

PHILIPPINE PAPER ON THE RELATIONSHIP BETWEEN SPECIFIC TRADE OBLIGATIONS OF MEAs AND WTO RULES

I. INTRODUCTION

The linkage between trade and environment is a growing global concern nowadays and the paradigm that economic development should go hand-in-hand with environmental protection is getting more internationally accepted. The World Trade Organization (WTO), although primarily concerned with trade, has nonetheless recognized the need to protect the environment and promote sustainable development, as embodied in its preamble. Environmental concerns are also recognized in several agreements which the WTO oversees, including those on Technical Barriers to Trade (TBT), Sanitary and Phytosanitary Measures (SPS), Trade-Related Aspects of Intellectual Property Rights (TRIPS), etc. A proof that environmental matters will be discussed under the WTO in relation to trade was the formal establishment of the Committee on Trade and Environment (CTE) by the WTO General Council (GC) in early 1995.

II. RECENT DEVELOPMENTS AT WTO PERTINENT TO TRADE AND ENVIRONMENT

At the 4th WTO Ministerial Conference held on 09-14 November 2001 in Doha, Qatar, the “trade and environment” portion of the Ministerial Declaration included the following provisions under Paragraph 31 (i):

“With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question.”

Relative to the above matter, the CTE in a Special Session in 2002 conducted intense debates on the scope of the mandate in Sub-Paragraph 31 (i) of the Doha Development Agenda (DDA) and agreed on a three-phased approach as proposed by Australia, to wit: (a) identification of Specific Trade Obligations (STOs) laid out in MEAs; (b) identification of existing WTO rules; and (c) analysis of their relationship and recommendation on the scope for applicability of those relationship as among WTO Members of the MEAs.

As per latest developments, during the Special Session of the CTE held on 01-02 May 2003, there were suggestions that an STO in a MEA should include at least the following elements: (a) it must be obligatory in nature; (b)

it must specify explicitly the actions which Parties shall take to fulfill the relevant obligations in the MEA; and (c) it must be a trade measure that affects the free flow of goods.

III. PHILIPPINES' INVOLVEMENT IN MEAs PARTICULARLY THOSE WITH STOs

Just like other countries, the Philippines is a member/signatory to MEAs which include the following:

- a. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- b. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- c. Montreal Protocol on Substances that Deplete the Ozone Layer;
- d. International Tropical Timber Agreement (ITTA);
- e. Convention on Biological Diversity (CBD);
- f. Cartagena Protocol on Biosafety;
- g. United Nations Framework Convention on Climate Change (UNFCCC);
- h. Kyoto Protocol;
- i. Stockholm Convention on Persistent Organic Pollutants (POPs); and
- j. Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

Taking into consideration the suggested elements in defining STOs, we have identified the following MEAs which have already entered into force as containing STOs, in which the Philippines is a Party: (a) CITES; (b) Basel Convention; and the (c) Montreal Protocol.

On CITES, the following Articles contain specific trade provisions/obligations which could be described as follows:

Article II – describes the three (3) appendices under which the endangered species are categorized, and in which restriction/regulation of trade have to be made.

Article III - describes the regulation of trade (imports, exports and re-exports) in specimens of species included under Appendix I.

Article IV - describes the regulation of trade (imports, exports and re-exports) in specimens of species included under Appendix II.

Article V - describes the regulation of trade (imports, exports and re-exports) in specimens of species included under Appendix III.

Article VI - describes the conditions of permits and certificates to be granted pursuant to the provisions of Articles III, IV and V.

Article VII - lists the exemptions and other special provisions relating to trade of endangered species.

Article VIII - indicates that Parties shall take appropriate measures as provided thereon to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof.

On the Basel Convention, the following Articles contain specific trade provisions:

Article 4.1 (a)- Parties can exercise their right to prohibit the import of hazardous wastes or other wastes for disposal.

Article 4.1 (b) – Parties shall prohibit/not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes.

Article 4.1 (c) - Parties shall prohibit/not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in case where that State of import has not prohibited the import of such wastes.

Article 4.2 (e) – Parties shall not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration/organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if they have reason to believe that the wastes in question will not be managed in an environmentally sound manner.

Article 4.2 (g) – Parties shall prevent the import of hazardous wastes and other wastes if they have reason to believe that the wastes in question will not be managed in an environmentally sound manner.

Article 4.5 - A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.

Exception on Article 11: Notwithstanding the provisions of Article 4 Paragraph 5, Parties may enter into bilateral, multilateral or regional arrangements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by the Convention.

Article 4.6 - The Parties agreed not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60 South latitude, whether or not such wastes are subject to transboundary movement.

Article 4.7 - Requires that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling and transport, and that due account is taken of relevant internationally recognized practices.

Article 6 - The state of export must obtain prior informed consent from the importer.

Article 8 - There is a duty to re-import if waste cannot be disposed of in an environmentally sound manner.

On the Montreal Protocol, its specific trade provisions include the control of trade with Non-Parties (Article 4), control of trade with Parties (Article 4A) and the provision for the establishment and implementation of a system for licensing the import and export of controlled substances (Article 4B).

The principle followed in restricting/regulating trade under the above-mentioned three (3) MEAs is in consonance with the provision under Article XX (General Exceptions) of the General Agreement on Tariffs and Trade (GATT) which provides, among others, that “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 necessary to protect human, animal or plant life or health.”

Relative to the Philippine commitments as signatory to the CITES, Basel Convention and the Montreal Protocol, relevant laws/rules/regulations were enacted/promulgated and currently under implementation which include the following:

On CITES:

- a. Republic Act No. 9147- An Act Providing for the Conservation and Protection of Wildlife Resources and Their Habitats, Appropriating Funds Therefor and For Other Purposes.

- b. DENR Administrative Order (DAO) No. 29, Series of 1998- Revised Rates of Charges on Wildlife Use

On the Basel Convention:

- a. Republic Act No. 6969 – An Act to Control Toxic Substances and Hazardous and Nuclear Wastes, Providing Penalties for Violations Thereof, and For Other Purposes.
- b. DAO No. 29, Series of 1992 – Implementing Rules and Regulations of R.A. 6969.
- c. DAO 28, Series of 1994 – Interim Guidelines for the Importation of Recyclable Materials Containing Hazardous Substances
- d. DAO No. 97-38 – Chemical Control Order for Mercury and Mercury Compounds.
- e. DAO No. 97-39 – Chemical Control Order for Cyanide and Cyanide Compounds.
- f. DAO No. 2000-02 – Chemical Control Order for Asbestos.

On the Montreal Protocol:

- a. R.A. 6969
- b. DAO No. 29, Series of 1992
- c. DAO NO. 2000-18 – Chemical Control Order for Ozone Depleting Substances

The Philippines is in compliance with the provisions of the CITES, Basel Convention and the Montreal Protocol, just like with the rest of the MEAs wherein the Philippines is a Party. The Philippines joins the other countries in strictly observing the rules/regulations of MEAs such as those on trade. The Philippines has a number of accomplishments/achievements in implementing trade regulations relative to MEAs which in effect prevented illegal trade. To cite examples, in pursuance of CITES provisions, the Philippines was able to confiscate wildlife specimens illegally imported into the country and was able to repatriate confiscated animals (Gibbons and Drill Monkeys). Another Philippine accomplishment in CITES was the inclusion of Philippine species in the CITES Appendices.

