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## TRADE RELATED ENVIRONMENTAL ISSUES: IMPLICATIONS FOR THE OECS

by

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### INTRODUCTION

Free trade is an old idea undergoing a global facelift. International trade flows amounted to more than US\$5 trillion in 1995. Clearly then, the potential of trade to promote or prevent sustainable development is enormous. The World Trade Organization (WTO) that was established at the end of the Uruguay Round of trade negotiations in 1994, to replace the temporary General Agreement on Tariffs and Trade (GATT) is testament to the influence of the twentieth century economics. The idea of free trade, or dismantling trade barriers between nations, has become the aspirin of international economics. Indeed, free trade and sustainable development may be the biggest policy trends of our time.

The objectives of the WTO are predictable: Growing access to markets, promotion of fair competition and encouragement of development and economic reform. At the same time, as far back as 1971, it was recognized that the efforts to regulate environmental behaviour at the national and multinational levels were having effects on international trade. In that year, a Group on Environmental Measures and International Trade was therefore up in the GATT to monitor these trends. The Group was, however, never convened.

In 1995, the General Council of WTO established the Committee on Trade and the Environment (CTE). The CTE was set up to

explore, evaluate and establish a WTO position on the multiple and complex regimes of environmental regulations that affect international trade. The environmental regulations have been in a response, (1) at the national level, to States - especially those in the industrialised north - developing increasingly stringent regulations governing the use of the environment at the domestic level; and (H) at the multilateral level to States agreeing to a Global Agenda of policies to improve the condition and use of the environment. Some countries, especially the Member States of the European Union (EU) and the United States (US), in particular, have begun adopting unilateral trade measures in accordance with their own environmental standards and regulations. Indeed, at the recently concluded Inter-Ministerial Conference in Singapore, in December 1996, Sweden, the EU and the US were insistent that free trade and environmental policies are mutually reinforcing and necessary to achieve sustainable development. At this same meeting, a number of developing countries, on the other hand, expressed concern that environmental measures could lead to protectionism and decreased market access.

There is growing literature on the effects of liberalization on the environment. Some are of the view that trade liberalization will have detrimental effects on the environment because more economic activity will lead to more pollution and differing environmental standards between States could lead to

industries moving to those States which have lax environmental standards (Harold and Runge, 1993). Others, on the other hand, argue that free trade generates growth that increases employment and reduces poverty thereby resulting in a slowing down of poverty-creating environmental degradation. These analysts further argue that the removal of subsidies and the increase in government revenues as a result of free trade will allow States to channel funds for environmental protection and mitigation. These two arguments are unfortunately tenuous at best. The analytical link between the rate of income growth and liberalized trade is questionable (Shrinivas, 1993:18) as is the issue of whether sectors to which resources shift as trade is liberalized are on average more or less polluting than other sectors. It is also fallacious to argue that self-sufficiency and protection will necessarily improve the environment while liberalized trade will hurt it.

## FUNDAMENTAL PRINCIPLES OF INTERNATIONAL TRADE

As previously mentioned, the GATT assumes Free Trade to be the norm and provides for situations that quality for in order to enforce the regulations within its own territory, a State may impose penalties, taxes, charges or issue permits. Many industrialised countries now use the Polluter Pays Principle (PPP). These countries have also begun eco-labelling, which inform the consumer of the environmental effects of the product through its life cycle.

All of the laws and regulations identified above are permissible under international law but they can be applied only within one's own territory. A State cannot impose its domestic environmental laws and regulations

exceptions to the rule. The mandate of GATT is to ensure the reduction of tariffs and obstacles in international trade and, therefore, exceptions to free trade are very tight and specific so as not to encourage protectionist measures. The Agreement is based on two (2) fundamental principles: Most Favored Nation (MFN) and National Treatment (NT). The MFN extends to all members of GATT any trade privileges that a State may give to another State; the NT Principle requires that imports are treated no differently from domestic products.

Over and above these two fundamental principles, the WTO rules allow for a State to pass national laws and regulations to control environmental behaviour *within its own territory*. Such regulations could include:

1. Command and Control instruments (e.g. a chemical ban)
2. Product standards to ensure that the characteristics of the product do not cause harm to the environment (e.g. levels of chemicals residue, packaging requirements)
3. Process and production methods (PPM) to control emission levels and to ensure sustainable use of natural resources,

but they can be applied only within one's own territory. A State cannot impose its domestic environmental laws and regulations on other states. *The concept of applying trade measures purely because one's own standards are not met by exporting States is illegal under GATT rules.*

Article XX of the original GATT (1947) Agreement (on exceptions) does however permit trade measures that are necessary to protect human, animal and plant life or health, or to conserve exhaustible natural resources, provided they are primarily aimed

at making effective domestic production or consumption restrictions. These exceptions function as trade related environment provisions which, in turn, operate no less than Technical Barriers to Trade (TBT) or as Sanitary and Phytosanitary Measures (SPS).

Under the TBT and SPS, trade measures may be taken through the specification of technical regulations in respect of:

- a. Product Standards for the Protection of animal and plant life and human health
- b. Process and Production Methods (PPM)
- c. Packaging and Labeling regulations
- d. Subsidies and Countervailing Measures and Anti-dumping Measures

TBT, which applies to all signatories, relates to 'technical regulations' as opposed to 'voluntary' standards. The objective of these technical regulations or Standards Code is to protect human, animal and plant health and life and safety of the environment. The Standards Code relates to quality, performance, safety dimensions and packaging and labeling. The regulations must be based on international standards and the States must provide scientific evidence of any deviation from such standards. There must be a sufficient period for receiving comments from affected States and due consideration must be given to comments received.

#### a. Product Standards

Trade measures can be taken only in respect of product characteristics as they relate to quality, performance, safety, dimensions, and packaging and labeling. Product standards

under TBT apply to all products, but largely focus on industrial products.

Under SPS trade measures can be taken to protect animal and plant life and human health from:

- i. Entry of pests and diseases
- ii. Risks arising from additives, contaminants, toxins or disease causing organisms in food, beverages or foodstuff, and
- iii. to prevent or limit other damage within one's own territory from the entry, establishment or spread of pests.

The SPS applies only to agricultural products and differs from TBT in the following ways:

1. MFN does not apply, provided that measures do not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.
2. More flexibility is given for deviation from international standards, allowing for higher standards where scientific justification can be provided. The level of protection is also computed according to economic factors, i.e. the cost of control or eradication of the importing State; the cost of alternative approaches; and the economic cost of the damage to or loss of production and sales caused by the establishment and spread of the pest and disease in the importing State.
3. An importing State is allowed to adopt the precautionary principle by imposing SPS measures on a provisional basis based on pertinent information available from international organizations.

### **b. Process and Production Methods (PPM)**

The PPM lays down product characteristics or their related process or production methods. Under SPS restrictions are justified only when compliance with the prescribed PPM is considered necessary for human health or plant and animal safety within the importing State. PPM cannot apply for import restrictions if the PPM standards in the exporting State are lower than those in the importing state. Article XX allows trade restriction only under conditions where protection is needed within a State's own territory.

### **c. Packaging and labeling**

The definition of product characteristics includes packaging and labeling requirements as they apply to a product, process or production method. Packaging regulations also come under SPS to ensure food safety but such regulations can be applied only if the characteristics of the packaging materials affect the quality of the food. In terms of taxes and charges imposed under packaging regulations as well as under deposit fund schemes, GATT obligations clearly stipulate that internal taxes on imported products cannot be "in excess of those applied directly or indirectly to domestic products". Additionally, the obligations stipulate that national laws and regulations should be applied to imported and domestic products on a non-discriminatory basis.

### **d. Subsidies and Countervailing Measures (SCM) Anti-dumping Measures**

Non-specific subsidies are allowed for environmental purposes. Such subsidies should be a one-time measure and should not exceed twenty per cent (20%) of the total cost of retrofitting to meet new

environmental requirements imposed by the law.

Anti-dumping measures are not relevant to environmental issues under GATT. However, at the level of the States, use of polluting production methods or processes are deemed as eco-dumping and it is now being argued that countervailing measures should be applied by the importing State.

## **DIVERGENCES BETWEEN THE WTO AND MULTILATERAL ENVIRONMENTAL AGREEMENTS**

Agenda 21 which is the final agreement of the UN Conference on Environment and Development (Rio, 1992) calls for the incorporation of ecological and environmental considerations into national and transactional policy making. Chapter 2 of Agenda 21, which calls for the removal of distortions in international trade through the removal of tariff and non-tariff barriers to trade, seeks a clarification of the role of the GATT to ensure that environmental concerns are not used to restrain international trade.

The underpinning concept of global responsibility of Agenda 21 contrasts with the narrowly defined "own" territorial responsibility of GATT. The various multilateral agreements ensuing from Agenda 21 insist upon collective environmental security through the policing of environmental behaviour extra-territorially. GATT on the other hand focuses purely on the characteristic of final products and their effects within a State's territory. The main contradictions that exist between GATT and multilateral environmental agreements is best exemplified by the Convention on

International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973. CITES bans international trade in all products made from endangered species. Trade in endangered species is restricted for both signatories and non-signatories to the Convention. This restriction applies even when a particular species does not naturally occur in a State's jurisdiction thereby requiring a trade restriction based on extra-jurisdictional environmental concern (Hagen and Raul, 1993). This extraterritorial jurisdiction is required to prevent circumvention of the obligation by parties to the convention or to force nonparties to join the convention or punish free riders.

## TRADE RELATED ENVIRONMENTAL ISSUES

Many of the issues on the trade and environment agenda center around the tensions between those supporting drastic measures to preserve the environment or to fulfill a complimentary economic agenda and those whose concern is the rule of the law in international trade based on the principle of free trade, with exceptions allowed only under specific conditions as outlined in the GATT Agreement. Of particular concern to the OECS member states, as is true of the entire Caribbean, is the marginalisation of their voices in the heated negotiations underway in the international fora to revise trade regulations and standards related to the environment: Our Member States lack the human and financial resources to meaningfully participate in these negotiations. Yet, the resulting standards or rules that are negotiated must be complied with, even if inappropriate to the conditions and needs of our States. Additionally, as our economies contract and the control and redress of socioeconomic reality becomes

increasingly difficult, the OECS States have not been able to keep pace with global trends in environment management, although they are now faced with tremendous pressure from international financing institutions to undertake reform of domestic legislation related to the environment and to include environmental concerns into project planning and management.

Unilateral pressure is also being applied by the United States for regional governments to upgrade their environmental laws and standards. While this is necessary the danger for Caribbean countries is that we may import many of these standards and laws without really assessing our own priorities and without determining what is the most appropriate way of dealing with the given problem. The environmental lobbyists in the US have continued to call for countervailing duties to be imposed on States whose pollution policies do not meet US standards. This trend points to the possible increase in non-tariff barriers based on environmental protection requirements, not within the state erecting the barriers, but in the exporting State. This then translates to the extra-territorial imposition of US standards.

The line between non-tariff barriers and legitimate environmental policies is growing increasingly thin. The reality is that the exports of developing countries are now confronted by a widening variety of environmental standards that increase cost and make market access difficult.

Another matter of concern for countries in the region is the aggressive marketing of environment friendly technologies and the links between upgrading of standards and the import of technology to comply with regulations. There is an open strategy on the part of the US and the EU to create markets

for their environmentally sensitive technologies. Demand for such technologies in the Caribbean is, however, not market based; the demand has therefore to be created through the use of command and control instruments and the application of polluter pays principles (PPP). A major concern facing our countries is keeping abreast of the information on changes in regulations and standards in their export markets and complying with requirements. Even in the best of circumstances, there could be trade disruption because of rigid production structure, lack of investment capital to effect the changes needed, or unavailability on the local market of materials of the technology required. Small firms are the norm in the smaller islands of the Caribbean and are generally not able to retrofit to meet new environmentally sensitive production standards.

Eco-labeling requirements too have posed obstacles to exporters from developing countries. Schemes in various export markets require different certification and verification methods. The international trade in cut flowers is a case in point. The "Flowers" scheme of the EU require third party certification by a designated competent body, while the German "Blue Angel" requires self-declaration and relies on competitors to keep each in check. The Environmental Choice Programme of Canada requires both facility and product inspection. Consequently, an exporter to different flower markets, each with its own certification scheme, will incur additional costs in complying with multiple arrangements.

While eco-labeling is still voluntary, there may be market loss to those who do not label since many consumers in the industrialized North make choices based on environmental

preferences. Moreover, small firms may not be able to afford the cost of being certified from the appropriate agency in their export market. All these factors could undoubtedly lead to trade disruption.

Packaging requirements pose similar problems. The additional cost of complying with different requirements in multiple export markets can be a deterrence and an obstacle to trade.

Developing country markets have been used as dumping grounds for toxic and hazardous substances that have been banned in their domestic markets. Developing countries often do not have the necessary information on whether and why certain products were banned or restricted in the exporting countries and those exporters sometimes resort to falsifying customs documentation. Moreover, customs officials often do not have the necessary testing facilities or the necessary information.

## IMPACT ON THE OECS MEMBER STATES

The environmentally focussed provisions to the GATT actually undermine the fundamental principles underpinning the WTO regime governing trade-related environmental issues: A State may not impose its domestic environmental laws and regulations on another sovereign State unless it is experiencing adverse effects within its own territory as a result of the exporting State's actions. But through the precautionary principle, a State may undertake to ensure that its environmental standards are met under the guise of protecting human health.

Many of the large chain supermarkets in the United Kingdom cater to consumers who are highly sensitive to the environment and who constitute a strong environmental lobby that readily resorts to expensive litigation. Consequently, these supermarkets have begun the pre-cautionary principle under SPS. The supermarkets have undertaken to ensure that production and process methods of the foods that they sell meet with the international standards set by the Codex Alimentarius.

Through a process called "Due Diligence" the Codex sets out the guidelines for the cultivation and processing of agricultural products. These guidelines include requirements for environmental audits, safe use of pesticides, water quality monitoring, testing of pesticide residues, etc. The guidelines are so stringent that they allow for scientists from the importing country to visit farmers' holdings in the exporting country to verify that the standard of production and process methods have been adhered to.

While the OECS countries have not as yet been subject to the strict implementation of Due Diligence, SPS, or TBT, the following issues are imperative:

1. The countries in the Eastern Caribbean do not have the financial resources, technical expertise or institutional base to participate in the activities of the organizations that set the international standards. Consequently, these standards do not reflect our interests and values, the characteristics of our agricultural exports, or the technology and production methods that we use. Most importantly, the standards do not reflect the physical environment in which our agricultural production takes place: the efficacy of pesticides tested in temperate

climates for instance, cannot be the same as that for tropical climate.

2. Our countries are marginalised in the negotiations to revise trade regulations and standards related to the environment. The financial and human resources needed to monitor and implement the environmental regulations and standards of the industrialised North are simply not sufficient or available to us. In 1996, the Food and Drug Administration because of traces of a banned chemical seized a shipment of hot peppers from Grenada to USA. The consignment was not monitored or tested because there are no facilities for testing pesticide residue in Grenada. Furthermore, the Pesticide Control Board in Grenada is not adequately staffed to monitor the importation of banned chemicals. In addition, Grenada, as is true of all of the OECS Member States, lacks good consistent data on the types and quantities of agro-chemicals imported and applied in the field.

It is only over the last two years that the Inter-American Institute for Cooperation in Agriculture (IICA), the Food and Agriculture Organization (FAO), and the Organization of Eastern Caribbean States (OECS), have been working together to strengthen the OECS Pesticide Control Boards through legislation on pesticides and toxic chemicals, public awareness and sensitization on the safe use of agro-chemicals and regulations and procedures for pesticide registration. We still, however, are a far cry from being able to meet international standards and we realize that we have to step up our national and regional efforts. We need to build up national capabilities for sampling and analyzing pesticide residues and for the on-going monitoring of the levels of



pesticides and toxic chemicals in drinking water, crops, soils, and the health of human and wildlife.

3. Packaging requirements differ from country to country and this causes our banana suppliers to incur costs to meet differing requirements. The German market does not permit plastic wrapping of the bananas, while the United Kingdom market permits such wrapping. While at this point in time, the different packaging requirements has not had major cost implications, we ourselves need to develop a regional policy and action plan for environmental standards including packaging and labeling. It is critical that we develop our own Caribbean standards and regulations based on an assessment of our own priorities and on what is the most appropriate way of dealing with a given environmental programme.
4. There are increasing trends by industrialised countries to impose non-tariff barriers based on environmental protection requirements, not within the state erecting the barriers, but in the exporting state. This translates to extra-territorial imposition of environmental standards. There are three options available to us to deal with such extra-territorial imposition: -

- We fight the imposition of these standards and regulations at the WTO. The OECS is only too familiar with the process of arbitration in the WTO. At this present time, our voices, as are the voices of other developing countries, are marginalised in negotiations to revise trade

regulations and standards related to the environment.

- We can accept the international standards and regulations and then be faced with the dilemma of not having the necessary resources to implement and monitor the standards and regulations ultimately resulting in trade obstacles and disruptions.

- We can undertake to improve our own environmental and natural resource management, including the development of the appropriate, legislation, regulation, standards and institutional arrangements. We also need to familiarize ourselves with the existing laws and emerging trends of our importing countries and develop the appropriate strategies for responding to these standards and regulations. This is, however, a mammoth task and no single country in the Caribbean can undertake it alone.

- There is growing pressure, from International Financing Institutions, for the OECS sub-region to adopt economic instruments under the principles of PPP and UPP to achieve sustainable development objectives. It is envisaged that we will face difficulties in applying these principles intact. The prices of

our exports are set internationally. Our exporters have no control over the prices they receive and we have to absorb the cost of the environmental degradation caused by that export production although the UPP should allow us the discretion to charge for the degradation.

While none of our Member States have developed eco-labeling systems, it is anticipated that the systems developed in the EU and North America will be extended to the travel industry in the region. Eco-labelling is a useful mechanism for environmental management because it aims to change the specification of products in favor of relatively environmentally friendly materials and technologies. But, as mentioned previously, if we do not undertake to develop our own standards in this case building codes, zoning, set-backs, abatement and ecologically sensitive technologies, then we will be faced with importing inappropriate standards and technologies.

## CONCLUSION

The OECS sub-region has not as yet begun to feel the impact of the obstacle and non-tariff barriers to trade although we have been exposed to WTO negotiation strategies. It is clear that we need to work collectively as a

region to develop adequate responses to the challenges posed by the requirements of international law on trade and the environment:

- (i) Understand existing multi-lateral environmental treaties;
- (ii) Deduce the environmental requirements necessary to prevent non-tariff barriers and trade sanctions;
- (iii) Determine the extent to which the PPM and product characteristics of our export products diverge from international standards;
- (iv) Develop and implement the necessary legislation and regulations to control the import and use of agro-chemicals;
- (v) Design and implement a regional approach to trade negotiations and the development of environmental standards and guidelines including capabilities for monitoring and evaluation.