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WTO-ENVIRONMENT SYNERGY: MYTH OR PROGRESSIVE REALITY?

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Abstract *'Trade and environment have always been uncomfortable 'colleagues' since the inception of the World Trade Organization and free trade. However, post the Singapore rounds in 1996, it is said that a new kind of free trade has emerged that is more conscientious and aware about environmental impacts and sustenance. While trade remains the primary objective, the WTO has taken it upon itself the task of striking a balance between liberalising the integrated global economy and acting as a vanguard to precautionary and sustainable environmental principles. This article will look into the interphase between trade and environment as witnessed under the pre and post WTO regimes and critically analyse judicial pronouncements and best practices to better understand this alliance'.*

Keywords *Trade, Environment, WTO, Legal Framework, Sustainable Development*

INTRODUCTION

Contrary to popular belief, Hoekmen & Mavroidis (2007) have asserted that the 'formal' objective of the WTO regime is not exclusively free trade. Trade also serves as the means to achieve the other objectives listed in the Preamble of the Marrakesh Agreement Establishing the World Trade Organization, 1994, one of them being:

'……..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.'

It is often contended by WTO critics that the organisation pays no heed to environmental concerns. The primary argument advanced by entities such as Greenpeace against the environment protection regime is that the WTO is ideally a device to regulate free-trade and making environment a dominating concern may greatly diminish its capacity to perform its core function. However, that is not entirely true. According to Oxley (2001), 'the WTO gives great latitude to members to restrict trade to protect the environment' and all the WTO Agreements have environmental provisions incorporated in them. But clearly, given the increasing environmental concerns, Oxley observes that the WTO needs to drastically increase measures/steps for protection of the same.

The additional need for subordination of WTO rules to the environment is supported by Brown & Jackson (2001), through two existing legal principles of respect for national sovereignty and the precautionary principle. The Appellate Body on *US-Gasoline* case clearly stresses the need to regulate the two in the context of environmental issues:

'Indeed, in the preamble to the *WTO Agreement* and in the *Decision on Trade and Environment*, there is specific acknowledgement to be found about the importance of coordinating policies on trade and the environment.'

As stated by Trebilcock *et al*. (2005), it is quite evident that growing political priority demands further applicability of trade restrictions in order to support protection of the environment.

HISTORY OF THE 'ENVIRONMENT DEBATE' IN GATT/WTO

The link between trade and environment and their mutual impact on each other was recognised early on, in the 1970s as enunciated by Birnie & Boyle (2002). Growing international concerns led to the culmination of United Nations Conference on the Human Environment in Stockholm in 1972 and brought about the inception of the 'green protectionism' under GATT. The next two decades saw an influx of environmental policies in connection to trade and this brought about further deliberations as discussed by Fiona MacMillan (2003), such as:

- The Tokyo Round (1973-1979): In this round, The Tokyo Round Agreement on Technical Barriers to Trade (TBT) or 'Standards Code' was drawn up. It called for transparency in methods and application of certain technical regulations and those pertaining to standard.

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- The Uruguay Round (1986-1994): This round was the next big trade-environment development period. Here, the TBT was modified and several other environmental issues were addressed in the following agreements - General Agreement on Trade in Services (GATS), Agreements on Agriculture (AOA), Sanitary and Phytosanitary Measures (SPS), Subsidies and Countervailing Measures, and Trade-Related Aspects of Intellectual Property Rights (TRIPS).

1991 saw GATT start the resolution of the famous Tuna-Dolphin dispute between United States and Mexico where the panel report shifted the spotlight from exclusive trade concerns to the interconnection between trade and environmental protection policies. Mexico and others brought a case against the United States under GATT challenging the US regulatory ban on tuna imported from Mexico. The primary objection was the use of 'purse seine' nets to catch Tuna. These nets led to the incidental killing of a lot of endangered dolphins. US required the tuna to be 'dolphin safe' while Mexico contended that this regulatory ban was inconsistent with objectives of international trade. The panel ruled in favour of Mexico citing a number of legal reasons such as extraterritorial interpretation and violation of GATT rules. The panel report was not adopted as Trebilcock *et al.* (2005) observed and therefore, it does not occupy the position of a legal interpretation of law as understood and used by the GATT law. However, it was subjected to heavy criticism from environmental groups all over who stated that such trade rules were proving to be obstacles for environmental protection everywhere.

Following the tuna-dolphin dispute, the GATT took a step towards the environment in 1992 through the UN Conference on Environment and Development, also known as the Rio 'Earth Summit'. This summit aimed at streamlining the role of trade vis-a-vis environment and focused on scope of poverty alleviation, preventing/combating environmental degradation and promoting sustainable development under the aegis of Agenda 21. These steps have yielded concrete results within the trade regime and since then, the WTO (after its formation in 1995) has taken over the mantle from GATT and continues to develop the concept of sustainable development. The WTO has reiterated in the Summit that 'the multilateral trading system has the capacity to further integrate environmental considerations and enhance its contribution to the promotion of sustainable development.' And since the commencement of the Doha Development Round, the Doha Declaration has officially put it on paper as a WTO agenda:

'We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement. We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive...'.

WTO AGREEMENTS AND ENVIRONMENTAL LEGISLATIONS

Anderson (1998) affirms that the GATT is considered to be WTO's primary rule-book for trade. However, Caldwell (1999) has identified that unlike the GATT, the WTO has attempted to cover the environmental deficit through the Uruguay Rounds by allowing the Committee on Trade and Environment (CTE) to come into formal existence at the first meeting of the General Council of the WTO. The CTE has a very specific role. As per the Trade and Environmental Committee's mandate and the Ministerial Briefing Notes, it is designed to function as 'the institutional machinery for investigating the trade and environment interface, and making positive suggestions towards the objective of sustainable development'. The CTE has two important functions: (1) identify trade-environment interfaces, and (2) make recommendations for modifications of the multi-lateral trading system wherever necessary. Interestingly, in its first report to the General Council, the CTE suggested a hitherto unexplored approach to environmental concerns - through multilateral environmental agreements (MEAs).

Through its slow growth, the CTE has emerged as the symbol of WTO's efforts to 'institutionalize environmental concerns within its legal and administrative framework' observes Birnie & Boyle (2002). It also doubles up as an international platform and meeting ground for trade officials and representatives of MEAs and UN (from United Nations Environment Program). Jones (2004) contends that the CTE may be construed as a sign that the environmentalists are in a position to influence the WTO's policies in favour of 'organisational transparency'. But despite the progress, the CTE's status may be summed up in the words of Jones as:

'The [WTO's] Committee on Trade and the Environment (CTE), for its part, has provided a valuable forum for discussions on reconciling environmental and WTO treaty obligations and other crossover issues. However, it has not produced concrete proposals for trade policy reform to enforce or promote environmental goals because it has no institutional mandate to do so.'

GATT/WTO PROVISIONS AND JUDICIAL DECISIONS

There are three GATT articles that predominantly operate in the environmental area. These are Articles I, III and XI. Article I speaks of the Most Favoured Nation (MFN) principle which mandates contracting parties to grant all other

contracting parties the most favourable treatment in respect of all rules and formalities with respect to international trade. And Article XI strictly prohibits quantitative restrictions. These two articles, as noted by Trebilcock, deal with the external aspects of trade. Article III on the other hand is connected to internal operatives and it speaks of the National Treatment obligation. It is a national equivalent of the MFN and prohibits measures discriminating imported products against domestic products.

However, the GATT does make room for exceptions, namely Article XX, which covers the environmental perimeter. Article XX(b) allows exemptions for measures which act as protective index for human, animal or plant life or health; and Article XX(g) provides exemptions for measures which allow for 'conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'. While the exemptions do aim to take care of the environment, they only apply when the predominant requirement of Article XX has been met - that the measures not be applied in a discriminatory manner between countries where the prevailing conditions are similar or in a manner that is a disguised restrictions on international trade.

Interestingly though, Trebilcock notes that it has sometimes been alleged that these two exceptions are used as a forms of 'green protectionism' and on several occasions, GATT and the Dispute Settlement Body have been required to clarify their position vis-a-vis these provisions. A classic example would the *U.S.-Shrimp* case, 1998. Here, the WTO Appellate Body interpreted the general exceptions in GATT Article XX in favour of the environment and stated in paragraph 123 that through the preamble, the WTO trade agreements expressly clarify their objective of '*sustainable development*'. Keeping in mind the nature of the decision, Professor John Jackson in Charnovitz(2005) called it 'a constitutional door opener for approaches that require a broader perspective than just the four corners of the very extensive GATT/WTO treaty language'.

There are two important features in this decision: the first being the Appellate Body suggestion of adoption of effective and necessary measures for protection of endangered species and the second is the recommendation of a pluri-lateral or multi-lateral action plan by states *within the WTO* to enhance protection of endangered species and environment as discussed in paragraphs 153, 155 and 185 of the judgment. According to WTO scholars such as Trebilcock, the decision is an enabling provision because it seems to reflect that, the Appellate Body is under the assumption that such form of collective action within the organisation out to be consistent with the WTO's area of competence.

But Jackson (2005) notes that this environment friendly view was not always the stand taken by the Body whose initial approach to Article XX was more restrictive.The *Tuna/ Dolphin I* saw the Panel overrule pertinent environmental concerns in 1991. The decision was heavily criticised by environmentalists and was not adopted by the Panel thereby denying its legal status. The panel found the ban of Mexican imported tuna by the US till their capture was made 'dolphin safe' amounting to a quantitative restriction under Art XI. The panel denied US the right to exercise the exemption clauses under XX stating that it would involve 'extrajudicial interpretation'. Allowing each country to set their own benchmark under XX will interfere with other GATT provisions and rights. Furthermore, 'necessity' under Article XX(b) was deemed to be available only when the party had already exhausted all available to pursue its 'dolphin protection objectives through measures consistent with the GATT'. A similar approach was adopted in the *Thai Cigarette '*case 1990, by the Panel, making environmentalists wary of the WTO's intention to safeguard the environment.

In its subsequent decisions however, the Panel seemed a little willing to broaden its horizons. In *Tuna/Dolphin II*, which was also not adopted, extra-territorial application was considered a possibility by the Panel in its report. Furthermore, the Panel report stated that general international law does not prevent States from regulating the conduct of their nationals 'with respect to persons, animals, plants, and natural resources outside their territory'. Therefore, the scope of application of Articles XX(g) and XX(b) was extended beyond the territory of the contracting party to gain environmental currency. But despite the moral victory, Jackson notes that it was also held that the conditions for applying the exemptions were not met. Finally, in the Shrimp decision, the Panel was ready for a change. The subsequent *Shrimp-Turtle* dispute of 2001 saw the Appellate Panel emphasize and uphold 'sustainable development' as one of the key goals and objectives of the WTO Agreement. The WTO Dispute Settlement Body adopted this panel decision immediately and unanimously. In yet another noteworthy statement at paragraph 7.2, the Panel called for the parties '... to cooperate fully in order to conclude as soon as possible an agreement which will permit the protection and conservation of sea turtles to the satisfaction of all interests involved and taking into account the principle that States have common but differentiated responsibilities to conserve and protect the environment'.

In the previous Shrimp dispute the Appellate Body quoted from the 1994 terms of reference for the Committee on Trade and Environment, paragraph 153, making the organisation's agenda very clear with respect to the environment:

'... the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and... the avoidance of protectionist

trade measures, and the adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12...'

Keeping in mind that this was in 1998, one can hardly question the WTO's intentions to make the environment a part of its organisational structure. But the projection of intention into express action is where the conflict prevails.

The WTO contains several provisions pertaining to the environment in its 24 agreements. And sometimes, these provisions serve to facilitate environmental protection better than would otherwise occur in a WTO free scenario because, as duly noted by the panel in the *Turkey-Textiles case* of 1998, environmental standards often have lasting impact on trade. As far as imports are concerned, the parties are required to apply environmental measures in accordance with the MFN and national treatment. The WTO has come a long way from the *Tune/Dolphin* dispute and although the WTO Secretariat generally disallows restrictions based on PPMS, there is no blanket ban on the same. On account of this, environmentalists look to the Shrimp decision as yardstick for flexibility in necessary cases. Under the current WTO regime, it may be understood that if a country deviates from the MFN or national treatment principles, it may be able to defend its policies under one of qualifying exception in Article XX.

But while the WTO is more flexible than the GATT in its general approach, a dichotomy is observed in Article XX(b) case laws. The trends, according to Charnovitz (2007), indicate a more stringent approach by the WTO for interpretation of the term 'necessary' than the GATT era. And this practice is extended and derived from Article XX(d) as well, for instance, the *Korea-Beef* case of 2001. The standard set by the Appellate Body as stated in paragraphs 163-166, to determine 'necessary' was that the measure must pass a 'weighing and balancing process' through three factors: (1) the importance of the protected measure in connection to restricting free trade, (2) the effectiveness and progress of the contested measure towards attaining the objective, and (3) the restrictive impact of the given measure on imports. At the same time, the Panel also made room for other WTO consistent measures to be employed by States in a similar situation. The WTO has since referred to the test in the *Asbestos* case in 2001 and again, more recently in April 2005 through the *Dominican Republic-Cigarettes case*. In the *Asbestos* case, the Appellate Body found that the French ban on asbestos was a legitimate health connected measure and met the 'necessity' and 'indispensable' requirements in the absence of the balancing requirement, as laid down in the *Korean-Beef* case.

This new approach, observes Charnovitz, has some troubling implications for national policies concerning the environment. One primary problem being, it can lead to utility weighing, such as, trade of one country versus the environmental protection of another. The WTO panel's most recent decision on *Brazil-Retreaded Tyres*2007, sheds some light on the issue. Brazil's import ban on retreaded tyres was a long-term health measure to avoid fire and mosquito borne illness. These tyres also seemed to be causing environmental damage, leading Brazil to invoke Article XX(b). However, the panel held the ban to be arbitrary, violating GATT provisions and not meeting the exceptions under XX(b).

The *Tyres* panel followed the Appellate Body jurisprudence and first applied the 'weighing balance' test, which was cleared by the Brazilian ban. But, it failed to meet the 'necessary' test. The ban, in paragraphs 7.348, 7.95, 7.54, 7.76 and 7.78, was stated to be arbitrary, unjustifiable and a disguised restriction on trade. To quote the panel it 'operated to the benefit of domestic retreaders, while the fulfilment of the purpose for which it (the import ban) has been justified is being significantly undermined'.So clearly, the WTO has decided to take a very case specific pathway as far as the exceptions are concerned. And despite the stringent applicability, it cannot be said to be in total disregard of the environment; total being the operative word here.

OTHER RELEVANT MEASURES AND ENVIRONMENTAL GREY AREAS

Subsequent to the GATT, environmental regulations also need to meet the WTO Agreement on Technical Barriers to Trade (TBT), 1994. A technical regulation, as per the Act may be broadly defined as 'a government document laying down product characteristics or their related processes and production methods'. One primary TBT requirement, as per Article 2.2 is that 'a governmental regulation shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks that non-fulfilment would create'. There exists no case law to clarify the legal position, but, it is argued by Motaal (2004), that this rule requires that an apparent science based regulation must act only on or after risk assessment'. Another core TBT rule, Article 2.4, requires all technical regulations to abide by existing international standards, including environmental ones unless they are rendered ineffective to the objective. The TBT may be seen as two-edged sword that either asks Governments to meet International standards, or, adopt a less effective existing benchmark. There is some ambiguity over its impact on the environment.

In case of health-related regulations, the TBT rules are also supplanted by the Agreement on the Application of Sanitary and Phytosanitary Measures, 1994. The SPS Agreement, muses Boisson *et al.*(2000) contains various rules on

'regulations used to protect human, animal or plant life against the classes of risks designated in the SPS Agreement'. Such measures require scientific principle, evidence, and risk assessment. Nevertheless, favouring the environment and health, the SPS Agreement allows flexibility in the absence of evidence to perform a risk assessment through clause 5.7. The Appellate Body upheld in *EC Measures Concerning Meat and Meat Products (Hormones)*case 1998 that the 'Precautionary principle' is reflected in that clause. In the more recent *Japan-Measures Affecting the Importation of Apples*, 2003, it was noted by a panel that the Cartagena Bio-safety Protocol has reiterated the international law designation of the confirmed the key function of precautionary principle in international law. While every national SPS measure challenged has been held to be a violation of trade rules by WTO panels, the organisation lacks the redressal mechanism to tackle damage resulting from trans-boundary movement of harmful organisms. This clearly highlights the grey area of environmental protection and calls for newer yardsticks in favour of the precautionary principle.

The SPS Agreement favours international standards set by the Codex Alimentarius Commission but, under Articles 3.1, 5.5, allows parties to choose a higher level of protection to filter out arbitrary or unjustifiable distinctions and disguised restriction on international trade. This allows the WTO greater enforcement powers. In the *Australia-Salmon* case 1998, the Appellate Body advocated a WTO position at paragraph 198, 199 by stating that the 'determination of the appropriate level of protection ... is a *prerogative* of the Member concerned and not of a panel or the Appellate Body'. Thus, one may say that the appellate body states that the parties have a duty to protect people's life, health and the environment. At the same time, it sees a competing paradigm between trade and environment and is yet to grant observer status to the Secretariat of the Convention on Biological Diversity: a much needed move.

Another relevant grey area is trade in service. The General Agreement on Trade in Services is revealed to have relevant environmental consequences. According to Waskow (2003), 'a key environmental plus is that the GATS may help enable governments to be more open to the importation of environmental services and facilitate the movement of natural persons both to consume and to deliver services'. On the other hand, Waskow further observes, as opposed to GATT'S dual exemption policy, the GATS contains just one, applying to 'measures necessary to protect human, animal or plant life or health'; the environmental conservation clause being deliberately omitted. Although no environmental disputes have involved the GATS, absence of such a clause is likely to make environment protection difficult. The fact that GATS does not choose to define 'services' raises the question: can environmental rights be included under the same? But in the absence of case laws or affirmative legislations, this may not go very far to protect the environment and needs to be addressed soon.

And finally, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) constitutes the last leg of the WTO Agreements. The potential effect of TRIPS on the environment is likely to be mixed. Available technology, according to Nadal (2005), may allow protection measures if patenting facilitates innovations, while high cost of obtaining foreign innovation products may lead to cheap local replica through depletion of natural resources. TRIPS Article 66.2 obliges developed countries to come up with incentives to enterprises and institutions in their sovereign territory in order to promote and encouraging technology transfer to least-developed countries for creation of viable technological base for them'. While this provision may be seen as a tool to promote sustainable development, Helfer (2004) suggests that it runs the risk of putting forth a legal conflict between this and prohibitions against actionable subsidies in SCM. The Doha Agenda put forth the question of protection of protection of bio-piracy under the aegis of the relationship between TRIPS and the Cartagena Protocol. If implemented, this may go a long way in protecting the environment. But till then, it continues to remain an area of concern.

MEAS AND TREMS

As per the suggestions of the CTE, one effective way of making the WTO more environment-friendly is through inclusion of multilateral environmental agreements (MEA). But, the capability of the WTO system to accommodate MEAs employing trade restrictions, as observed by the U.N. Environmental Programme & the International Institute for Sustainable Development, is an important issue to deliberate on. According to them, certain MEAs include TREMs or in other words, it implies that the agreements allow trade restraint for particular substance or products between parties or parties and non-parties. The WTO's Committee on Trade and Environment (CTE) is quick to point out that potential risk of conflict exists between such MEAs and WTO rules on trade.

Wold (1996) noted that approximately 20 MEAs with TREMs exist, such as the 1933 Convention Relative to the Preservation of Fauna and Flora in their Natural State, the 1989 Basel convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. MEAs with TREMs are far more likely to conflict with the WTO than the other less restrictive ones. Most of these MEAs are unable to reconcile with likely WTO conflicts and while there have been no disputes in this arena so far the absence of a set mechanism to regulate this will clearly put the system in a state of disarray.

Most MEAs, states Petersmann (1997) are equipped with their own dispute settlement procedure and mechanism which are very unlike the WTOs judicial dispute settlement process and more likely to not serve its purpose in the event of a conflict. Additionally, the International Court of Justice (ICJ) Environmental Chamber, established in 1993 under Article 26(1) of the Statute of the Court,is supposed to take care of specific MEA conflicts although no cases have been dealt with by it so far. Interestingly, Ehrmann (2002) observes, the CTE has recommended that any dispute related to MEAs should be settled under the terms of those Agreements as opposed to the Dispute Settlement Body despite the fact that the MEAs lack provisions to bind such decisions. Although the WTO seems to give great leeway to the MEAs, some of their enforcement mechanisms are deemed questionable. Therefore, it seems fitting for the WTO to deal with any such potential dispute. But before that, it is necessary to envisage a more environment friendly model. WTO members are engaged in a constant process of negotiation on the trade conflicting rules set out in the MEAs. According to some of them, the MEAs transcend trade control and move into the trade coercive zone on account of lack of regulatory provisions and the same finds voice in Alan Oxley, the former GATT Council chairman, who has criticised leading MEAs for using "trade coercive measures that disregard 'national sovereignty'." The failure of the Doha rounds to bring about any change in the existing provisions with respect to MEAs clearly puts the WTO in a spot.

The WTO's primary problem with including MEAs, as laid down in the Doha Round Briefing Series is based on their discriminatory measure applicable to a non-party in case of failure. (e.g., the Montreal Protocol on the Ozone Layer). However, this seems to be hypocritical in nature, observes Moltke (2005), owing to WTOs own flexibility to discriminate against non-members or worse, discrimination through accession (e.g., the China Accession Protocol) as is discussed in the work of). Even if the WTOs core function is free trade, circumventing environmental provisions is not the solution. And policies such as these clearly need to be addressed in order to meet current environmental requirements. Keeping these factors in mind, one may consider a recommendation put forth by Carpentier, Gallagher & Vaughan (2005) as a solution to 'shifting the hapless debate within the CTE [WTO Committee on Trade and Environment] around MEAs toward a useful purpose'. The recommendation suggests that the WTO take up and analyse each MEA individually and consider the relevant trade liberalisation measures that would help keep intact the object and purpose of the MEA while incorporating these changes.

CONCLUSION

It has been repeatedly contended by the WTO Secretariat that 'The WTO is not an environmental protection agency' and this statement clarifies the cause for the existing debate on the subject. While it may still be considered an 'underachiever' in the environmental arena, it is slowly clear that the WTO does not blatantly overlook the environment in its agreements. It is already redesigning itself as an environmental agency in several of its treaty provisions, agendas such as increased market access for environmental goods and services, curtailment of government subsidies that bring about overfishing and pro-environmental decisions such as the Shrimp-Turtle case and others. There are, of course, prevalent grey areas that need to be addressed with some immediacy, but that, on no account disproves the WTO's emerging environmental inclination.

The Secretariat's denial of the environmental identity is seen by some as a WTO ploy to exercise power over governments and regulate their environmental measures without taking responsibility for the ensuing outcome. It is argued by the likes of Trebilcock that the WTO wants to absolve itself of responsibility and leave to national and international environment agencies the hard work of formulating strategies to address environmental problems, and, on trans-border threats, getting governments to agree'. He, along with a gamut of WTO scholars suggest that keeping in mind the weak nature of international environmental implementations, the WTO ought to be given more responsibility by being referred to as an environmental organisation. This way, if one concurs with Konrad, one may preclude possible power abuse by the organisation in face of adverse environmental outcome that they seek to wash their hands off from.

While the WTO operates as an environmental agency, it is yet to meet all the requirements stated out in the preamble. Having taken the positive initiative, it has a very long way to go before meeting the current environmental needs. The WTO can play a critical role in concerns such as climate change and it needs to prioritize its environmental concerns through modifying its existing framework which is favourably inclined towards the environment.

Of course, the task is not and has never been easy or simple. The WTO has had its classic drawbacks seen in the prolonged Doha round despite the relevance of trade liberalisation for alleviation of world poverty and other environmental concerns that formed a part of that mandate. But despite the repeated criticism, drawbacks, and controversial emerging case patterns, the WTO has, at some level, sought to live up to its environmental obligations. Through clever legislations and conscientious decisions, the WTO has established itself

as an environmental agency, no matter how flawed or short of its aim. Maybe the resolution on the recent EU imposed Carbon tax under its Emission Trading System will set the tone for the future of WTO and the environment.

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