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Regulating Water Footprint in Trade: The Role of WTO Rules & Principles

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How Can Trade Help Save Water Resources?

- Trade increases availability of water resources in water-scarce countries and enhances global water use security

  - 3.5 bn people will be exposed to water shortages by 2025: Transfers of virtual water can help?

  - 16% of the world‘s water use is for export

- Virtual water trade is a realistic alternative to the bulk water trade
- Trade in food saves 8% of global water resources
- But some serious drawbacks of the virtual water trade solution:

  - available only for relatively rich countries

  - negative economic and ecological side effects

Is There a Role for Trade Policy Instruments?

- Countries need to review their export to account for the water use
- Trade instruments can include the water footprint in the price of products and increase water efficiency of trade flows
- The use of water footprint labels will increase public awareness of the water challenge, establish the link between consumer purchases and water scarcity, and stimulate producers to use water-saving technologies

How Can We Measure the Water Footprint?

- Knowing the water footprint of a nation and the virtual water trade balance is essential for developing a rational national policy on the sustainable water use
- Measurement of the product's water footprint based on the life-cycle analysis is the starting point
- But no common procedures and methodology, no internationally recognised certification schemes
- Limitations of the virtual water footprint indications:
  - water use efficiency?
  - water pollution?
  - opportunity costs?

"Processes & Production Methods (PPM)" Debate in the WTO & "Trade &" Policy Areas

- Virtual water dimension of international trade is problematic from the WTO law perspective

  - product-related vs non-product-related PPMs

- But the environmental protection is a legitimate objective

  - GATT Art. XX, TBT Agreement etc.

- WTO rules can ensure that PPMs are not used for protectionist purposes

GATT Non-Discrimination Rules and Exceptions

- Principles of the most favoured nation (MFN) & national treatment (NT)
- Like-product concept and the PPM issue
- GATT Art. XX, paragraph g)

  measures *"relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption"*

  … provided that they are not applied in a manner which constitutes arbitrary or unjustifiable discrimination (Chapeau of the article)

Regulation of Water-Intensity Standards & Water Footprint Labels: Rules on Technical Barriers to Trade

- Water-intensity standards and water footprint labels: TBT rules
  - MFN & NT,
  - the "not more trade-restrictive than necessary" requirement,
  - use of international standards as a basis for a measure
- Mandatory vs voluntary measures: Governments bear liability for the application of discriminatory voluntary labels
- Governmental vs private labelling schemes: Does the TBT Agreement regulate the use of private labels?
- GATT Art. XX environmental exceptions cannot be invoked to justify TBT-inconsistent water footprint labels

Water Footprint-Related Export Restrictions

- Water footprint-related export taxes - allowed: MFN, protocols of accession to the WTO
- Water footprint-related export quantitative restrictions – prohibited: GATT Art. XI, some exceptions
- GATT Art. XX environmental exceptions might apply

Conclusion

WTO law is not an obstacle to the protection of the environment, including water, but it does not allow arbitrary discrimination.

WTO rules can contribute to the implementation of virtual water trade in a sustainable way and a meaningful fashion

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THANK YOU

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