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GALT Update
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Trade in natural resources

Resources play a key role in the process of development of any country yet development and use of resources have been controversial. While some of the countries without much of natural resources continued to developed, while several countries with huge natural resources continued to languish in poverty and backwardness, providing the context to the development of resource curse hypothesis. While the factual basis of the resource curse hypothesis is still debated, price volatility and secular decline of prices of some of the commodities have long concerned the resource exporting countries, particularly in Africa. Such concerns often led to resource nationalism but strategies based on such philosophy did not work except commodities like oil.

The unratified 1948 Havana Charter included measures aimed at the alleviation of situations of "burdensome surplus" which were essentially export restrictions used in a coordinated manner. But what came out in place of Havana Charter was the General Agreement on Tariffs and Trade (GATT) which did not include any such measure. What however emerged along with GATT are a number of international commodity agreements to stabilize prices where both exporting and importing countries participated. These agreements however could not achieve much in stabilizing prices which in any case did not include the mineral resources.

The importance of emerging economies like China, India, Brazil and Malaysia in global trade and investment in resources has increased sharply in recent years. This has also led to a period of sustained high commodity prices fueling the impressive growth in many African countries in recent years where growth has been elusive for decades. Though Africa is now getting a better deal for its exportable due to

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heightened competition for resources, this has not led to diversification of its export basket or significant increase in job creation. African countries have also been able to avoid declining and fluctuating commodity prices which severely affected their economic performance in the past.

There are however skepticism that despite their impressive show in recent years, African countries are yet to get into a win-win situation vis-à-vis the emerging economies in the context of trade in natural resources. On the other hand, it is often feared that the growth engines of the emerging economies may get retarded due to the sustained high level of commodity prices which may in turn adversely affect the African countries as well. It is now being argued by many that due to emergence of China and India as major commodity importers such problem of steep decline in commodity prices particularly in mineral resources may be over.

Given this context resource nationalism is back again. The global trade of goods including resources is governed by the WTO rules. However WTO rules are mostly to govern or discipline policies and practices in importing countries. WTO regulates behaviour of the exporting countries only to the extent of restriction on subsidies provided by the governments. China resource case at the WTO is however a new development where its policy of putting restriction on export of resources has been declared to be in violation of its commitments made at the WTO. It should however be noted that such commitments are not general to WTO members as China had to accept additional obligations at the time of its accession to the WTO in 2001. It is an open question if an agreement with similar obligations and involving all members of the WTO could be reached in future.

While it might be a legitimate aspiration of resource rich countries not to remain an exporter of resources only, resources nationalism will take us nowhere. For example, no country has all the resources required to produce a computer or a mobile phone. Hence, the global community needs to develop a framework that ensures access to resources which also fulfils the legitimate aspirations of the resource exporting countries. One important additional step would be to enhance resource efficiency and resource reuse. This will require significant technology development and diffusion. It is understandable that such technologies would come mostly from developed countries but they should be more willing to share these technologies in their own interest of keeping the prices lower as their own need for resources may be reduced but not eliminated.

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About TERI

A dynamic and flexible not-for-profit organization with a global vision and a local focus, TERI is deeply committed to every aspect of sustainable development. From providing environment friendly solutions to rural energy problems, to tackling issues of global climate change across many continents and advancing solutions to growing urban transport and air pollution problems, TERI's activities range from formulating local and national-level strategies to suggesting global solutions to critical energy and environmental issues. With staff of over 700 employees drawn from diverse disciplines, the institute's work is sponsored by ministries and departments of the government, various bilateral and multilateral organizations, and corporations of repute.

About GALT

The Centre for Global Agreements, Legislation, and Trade (GALT) is an area within the Resources and Global Security Division of TERI. The broad objectives of the area are:

- To engage in research on trade, investment, resource development and use, and sustainability issues from a multidisciplinary perspective;
- To engage in capacity-building through training programmes, workshops, and seminars;
- To create awareness through an effective dissemination of knowledge and dialogue amongst policy-makers, academia, practitioners, and other stakeholders.

Towards sustainable development in natural resources: case of African Green Economy

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It is recognized that countries need support and a helping hand in building the know-how and show-how of the capacity to plan and carry out sustainable development decisions for greening the economy. This recognition must remain the core of the thematic weaves, that is generally referred under different rubrics namely, "Africa, Emerging Economies and Trade in Natural Resources", "Trade for sustainable development and a green economy", etc. Indeed this theme has become critical in recent times characterized by crises severely impinging upon the sustainable development efforts (UNCTAD 2011a). Understandably, Agenda 21 has mandated that 'sustainable development is the way to reverse both poverty and environmental destruction'. In fact the forceful reports of the UN Special Rapporteur to the right to food have underscored the myriad dimensions of action plan rooted in the natural resources and livelihood security options (De Schutter 2011b).

A meaningful forward movement in this direction, therefore, makes it imminently desirable and obligatory to eradicate poverty by providing poor people access to the resources for sustainable living. Here the bottomline is, the access to resources by poor people towards ensuring their livelihood security. The questions that compel us to re-examine are the extent and magnitude of primary economic activities, like cultivation, fishing, logging, hunting, etc.

The contemporary engine driving the sustainable development discourse is heavily biased towards trade in natural resources (WTO 2011). For example, consider the following questions: (a) Can we sustain the current boom in natural resources trade?(Breisinger and Thurlow 2008); (b) How does this boom impact and which segment of the African and emerging economies' natural resources? (World Bank 2011); (c) Is it feasible and desirable to reap long term advantages using high commodity prices? (UNCTAD 2011b, 2012); (d) What is the trade-offs in the natural resources trade?; and (e) Is it amenable to the creation of pathways for a win-win situation in all those countries well endowed with natural resources? (Feldman, Biggs and Raina 2010; Kariuki 2009).

Unmistakably, three critical elements emerge in these questions, namely, *natural resources*, *commodity trade*, and *sustainability*. In conjunction with this milieu the arguments in the paper will concentrate on the issue "How to strategically map out a win-win scenario for the economies, off course, trade and natural resources being the main platform for analysis and take off.

The path towards a win-win scenario is complex but not indomitable. The Agenda 21 provided us with a blueprint for sustainable development, way back, in 1992. The Rio+20 Conference has rightly focused on the green economy as a strategic medium to speed up efforts on sustainable development (UNCTAD 2012). Natural resources being the main component of the developing country wealth economic activities, its contribution to economic growth, employment and fiscal balances cannot be overemphasized.

The noteworthy estimates (Chart 1) of "Wealth of Nations: millennium capital assessment" indicate that low-income countries have 26% wealth in the form of natural resources in comparison to a mere 2% of wealth in industrialised OECD countries (World Bank 2006). The seminal importance of the natural resources in the low-income countries notwithstanding, significant (three-fifth) role of agricultural activities does indicate where the win-win scenario should be focused.

Out of the total EAP (economically active population) which is over 50% in the low-income countries, the significant fact of human capital in the EAP is in agriculture. Hence the emerging stylized fact is that the natural resources (26%) along with the social capital (58%) forms over four-fifth share of total wealth that is much greater than the produced physical capital of the low-income countries.

These facts are reinforced (Table 1) in the estimates of total wealth of bottom 10 countries. A special note can also be made of the contributions made by the sub-soil component of the natural resources among constituents.

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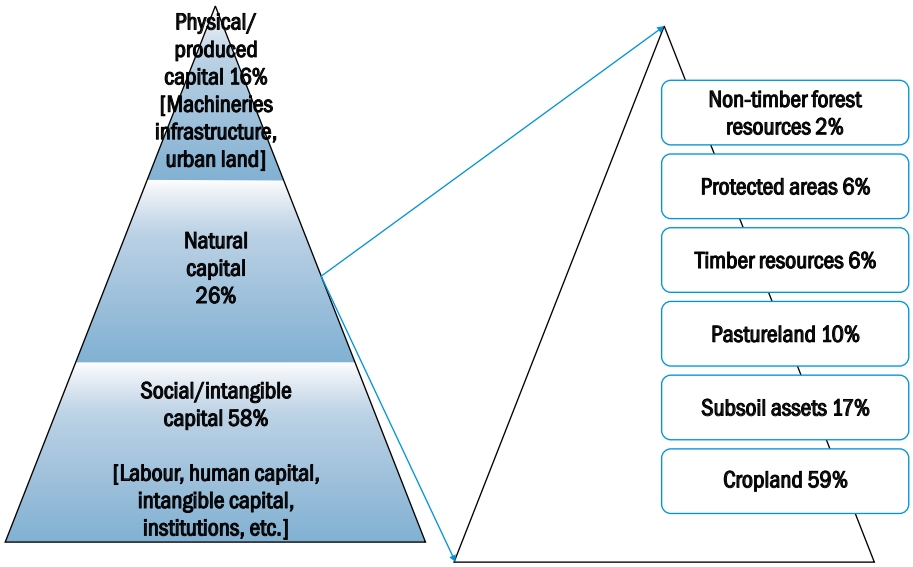

Chart 1 Total Wealth Constituents i low income countries 2000
Source World Bank (2006)

Table 1 Total Wealth of Bottom 10 Countries, 2000

Country descending order of Per capita wealth)	Wealth per capita ($)	Natural capital (%)	Produced capital (%)	Intangible capital (%)
Madagascar	5,020	33	8	59
Chad	4,458	42	6	52
Mozambique	4,232	25	11	64
Guinea – Bissau	3,974	47	14	39
Nepal	3,802	32	16	52
Niger	3,695	53	8	39
Congo, Rep. of	3,516	265	180	-346
Burundi	2,859	42	7	50
Nigeria	2,748	147	24	-71
Ethiopia	1,965	41	9	50

Source Reproduced from Table 2.2 (World Bank 2006, p. 21)

In order to avoid something of an 'analysis paralysis', a set of questions like: (i) who manages natural resources; (ii) what are the sustainable trade in natural resources meant to achieve; (iii) who and what elements circumscribe the win-win scenario for such economies, etc., needs to be examined for a better perspective. In effect it is suggested that the task of building a 6×5 matrix for the economy in question certainly charts out a perspective that will give us the contours of a win-win scenario mapping (Chart 2).

The market forces have made the economies face tremendous challenges and therefore the five elements confronting them are Rules, People, Resources, Activities and Power. The experience of the past two decades clearly suggests that the state has gradually

	Rules	People	Resources	Activities	Power
What ?					
Why?					
Where?					
When?					
Who?					
How?					

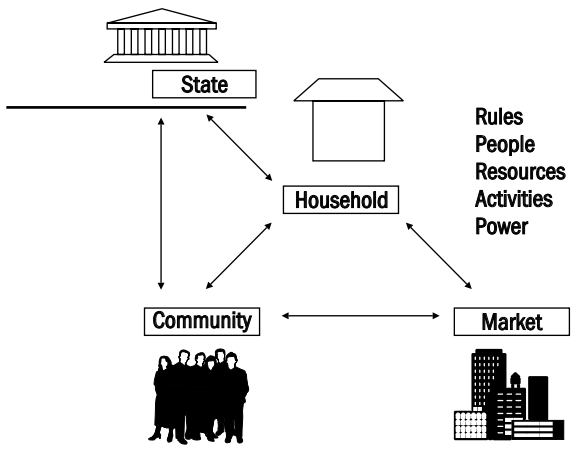

Chart 1 Chart 2 George's 6×5 analytical Matrix

abdicated its position to the market under various 'development' programmes while no state would admit that their main objective has shifted away/out from being "people"-centric.

Now the challenge here is to superimpose the performance of these economies with respect to betterment of their population, their achievements in various development indicators. The scenario thus emerging suggests that their livelihood security has become more vulnerable so much so that special packages and differential treatments have not made any dent (De Schutter 2011a).

The next question therefore is "How" do we move ahead on the path of a win-win scenario? Livelihood security options of the population needs some critical examination to make the much needed forward movement.

A dispassionate analysis will indicate that the dominant proportion of the population derive their livelihood security as care givers and conservers of the natural resources. Besides, agriculture and allied activities, despite their falling share in the nation's GDP, is the major source of providing food and livelihood security. Hence, the win-win strategy has to be pivoted on this dominant economic activity that is not an easy task given the current state of Doha Rounds. However, we can briefly explore the possibilities and silver linings that have emerged over the last few years to mitigate our despair and dismay.

> "There is one final factor which will obviously be a major influence on Africa's future economic growth. It is the environment."
>
> *Commission for Africa, 2005*

We need to explicitly recall that UN Commission on Sustainable Development (UNCSD) in 1994 had provided a working definition of sustainable production and consumption - "The use of goods and services that respond to basic needs and bring a better quality of life, while minimizing the use of natural resources, toxic materials and emissions of waste and pollutants over the life cycle so as not to jeopardize the needs of future generations".

UNEP (United Nations Environment Programme) endorsed these sentiments in 2007, International Union for Conservation of Nature (IUCN) has expressed their concerns about the "Brown Growth", unleashed by the industrial revolution and we have SCP — sustainable consumption and production templates — coming out from UN agencies. The World Business Council for Sustainable Development (WBCSD) identified consumer focused five areas of concerns: (1) global drivers of consumption, (2) global consumption patterns and impacts, (3) role of consumers, (4) role of business, (5) challenges ahead and options for change.

A merely listing of broad concerns here does underline the point of departure from our path of seeking a set of win-win alternatives for trade in natural resources. Although market players derive their growth by focusing on the consumer segment, the win-win scenario has to be pivoted on the production landscape that is home to wealth of bio-diversity.

Even at the cost of repetition this point needs reiteration as it is one of the major strengths. For example, India is home to two bio-diverse hot spots and the case of Africa and other emerging economies are equally more significant.

However, we need to underscore the importance of growth potential while charting out win-win scenario pathways, lest it is dubbed as regressive. This is best attempted by first exploring the nuances of sources of growth in natural resources. It has been estimated that the contribution of growth in natural capital to growth in total wealth is very high in the Middle East and North Africa and actually declined in Sub-Sahara Africa between 1995 and 2005 (World Bank 2011). Therefore, it is time to critically examine these short term simplifications and explicitly bring in long term expectations of a win-win scenario.

Broadly, competitive factor markets and better access to product markets could reasonably address the malaise. However, three primary elements attain significance in the African livelihood security context. These are land, minerals, as well as agribusiness firms that set the tenor for the sustainable development. Hence, it has become imperative to explicitly engage with the Hartwick rule for sustainability, namely, in order to achieve sustainable consumption; countries should invest their rents from natural resources (World Bank 2006).

Here, the underlying economic theory is of significance since the natural resources have two unique traits, namely exhaustible and renewable. The exhaustible resources are transformed into productive assets through exploitative mechanism that does not match with investment of resource rents. The renewable resources when used properly, does produce sustainable income flows. Since the share of natural resources in

total wealth tends to fall with income and the share of intangible capital rises, in the case of African continent's development portfolio, significance of exploitative rent seeking behaviour of economic actors must address critical issues with respect to right to food approach incorporating fundamentals of human rights in general and livelihood security in particular.

Africa and the emerging economies have been mere price takers set by the international stakeholders and that has not been very beneficial to their growth as well as betterment of the livelihood security. The excessive reliance on area expansion led growth approach has resulted in degradation of our natural resource endowments. Following UNCTAD 2012 it is easy to demonstrate that the root cause of malaise lies in the current prescription vended by international development financing institutions are two-fold, namely increase production and productivity. It is a fit case of missed opportunities. The scientific as well as economic truism of not reinvesting resource rents from non-renewable natural capital and over exploiting renewable natural resources without commensurate investment in the social capital formation (Randa and Karshenas 2012; Hanieh 2012; World Bank 2011).

The production landscape in the region is extremely skewed. According to the UN General Assembly report (A/HRC/9/23) small holding accounts for 85% of the world's farms. In the African region such statistical information is very inadequate. However, select country information about the production landscape is certainly alarming. For instance, domination of marginal and smallholder producers requiring special and differential treatments for food as well as livelihood security consideration (Table 2) would demand a more nuanced and pointed action-plans. On the other hand, developed countries have factory farms that are structurally and environmentally as diverse as the profit maximizing opportunities permit (George 2011). The loss of biodiversity as well as increase in vulnerabilities severely impact health and life of human, plant and animal kingdom.

It is clearly demonstrated in Table 2 that the economics of sustainable development in the African countries cannot follow a 'one size fits all' template as is often recommended by the development finance institutions and donor countries. The criticality of farming operations in turn is driven by marginal and small holding farmers. Although the data set may appear dated, any update will only reinforce the preponderance of marginal and small farmers. For instance, the three points of time available data set for Ethiopia indicate that the average size of holdings declined in 2001–02 to 1.03 hectare from 1.43 hectare in 1977. The most proximate explanation is available

Table 2 Select African Countries Distribution of Farm Holdings

			Holding area as per cent of country area	<1 Ha and landless		1 to <2 Ha		2 to <5 Ha		5 to <10Ha		10 Ha +above		
Country	Census/ year	Average holding size (Ha)		million #	Per cent	million #	Per cent	million #	Per cent	million #	Per cent	million #	Per cent	Total holdings numbers
Algeria	2001	8.26	3.6	0.223	21.8	0.129	12.6	0.239	23.4	0.181	17.7	0.251	24.5	1.023
Egypt	1999/ 2000	0.83	3.8	3.956	87.1	0.365	8.0	0.171	3.8	0.036	0.8	0.014	0.3	4.542
Ethiopia	2001/ 02	1.03	11.0	6.762	62.8	2.612	24.3	1.277	11.9	0.097	1.0	0.010	0.1	10.758
Morocco	1996	5.84	19.6	0.380	25.5	0.272	18.3	0.412	27.2	0.248	16.6	0.184	12.4	1.496
Mozambique	1999/ 2000	---	5.0	1.634	53.8	0.923	30.4	0.427	14.0	0.050	1.6	0.004	0.2	3.038
Namibia	1996/ 97	2.89	0.4	0.015	14.4	0.025	24.5	0.050	48.9	0.011	11.2	0.001	0.9	0.102
Senegal	1998/ 99	4.30	9.8	0.092	21.0	0.072	16.5	0.142	32.5	0.091	21.0	0.040	9.0	0.437

Source: FAO 2010

Note: (1) indicate non availability of data on area; (2) figures may not add up due to rounding off.

in the fact that holdings under the category <1hectare and landless farmers registered a three-fold increase during this 25 years. During the same period holding numbers under the class 1 to <2 Ha also doubled in Ethiopia.

The domino effect of the industrial farming model, we must boldly recognize, has resulted into three irreparable flaws. First, the poorly endowed marginal and small farmers are marginalized and made more vulnerable when state abdicates her responsibilities wearing the mask of public–private partnership.

Second, the scientific research agenda is hijacked in order to be subservient to the domino interests (Feldman, Biggs and Raina 2010; Kariuki 2009). For instance, the comprehensive Africa agriculture development programme (CAADP) has a dominant window for scientists under the pillar IV, namely, improving agricultural research and systems to disseminate appropriate new technologies as well as increasing the support to help farmers adopt them. The key concern here is who sets the agenda for research and dissemination. A case in point is the fact that scientists have gone to great length to underscore the importance of seed replacement rate to increase productivity levels and also submitted a memorandum to the G20 Presidency to boost their access to fertilizer ostensibly in conformity with commitments towards African smallholder producers. That the moral and economic rights of the farmer household and especially the women members are infringed, in doing so, is of no consequence to the business models (George 2011).

Third, under global value chain governance system high food prices at the consumers' level does not necessarily lead to income enhancement at the marginal and small farmer level. It is ironical indeed to note that most of these agribusiness firms have shown incredible business performance during the period of global economic downturn. The swelling profits of these conglomerates firms increase manifold. Since these firms concentrate on the factor as well as product markets through various mechanisms of collusive behaviour, oligarchic protocol becomes the defining protocol. Abuse of buying power is a reality. The Report of the Special Rapporteur on the right to food (A/HRC/13/33 dated 22 December 2009) elaborates on the dynamics. The collective abuse of dominance is the new crafty way commonly used to avoid sanctions for cartels and collusive behaviour. The small holder farmers in Africa and the Asia Pacific region are not at all equipped to handle this machination.

Economies of scale is the oft quoted theoretical underpinning to buttress the agribusiness and seed companies business model that consciously pursues a bottomline driven framework. The other side of this coin is the transferring of their own diseconomies to the marginal and small farm holdings. It does not bode well for the sustainability issues in the agriculture and allied activities. The development literature is now rife with African and Asian cases that demonstrate the opportunities utilized and seized to leverage smallholders' stakes in myriad business models.

Given the unquestionable scientific and ground level evidence to alternatives pivoted on the marginal and small holder farming system, the roadmap for reinvestment in agriculture as pointed out by the UN Special Rapporteur is available by asking the question '*how*' and not quibbling over '*how much*'.

Sustainable agriculture in Africa — How?

Following a number of studies commissioned by FAO and others, it has become clear that a system can be put in place to ensure doubling of food output in 10 years without infringing on the human rights of vulnerable segments of the society (De Schutter 2011a and 2011b and George 2011). The persuasive arguments in De Schutter (2011b); George (2011) and UNCTAD (2012) provide sufficient confidence to embark on the sustainable development pathways by skillfully avoiding the pitfalls that usually get embedded in a top down remote controlled approach

It can be demonstrated that skewed production landscape has to have *ab initio* a new approach to production enhancement. Hunger as demonstrated by many scholarly expositions is a function of a pronounced skew in distribution of food items though production may explain a small influencing role. Besides, agriculture provides massive employment to majority of the population that is clearly indicated by the economically active and dependent population. The challenges in agricultural sector, growth within the natural resources, and climate change discourse have a unique dimension in the livelihood security. The select African country facts (Table 2) clearly show contours of such possibilities. The livelihood security option therefore becomes integral as alternative employment in other sectors require a threshold level of skill sets found lacking in these rural population.

To conclude we need to refresh the development approach to the ground realities in the African region.

Such an approach will indeed clarify that the African region will demonstrate feasibility and workability of the fragmented production landscape in the natural resources rich agriculture sector. It is certainly appropriate to chart out suitable new sustainable growth paths. The physical and related resource endowments does suggest that technology challenges towards productivity driven food security and poverty reduction can be addressed with meaningful engagements.

The final strategy, therefore, must reckon with the natural resources based sustainability and is best captured in the template LOADS–LEADERSHIP, ('It is African leadership that has produced growth and development since 2005 and it will be African leadership that decides Africa's future'. *Commission for Africa Report 2010*, p. 58)

Ownership, accountability, decentralization, sustainability. [Investing more in Africa is in the economic interests and will help all economies recover from the current crisis, not just Africa alone. *Commission for Africa Report 2010*, p. 58.

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The WTO China Raw Materials Case: Reigniting the debate on Coherence and Conflict between Free Trade Theory and Resource Economics

Manuel A J Teehankee

Introduction

On 30 January 2012, the WTO Appellate Body (AB) issued its findings in *China – Measures Related to the Export of Various Raw Materials* and on 22 February 2012, the Dispute Settlement Body officially adopted the AB Report which, in effect, created new international law as regard to how the countries may undertake their natural resource management policies to comply with their WTO treaty obligations.

At the core of the case were China's domestic policies and regulations relating to certain natural resource minerals, namely, *bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorous, and zinc* (the "raw materials"). China had adopted various measures as regards these minerals and raw materials, that included, (i) export taxes, (ii) export quotas, and (iii) a other administrative regulations relating to exports such as licensing procedures, exporter qualifications and bid pricing mechanisms. These 3 types of measures represented the 3 distinct parts (Parts I, II and III) of the mirror complaints that had been filed by the United States, the European Union and Mexico.

In dealing with the complaints, both the Panel and the AB have had to deal squarely with whether the general public policy exceptions under Article XX could provide appropriate justification to allow China to derogate from its WTO commitments on export duties, export quotas and export administration regulations as regards the specific minerals and raw materials in question.

As these minerals are non-renewable and exhaustible natural resource endowments of China and since the measures were claimed to be in part related to resource management and conservation, health and environment, and climate change-, and development-related policies, the case becomes significant for many commentators focusing on the treatment of environmental issues in the WTO[1] as well as experts on natural resource policies that are concerned about countering the so-called *Dutch Disease*, as well as the *Resource Curse*, economic phenomena dealt with extensively by leading economists, such as Nobel laureates Joseph Stiglitz and Paul Krugman.[2]

Through the years, Article XX had assumed increasing importance to environmentalists, as the AB in its decisions upheld the use of Article XX to justify import bans and trade restrictions founded on the need to conserve exhaustible natural resources, as in US Gasoline as to provisions of the Clean Air Act) or relating to the protection of animal or human health, as in, *US Shrimp Turtle* relating to practices that harmed turtles, and *EC Asbestos* relating to a ban on materials with the carcinogen asbestos,[3] and even more recently, as in *China Audiovisual*, to protect public morals.[4]

The importance of Article XX in the scheme of things was also highlighted over the years by WTO

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[1] See Steve Charnovitz. 2007. The WTO's Environmental Progress, Journal of International Economic Law, 10: 685–706; Michael M. Weinstein and Steve Charnovitz. 2001. The Greening of the WTO, Foreign Affairs, 80: 147–156 (November–December 2001)

[2] See Krugman (1987); Stiglitz (2009), What is the Role of the State, in Escaping the Resource Curse at 23; Sachs Warner (1995). For an analysis related to China, see Karl Yuxiang and Zhongchang Chen, 2011, Resource Abundance and Financial Development: Evidence from China, Resources Policy, 36: 72–79. The phrase was first coined by Richard Auty in 1993 in his treatise on Sustaining Development in Mineral Economies: The Resource Curse Thesis (Routledge, London and New York 1993).

[3] Reports of the Appellate Body, United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R (29 April 1996), Brazil – Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB7R (3 December 2007), United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (12 October 1998), European Communities - Measures Affecting Asbestos and Asbestos-containing Products (AB-2000-11), WT/DS135/AB/R (12 March 2001).

[4] Report of the Appellate Body, China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363/AB/R (AB-2009–3, 21 December 2009).

writers as a lever that prevents and avoids conflict between the liberal trade agenda and non-trade concerns. It allowed domestic environmental and resource management regulators sufficient policy space to frame their action plans with a view to international and domestic best practices furthering their strategic goals for their country's development, both in terms of sustainability and enhanced growth, while at the same time stringently prohibiting protectionist conduct as mandated by the chapeau of Article XX.

The focus of this update is on the impact of the recent AB rulings on the natural resources exception covered by section (g) of Article XX.[5] In order to put our discussion in context, let us examine the text of Article XX which provides, in some parts, the following.

> **Article XX: General Exceptions**
> 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 [the GATT or the WTO Treaty] shall be construed to prevent the adoption or enforcement by any contracting party of measures:
> - necessary to protect public morals;
> - necessary to protect human, animal or plant life or health;
> - imposed for the protection of national treasures of artistic, historic or archaeological value;
> - relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

The Panel Rulings on Export Duties and Export Quotas (Parts I and II)

The Panel faced the question of whether China could invoke an exception under Article XX in the face of clear provisions in China's accession treaty to eliminate export duties and export quotas. The Panel adopted a dual approach making a ruling on two levels.

On the first level, it assumed *arguendo* that Article XX was applicable in general and focused the panel analysis and review on whether sufficient facts existed to qualify for one of the exceptions of Article XX.

The Panel found that China was unable to show enough facts to overcome its burden of proof that an exception existed or was necessary under subsections (b) or (g) of Article XX and that China was therefore in violation of its commitments to eliminate export duties and quotas and should bring its measures into WTO conformity.

Similar and consistent with prior rulings, the Panel imposed a strict burden of proof and necessity prior to permitting an application of the general exceptions, and in order as well to comply with the chapeau of Article XX.

On the second level, the Panel went beyond the safe haven of prior legal precedents and attempted to chart new WTO law:[6]

- The Panel said it would impose a stricter reading (than that handed down by the AB in the prior case of US Gasoline) for fulfilling the exception of Article XX (g) relating to the conservation of exhaustible natural resources

  > 7.397 Therefore, in [the Panel's] view, restrictions on domestic production or consumption must not only be applied jointly with the challenged export restrictions *but, in addition, the purpose of those export restrictions must be to ensure the effectiveness of those domestic restrictions*.[7]

- The Panel said that it also found Article XX unavailable to China for purposes of paragraph 11.3 of China's protocol of accession.

These two additional points were appealed vigorously by China and attended by keen attention of analysts and commentators on how the AB would rule.

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[5] For a more comprehensive analysis of the full legal case, see WTO Dispute Analysis (China Raw Materials 7 February 2012), Centre for WTO Studies, Indian Institute of Foreign Trade, details available at <http://wtocentre.iift.ac.in/DisputeAnalysis/China_Raw_Materials_Dispute_Analysis.pdf >.

[6] In the writer's view, this could have been subject of judicial restraint given the factual findings being made that no exception had been satisfied under Article XX.

[7] Reports of the Panel, China – Measures Related to the Exportation of Various Raw Materials, WT/DS394/DS395/DS398/R (5 July 2011) at par. 7.397 , citing GATT Panel Report, Canada - Measures Affecting Exports of Unprocessed Herring and Salmon (L/6268, adopted 22 March 1988), BISD 35S/98 at para. 4.6.

In prior cases, the AB had acted to soften the impact of panel decisions that ruled against the applicability of the Article XX exceptions, and, in fact, in the cited case of US Shrimp Turtle, the AB had affirmed the end result of the panel's rulings while carefully reversing certain panel findings in order to emphasize the efficacy and validity of Article XX, subject only to the strict conditions of the specific exceptions and that of its chapeau – that the measures ought not to be arbitrary or a disguised restriction on trade. In 2009 as well, the AB had found Article XX applicable as regards paragraph 5 of China's protocol of accession.[8]

How the AB Ruled

On the first level arguments, the AB predictably upheld the main findings of the Panel relating to Parts I and Part II, notably finding that none of the exceptions under Article XI or under Article XX were demonstrated to exist for purposes of allowing non-WTO compliant export duties or export quotas to stand. Similar then to past cases, it was a matter of demonstrating in good faith the existence of facts to warrant the exception if a measure was to be upheld under Article XX. A review of all the prior Article XX cases would show deference to Article XX was done more in letter than in spirit, as in all cases, save EC Asbestos, the non-compliant measures were ordered to be removed.

Article XX (g)

On the two new precepts proposed by the Panel, the AB split the difference by agreeing one and disagreeing the other. First, on Article XX (g), the AB over-ruled the Panel, pointing out that the AB had already spoken in US Gasoline on the correct legal interpretation of Article XX (g) as merely requiring even-handedness in regulating both the imported and domestic sources of the exhaustible resource.

> Put in a slightly different manner, we believe that the clause "if such measures are made effective in conjunction with restrictions on domestic production or consumption" is appropriately read as a requirement that the measures concerned impose restrictions, not just in respect of imported gasoline but also with respect to domestic gasoline. The *clause is a requirement of even-handedness* in the imposition of restrictions, in the name of conservation, upon the production or consumption of exhaustible natural resources.[9]

The AB therefore sent a clear signal in favour of abiding by the textual integrity of the treaty provisions. In a manner of speaking, so far so good, and the AB kept to its tradition of restraining panel rulings; nothing unexpected.

In the view of China and other developing country participants, the AB ruling would lessen the stringency that an additional "purpose test" for Article XX (g) would impose on governmental natural resource management measures.[10]

Article XX and China's Export Duties

On the second and more controversial proposal by the Panel to render the general exceptions of Article XX wholly excludible, the AB broke new ground and departed from its own history of strengthening Article XX, albeit in spirit and principle. The AB ruled that the Panel was correct in proposing that all of Article XX is unavailable to China in respect of sub-paragraph 11.3 of China's protocol of accession.

The main underpinning of the AB ruling is that sub-paragraph 11.3 lacks an explicit reference to Article XX or to GATT 1994 or the WTO Treaty.[11] On this same basis, *mutatis mutandis*, the AB affirmed the applicability of Article XX to other aspects of China's obligations where some reference is made to the WTO Treaty or to GATT 1994, or where the obligations arise under GATT 1994.

To illustrate the contrast of reference or absence of reference, some of the relevant portions of China's protocol of accession are reproduced below.

> **5. Right to Trade**
>
> 1. Without prejudice to China's right to regulate trade *in a manner consistent with the WTO Agreement*, China shall progressively liberalize the availability and scope of the right to trade,… . Such right to trade shall be the right to import and export goods.

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[8] Supra note 4.

[9] US Gasoline, supra note 3 at page 20–21.

[10] See Arguments of Third Party Participants, Reports of the Appellate Body, AB-2011–15, WT/DS394/DS395/DS398/AB/R (30 January 2012) at page 69 et seq; see also Submissions of Third Parties, Reports of the Panel, China Raw Materials, WT/DS394/395/398/R/Add.1 (5 July 2011), Annex E.

[11] The AB posits that, paragraph 5, as well as sub-paragraphs 11.1 and 11.2, of China's protocol of accession contained references to either the WTO Agreement or GATT 1994, which references are absent in sub-paragraph 11.3.

11. Taxes and Charges Levied on Imports and Exports

1. China shall ensure that customs fees or charges applied or administered by national or sub-national authorities, shall be *in conformity with the GATT 1994.*
2. China shall ensure that internal taxes and charges, including value-added taxes, applied or administered by national or sub-national authorities shall be *in conformity with the GATT 1994.*
3. *China shall eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6 of this Protocol or applied in conformity with the provisions of Article VIII of the GATT 1994. …*[12]

To legal and contract drafters, the result seems a trifle contrived, given that Article XX is entitled *General Exceptions*, which by its own terms states that *nothing* in the whole treaty is able to be read as preventing them. The ruling also appears to put in question the integration clause common to many treaties or contracts with multiple parts, and which is contained in paragraph 2 of China's protocol of accession.

2. *The WTO Agreement to which China accedes* shall be the *WTO Agreement as rectified, amended or otherwise modified by such legal instruments* as may have entered into force before the date of accession. *This Protocol, … shall be an integral part of the WTO Agreement.*[13]

Would the absence of express reference also impact on the security exception contained in Article XXI of GATT 1994 as far as export taxes is concerned. Article XXI is one of the strongest exceptions contained in the GATT and the WTO Treaty, and states,

Article XXI

Security Exceptions

Nothing in this Agreement shall be construed…

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or…

It can be noted that in Article XXI the discretion and judgement is solely committed to the WTO member's prerogative and is not subject to review. However, by the same logic or lack of specific reference, Article XXI might not be available to China for export taxes.[14]

In another situation, as regards Article XXVII and XXVIII, relating to the ability of members to withdraw or adjust their concessions and schedule of commitments, unilaterally, upon and pursuant to certain procedures, would the AB ruling also signify that China will not be able to adjust any of its export tax elimination commitments under sub-paragraph 11.3 due to the absence of an explicit reference to Articles XXVII and XXVIII of the GATT 1994.

For now, it seems that the main effect of the AB ruling is that China must refrain from the use of export taxes in the context of Article XX, as well perhaps in terms of Article XXI, and other non-referenced provisions of the GATT 1994. As regards other measures, the exceptions within Article XX, and other non-referenced provisions remain relevant.

Speaking of other measures conveniently brings our discussion to Part III of the complaints, where the Panel found certain administrative and export regulations inconsistent with China's WTO obligations.

Part III Other Export and Administrative Regulations – The Panel Rulings

While Parts I and II yielded some ripples of concern and questions, they had limited impact in the sense that they were limited to export taxes and export quotas, measures quite familiar to the trade community and to WTO experts. However, in Part III, there were not only ripples being generated but rather large waves caused

[12] WTO Ministerial Decision of 10 November 2001, Accession of the People's Republic of China, WT/L/432 (23 November 2001).

[13] Ibid.

[14] It is noted that in the United States, export taxes are not a viable constitutional option; The United States Constitution, Article I, Section 9, Clause 5 provides that: No Tax or Duty shall be laid on Articles exported from any State.

by the Panel's handling of matters that go beyond trade issues and concern the larger economic and governance community.

In the course of reviewing the complaints under *Part III*, the Panel attempted to review a whole series of measures not easily identifiable as trade measures that dealt with export and minerals administration, such as prior export experience qualifications, export licensing rules and even minimum export price bid requirements, imposed for various national policy or administration objectives. In the absence of clear WTO precedent and natural resources governance perspectives, the Panel found itself navigating in unchartered waters well outside its area of expertise.

The Panel report contained generalized statements and found a number of the measures in violation of WTO rules. Many WTO members were similarly maintaining various export administration regulations and natural resource economists and experts have at various times suggested certain of these regulations and measures as part of good governance practices. It was clearly an important area which required the AB's intervention.

Part III The AB Ruling on Appeal

The AB cautiously side-stepped the issues by reversing and mooting large parts of the Panel Reports as it related to *Part III* of the complaints and by doing so rendered moot certain elements of the appeals. The AB found that the Panel had created its own problem by failing to issue its preliminary ruling on the sufficiency and clarity of the complaints. This resulted in requiring tremendous amounts of briefing by both the complainants, the defense and third parties, relating to a whole series of measures without a clear guide to what extent WTO rules were relevant or proper.

In reversing and setting aside virtually all the findings relating to Part III, the AB adopted China's position and cited the failure to comply with the Dispute Settlement Understanding's requirement that complainants present a clear case of what WTO obligations were being contravened. Article XX remained mainly in the background as to whether it would have been able to provide a safety net for good faith measures relating to exhaustible natural resources or safety and health concerns.

To natural resources regulators, the panel rulings and the limited guidance of the AB was too close a call for comfort. The panel rulings had already caused alarm bells in the minerals and natural resource policy communities as it appeared to re-ignite the historical concern that the WTO could relatively easily with a broad brush put in question a whole domestic regulatory framework and sets of measures that government bureaucrats and governance and economic policy experts had fashioned and intended to deal with non-trade concerns, such as the environment, the resource curse, and issues of sustainability as well as value-addition and value chain policies to further development.

For example, minimum bid price mechanisms and due diligence export qualifications for raw materials and natural resource minerals are common governmental mechanisms that, had the AB not ruled to throw out Part III of the complaints, were in danger of being questioned and were in fact found by the Panel as violating various WTO provisions.

This would have set a very dangerous precedent and have created a new area of potential conflict for the WTO, which had for a long time been gradually evolving towards assuring environmentalists of the viability of balancing and avoiding conflict between free trade objectives and that of environmental and sustainability policies.

One of the most quoted provisions by many writers and commentators in support of the evolution and progress of the WTO, is the 1994 preamble (updated from GATT 1947) that affirms sustainable development as a fundamental goal:

> 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.

All is well perhaps that ends well and a temporary sigh of relief is feasible as regards Part III of the complaints. Perhaps, it would behoove legal experts and authorities in the WTO to tread carefully on entering into another area of potential conflict involving measures that go beyond export duties or quantitative trade quotas. Non-tariff measures such as licensing and bidder qualifications, and their rationale and wisdom, it is humbly posited, are best left to the discretion of individual governments in accordance with their natural resource and economic development policy mandates.

As stated by Brazil, and echoed by Ecuador and the Kingdom of Saudi Arabia.

> Nothing in the WTO Agreements seems to impose the shared use of the world's natural resources as an obligation to Members. Therefore, the right of Members to consider their own developmental needs in the use of their resources is endorsed by WTO law, in a manner consistent with the principle of Permanent Sovereignty over Natural Resources, but without prejudice to the obligation of a Member claiming justification of a measure under Article XX (g) to demonstrate its full compliance with the requirements contained therein, including its chapeau. These requirements ensure that conservational measures adopted pursuant to Article XX (g) relate to a legitimate conservational policy objective; that they do not target exclusively foreign suppliers or consumers; and that they do not constitute a protectionist restriction. [15]

On balance, the principle of permanent sovereignty is still un-tested in the WTO, and there is a contrary principle of shared resources referred to in one of the sub-sections of Article XX:

> … nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: …
>
> (j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the *principle that all contracting parties are entitled to an equitable share of the international supply of such products* . . .

Disputes Procedural Due Process

In dealing with the Part III debacle, as mentioned above, the AB made known its displeasure that the Panel had failed to dispose of Part III early on to avoid the need for pleading the issues. The AB guidance on this issue has significant import to many developing countries given the heavy administrative burdens imposed on them by the failure of panels to require strict compliance with DSU Article 6.2 and in preventing least and less developed countries from being subjected to overly broad and complex requests and complaints relating to their WTO obligations. This part of the AB ruling is a positive development for developing country respondents.

Concluding Comments

In an attempt to understand the AB ruling, one is struck by the many questions that have arisen, and could in the future arise, as a result of the ruling. Has the China Raw Materials case contributed to settling the legal situation definitively;[16] was the AB well-advised to venture into a new area when it could just as easily have affirmed the Panel on the absence of facts to warrant an exception under Article XX, leading to the same end result while remaining faithful to existing AB precedents.

The impact of this case on the Article XX exception and other non-trade and governance exceptions will therefore be of continuing interest to the environment and natural resources and minerals and mining communities, and warrants close monitoring and further expert commentary and research. It will also impact on recent and future protocols of accession, and the need for negotiators and drafters to examine carefully the coherence and integrity of the single treaty system of the WTO and the multilateral trading system as a whole.

There will also be a need for a more comprehensive discussion of natural resources economics as it interfaces with trade theory and how policy makers can balance conflicting interests over natural resources as it relates to issues of sovereignty, the global commons, exhaustibility and sustainability, economic development imperatives and open access, and the handling of resource curse factors.[17]

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[15] See Executive Summary of the Oral Statement of Brazil, in China Raw Materials, WT/DS394/395/398/R/ Add.1 (5 July 2011), Annex E-2.

[16] It seems that not everything is settled by the case. As of writing, the United States, Japan and Europe announced that they were filing another natural resources WTO case against China involving rare earths (A.P., Reuters, FT, CNN, 13 March 2012).

[17] For a comprehensive discussion on the subject, a suggested starting point is the special issue of the World Trade Organization's World Trade Report 2010: Trade in Natural Resources, details available at <http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report10_e.pdf>

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Africa, Emerging Economies and Trade In Natural Resources: Panel Discussion in World Trade Organization Public Forum, 21 September 2011

Summary

A panel discussion titled "Africa, Emerging Economies and Trade in Natural Resources" was organized by Centre for Global Agreements, Legislation and Trade area of The Energy and Resources Institute on 21 September 2011 in the WTO (World Trade Organization) Public Forum (September 19–21 2011), at Geneva, Switzerland. The session aimed to assess importance of trade in natural resources for economic development of Africa and emerging economies. The assessment was made by exploring how natural resource based commodity trade can be applied for Africa's advantage through new strategic, reengaged, reformulated partnerships with emerging economies. Key elements of such partnerships would deal with – (a) well-designed taxation systems helping communities, (b) management of natural resources. Aid, investments from emerging economies to Africa will have to play a key role in these strategic partnerships and needs to be designed, disbursed in an effective, fair, manner. Moreover, in these partnerships, emerging economies should share their experiences with countries of Africa. Investments made as part of these partnerships have to be considerate to livelihoods of people owning natural resources. It was recognized that these measures can be implemented only with the presence of sensitive, coherent, inclusive policies, effective governance and leadership regimes at local and global level.

Presentations by panelists: brief summary of the main points raised by each panelist

The session included moderator H.E. Jayant Dasgupta, Indian Ambassador to WTO. Speakers of the panel included Ms. Phelisa Nkomo from Black Sash (South Africa), Ms. Netsanet Kibret from Horn of Africa Regional Environmental Centre and Network (Ethiopia), Prof. J George from Institute of Economic Growth (University of Delhi, India) and Mr. Nitya Nanda from The Energy and Resources Institute (India).

The panel discussion began with an introductory speech by H.E. Jayant Dasgupta. He emphasized the need of developing partnership between emerging economies and Africa to create a win win situation for both. In this context, he described the role and effectiveness of changing nature of aid that will be important to establish a win win situation for partnering countries of Africa and emerging economies.

Ms. Phelisa Nkomo mentioned the importance of strategic, reformulated partnership in natural resources between Africa and emerging economies. With emergence of growing trade protectionism following the financial crisis, this partnership can act as a buffer and holds substantial importance for Africa. In order to give sustaining longevity to this partnership, comparative advantage of Africa in natural resource sector has to be harnessed along with a simultaneous focused growth of manufacturing industries. Revenue from these sectors has to be directed for social, economic, infrastructure and livelihood development of communities of the African nations. An integrated trade, social and economic policy regime has to support this development across these countries complemented by efficient governance mechanisms.

This strategic partnership has to be launched through treating partners from Africa with dignity and consideration of the challenges faced by them in coming out of special adjustment programmes. Technology and skill transfer between economies has to be an integral part of this partnership.

One of the essential means of this partnership has to be through investment in natural resources. Investment should not only be linked to extractive industries and must emphasize on development of new, subsidiary, downstream, processing industries as well. Currently, processing is done in other continents after natural resource is extracted from African countries. Investment from emerging economies in natural resources has to ensure that local communities in resource rich regions of Africa are taken along in developing the partnership. Returns from such investment should also be used in domestic social infrastructure development. An industry of emerging economies which gets involved through this investment has to safeguard community interest and ensure transfer of revenue to communities. Such transfers can be achieved through implementation of well-designed taxation systems and reformulation of fiscal devolution mechanisms for trickling down of revenues to local level. These can be achieved only by checking capture of the fiscal system by political elites and private parties.

In continuation of panel discussions, Ms. Netsanet Kibret mentioned the need of managing natural resource degradation through participatory land management before forging out for partnerships with emerging countries. She highlighted the need to enhance intraregional trade within countries of Africa to strengthen macroeconomies of Africa. Currently, intraregional trade is very low within Africa and most exports belong to natural resource sector and are directed to continental Europe followed by North America, Asia and South America. Revenue from larger intraregional trade can help African countries to be in a better bargaining position before delving into partnerships with emerging economies. Once domestic strength on natural resource governance and intraregional trade is developed, it can pave way for countries of Africa to negotiate better in trade negotiations and get larger market access in partnering countries of South.

South–South trade in natural resources between Africa and emerging economies has happened largely through long term bilateral contracts between host government and private firms and has been marked with land acquisition by private firms in host countries like Ethiopia. It has to now focus on the objective of development of strong manufacturing industries facilitated through South–South trade. Along with nurturing of these industries through a trade relationship, development and integration of renewable energy technologies in these industries can be sought for through fiscal incentives of tax breaks within the host countries.

An oversight body has to be developed to supervise nature of investments made as a part of South–South trade. Strict regulatory measures, accountable governance mechanisms supported by political will should assess every new investment and find out the impact of such investments on environment, ecosystems. A culture of corporate social responsibility has to be built which will ascertain that communities benefit from investments arising out of a South–South trade partnership. Such a culture will push towards strong legislation to make land acquisitions in a responsible way by involving communities through development of proper land use development plans. In the Kampala region, a land use plan has been developed for investors by involving the regional government, civil society to preserve natural resources and protect them from adverse consequences of investments, land acquisition in order to promote eco tourism.

Mr. Nitya Nanda pointed out that debates related to export restrictions, resource access have become prominent after the arrival of emerging economies in the world stage. Globally, trade in primary products has been dominated by few companies and they have got control over buyers and sellers. This has happened in case of coffee, oil, commodities like copper. Number of buyers in the market of primary commodities has increased over the years in comparison to suppliers. Commodity market has become competitive and as a result of that suppliers have started getting relatively a better price.

Mr. Nanda mentioned that emerging economies like China have faced the allegation of not participating in global market. Instead of participating in the global market, China has got engaged in deals with national level governments, local companies and is trading with African countries by passing the global market. He raised a fundamental question—in what way and by whom prices of traded primary commodities are determined. Price of these commodities and its determination process become important for countries of Africa as they are highly dependent on export revenues earned from these traded primary commodities. Moreover, these prices are determined by speculative actions in commodity exchanges such as NYMEX (New York Metal Exchange). Speculative trading has increased prices of primary commodities leading to a positive mark up between buyers and

sellers price. Market speculators have earned their profits from this price mark up. Gains from such market speculation do not trickle down to poor communities engaged in production of primary commodities. There is a need to reduce this global imbalance. Partnerships between emerging economies and Africa have to be designed in a way to correct this imbalance through governance regimes. Such associations have to involve fair means of aid disbursement. Further, it should be guided by mutual exchange and sharing of learning experiences without having the so called "White Man's" burden.

In an emerging economy and African country relationship, importance has to be given to policies that is sensitive to people owning natural resources. This will help in effective transformation of a partnership towards social reforms and development with assistance of the revenue arising from natural resource sector. Success of Botswana bears resemblance to this fact. Role of government was very important behind this success. In the past, most African countries went for privatization of natural resource sector without safeguarding people owning natural resources. Many times, concessions were given to private players who took the mining assets and earned profits although the people who owned the resources suffered. Host governments did not negotiate strongly with private investors in these mining assets leading to repeated concessions for private investors who got these mining assets at high concessional rates. Acquisition of Zambian copper mines is evidence of this fact.

Prof. George criticized the vision of sustaining economic growth of countries relying on extracted natural resources as inputs for goods production for maintaining growth path. African countries have moved on this path leading to natural resource degradation. Growth of natural resource based oligarchic business models with a drive for productivity enhancement have created adverse consequences for small and marginal farmers livelihood and have impinged food security. With this premise, it is important to consider livelihood security of people managing natural resources in any partnership between emerging economies and countries of Africa. Essentially, small and marginal farmers should be aligned and linked to market for enhancement of their income and livelihood gains which can only be obtained through new regimes of political, business leadership.

Following the panel discussion, questions were raised from the floor. Brief synopsis of the questions from participants and the corresponding responses to those questions by speakers are summarized below.

Questions and comments: A selection of some of the questions/comments following the presentations

Responses to the questions are summarized below -

What is the role of political will in creating win win strategic partnership between emerging economies and Africa?

This question was addressed to all speakers in general. Response was sought from speakers of the panel on this question by the audience. Summary of responses by speakers communicated that any strategic partnership has to be done in an equitable, fair way. Moreover, such partnerships will have to be based on pillars of strong domestic governance. Sharing of learning experiences between partners hold key in sustaining such alliance. Political economy, governance regimes play a key role in bringing that sustenance. Local governance has to be strong and challenges faced by communities have to be solved at local levels. These challenges have to be discussed at the national and international level between decision makers. A strong political will has to be formulated through such discussions for addressing them in the context of engagement between emerging economies and Africa. A new age of political leadership will play a very important role in bringing out such solutions. Further, in such a leadership voices of communities and their livelihood issues will have to be heard. This will result in a futuristic, sustained partnership between emerging economies and countries of Africa.

Can WTO ensure that Africa and emerging country partnership will be able to secure a sustainable trade in natural resources?

Ms. Nkomo answered this question by saying that it is important to recognize historical achievements of WTO before commenting on its future role in securing sustainable trade in natural resources. At the same time, it is critical to strengthen national level initiatives, bilateral, partnerships to infuse larger accountability for the people through integration of issues dealing with natural resources into the national development agenda of all partnering countries of Africa and emerging economies. In order to do that there is a need to revisit

the existing rules of WTO. Prof. George suggested that the success of WTO will also depend on efficacy of the functioning of regional institutions and governance mechanisms at decentralized levels.

What can be the possible impacts of new legislations of not buying resources from conflict areas for the people and emerging economy, Africa association?
Implementation of this type of legislation has to take into account the causal factors behind a conflict in any particular area. Once such causal factors are determined and analysed, investments and buying of resources have to be further decided on the basis of transparent mechanisms assuring the communities that they get dividend of owning natural resources. Further, if investments are made in these areas, communities have to get a development dividend from these investments in conflict ridden areas. Investments might not be affected due to these legislations as long as communities are protected and given a dividend out of these investments in conflict ridden areas. Ms. Kibret highlighted that each of these investments in conflict ridden areas have to be dealt on a case specific basis before assessing the effects of this legislation on investments and emerging economies' partnership with Africa.

How much policy space exists for a member country of WTO from Africa to ensure development of downstream domestic industries at the backdrop of China's rising acquisitions of natural resources from Africa?
Ms. Nkomo, Ms. Kibret answered this question by mentioning that countries of Africa need to have strong domestic negotiation policies which ensure that they negotiate and pushes the investors to develop domestic downstream industries when they come for resource acquisitions in countries of Africa. So the policy space creation has to be more of a domestic initiative rather than coming from WTO.

Mr. Nanda complemented them by saying that if WTO gets involved in this space creation it can give wrong signals to other investors from some countries which are rich in natural resources like energy. These include countries like Russia which has an observer status in WTO. Involvement of WTO in domestic policy space creation in the negotiation process of African countries with investors from countries like China can give adverse signals to observer countries and can act as a hindrance in their joining process to WTO.

Conclusion

Active discussion between speakers and participants from Africa, South East Asia and South Asia suggested that a strategic, reformulated, reengaging partnership between emerging economies and Africa, political leadership and governance regime has to be evolving over time and needs to be managed well. Focus of such partnership should be on reduction of adverse sufferings of the communities who own these natural resources. Responses from speakers and discussions between participants and panelists brought out a sense of optimism in the possible scope of sustenance of such partnership. It was recognized that such sustenance can be achieved only through more sensitive, coherent and inclusive policies, strong governance and leadership regimes at local and global level.

Course VI

Trade and sustainable development - issues for developing countries

19 November–07 December 2012
RETREAT, Gual Pahari, Gurgaon

Course Coordinator: Mr Nitya Nanda (nitya@teri.res.in)

About TERI-ITEC

TERI is empanelled by the Indian Technical and Economic Cooperation (ITEC)/ Special Commonwealth African Assistance Programme (SCAAP), government of India, for this programme. Under the programme, eight courses are being offered for the year 2012-13. These are: Integrated approach towards sustainable development, applications of biotechnology and its regulation, designing and implementing solar energy based livelihood projects for rural communities, climate change and sustainability, decentralized energy solutions-planning and implementation, trade and sustainable development, resource security and governance issues, challenges and opportunities, renewable energy and energy efficiency.

Each individual course is a three-week long residential programme conducted in India, attended by participants from other developing countries. The courses are designed to meet the needs of senior and mid-level government and non-government officials from ITEC/SCAAP countries.

Advantages of attending the course

- Increased understanding of various dimensions of each course;
- Development of practical knowledge through demonstrations and field visits; and
- Wider exposure to India as the course lectures are complemented by study tours.

Course eligibility

Bachelor's/Master's degree in any discipline; work experience of 2 years
Number of participants - 30

Course details

The course provides an introduction to multilateral and regional trade regime, global institutions and sustainability, multilateral environmental agreements and trade linkages. It has a special focus on developing country concerns and south-south trade.

Scholarship

The cost of the course, travel, and stay of the selected participant will be borne by ITEC (Indian Technical and Economic Cooperation, Ministry of External Affairs, Government of India).

Application procedure

Fill up the ITEC/SCAAP Application form and submit it to respective nodal government department/ agency designated to nominate candidates. The nodal department/agency will, in turn, forward the applications to the Embassy/High Commission of India. The selected participants would be informed by the Indian Embassies of the respective ITEC/SCAAP countries.

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NEWS UPDATE

Trade Winds

No to sectoral talks

Despite mounting pressure on the member countries to take the stalled global trade talks forward, India is resisting developed world's attempts to force negotiations on import duties on specific goods, or sectorals.

The US, backed by the EU and Japan, has been pushing for sectoral negotiations if talks are revived, which would force the member countries to completely remove tariffs on a number of products, including machinery and chemicals, which are of interest to advanced nations. India and other big developing countries, such as Brazil and Argentina, have argued that the mandate of the ongoing Doha negotiations was to keep sectoral negotiations voluntary.

The Economic Times, April 11, 2011.

EU's new trade scheme to affect India

The European Commission plans to dramatically cut the number of countries that receive trade benefits under a special scheme for growing economies from 176 to around 80.

India and the other BRIC nations are among those that will no longer receive the special tariff preferences. Europe's Trade Commissioner, Mr Karel De Gucht, set out the proposals, which must still be ratified by member states and the European Parliament, to reform the region's system of providing zero or reduced tariff rates and quotas, known officially as the Generalised System of Preference (GSP).

The Hindu Business Line, May 10, 2011

India and Australia begin FTA Talks

New Delhi: India and Australia on Thursday committed to double their bilateral trade in five years and signed an agreement to launch free trade negotiations. Trade relations between the two countries is heavily tilted in favour of Australia because of India's fast-growing demand for natural resources. India's objective is to create some sort of balance in the bilateral relations with Australia by getting the latter to remove barriers to its exports of services.

Financial Express, May 13, 2011

WTO criticizes India's trade policy

In its review of India's trade and economic policies, the WTO observed that India was one of the highest user of anti-dumping and a frequent user of safeguard measures against imports from other countries. Between January 2006 and December 2010, India initiated 209 anti-dumping investigations against 34 trading partners, compared with 176 reported in its last review. Since its last review in 2007, India has also imposed several safeguard measures, the report notes.

India uses trade policy to attain short-term goals such as containing inflation, although it aims to provide a stable trade policy environment to reach its long-term goals, the report said. On the positive side, India's average applied tariff rate declined to 12% in 2010-11, from 15.1% in 2006-07.

The Economic Times, September 15, 2011

WTO Ends Meeting Silently

The World Trade Organization closed its biennial ministerial conference on December 2011 with no concrete moves forward on the Doha round of world trade talks. Little was expected from the meeting on Doha, a deadlocked negotiation. This also ensured that the meeting passed almost unnoticed unlike the earlier years when huge media and NGO attention became the norm. There was some success though in the meeting as Russia, Samoa, Vanuatu and Montenegro were brought into the group.

Reuters, December 17, 2011
(http://www.reuters.com/article/2011/12/17/us-wto-idUSTRE7BG0NR20111217)

Pakistan to ease trade with India

Pakistan's cabinet approved a proposal to ease trade with India by switching to a negative list-based import regime and following it up with a most-favoured-nation (MFN) trade status by the year-end.

The move will increase the number of items Indian exporters can sell to Pakistan by nearly three times. India had given MFN status to Pakistan 16 years ago, though Ismalabad claims there are still several non-tariff barriers that its exporters face.

The Economic Times, March 1, 2012

BRICS to promote trade in local currencies

Determined to end the hegemony of rich Western nations in navigating global economic policies, the BRICS nations today signed two key accords to promote trade among them in their local currencies and explore the possibility of setting up a development bank for mobilising resources for infrastructure and sustainable development projects.

"The agreements signed today by development banks of BRICS countries will boost trade by offering credit in our local currency," Prime Minister Manmohan Singh said in a media statement at the end of the meet, attended by the Presidents of Presidents of Brazil, Russia, China and South Africa

The Tribune, March 30, 2012

Investment Current

South Africa ranks 14th in the list of prospective investment destinations

According to the World Investment Report of UNCTAD, South Africa is ranked 14th amongst 21 prospective investment destinations for 2012 – 2014. This survey based ranking suggests that developing countries will continue as an attractive export, trade, investment destination points during 2012 – 2014. Top 5 countries within the ranking are – China (1st), India (3rd), Brazil (5th) with Russia, Germany having a joint ranking of 8th. Investments in these countries will be coming mostly from developed countries which include US, UK, Germany, Japan, France and Canada.

Source: "SA ranked 14th top investment prospect", South Africa - The Good News, July, 2012

Transition of least developed countries owing to South South Cooperation

UNCTAD Least Developed Countries Report of 2011 indicates that South South Cooperation has been helping various least developed countries to make a transition from their LDC level to a higher income status. This transition is happening due to an improvement in their income from projects. Various projects are being implemented successfully because of larger access to development finance, capital and affordable technology. Share of FDI projects belonging to southern investors between 2003 and 2010 has also grown upwards. Statistics indicate that the share has increased from 25% to 40% between 2003 and 2010 though the total FDI flows to LDCs during the same time was growing at an average of nearly 20% each year.

Source: " South-South cooperation for development" , United Nations, 2 April, 2012, http://ssc.undp.org/content/dam/ssc/documents/HLC%202012/SSC%2017%201%20(E).pdf

Latin America as a source of natural resources for India

According to the report of the UN Economic Commission on Latin America and the Caribbean (ECLAC, November 2011), South America is turning out to be a major source of copper, oil, soya and iron ore for India and China. Larger drive of India, China to seek these natural resources from South America can push the South American region towards deindustrialization and can convert it to an agro mineral exporting economy hindering diversification of the economy to other sectors. The report finds out key differences in investments from India and China to these sectors. These differences are a) supply and demand factors of Indian companies drive investments from India whereas for China, investments are led by government, b) Indian FDI is directed to manufacturing and service sector of the developed world whereas the Chinese FDI is geared towards the mining sector of developing countries and c) Indian FDI is supported by corporate governance, management measures though the Chinese FDI is assisted by economic diplomacy and government strategies.

Source: "Latin America, India's next big thing?", The Hindu, February 22, 2012

Global FDI Outflows fail to generate productive capacity

Increase in the growth of FDI outflows during 2011 didnot generate an expansion of production capacity. This happened because these FDI outflows didnot generate direct greenfield investments to a large extent. Moreover, most of these investments also didnot create any capital expenditures for building up foreign affiliates in the countries where the FDI was directed.

Source - Global Investment Trends Monitor, UNCTAD, 12th April, 2012

Global FDI rises in 2011

Global FDI inflows rose by 17% in 2011 as per the UNCTAD estimates. However, rise in FDI will be impacted in future by uncertainties arising from volatilities of euro, enhanced financial turbulence and debt crisis of developed countries. This was reflected in the trend of FDI inflows for the final quarter of 2011 measured by means of green field investment projects and cross border mergers, acquisitions. Rise in FDI has happened in all types of economies viz. developed, developing and transition economies. Though overall, FDI increased in all these types of economies, foreign portfolio flows declined substantially during the third quarter of 2011. This is in contrast to the FDI flows to developed countries which grew in 2011 after facing three years of consecutive decline.

Source: "Global FDI flows rose by 17% last year", TWN Info Service on Finance and Development (Jan12/03), Third World Network, 31 January 2012

FDI in Indian port is at a standstill

One of the biggest foreign direct investment by Singapore's PSA International which was directed to an India port project has come to a standstill. This happened once the members belonging to the board of Union government who are looking after the Jawaharlal Nehru port raised their reservations about the local partner of PSA viz. ABG Ports Pvt. Ltd. Investment of PSA is meant to build up a fourth terminal and create a capacity expansion. Members have expressed concerns regarding the underperformance of the Indian company (ABG Ports Pvt. Ltd) which has been operating at Kandla port of Gujarat.

Source: Wall Street Journal, August 14, 2011

Resource and Energy

Asia-Pacific Energy Summit 2012

The recently held Asia-Pacific Energy Summit 2012 shared a view that Asia is facing challenges due to the increasing demand for energy to support its economic growth. In order to meet this demand it is important to focus on clean energy technologies and efficient power saving. Market demand for clean energy and energy products should be created through some successful regional energy cooperation in South Asia , Southeast Asia and APEC. Participants discussed the recent development of nuclear power in the region, and made some practical recommendations for power policies.

Source: Sustainable Energy Highlighted at Asia-Pacific Energy Summit 2012, 23 March, 2012

Solar power initiative between Tunisia and Europe

Europe could rely on Tunisia to find renewable clean sources of energy and reduce the dependence on nuclear power. Tunisia is endowed with solar power and has 20% stronger radiation than Europe. Being near to Italy, Tunisia can supply the electricity directly to European markets. TuNur, a joint-venture between Nur Energie, a solar plant developer from England, and a group of Tunisian investors, established the first solar export scheme between Tunisia and Europe through Italy. It may start its electricity exports by 2016 to cater 700,000 European households. and can generate employment According to TuNur officials, apart from creating large number of employment opportunity for local economy, it will help other Tunisian firms to build their solar plant for local consumption.

Source: Solar Power Initiative Could Make Tunisia Power Source for Europe, Tunisialive, 8 Feb., 2012

India-Afghanistan strategic partnership in mining and hydrocarbon sectors

India and Afghanistan have signed a Strategic Partnership Agreement to create an institutional framework for future cooperation in mining and hydrocarbons. The MOU mentions of promotion of closer trade, investment and transit links in oil and gas sector facilitating bilateral cooperation in exploration, production, infrastructure development within the hydrocarbon sector. The MoU in mining aims at exploration and exploitation of mineral resources and capacity-building in the field of geosciences and mining in Afghanistan. Both the MoUs seek to promote private and public sector investments in the respective sectors.

Source: India, Afghanistan ink agreement on strategic partnership, NetIndian News Network, 4 Oct., 2011

Latin America and the Caribbean initiative of regional cooperation in bio-jet fuel

A regional cooperation to develop sustainable bio-jet fuels industry was approved by the Inter-American Development Bank (IDB). Both public and private institutions will be engaged in this initiative. The initiative will fund knowledge development and consultancy services on the sustainable use and production of bio-jet fuels based on local organic feedstock. The industry will target both local requirement and export potential. The IDB is partnering with related institutions and companies and aims to displace nearly 50 % of jet fuel worldwide by alternative sources by the year 2050 to reduce carbon emission. According to the IDB project team, since aviation industry is currently adopting "drop-in" fuel approach, it will be easier to introduce bio-jet fuels. Brazil, Mexico, and Colombia have already initiated the development of sustainable bio-jet fuels.

Source: IDB launches regional initiative to support Sustainable Aviation Biofuels in Latin America and the Caribbean, Inter-American Development Bank, 8 Jun, 2011

India-Africa cooperation in renewable energy

The recent IRENA-Africa High Level Consultative Forum, India offered to expand and strengthen its cooperation in the field of renewable energy with the African countries through sharing its own experience, knowledge and technology in the field. It was informed that for electrification of villages in the African countries through solar energy, India is already assisting them and aims to set up 40 solar charging stations and 40 biomass gasifiers to facilitate the initiative. In the forum, India projects its success in providing energy access through decentralized renewable energy sources. Moreover, India has announced about 250 training positions for African learners and professionals in the field of renewable energy. On the other hand, to help Africa to achieve its development goals, India has offered 700 million USD as assistance and 5 billion USD as lines of credit for the next three years in 2nd Africa-India Forum Summit.

Source: India calls for cooperation with Africa in solar energy, The Economic Times, 8 July, 2011

Solar power plant with 24 hours of uninterrupted production

Gemasolar, the solar plant located at Seville, Spain, has supplied its first uninterrupted 24-hours of electricity to the network. The innovative technique of storing solar energy in molten salt has made the effort possible. This system is able to produce 15 hours of electricity without solar radiation and can help to overcome energy supply fluctuation as well. The innovative system allows the plant to generate and supply electricity beyond sunset, irrespective of the cloud cover. The plant is able to supply electricity to a population of 25,000 households. The plant is operated by Torresol Energy which is a joint venture between Masdar – Abu Dhabi's clean energy initiative and SENER – the leading Spanish engineering and construction company. The receiver in the plant is able to absorb 95% of the radiation from the sun's spectrum. It then transmits this energy to the molten salt compound which is then used to heat steam and operate the steam turbines.

Source: Gemasolar solar power plant reaches 24 hours of uninterrupted production, Al Bawaba, 5 July, 2011

Air and water

CoP 17 sets agenda for the future treaty

The annual event of UNFCCC, COP17 took place in Durban, South Africa, from 28 November to 9 December, 2011. Key outcomes of the event included the extension of the Kyoto period, agreement of the countries to negotiate a legally binding deal on emissions reductions by 2015 to be implemented from 2020, and the establishment of Green Climate Fund which to be ready by 2012. A standing committee would monitor the climate finance in the context of the United Nations Framework Convention on Climate Change (UNFCCC) to assist the COP.

Source: "Overview of the Key Outcomes of the Durban Conference", UNFCCC. Available at http://unfccc4.meta-fusion.com/kongresse/120215_tec02_bonn/pdf/3_Outcomes_of_Durban_DTT%20final.pdf

Sustainable biofuel schemes win EU approval

The European Commission (EC) approved voluntary schemes to ensure that rainforests are not destroyed to grow biofuel crops. Where biofuels are used to achieve this target, they must meet a set of sustainability requirements in order to receive government support. Such schemes will verify where and how the biofuels are produced. The Commission will appoint auditors that require to have relevant standards in place as certified by the International Organization for Standardization (ISO) and are accredited by a member of the International Accreditation Forum.

Source: "EU powers ahead with 'sustainable' biofuel certification schemes", ENS-Newswire, 22nd July, 2011. Available at http://www.ens-newswire.com/ens/jul2011/2011-07-22-01.html

National Green Tribunal starts functioning

The National Green Tribunal (NGT), a judicial body aimed at expediting environment-related cases, began functioning in July 2011. The tribunal, headquartered in Delhi, is an independent unit and has been launched with an initial support of the environment ministry. The tribunal will deal with environmental cases. Apart from Delhi, the green tribunal will have four circuit branches in four regions of the country. India is only the third country after Australia and New Zealand to have a dedicated (green) court.

Source: "National Green Tribunal starts functioning", The Economic Times. 4th July, 2011, Available at http://economictimes.indiatimes.com/news/politics/nation/national-green-tribunal-starts-functioning/articleshow/9097684.cms

Green strategy for CBEC cleared

Government of India has cleared 'Environment Strategy' for the CBEC. Under this, officers of the department are to be trained for monitoring international trade in environmentally sensitive goods. It would also include sensitizing officers of Directorate Revenue of Intelligence DRI and Customs to enhanced detection of environmental violations, besides creation of a database and dissemination of relevant environmental information. It seeks to protect officers from hazardous substances by providing radiation detection kits, eliminate paper documentation and promote web-based communication and develop and implement green standards for infrastructure.

Source: "Finmin clear green strategy for CBEC", The Business Standard, 16th August, 2011. Available at http://www.business-standard.com/india/news/finmin-clear-green-strategy-for-cbec/144532/on

SC asks centre to form panel to interlink rivers.

Supreme Court of India has asked the government to implement the interlinking of rivers project in a time-bound manner to prevent drought and flood in the country. The court also appointed a high-powered committee for planning and implementation of the project. The committee comprises representatives from various government departments, ministries, experts and social activists

Source: "Interlink Rivers: SC asks centre to form panel to tackle drought, flood", The Economic Times, 28th February, 2012. Available at http://articles.economictimes.indiatimes.com/2012-02-28/news/31108060_1_river-interlinking-project-task-force-social-activists

Ministry of Petroleum asked to follow IMO fuel emission norms

The Ministry of Petroleum and Natural Gas (MoP&G) has been advised to follow fuel emission norms prescribed by the International Maritime Organisation (IMO). IMO has reduced sulphur limit in the fuel oil to 3.5% from 4.5%. Also the sulphur limit in the fuel oil has been reduced to 1% from 1.5% in Emission Control Area (ECA). This is a part of the IMO Energy Efficiency Design Index (EEDI) value to apply in four phases from 1st January, 2013 to 1st January, 2025. India has approved ratification of MARPOL (marine pollution), an international convention for prevention of pollution from ships "so as to avail the waiver of the requirements of compliance with the Energy Efficiency Design Index (EEDI)."

Source: "Petroleum Min asked to follow IMO fuel emission norms", Business Standard, 10th January, 2012. Available at http://www.business-standard.com/india/news/petroleum-min-asked-to-follow-imo-fuel-emission-norms/154915/on

PROJECT UPDATE

Examining issues in carbon barriers to trade
Supported by: Norwegian Ministry of Foreign Affairs

The nexus between trade and climate change is receiving much attention lately. This also has roots in the fear of leakage of carbon-intensive industries to developing countries. However, such adjustment measures can impose significant economic costs upon developing countries, which in turn might affect their mitigation and adaptation capabilities. The study is undertaken with the objective of addressing trade issues in climate change mitigation and adaptation from an Asian perspective. The project will examine the issues in carbon barriers to trade and their implications for trade competitiveness of developing countries as well as their implications for climate change mitigation and adaptation strategies.

The study will throw light particularly on the existing and potential carbon related trade barriers and the vulnerability of select sectors to such trade policies. The analytical findings along with stakeholders' feedback will help in designing possible sustainable interventions in the changing trade policy scenario.
Under the project, the literature survey and data collection is almost complete. Currently, the major activity is analysis of relevant data.

IPR roadmap for technology transfer in developing countries for mitigating and adapting to climate change
Supported by: Norwegian Ministry of Foreign Affairs

The project seeks to devise an IPR regime roadmap for developing countries that uses existing TRIPS flexibilities and beyond TRIPs, reconciling the twin goals of incentivising innovation and facilitating technology transfer for mitigating and adapting to climate change.

Examining the role of trade agreements other than TRIPs and developments at forum like the WIPO in coercing developing countries in adopting TRIPS-plus bligations as well as assessing how (if at all) IPR issues and options for technology transfer vary in the case of adaptation as against mitigation will be an important part of the study.

Exploring flexibilities beyond TRIPs and harmonization of international agendas (e.g., WIPO development agenda) in favour of technology transfer for developing countries, and emerging alternative IP options like patent pooling, open sourcing and green patent commons, which are still in rudimentary stages, but expected to grow in recent times, will also be examined.

The project started in August 2010 and the scoping study has already been completed. Currently, work is on for preparing case study for select climate technologies.

'Responsible sovereignty' and energy resources
Supported by: Konrad Adenauer Foundation

What does 'responsible sovereignty' entail in the context of energy minerals resource development? What does it imply in the context of the principal-agent relationship? These are important questions as nations exercise sovereign control over resources, of which they are custodians on behalf of the people. This study examines these issues as they translate into control and governance of key energy resources. It will focus on coal and uranium in India and be woven around three broad governance themes—global investment strategies, sharing of benefits and burdens from such development, and issues pertaining to the policy and institutional framework. The project is in its preliminary stage now and work for the three modules is yet to start. Meanwhile, work started on for the following five background papers, three of which have already been completed:

- Sovereignty and resources
- Production and use of coal
- Production and use of uranium
- Trade and investment issues for coal and uranium
- Coal and uranium pricing and the institutional structure in the power sector

The project draft report has been completed. Currently, the project team is engaged in converting the report into publishable form.

Post-TRIPS IPR Regime: Opportunities and Challenges
Supported by: British High Commission, New Delhi

Post-TRIPS, a thorough revision of the Indian IPR regime has taken place.

However, there have been very little research to understand this which has also been narrowly focussed

on patents and pharmaceuticals industry. There are still issues like low level IPR especially with SMEs and low level of commercialization of IPRs. At domestic level, despite many reforms contribution of Indian IPR holders in total IPR registered in the country is quite low. Moreover, even if IPRs are registered, drawing commercial benefits from such IPR is also at low level. Hence, the country needs some additional measures to improve the situation.

Against this backdrop, TERI has undertaken a project to contribute to India adopting policies and measures for improved IPR regime to ensure balanced outcomes for different stakeholders. The project will look at the extent to which India has been able to put in place appropriate regulations and enforcement measures so that the recent changes in IPR Regime bring out balanced outcomes as well as the impacts of the amended patent law on the stakeholders.

The project aims at identifying opportunities and challenges for India with respect to patent, GI and design protection in the Post-TRIPS IPR Regime in India. The project is guided by a steering committee comprising of policy makers, practitioners and experts. The literature survey under then project is almost complete. It also had one round of stakeholder consultation. Currently, the project team members are engaged in preparing for field survey.

Trade in Remanufactured Goods: Issues and Stakes for India

Supported by: Centre for WTO Studies/Ministry of Commerce and Industry, Government of India.

Remanufacturing, whose definition is often contested, is sometimes defined as a process in which a used product that has served its required amount of use and whose core is in a perfectly usable condition, is made fit for commercial use by transforming it through cleaning, testing and other industrial processes. Trade in remanufactured goods has both advantages and disadvantages. Remanufacturing represents an opportunity for consumers, especially in developing countries, to purchase high quality goods at lower prices. At the same time it may be argued that trade in remanufacturing may result in trade in used products which would promote trans-boundary movement of waste from the industrialized countries to developing countries. In other words, it is one way of shifting the environmental and safety burden from developed to developing countries.

Trade in remanufactured goods has attained significant prominence after the issue was brought in to the ambit of Doha trade negotiations in 2004 by the developed countries and in particular by the United States. Given this context, TERI is looking at several issues related to remanufacturing – ranging from definitional issues, economic, social and environmental impacts of production and trade in remanufacturing goods and rules and regulations related to remanufactured goods in prevailing in different countries.

The project has completed the literature review and field survey and currently the project team members are engaged in preparing the draft report.

Training Programmes

A training programme titled - 'Trade and Sustainable Development: Issues for Africa' supported by Ministry of External Affairs, Government of India, was held at Addis Ababa University, Ethiopia from 26 - 28 March 2012. The training programme organized by Addis Ababa University (Horn of Africa Regional Environmental Centre and Network) and TERI delved into issues of trade and sustainable development relevant for Africa.

Africa relies on agricultural, primary and mineral commodities produced by farmers for export earnings. Distribution of export revenue leads to development of people engaged in the production of these commodities. However, in the recent past, Africa has faced bans on exports in developed country markets. These bans have been imposed owing to concerns regarding adverse impacts of such exportable goods on plant and animal health. Role of resource governance has also become important for determining the development of communities engaged in the production of mineral commodities which have been exported to developed countries. Enhancement in the access to essential medicines, traditional knowledge through execution of intellectual property rights has been proved to improve public health and quality of life in Africa. Additionally, trade between southern partners like India and Africa is also supposed to play an important role for upscaling economic, social gains for the people of Africa. These issues can affect the environment, social and economic domains of sustainable development for Africa. The above highlighted topics related to 'Trade and Sustainable Development' in the context of Africa were touched upon in the lectures delivered by Mr Prabir Sengupta, Mr Nitya Nanda, and Mr Anandajit Goswami of TERI; and Ambassador Teehankee (Distinguished Fellow, TERI and Former Ambassador of Philippines to the WTO). Uniqueness and novelty of this programme was well received by participants representing mid-career professionals, policy makers, practitioners, students and civil society. Demand for conducting similar programmes in Africa was made by participants towards the end of the programme. TERI plans to conduct similar training programmes in other countries of Africa during this year. Overall, it established a way for collaboration in areas of trade and sustainable development between the Addis Ababa University team led by Dr Araya Asfaw, Dr Satish Kumar, and the TERI professionals. Similar training programmes are being planned to be held in Africa in the near future.

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