

MEC-10
Block-5



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Odisha State Open University
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MAEC

MASTER OF
ECONOMICS

ENVIRONMENTAL ECONOMICS

*International Treaties
& Environment*

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MAEC-10 ENVIRONMENTAL ECONOMICS

Block-5

INTERNATIONAL TREATIES & ENVIRONMENT

UNIT- 13 WTO Regime and Environment

UNIT- 14 International Treaties

UNIT-13 WTO REGIME AND ENVIRONMENT

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13.1 LEARNING OUTCOMES

After studying this unit, you shall be able to

- Comprehend the WTO and what it stands for
- Identify the environmental provisions WTO has incorporated in its various agreements
- Evaluate the adequacy of WTO as far as protection of environment is concerned
- Analyze the WTO – Environment dispute
- Appreciate the case for multilateral environmental agreements (MEAs) for environmental protection

13.2 INTRODUCTION

Environment and the World Trade Organization (WTO)

Globalization has been initiated in the form of inception of WTO. In general, globalization signifies creation of a common international business environment. WTO is an international body whose principal agenda is propagation of free trade for the benefit of all economies. The WTO doctrines of trade without discrimination and level-playing field attempt to ensure that all countries across the world have an equal opportunity to trade as well as invest anywhere in the world, on equal terms. The removal of tariff and non-tariff barriers and the conceptualization of certain agreements mainly TRIPS and TRIMs, largely facilitate this. The expectation therefore is that, with the advent of WTO a new era had begun whereby there would

be a narrowing down of the divergence between the developed and developing countries, along with higher growth of GDP. The implications for the environment however, are a derivative of the broader growth pattern. The environmentalists thus, fear that talks about free trade would be used as an excuse to give unwarranted significance to GDP maximization and subvert the environmental goals. Free traders, instead, fear that talks about environmental protection would be used as a defense by some sectors to secure protection against competition from abroad. This debate raises some key questions: Does trade liberalization limit the choice of environmental policies? Can the WTO with trade as its priority, promote the environment as well as health?

13.3 UNDERSTANDING THE WTO

13.3.1 The WTO: In brief

The WTO is the one global body that has been constituted to lay down principles governing trade between nations. It came into existence in 1995 with the aim to ensure smooth, predictable and free flow of trade as much as could be possible. It had 159 countries as members on 2nd March 2013. Its principles namely, MFN (Most Favored Nation: treating other nations equal), National Treatment (Treating non-nationals and nationals equal) and level playing field are fundamental to its functioning. The bulk of WTO's current propaganda comes from the Uruguay Round negotiations (1986-94) and earlier rounds of negotiations under the General Agreement on Tariffs and Trade (GATT), a multilateral agreement aimed at furthering trade liberalization. The WTO current mass of negotiations was launched in 2001 under the 'Doha Development Agenda'. At the heart of the system, are WTO agreements, which aim at bringing down hindrances to global trade and ensuring common ground for all, thereby furthering economic growth and development. These agreements lay down the foundation for smooth functioning of international business. Negotiated and ratified by governments, these agreements aim at diminution or abolition of trade barriers (import tariffs as well as non-tariff barriers) and achievement of an understanding on policies governing conduct of international trade (e.g. anti-dumping provisions, subsidies, product and safety standards, etc.).

The WTO has institutionalized agreements governing trade in goods, services and intellectual property. It all began with trade in goods. From 1947 to 1994, GATT furthered negotiations for lowering tariffs and other trade barriers among contracting parties, but since 1995, the updated GATT has become WTO's umbrella agreement for trade in goods (manufactured goods or/and agricultural products). The same principles of free and nondiscriminatory trade originally only applicable to trade in goods were extended to services (banking, telecommunication, insurance, etc.) under

the General Agreement on Trade in Services (GATS), included in the Uruguay Round (UR) of trade negotiations.

Another agreement negotiated in the UR, TRIPS (Trade Related Aspects of Intellectual Property Rights) lays down rules for protection of intellectual property (copyrights, patents, trademarks, industrial designs, undisclosed information etc.) when trade is involved. These rules render the makers of intellectual property, rights precluding usage of their innovations, designs and inventions by others and enable usage of such rights for negotiating payments with those who seek to use their creations. These are called Intellectual Property Rights. Here, pharmaceutical patents have garnered the most attention, where the WTO seeks protection of the inventors' rights but at the same time allows governments room to render cures affordable. Further, there is an agreement on Trade Related Investment Measures (TRIMs), which prohibits trade restrictive investment measures such as local-content or trade balancing requirements that are inconsistent with the basic provisions of GATT 1994. The applicability of this agreement is restricted to measures affecting trade in goods. All WTO agreements are designed to forward its central pursuit of opening up national marketplaces to transnational trade, with justified exemptions and adequate flexibilities. For the implementation and monitoring of these agreements, WTO has review boards and committees along with dispute settlement mechanisms for resolving conflicts. The aim is to stimulate sustainable development and foster people's welfare through trade openness supplemented by extensive policies adhering to each member's needs and aspirations.

13.3.2 Environment on the WTO schema

The Marrakesh Agreement establishing the WTO embraces among its objectives preservation of environment, sustainable development and optimum utilization of world's resources.

“The Parties to this Agreement [recognize] that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development ...”.

Preamble to the Marrakesh Agreement Establishing the WTO

Though the objectives of environmental protection and preservation are important enough to be stated in the prologue to the agreement instituting the WTO, the organization has no explicit agreements catering to the environment. Nevertheless, there are certain provisions in the WTO agreements that address environmental concerns.

There are provisions in the GATS, Agreement on Agriculture and TRIPS, to name a few. But, the most significant provisions so far are Article 20 of the GATT and the Agreements on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT), as far as the environment agenda is concerned.

‘Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:...

(b) Necessary to protect human, animal or plant life or health;

(g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption...’

These are the grounds on which health and quarantine restraints are applied to trade in pharmaceuticals, unsafe products, toxic products and products with risk of disease. These measures enable governments to maintain the integrity of national environmental programs by restricting the entry of such products in their respective territories, in majority of cases.

Agreement on Sanitary and Phytosanitary Measures (SPS) (plant and animal health and hygiene)

The SPS Agreement was negotiated in the Uruguay Round to lay down the fundamentals in respect of plant and animal health standards and food safety. The agreement enables nations to follow their respective standards but also establishes that such benchmarks must be backed by science. The applicability of such standards would be justified only to the extent they appear essential to protect plant, animal or human health or life with no unjustifiable discrimination amongst nations, which are characterized by similar conditions.

To ensure that quarantine measures were not used as a defense to secure protection for domestic producers rather than protect health and safety, the Agreement encourages members to adopt global benchmarks, parameters and suggestions where they exist. Countries could apply higher standards, if they were backed by science and supported by a risk assessment process. They could also to a certain extent apply the “precautionary principle”, a kind of “safety first” mechanism to combat scientific uncertainty. This principle allows preventive measures to ensure that the environment is not harmed in the absence of definite scientific evidence. Article 5.7 of the SPS Agreement permits the use of temporary “precautionary” measures.

Agreement on Technical Barriers to Trade (i.e. product and industrial standards)

The Agreement on Technical Barriers to Trade (TBT) was also negotiated in the Uruguay Round. It was an attempt to ensure the applicability of technical standards and simultaneously inhibit nations from using such standards as a protectionism mechanism. It tries to ensure that policies, standards, tests and authorization procedures do not serve as unwarranted impediments to trade. Also, the WTO expects that the members account for its principles of trade without discrimination and national treatment where technical standards are enforced as mandatory regulations to be complied by trading partners.

However, there are four legitimate objectives for which technical standards with obstructive trade outcomes are permitted. These include inter alia: national security issues, prevention of deceptive practices, protection of human health or safety, protection of animal and plant life or health or the environment (Article 2.2), provided the effect is not more restrictive than necessary, taking into consideration the risks, non-fulfillment of the objective would create. In assessing that risk, the important factors to be considered are, available technical and logical information, technology or final uses of the products, among others.

Also, the standards developed by members are expected to be in line with the standards set by international bodies, which are presumed to be in compliance with the Agreement. In other cases, and where measures have a considerable effect on trade, parties are required to notify the measure to WTO and render others a chance to comment.

Other ‘**Green**’ provisions include:

Intellectual property: governments can refuse to issue patents that threaten animal, plant or human life or health, or pose considerable harm to the environment (TRIPS

Article 27). **Subsidies and Countervailing duties:** subsidies up to 20 % of firms' costs are granted, for compliance with stringent environmental provisions

Agriculture: environmental programs are exempt from cuts in subsidies. **GATS Article 14:** Exemptions from GATS rules are allowed to policies affecting trade in services for protecting plant, animal or human life or health, provided certain conditions are met.

Additionally, WTO constituted a **Trade and Environment Committee** at the close of the Uruguay Round in 1994 to enhance its commitment to environmental issues. The committee is entrusted with the responsibility of examining the links between environment and trade to the extent such linkages impact trade – intellectual property, goods and services and make suitable recommendations about any changes that might be needed in the trade agreements.

The committee believes that the fundamental WTO principles of trade without discrimination and transparency in operations are not in conflict with trade measures that seek protection of the environment and adds that due importance is given to domestic environmental policies through provisions in the WTO agreements. It emphasizes that the system through its policies could enable countries to achieve efficient allocation of limited resources. But having said this, the committee does not fail to stress the fact that WTO is not an environmental agency. It should not be expected of WTO to establish ground rules for international protection and conservation of environment. It propounds that that the most effective way to deal with environmental concerns across the globe is through international agreements and conventions. It also argues that restrictive trade practices are not the only means through which environment can be protected. Alternatives include: helping nations to acquire green technology, giving them financial support, providing training, etc.

Furthermore, the Doha Agenda contains negotiations specific to trade and environment issues. These pertain to the connection amongst WTO rules & specific trade commitments set out in multilateral environmental agreements (MEAs); procedures for regular information exchange among MEA secretariats and the relevant WTO Committees; and reduction or, as appropriate, abolition of tariff and non-tariff barriers to environmental goods & services. These negotiating objectives are additional to the existing WTO discussions on the role of fisheries subsidies, usefulness of eco-labeling, etc.

13.4 THE WTO-ENVIRONMENT DEBATE

Since its establishment, the WTO has remained at the forefront of efforts to promote globalization. Globalization is the result of permitted or less restrictive trade in goods, services, technology and capital among countries. The experience so far has been encouraging but a common accusation is that the WTO considers trade as the priority at the cost of environmental and humanitarian objectives. Environment protection and preservation might be enshrined as fundamental objectives in the agreement institutionalizing WTO, but many claim that the WTO does not do much to actually promote environmental protection. A considerable number of environmental, conservation and public policy NGOs and organizations such as Green Peace, One World etc. contend that WTO undermines health and environmental standards.

13.4.1 WTO's environmental provisions inadequate: Opponents reason

Among the most vital environmental provisions of WTO, is the Article 20 of the GATT, which allows countries to enforce measures to protect plant, animal or human life or health, and to support scarce natural resources. It waives the fellows of the compulsion to smear fundamental obligations, predominantly non-discrimination, in certain cases. But Article 20 is restricted to a few areas. Members are also destined to employ the exemptions only to the level that it is crucial and are obligated to confirm they are not disguised restrictions on trade. Experience with the use of the Article over many years revealed weaknesses in some provisions.

Another complaint about WTO provisions is that they do not allow trade to be restricted on grounds of production and processing methods. This issue was brought to the fore by the infamous **Tuna- Dolphin case**, whereby Mexico challenged US restrictions on imports of tuna in cases where fishing methods did not minimize the incidental kill of dolphin. The WTO ruled in Mexico's favor stating that restrictions could be based on product attributes but not process methods. The general point was that GATT rules did not consent one country to accept trade action for the objective of trying to implement its own domestic laws in another country — even to protect animal health or exhaustible natural resources. This is referred as “extra-territoriality”.

The environmental case is that if one method of processing (such as a method of fishing for tuna) causes environmental damage (high levels of incidental kill of dolphin) then an importer would be able to prompt its fondness for the product (tuna) to be treated in a way that does not cause environmental damage (wedged using fishing methods that reduced the incidental kill of dolphin).

The general case for not making a provision in the WTO for the right to restrict trade on these grounds is that to do so assumes the WTO should include provisions to secure public policy aims other than trade.

Another case of WTO-environment dispute is the **Shrimp-Turtle case**. In 1998, US barred its market to shrimp trapped without turtle exclusion procedures to upkeep the US Endangered Species Act. India, Malaysia, Pakistan and Thailand took a joint grievance to the WTO. The US lost the case on account of violation of WTO rules (not under Article 20 for seeking protection of environment but since it discriminated amongst WTO members). The WTO pointed that it delivered countries in the western hemisphere — mainly in the Caribbean — technical and financial support and elongated transition periods for their fishermen to initiate using turtle-excluder devices. However, it did not provide these similar benefits to the four Asian countries (India, Malaysia, Pakistan and Thailand) that filed the grievance with the WTO. In essence, legal reasoning acknowledged that in some circumstances, countries could use trade measures to protect global resources. Nevertheless, US still maintains statute, but restricts imports by shipment, not by country.

The critics of WTO often highlight the systemic bias in its rules against rights of states to enact and enforce environmental standards, citing the rulings in the Tuna-Dolphin case, the Shrimp-Turtle case and others like the Venezuela Gas case.

The critics further contend that little progress has been made towards removing trade barriers that are detrimental to environment. These include fishery, agricultural, coal and road transport subsidies, all of which are harmful to the environment. Restrictions on trade in pollution abatement technologies and waste management techniques, if lifted could lower costs of environmental protection and render environmental policy more attractive.

To add to this, it is argued that the WTO rules fail to include the precautionary principle satisfactorily. It is found only in the SPS Agreement, which requires members to ‘prove’ through scientific risk assessment the existence and relevance of dangers to be able to enact restrictions. It allows measures taken with recourse to the precautionary principle only provisionally, thereby ignoring the persistence of scientific uncertainty. This unsatisfactory treatment of scientific uncertainty renders WTO decisions insensitive to environmental concerns.

Furthermore, environmentalists, human right activists and labor unions paint WTO’s past environmental record negatively. The environmentalists express concerns about the impact that free trade in agriculture products has on the rates of deforestation. They question the high levels of subsidies permitted in agriculture. Subsidies to farmers encourage over-exploitation of land, subsidies of fertilizers encourage over

use and all this leads to environmental degradation. They also point out the adverse impact that some WTO rulings have on environmental policies (The Shrimp-Turtle case). Human rights activists see the WTO rules as a hindrance in the ability of nations to discontinue imports from countries with hazardous working conditions or those using child labor. There are oppositions from labor unions as well. But the more fundamental problem is the lack of adequate support among WTO members to make the organization and its rules more environmentally sensitive. The developed countries render support, though partial but the greatest oppositions comes from the developing nations who fear that rich countries will use environmental concerns and related issues to erect barriers to the products of the developing world. Such fears are rooted in deeper frustration with the distribution of benefits from WTO agreements, which are regarded as biased towards developed nations. This makes it highly difficult to lead the WTO-environment relationship out of its current impasse.

13.4.2 WTO's environmental impact over-rated:

Proponents maintain

The supporters of free trade and WTO dismiss the criticism levied against it. They repeatedly point out that the WTO exists to serve the interests of its members, not subvert them. They propound that WTO agreements try to make trade support the things we really want, including a clean and safe environment but at the same time prevent governments from using these goals as a excuse for familiarizing protectionist measures. WTO's function is to make sure that there are no violations of trade rules, particularly non-discrimination. If a measure designed to protect the environment is deemed illegal under WTO, it should not be misconstrued to be illegal because it conflicts with trade. If it were equally tough (or equally lenient) on goods from all sources, it would be legal. In other words, members are encouraged to protect natural resources, endangered species and the environment but there cannot be any discrimination.

The supporters also argue that it is the rich countries that pass strict environmental standards not the poor ones. In their view, free trade, by raising living standards in developing nations, will encourage passage of such laws in in these nations. Attempts to impose such practices through trade regulations, they believe, will produce self-defeating repercussions.

Moreover, the stance of representatives from developing nations, which account for a majority in the WTO membership, also weakens the position taken by environmentalists. They contend that poor nations depend on exports to boost their economic growth and work their way out of poverty. They believe that 'greening' the

WTO rules would mean old protectionism in new environmental disguise, such that the effect would be to trap the developing nations in the vicious cycle of debt and poverty.

Nevertheless, the proponents point out that WTO has become increasingly environmentally friendly. They note noteworthy variations in the way in which prevailing WTO rules have been inferred to deal with environmental distresses. Also, the WTO agreements put few constraints on environmental regulations where damage to the environment or human health is related to the consumption of goods, unless the damage is highly indeterminate.

Some even feel that critics fail to recognize the fact that WTO lacks the ability to force any member nation to take an action it is opposed to. No country can really be pressurized to confiscate the constraints that was found discordant with WTO rules although the WTO rulings become automatically authoritative except it is universally objected to by all its members. What the country requires is to actively accept retaliatory trade sanctions in response, which it should if it is powerfully devoted to the environmental or health protection cause underlying the restriction.

What can be understood is that environmental impacts are a concomitant of free trade, so whether further liberalization occurs will depend on the importance the popular opinion attaches to issues such as environmental policies, human rights, labor standards, and national sovereignty. It will also depend on the ability of advocates of free trade to articulate in a clear and compelling manner the argument that, in the long run, free trade is the best way of promoting adequate protection of environment.

13.4.3 The case for Multilateral Environmental Agreements (MEAs)

The contention here slides over to another point. The purpose of the WTO is to enable countries to gain benefits of an open trading system. If it is to be assigned the charge of realizing other international public policy purposes, such as shielding the environment, its capacity to meet its central function - raising prosperity through trade - will be undermined.

‘The WTO, like all other institutions, has its shortcomings. But the main objections cannot be addressed by the WTO itself. The task of the WTO is to lay down ground rules for international trade; it is not designed to pursue other social goals. So the trouble is thus not really with the WTO, but with the lack of similarly powerful and effective institutions devoted to these other social goals. Indeed, the most fundamental problem of the present global order is that the production of private goods has taken

precedence over social development – i.e. the provision of public goods. Not only is the WTO not designed to deal with environmental protection, food safety, human rights and labor rights, but also its modus operandi is unsuitable for the provision of public goods. The strength of the WTO lies in its enforcement mechanism which states are willing to accept because they want the benefits of trade. They will not, however, accept it in other areas.’

- George Soros, “Fixing, not Sinking, the WTO”, Project Syndicate.

The instance to amend the WTO to authorize trade restrictions on environment grounds is burdened anyway. Those who make that claim are obliged first to explain why more normal means of achieving international agreement to meet international public policy objectives are not used.

The United Nations Conference on Environment and Development (UNCED) in 1994 laid down some principles on trade and environment. They indicated that the preferred international approach to protecting the environment was to generate **multilateral environmental agreements (MEAs)**, in which members would agree to adopt commonly agreed measures in their national law or practice. They also stated that use of trade procedures to safeguard the environment should be avoided. The WTO’s committee too favors this approach and adds that it complements their work in looking for internationally agreed elucidations for trade glitches. Alternatively, by means of the provisions of an international environmental agreement is superior to one country exasperating itself to change other countries’ environmental policies.

Applying this approach in the tuna-dolphin issue, all countries fishing in the area would come into an international agreement requiring their fishing flotillas to use the same fishing methods, as they would do in a regional fishing agreement. This would be better than one country impending a trade sanction to make another country comply with its favored environmental (fishing) policy (as was the US position). But, the protagonists of the sanction method would claim that it were not for the compulsion, the regional agreement would not have been adopted. This may be so, but it calls for justification of the globally denounced option of applying coercion because it disregards the sovereignty of nations, simply on the grounds that the more normal approach of seeking an international agreement is too slow. There was no situation for urgency in the case of effect on dolphins in the Eastern Tropical Pacific region. The concerned species were not endangered.

There are around 200 international agreements (outside the WTO) handling several environmental issues presently in force. An overlay does exist between some environmental agreements & WTO — on trade actions (such as

sanctions or other import restrictions) taken to implement an agreement. But it is essential to note that no provision confined in a MEA or any trade restriction accepted in (alleged) compliance with any MEA has ever been disputed on WTO. This is despite the fact that some provisions in, for example, the Montreal Protocol, the Convention on International Trade in Endangered Species (CITES), Basel and Rotterdam Conventions, etc. might well conflict with WTO rules. The same applies to the Kyoto Protocol and follow-up treaties.

Nevertheless, those opposed to MEAs advance the possibility of a potential clash with WTO to extend their argument. In short, the WTO's committee pronounces that the basic WTO principles of non-discrimination and transparency do not struggle with trade measures compulsory to safeguard the environment, comprising actions taken in the environmental agreements. Also, it is still to be revealed convincingly that any newly negotiated MEA has been less ambitious on account of concerns of potential clash with WTO rules, leave alone that a MEA was not successfully concluded for that reason.

13.5 SUMMARY

- The WTO is the one global body that has been constituted to lay down principles governing trade between nations. The WTO has institutionalized agreements encompassing trade in goods, services and intellectual property.
- The WTO has no explicit agreements catering to the environment. Nevertheless, there are certain provisions in the WTO agreements that address environmental concerns.
- The most significant provisions so far are Article 20 of the GATT and the Agreements on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT), so far as the environment agenda is concerned.
- Environment protection and preservation might be enshrined as fundamental objectives in the agreement institutionalizing WTO, but many claim that the WTO does not do much to actually promote environmental protection.
- The critics of WTO highlight the systemic bias in its rules against rights of states to enact and enforce environmental standards, citing the rulings in the Tuna-Dolphin case, the Shrimp-Turtle case and others such as the Venezuela Gas case. They also emphasize the unsatisfactory inclusion of the precautionary principle in WTO agreements and contend that little progress

has been made towards removing trade barriers that are detrimental to environment.

- The WTO supporters argue that it encourages protection of environment and health but at the same time prevents governments from using these objectives as an excuse for introducing protectionist measures.
- The developing countries believe ‘greening’ the WTO rules would mean old protectionism in new environmental disguise.
- Some purport that the purpose of WTO is to enable countries to gain benefits of an open trading system. If it is to be assigned the task of apprehending other international public policy objectives, such as guarding the environment, its capacity to meet its main function - raising prosperity through trade - will be weakened.
- The UNCED recommends creation of MEAs as the preferred international approach to protecting the environment. The WTO’s committee also favors this approach.
- No provision confined in a MEA or any trade limitation undertaken in compliance with any MEA has ever been disputed at the WTO.

Check Your Progress

1. “Talks about free trade would be used as an excuse to give unwarranted significance to GDP maximization and subvert the environmental goals” Discuss.

2. Explain the role of WTO in furthering trade liberalization

3. State the major objectives of Marrakesh Agreement.

4. State the arguments put forth to argue that the environmental provisions included under WTO are inadequate.

5. Highlight the arguments put forth by the supporters of free trade to argue that the WTO's environmental impact over-rated:

6. Highlight the need for Multilateral Environmental Agreements:

7. Briefly discuss the outcome of United Nations Conference on Environment and Development (UNCED) in 1994

Answer to Check Your Progress

1. Refer to section 13.2
2. Refer to section 13.3.1
3. Refer to section 13.3.2
4. Refer to section 13.4.1
5. Refer to section 13.4.2
6. Refer to section 13.4.3
7. Refer to section 13.4.3

Abbreviations

CITES	Convention on International Trade in Endangered Species
GATS	General Agreement on Tariffs and Trade
GATT	General Agreement on Tariffs and Trade
MEA	Multilateral Environmental Agreements
MFN	Most Favored Nation
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TRIM	Trade Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WTO	World Trade Organization

UNIT-14 INTERNATIONAL TREATIES

Structure

- 14.1 Learning Outcomes
- 14.2 Introduction
- 14.3 Need for Environment Protection Treaties
- 14.4 Major Environment Protection Treaties
 - 14.4.1 Kyoto Protocol
 - 14.4.2 Comprehensive Test Ban Treaty
 - 14.4.3 The Montreal Protocol
 - 14.4.4 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
 - 14.4.5 Convention for Biological Diversity
- 14.5. Issues with the Environment Protection Treaties
- 14.6. Summary

14.1 LEARNING OUTCOMES

After studying this module, you shall be able to

- Appreciate the need for establishing Environmental Treaties.
- Learn about some important Environmental Treaties.
- Evaluate the issues in proper enactment of Environmental Treaties.

14.2 INTRODUCTION

There is a plethora of species that inhabit our planet. These species – from the minutest to the largest, collectively sponsor the well-being of the eco systems. The survival and prosperity of all these species is interconnected and interdependent. However, more frequently than not, our civilization has failed to appreciate the true value of what the nature provides. We have been accounting for economic benefits much at the neglect of our life-support system, that is, the environment. Though it seems impossible to measure, in economic terms, the true value of nature, several economists and environmentalists have provided rough estimates of what it would cost us to accomplish the services the nature provides. Using multiple databases, they approximate that the nature provides \$33 *trillion* dollars worth of services every year, which is nearly twice as much as the yearly Gross National Product (GNP) of all the countries in the world combined.

14.3 THE NEED FOR ENVIRONMENT PROTECTION TREATIES

The ecosystem is the earth's life. We must value, nurture and preserve our environment as its role and contribution in our sustenance is invaluable. Economies around the world have witnessed tremendous economic progress over the 19th and the 20th centuries, and have been pushing harder for more. As a result of this, environmental and ecological consciousness has been pushed into a corner. However, nowadays the public and businesses have started paying greater attention to the glaring environmental realities. There has been an emergent concern towards global environmental problems, particularly in the developing world, in the wake of their near-crisis situation – economic and environmental. Against this backdrop, different nations from around the world have come forward and joined hands at the multilateral level, to conserve and protect the environment that directed to the acceptance of *International Environment Protection Treaties*. Over 400 multilateral agreements addressing climate change have been established and new treaties are being incessantly negotiated to address a vast array of environmental problems.

This has led to what has been referred to as "treaty congestion" by the United Nations Environment Programme. The numbers are quite impressive. Over the last 50 years, close to 500 globally recognized agreements have been signed by the international frontrunners. Of these agreements, 61 are related to the atmosphere; 155 cater to biodiversity; 179 address issues related to chemicals, waste and hazardous substances; 46 are land related conventions; and 196 are conventions broadly addressing water related issues. Environment is now the supreme zone of global rule making, after trade.

14.4 MAJOR ENVIRONMENT PROTECTION TREATIES

14.4.1 Kyoto Protocol (KP)

The United Nations Framework Convention on Climate Change (UNFCCC) proposed *the KP* in 1997, which commits its Parties through internationally obligatory emission depletion commitments. The protocol was accepted on 11 December 1997 in Kyoto, Japan and came into power on 16 February 2005. The list of rules for the application of the Protocol were accepted at Committee of Parties (COP) 7 in Marrakesh, Morocco, in 2001, and are known as the "Marrakesh Accords." The first obligation period began in 2008 and came to an expiration in 2012.

KP, operationalized the UNFCCC convention, by committing 37 industrialized countries and the European community to bring about an average 5 per cent emissions reduction over the 5 year period (2008 to 2012) in comparison to the 1990 levels.

It binds only the developed countries as it finds that they are mainly accountable for the current high levels of GHG emissions in the atmosphere, which are the result of over a hundred years of industrial action. Though the Parties are required to meet the prescribed targets primarily through national measures, the Protocol offers three market-based mechanisms to facilitate emissions reduction by nations.

These are:

- *International Emissions Trading,*
- *Clean Development Mechanism,* and
- *Joint Implementation.*

The Protocol places a huge burden on developed nations emphasizing their responsibility for climate change, but through its market-based mechanisms incites GHG diminution to start where it is most cost-effective, such as in the developing world. KP is guided by the fundamental principle of “common but differentiated responsibility”.

The 1st commitment period (2008 to 2012) had Parties committing to diminish greenhouse gas emissions to an average of 5 per cent against the 1990 levels. Moreover, for the 2nd commitment period (2013 to 2020), parties have committed to bring about a reduction in GHG emissions by at least 18 percent below the 1990 levels. The arrangement of parties however, is different for the two periods.

The eight session of the Conference of Parties was convened on 8 Dec 2012, in Doha, Qatar, which served as the summit of the Parties to the Protocol (CMP). Here, eleven countries (parties) agreed to adopt the KP including Bangladesh, Barbados, China, Honduras, Kenya, Mauritius, Micronesia, Monaco, Norway, Sudan, and UAE. The KP has stimulated governments to formulate green policies and urged businesses to make environment-friendly investment decisions, thereby initiating a truly global emission declining regime for stabilizing the ecosystems. The Protocol is also expected to provide inspiration for the conceptualization of international agreements on climate change in the future.

In Durban, the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) was constituted to design a protocol, which would be valid to all the Parties. This protocol would be an additional legal tool or an agreed consequence with legal binding under the Convention. The ADP is expected to finish its work as soon as conceivable, but no far ahead than 2015, so that the protocol (legal instrument or agreed result with legal force) could be accepted at the 21st session of the Conference of the Parties and come into force and be executed from 2020.

14.4.2 Comprehensive Nuclear-Test-Ban Treaty (CTBT)

The CTBT has been proposed to forbid all testing of nuclear weapons in all environments: underground, underwater, in the atmosphere and in the space. Since World War II, several attempts had been made to negotiate a comprehensive test ban, but it was only in the 1990s that the treaty became a reality. The treaty is not in force yet; hence the organization is named as the Preparatory Commission for the CTBT Organization with its headquarters in Vienna.

The CTBT was negotiated during 1994-1996 in Geneva. The treaty has been signed by 183 nations and sanctioned by 163 of them (as on March 2014). These nations include three of the nuclear weapon States: France, Russia and United Kingdom. However, for the CTBT to come into force, 24 nuclear specific technology-holding countries must sign and sanction it. India, Pakistan and North Korea are yet to sign the treaty.

Basic obligations for parties to the agreement include:

- Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.
- Each State Party undertakes, furthermore, to refrain from causing, encouraging or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.

14.4.3 The Montreal Protocol

It was conceptualized to address the issue of Ozone layer depletion. It is an attempt to bring about a reduction in the production and consumption of substances that are known to deplete the ozone layer. These substance include chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform. The idea is to reduce the abundance of these constituents in the atmosphere and preserve the earth's fragile ozone Layer. The original Montreal Protocol was established on 16 September 1987 and it came into power on 1 January 1989.

On 16th Sept., 1987 treaty was unlocked for signature, and came into power on January 1st, 1989, followed by the 1st meeting in *Helsinki*, May 1989. Since then, it has been revised on seven occasions, in *London* (1990), *Nairobi* (1991), *Copenhagen* (1992), *Bangkok* (1993), *Vienna* (1995), *Montreal* (1997), and *Beijing* (1999).

The Montreal Protocol has made a tremendous contribution in bringing down the production and consumption of ozone depleting substances employed in agriculture, consumer or industrial sectors across the globe. It has also been able to produce benefits for the climate, as some of its targeted substances are greenhouse gases too. Since 2010, the agenda of the protocol has been dedicated to the phasing out of hydrochlorofluorocarbons (HCFCs), a substance that depletes the ozone layer and is mostly used in refrigeration & cooling applications, and in the production of foam products.

The treaty's financial mechanism, the *Multilateral Fund for the Implementation of the Montreal Protocol*, has sponsored the incremental expenditures of compliance in developing nations since 1991. This is in complement with the Global Environment Facility in countries with economies under transformation.

14.4.4 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

The Inter-Governmental Conference on the Convention on the Discarding of Wastes at Sea, met in London in Nov. 1972, at the solicitation of the UK. The conference accepted this instrument, well-known as the London Convention. The London Convention came into action on 30 August 1975 and is one of the first global conventions with the agenda of preservation and protection of marine life from human endeavors. Since 1977, it has been managed by IMO. IMO currently has 170 Member States along with three Associate Members.

The London Convention forbids the discarding of certain precarious materials to supports its agenda of protection of marine life and prevention of marine pollution. In addition, it requires that a special permit be obtained prior to dumping of a no. of other recognized materials and a general permit for other wastes or matter.

Furthermore, the amendments approved in 1993 (which came into action in 1994) prohibited the discarding of low-level radioactive wastes into sea. In addition, they have forbidden the discarding of industrial wastes by 31 Dec. 1995 and banned the burning of industrial wastes at sea.

Moreover, the parties adopted a Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes & Other Matter, 1972, in 1996. This protocol, which came into power in 2006, is referred to as the **London Protocol**. It restricts **all** dumping apart from a permissible list (for which permits are still required).

Article 4 states that Contracting Parties “Shall prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1.”

The permitted substances are:

1. Dredged material
2. Sewage sludge
3. Fish waste, or material resulting from industrial fish processing operations.
4. Vessels and platforms or other man-made structures at sea.
5. Inert, inorganic geological material.
6. Organic material of natural origin.
7. Bulky items primarily comprising iron, steel, concrete, and similar non harmful materials for which the concern is physical impact and limited to those circumstances, where such wastes are generated at locations, such as small islands with isolated communities, having no practical access to disposal options other than dumping.
8. CO₂ streams from CO₂ capture processes (added under amendments adopted in 2006, which entered into force in 2007)

14.4.5 Convention on Biological diversity

This was initiated in the wake of the growing commitment of the international community towards a harmless future. With its mandate of sustainable development, it is seen as a sturdy step towards the preservation of biological diversity, the sustainable usage of its components, and the reasonable and equitable sharing of benefits rising from the usage of genetic resources.

The Convention was opened for signature on 5th June 1992 at the United Nations Conference on Environment and Development (the Rio “Earth Summit”). It remained open for signature until 4th June 1993, by which time it had received 168 signatures. The Convention entered into force on 29 December 1993, which was 90 days after the 30th ratification.

The objectives of this convention, to be pursued in accordance with its relevant provisions, are:

1. conservation of biological diversity (or biodiversity);
2. sustainable use of its components; and
3. fair and equitable sharing of benefits arising from genetic resources.

The Conference of Parties (COP) has established seven thematic programmes of work (listed below) which correspond to some of the major biomes on the planet. Each program establishes a vision for, and basic principles to guide future work. They also set out key issues for consideration, identify potential outputs, and suggest a timetable and means for achieving these.

Implementation of the work programmes depends on contributions from Parties, the Secretariat and relevant intergovernmental and other organisations. Periodically, the COP and the SBSTTA review the state of implementation of the work programmes.

1. Agricultural Biodiversity
2. Dry and Sub-humid Lands Biodiversity
3. Forest Biodiversity
4. Inland waters Biodiversity
5. Island Biodiversity
6. Marine and Coastal Biodiversity
7. Mountain Biodiversity

14.5 ISSUES WITH THE ENVIRONMENT PROTECTION TREATIES

Regardless of the vast media attention received by the environmental treaties, the system of creating and executing them is hardly functioning. The global environmental treaty-making system—the set of instruments by which countries fashion agreements to encourage more sustainable development—is not functioning very well. The system is actually quite undeveloped. There are some, if any rules concerning the no. of countries that should sign a treaty beforehand it can come into action. The penalties for not meeting the treaty compulsions are hardly made explicit, and the degree to which countries that have not signed a treaty, would be legally bound by the principles that the rest of the world has accepted, is still a matter of speculation. Execution of global environmental treaties practically does not exist

Global environmental agreements will always indicate political as well as scientific thoughts. This means that decision-making is always politicized: Some countries are bound to resent the claims of others (and of non-governmental entities) that they see as danger to their sovereignty. In general, during the treaty-making process, politics leads scientific considerations.

No particular institution has the accountability for establishing institutional treaty-making capacity. There isn't any central agency, no UN Environmental Treaty-making and Enforcement body to overlook multilateral treaties dealing with natural resources or sustainable development. The UN Development Programme, the World Bank, the UN Environment Program, and a long list of global agencies have all weighed in at different times, but there is very little coordination among the many independent treaty secretariats.

14.7 SUMMARY

- The ecosystem is the earth's life. We must value, nurture and preserve our environment as its role and contribution in our sustenance is invaluable. The life & survival of all the humans and other creatures depends on their environment.
- Environmental consciousness has been pushed into a corner in the wake of mankind's quest for rapid economic progress. We have contaminated the environment and disturbed the ecological system only to understand later the implications of a deteriorating environment.
- There is a rising concern around the globe to preserve and protect the nature and environment. So, the need of the hour is that all nations come together and initiate strong action in this direction.
- Different nations around the world have started to act jointly on this issue, which has led them to adopt and sign various Environment Protection Treaties to preserve and protect the earth's environment. Over the past 5 decades more than hundred such treaties have been adopted.
- World leaders have signed treaties related to various aspects of the environment. Some of them are: (1) Kyoto Protocol; (2) Comprehensive Nuclear-Test-Ban Treaty; (3) The Montreal Protocol; (4) Convention on the Prevention of Marine Pollution by Dumping of Wastes & Other Matter; (5) Convention on Biological Diversity.
- Though a large number of Environment Protection Treaties have been signed, the global environmental treaty-making system—the set of mechanisms by which countries fashion agreements to encourage higher sustainable development—is not working very well. The issue, in general, is that political influences override scientific considerations throughout the treaty-making process.

Check Your Progress

1. Describe Kyoto Protocol in Brief

2. State the basic obligations for the member nations who are parties to the CTBT agreement.

3. Write a short note on Montreal Protocol

4. Write a short note on **London Protocol**.

5. What are the key objectives of Convention on Biological Diversity?

6. Explain the key issues with the Environment Protection Treaties

7. Political influences override scientific considerations throughout the treaty-making process.

Answer to Check Your Progress

1. Refer to section 14.4
2. Refer to section 14.4.2
3. Refer to section 14.4.3
4. Refer to section 14.4.4
5. Refer to section 14.4.5
6. Refer to section 14.5
7. Answer based on you understanding of this unit

Abbreviations

ADP	Ad Hoc Working Group on the Durban Platform for Enhanced Action
COP	Committee of Parties
CTBT	Comprehensive Nuclear-Test-Ban Treaty
KP	Kyoto Protocol
UNFCCC	United Nations Framework Convention on Climate Change



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