidies are generally permitted only when:

- i) granted to target groups(industries, areas or plants) which would otherwise face severe difficulties
- ii) limited to well defined transitional periods, and
- iii) not likely to create significant trade distortions in international trade and investment.

The GATT Agreement on Subsidies and Countervailing duties recognises that subsidies are an integral part of economic development programmes of developing countries. However, developing countries have been urged not to grant export subsidies on industrial products which cause serious prejudice to the trade or production of another country and to enter into a commitment to reduce or eliminate subsidies which are inconsistent with their competitive and development needs. Herein lies some of the potential sources of friction between the developed and the developing world.

**Deposit-refund systems:** The deposit-refund system has gained in popularity ever since the advent of growing awareness abroad about the quality of environment and the scarcity of energy and raw materials. Such schemes have been in vogue mainly for beverages. Initially the objectives were purely economic. The prices of beverages can be kept lower when the containers can be reused. As environmental consciousness grew, it was realised that a well organised deposit refund system can diminish considerably the problems of waste deposit, littering, and the use of energy and raw material.

Deposit-refund schemes may affect imports if the costs to foreign suppliers of participating in a mandatory deposit-refund scheme are high(especially for developing countries) and the market in question represents only a small proportion of the total sales. The deposit-refund systems are considered to be compatible with international trade rules, provided that the requirements of MFN and national treatment are fully met.

**Packaging policies:** While considering the regulations and economic instruments being employed as part of environmental policies and programmes and their possible impact on the trade prospects of developing countries, the developments taking place in the area of packaging, should not be lost sight of. In fact, packaging policies with an environmental slant has emerged as a significant factor in international trading operations, meriting separate consideration.

Developments in the area of packaging involve - regulations regarding packaging material ; recycled content provisions ; product charges; deposit refund systems;and take-back obligations. Standards and regulations regarding the physical characteristics of products and packaging materials require, for example, that the packaging be suitable for recycling or re-use. German regulations are particularly stringent in regard to packaging requirements.

Even though packaging regulations do not explicitly discriminate against foreign suppliers, in practice they can sometimes act as an obstacle to trade when certain specific packaging material is used. For example certain kinds of packaging material from developing countries, such as jute or cloth, may be affected by newly enacted packaging laws, not so much because they are environmentally less friendly but because the importing country may not have the facilities to recycle them. Also the requirement that packaging be taken back for re-use or recycling may raise the administrative and procedural problems for the foreign manufacturers and increase their costs. In the case of the German Packaging Ordinance, the costs of reuse or recycling of imported packaging has to be paid by the foreign producer or the German importer.

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## 17.8 ACHIEVEMENTS OF THE URUGUAY ROUND OF NEGOTIATIONS-ASSOCIATED AGREEMENTS ON TRADE AND ENVIRONMENT

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The final Uruguay Round of Trade Negotiations addresses a number of environmental concerns in its different sectoral agreements. Although not entirely foolproof, the Agreements signify a definite attempt to bridge the differences between the various sections involved in this issue and marks some progress towards the goal of Sustainable

Development. Salient aspects of the Associated Agreements on Trade and Environment are highlighted in the following section:

**The Agreement on Technical Barriers to Trade (TBT).** The TBT Agreement recognises that countries should not be prevented from taking measures necessary to protect human, animal and plant life or health or the environment, and that each nation has the right to set the level of protection that it deems appropriate, without having to justify the level chosen. The Agreement, however, requires governments to apply the regulations in a non-discriminatory manner and to ensure that the regulations are drafted in such a way that they are no more trade restrictive than necessary to meet the objective.

The TBT Agreement also provides for a high degree of transparency for interested non-governmental parties to obtain information on proposed new regulations among others, in the environmental field. All members have to establish enquiry points to answer queries about their trade related regulations, standards and conformity assessment procedures. In the event of a dispute between two members, technical expert groups can be requested by either party for adjudication purposes.

**The Agreement on Sanitary and Phytosanitary Measures (SPS).** The new SPS Agreement explicitly recognises the rights of governments to take measures to protect human, animal and plant health, but where trade restrictions result, these measures should be taken only to the extent necessary for health protection on the basis of scientific principles and evidence. Sanitary and phytosanitary measures are to be applied in a non-discriminatory manner. If the health protection practices of other countries, although different, are capable of providing an importing country's level of protection, these should be accepted as equivalent. The Agreement has also provided for a dispute settlement panel, which can seek scientific expert advice from technical expert groups or from other international organisations.

**The Agreement on Agriculture:** The Agreement on Agriculture although geared to the liberalisation of trade through a curtailment of domestic support for agricultural production (particularly of production linked agricultural subsidies) exempts from the commitments certain support measures that have a minimal impact on trade. A notable exemption in this regard is the waiver provided for direct payments under environmental programmes.

**The Agreement on Subsidies and Countervailing Duties:** The revised Subsidies Agreement identifies certain non-actionable subsidies on which countervailing duties cannot be applied. It covers among others, assistance to adapt existing facilities to new environmental laws and requirements that imposes undue financial burdens on firms, subject to certain conditions. Upto 20 per cent of the cost of adaptation would be considered as non-actionable subsidy.

**The Agreement on Trade-Related Intellectual Property Rights (TRIPS).** The TRIPS agreement is directed to encourage more research and innovation and provides better access to new technology including "environmental technology." Paragraphs 2 and 3 of Article 27 of the Agreement also provides for exclusions from patentability, and both cover areas that are likely to be of importance in the context of environmental protection.

**The Agreement on Trade in Services:** The General Agreement on Trade in Services (GATS) proposes to establish a working party, which will examine and report, with recommendations if any, on the relationship between services, trade and the environment, including the issue of sustainable development.

**Dispute Settlement Measures:** The rules and procedures governing the settlement of disputes provide for each panel to have the opportunity to seek information and technical advice from any individual or expert body, which it deems appropriate. Such panels would also consult experts in the field of environment, in the event a dispute involves trade related environmental measure.

It would be evident even from a cursory study of the various provisions contained in the different agreements mentioned, that a great deal of work has been done to reconcile the interests of a free trade regime with environmental concerns and that the issues relating to environment will command priority attention in any future agenda of international trade.

## 17.9 ENVIRONMENTAL ISSUES AND INTERNATIONAL TRADE—THE INDIAN EXPERIENCE

India as one of the important developing country suppliers to world markets, has shown some concern on the introduction of what it regards as new issues, such as environment, child labour, labour standards and human rights in the international trade agenda. Such issues could easily negate the advantages secured by the lowering of tariff barriers and phasing out of the quota regime obtained through hard bargains in the Uruguay Round of Negotiations. These issues could act as effective non-tariff barriers if used indiscriminately. On subjects like environment, developing countries still need considerable lead time to build the requisite technical and technological competence to come upto developed country standards. India perhaps, is only marginally better placed in this regard than other developing countries.

Indian export apprehensions, principally lie in the fact that some of the sectors in which the country had placed specific export emphasis, viz leather and leather products, textiles and garments, agro-based items and chemicals etc., happen to be those wherein the developed countries are seeking more stringent environmental standards and regulations. It would be pertinent to illustrate this fact with a few concrete Indian experiences in this regard.

**Leather goods:** During the late 1980's Germany introduced an "environment standard" which banned the use of PCP (Penta-chloro phenol) chemicals used in leather tanning. It is reported that it took India over five years and an increase of 20 per cent in capital cost to adjust to the new technological standards required.

**Textiles and Garments:** A study made by the Apparel Export Promotion Council of India on eco-standards in the US and Europe, found that the emerging International eco-standards in this sector will ultimately affect all stages of textile production in India, from cotton cultivation, spinning, weaving to processing, dyeing, printing and finishing. In fact, the Indian garment exporters encountered a sudden problem recently, when faced with a proposed ban by German importers on clothing treated with azo-dyes. Azo-dyes were perceived as cancer causing by German consumers and hence the proposed ban. Indian exporters had not only to ensure that future garment exports to that market were free of such dyes but Indian dye manufacturers are now being obliged to phase out manufacture of azo-dyes and develop suitable substitutes.

**Tea & Coffee:** To deal effectively with pests, fungus and weeds which cumulatively can create a crop loss of over 30%, there is complete reliance by the Indian tea industry on various pesticides, fungicides and weedicides. Since tea is an edible item, Western countries do not permit pesticide residues in the item beyond a particular level. While the WHO/FAO Codex Alimentarius which determines international food standards, has set safe limits in this context, the Environment Protection Agency of the USA has reportedly adopted a different specification and Germany has apparently even more stringent requirements. Exporters of items like tea & coffee therefore need to doubly cautious.

**Shrimp & shrimp products:** Indian exporters of shrimp fish to America faced a predicament when that country stipulated that it will not import any shrimp, if during the process of netting such fish, the endangered species of sea turtles are in any way harmed. Many Indian exporting units are now being forced to use vehicles fitted with Turtle Excluder Devices (TED) to gain entry in the US market.

### Check Your Progress C

1. What do you mean by product standards?

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2. What is deposit refund system?

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3. Distinguish between product standards and process standards.

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4. State whether following statements are **True** or **False**.

- i) United States placed an embargo on imports of Tuna fish from Mexico.
- ii) Product charges are taxes levied upon the price of products which are not polluting.
- iii) The GATT Agreement on subsidies and countervailing duties recognises that subsidies are an integral part of economic development programmes of developing countries.
- iv) The TRIPS agreement is directed to encourage less research and innovation.
- v) Germany introduced an environment standard which banned the use of Penta chloro phenol.

5. Fill in the blanks.

- i) ..... agreement recognises that countries should not be prevented from taking measures necessary to protect human, animal and plant life.
- ii) ..... is the main organ of the UN General Assembly in the field of trade and development.
- iii) ..... is the successor organisation to the GATT.
- iv) ..... is the convention to protect the depletion of the ozone layer.
- v) ..... standards can be direct or indirect process.

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## 17.10 LET US SUM UP

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The worldwide concern for safeguarding the domestic environment by different nations has extended to preserving the sanctity of the global environment. Issues like degradation of natural resources, depletion of the ozone layer, conservation of wild life biodiversity and health and safety standards have become dominant global agendas and have had a major impact on the conduct of international trade and negotiations. Some of the major Multilateral Environmental Agreements have specific trade provisions.

The seeds of the Trade vs Environment conflict have often emanated from the varying perceptions of the powerful environmental lobbies and the trade economists. The perceptions of the developing and developed countries have also differed adding to the problem.

Developing countries have also perceived a threat from the environmental factor for a different reason. They have felt that their trade interests may be jeopardized by the efforts of the developed countries to impose higher environmental standards for imported products and processes which they could neither easily afford or comply with, due to technology lags. The problem has been somewhat aggravated by steady increases in the regulatory measures and economic instruments by developed countries to advance the environmental agenda. Developed nations on the other hand, with higher domestic standards of environment have



been apprehensive about their relative cost-competitiveness vis-a-vis the developing countries in the world markets.

India as one of the important developing country suppliers to the Western markets and cannot remain immune to such international developments in the trade arena. It has already faced environmental related problems in respect of specific export products like leather, garments and agro-based products. Since environmental issues are now firmly entrenched in global trade negotiations, we have to draw up appropriate pro-active strategies. This could be in the form of encouraging Indian business enterprises to adopt environmental friendly processing methods and produce environmentally cleaner products through a package of incentives, including tax rebates and remissions.

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## 17.11 ANSWERS TO CHECK YOUR PROGRESS

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- B 4 i) False ii) True iii) False iv) True v) True
- C 4 i) True ii) False iii) True iv) False v) True
- 5 i) TBT The Agreement on Technical Barriers to Trade  
ii) UN General Assembly in the field of Trade and Development  
iii) WTO  
iv) The Montreal protocol  
v) Process

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## 17.12 KEY WORDS

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**Sustainable Development:** refers to development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

**Global Commons:** The atmosphere, oceans, animal and plant species common to all global inhabitants and now threatened with extinction.

**CFC's:** Chlorofluorocarbons, a chemical, the emissions of which is regarded as doing the maximum damage to the ozone layer, located in the atmosphere.

**Polluter Pays Principle (PPP):** According to PPP, the polluter has to bear the cost of compliance with environmental standards deemed necessary by the authorities.

**Technical Barriers to Trade (TBT):** Technical standards laying down specifications regarding characteristics of a product, such as quality, performance, safety, dimension etc, which can act as barriers to international trade.

**Sanitary & Phytosanitary Measures (SPS):** Measures to protect human or animal life or health within the territory of the importing country, from risks arising from additives, contaminants, toxins, or disease causing organisms-in foods, beverages and feed stuffs.

**Tradeable Permits:** Quotas, allowances, or ceilings on pollution emission levels, which once allocated by the appropriate authority, can be traded subject to a set of prescribed rules.

**Deposit refund Systems:** Charges paid by consumers or importers which are refunded when the product is returned to a collection system.

**Eco-labelling:** The voluntary granting of labels by a government or privately sponsored agency, in order to inform consumers that a labelled product is determined to be environmentally more friendly relative to other products.

**Emission Standards:** Standards concerning the emission of environmentally damaging substances through the consumption or disposal of a product in the territory of the importing country.

**Take-back obligations:** Obligation for the manufacturers or importers to receive or collect products which can no longer be used.

## 17.13 TERMINAL QUESTIONS

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1. Describe the factors responsible for “environmental concerns” gaining increasing importance in the global trade agenda.
2. What are the issues involved in the trade and environment debate? Provide a few illustrative examples of the kind of global trade disputes which have erupted on environmental grounds and GATTs ruling on such issues.
3. Explain the provisions of some of the important International Environmental Agreements. Mention the type of trade measures laid down in such Agreements. Do you feel that they have been generally fair to the special needs of developing countries? Discuss
4. Describe the type of Regulatory Measures and Economic Instruments resorted to by developed nations to further environmental causes. How will such measures impact the developing world?
5. What has been the Indian experience in the field of trade vs environment? Outline briefly the steps India can initiate to tackle the issues that can surface in this context.