

Biodiversity Protection, Farmers and Breeders Right

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Lecture 17: Trade Regime and Biodiversity

Welcome to week 4 of the course Biodiversity Protection, Farmers Rights and Breeders Rights. This week we will be discussing about the Convention on Biological Diversity, the TRIPS and other related conventions. This lecture will be on Trade and Biodiversity. The concepts covered in this lecture will be Biodiversity and Trade, Trade Regime, Trade and Environmental Policies, the recent development in the form of Kunming-Montreal Global Biodiversity Framework and we will also be discussing about the concerns about Bio Trade. Biodiversity generates and helps to maintain the supply of ecosystem services. So the nature around us provides lot of ecosystem services which is very important for the sustenance and well being of mankind.

It also contributes to the economic development of the country. Agriculture for example, is extremely dependent upon the biodiversity around us. It contributes to the different seed varieties which are used in agriculture as well as the domesticated livestock. There are numerous species interacting with agriculture for example, the pollinators.

So without pollinators it will be impossible to do agriculture. So there are lot of components of biodiversity which is very important for the survival of mankind. That is why so much importance is given to the conservation of diversity. Realizing the hidden value of biodiversity is another important aspect. So take the example of ecosystem services.

So many of us does not understand the value of the ecosystem services that the nature around us provides. So realization about this hidden value is extremely important before moving on to policy formulation or decision making on the key biodiversity aspects. This increased awareness about the value of biodiversity will also help in incentivizing conservation. The inter-lengages between the international trade regime and biodiversity regime are an important area of academic and political discourse. So it has been subject of academic discussion many times and it also has been a controversial subject in the trade and the biodiversity negotiations.

So it has been part of many international multilateral frameworks as well as regional frameworks. While the CBD does not require any measure which is directly related to international trade, still there is a close relationship between various provisions of the Convention on Biological Diversity and the multilateral trade agreements under the WTO

regime. The agendas of biodiversity regime and the trade regimes sometimes conflict. For example, if you take the area like intellectual property rights, the trade regime under the WTO specifies the minimum standards of intellectual property rights that has to be followed by the member states. So many times this stipulations regarding intellectual property rights may be in direct conflict with the agenda under the biodiversity regime.

And similarly the biodiversity regime under the Convention on Biological Diversity provides for access and benefit sharing. So the requirement of access and benefit sharing may be sometimes in direct conflict with the agendas under the trade regime. And sustainable use is coming under actually both the trade regime and the biodiversity regime. But the interpretations of this may be varying under both the regimes. So many times these agendas come in direct conflict with each other and sometimes it leads to a tussle between the global south and the global north.

There are different aspects to the interrelationship between the international trade and the objectives and provisions of the Convention. The collection, production, transformation and commercialization of biodiversity based goods has to meet the sustainability criteria. And if it meets the sustainable criteria then it will generate direct incentives for the conservation and sustainable use of biodiversity. And accordingly there are different thematic programs which has been taken up by the secretariat of the Convention on Biological Diversity with different convention secretariats which includes the United Nations conference on trade and development in order to advance the biotrade promotion. So there is actually an increasing demand for bio based products and the nature supplies many of our demands with regard to food security, cosmetics, fertilizers, then drugs and many other aspects.

So, the quantum of biotrade is improving every year and it is extremely important that the agendas of the Convention on Biological Diversity is also taken care while the biotrade is promoted. The sustainable development and the protection and conservation of environment is also fundamental goals under the WTO regime. This is enshrined in the starting or the beginning the preamble of the Marrakesh agreement which established the World Trade Organization. And while there is no specific agreement dealing with the environment the WTO rules provide the members to adopt trade related measures which are aimed at protecting and promoting environment. The WTO thus contributes to the protection and preservation of environment through its objective of ensuring sustainable development and through its initiatives under the different WTO bodies.

A recent development under the Convention on Biological Diversity is the adoption of Kunming-Montreal global biodiversity framework by the conference the 15th conference of parties which was recently concluded in December 2022. The Kuming Montreal global

biodiversity framework was adopted in December 2022 and it includes 4 goals and 23 targets which has to be achieved by 2030. So, this is going to be the framework which is giving the goals for the global biodiversity governance for the coming years till 2030. The trade related policy action and cooperation will be essential to achieve most of these targets including those which are related to wildlife trade, invasive alien species, the reduction of subsidies which are harmful to biodiversity, conservation and management of biodiversity, reduction of waste generation and the objectives under Nagaya protocol and the Katarzyna protocol and it is also important for participation of business and stakeholders in the policy related aspects. The global biodiversity framework or the adoption of this Kuming Montreal global biodiversity framework gives us a fresh opportunity to reexamine how the international cooperation on trade and trade policies could support the global biodiversity agenda.

If you look closely the different targets under the Kuming Montreal global biodiversity framework we can see that there are different targets actually there are around 6 to 7 targets which are directly related to the international trade regime. If you take for example, the target 5 which requires ensuring use harvesting and trade of wild species in sustainable safe and legal preventing over exploitation, minimizing impacts on non-target species and ecosystems. This is actually in direct relation with the international trade related to wild fauna and flora. There are several regulations with regard to trade of wild fauna and flora especially under the CITES regime that is the convention on international trade in endangered species of wild fauna and flora. So, there also there is a requirement to protect the wild species and many times regulate or prohibit the international trade of many of the species which are listed under the CITES regime.

So, this target is going to have significant implications which require international collaboration between different agencies which include the CBD secretariat, different national governments, the CITES framework as well as the trade related agencies. Target 7 requires reduction of pollution risk and negative impact of pollution from all sources by 2030. So, this requires significant adjustments in the trade regulation and so also underlines that the environmental aspects has to be adequately considered in designing development goals. So, the reduction of pollution risk and the negative impact of pollution from all sources by 2030 is going to be an important goal under the coming Montreal global biodiversity framework. So, this will require several changes in the regulations which are affecting the industries and there should be significant adjustment in the trade regulations which includes the environmental aspects which are regulating industry functioning.

The target 10 requires ensuring that areas which are under agriculture, aquaculture, fisheries and forestry are managed sustainably in particular through sustainable use of

biodiversity including through substantial increase of the application of biodiversity friendly practices. So, this require adoption of biodiversity friendly practices in sectors like agriculture, aquaculture, fisheries and forestry. So, this necessitates change in agricultural policies and the associated trade regime. Target 13 is another important goal under the Kunming-Montreal global biodiversity framework. So, it requires taking effective legal policy administrative and capacity building measures at all levels to ensure fair and equitable sharing of benefits that arise from utilization of genetic resource and from digital sequence information on genetic resource as well as traditional knowledge associated with genetic resource and facilitating appropriate access to genetic resource by 2030 facilitating a significant increase of benefits shared in accordance with applicable international access and benefit sharing instruments.

So, this target specifically requires proper implementation of the convention on biological diversity and the Nagoya protocol. So, this target is specifically related to the access and benefit sharing principle under the CBD. So, as you can see this actually covers three different subject matters. So, one is genetic resource, second one is digital sequence information and the third one is traditional knowledge which is associated with genetic resource. So, the inclusion of digital sequence information is another significant development which happened during the 15th conference of parties to the CBD which happened in December 2022.

So, this inclusion now requires that any access and utilization of digital sequence information or the dematerialized form of genetic resource shall also be in conformity with the legal regulations applicable under the CBD regime. So, the ensuring of fair and equitable sharing of benefits which is arising from the utilization of genetic resource, the digital sequence information and the traditional knowledge will require that coherent action has to be taken at global level including significant changes in the legal regimes of different countries to achieve this objective. And this objective also aims at facilitating a significant increase of benefits being shared. So, this requires substantial changes in the trade regime and many times this will directly conflict with the agendas under trade regime especially under the TRIPS. So, many countries consider the taking of intellectual property rights or for example patenting or the obtaining of plant breeders right as regulated activities under the biodiversity regime.

So, in such scenarios also benefit sharing may be required under the national legislation of different countries. For example, if you take India, the national legislation in India, the biological diversity act requires that if any person obtain intellectual property rights either in the form of patent or a plant breeder right in a foreign country, then prior approval may have to be taken and it also has to be followed by the sharing of benefits after commercialization. So, that means that the obtaining of intellectual property rights is a

regulated activity in India. So, that means this objective may have direct conflict with the objectives of trade regime which is especially the intellectual property rights under the TRIPS regime. Target 14 requires full integration of biodiversity and its multiple values into policies, regulation, planning and development processes, poverty eradication, strategies, environmental assessments, environmental impact assessment and appropriate national accounting within and across all levels of government and across all sectors.

So, this requires mainstreaming of biodiversity considerations into all areas of policy making and implementation. This will also have effects on the trade regime. So, this means the considerations about biodiversity or the principles under the CBD or which are related to the conservation of environment has to be integrated into policies or legal formulations in all sectors. So, this can generally be considered as mainstreaming of biodiversity considerations into all areas and sectors including in policy making, law making and in implementation. So, this is also going to have changes in the trade regime because mainstreaming of biodiversity consideration will require significant changes in the trade related laws as well.

So, the target 15 under the global biodiversity framework requires taking legal administrative or policy measures to encourage and enable business and in particular to ensure that large and transnational companies and financial institutions first regularly monitor, assess and transparently disclose their risk, dependencies, impacts on biodiversity including requirements for all large as well as transnational companies and financial institutions along with their operations supply value chains and portfolios. Second, provide information needed to consumers to promote sustainable consumption patterns. Third, report on compliance with access and benefit sharing regulations and measures as applicable in order to progressively reduce negative impacts on biodiversity, increase positive impacts, reduce biodiversity related risk to business and financial institutions. So, this is another significant target coming under the Kuming Montreal global biodiversity framework. So, this the implementation of this goal will require changes in the trade regulations.

So this requires this target requires that legal administrative and policy measures has to be taken by the national government which impose an obligation on large companies and business houses to do mainly three things. First is to regularly monitor, assess and transparently disclose their risk, dependencies and impacts on biodiversity. So, every company may have to monitor and regulate the risk associated with biodiversity and will have to transparently disclose such risks under the fulfillment of this target. Secondly, adequate information has to be provided to the consumers with regard to sustainable consumption patterns. So, information in relation to a product has to be disclosed so that consumers can have an informed choice and it will lead to promotion of sustainable

consumption

patterns.

The third requirement is reporting on compliance with access and benefit sharing regulation and other measures. So this means that every company will have to disclose whether they are complying with the access and benefit sharing regulations while accessing the components of biodiversity for the purpose of research, commercial utilization or obtaining of intellectual property rights. So this the overall this objective is intended to ensure that companies follow the objectives of the Convention on Biological Diversity and also help the consumers in making an informed choice in order to promote sustainable consumption patterns. This target will have serious repercussions with regard to the obligations under the trade regime. Target 18 require identifying by 2025 and eliminate and phase out reform incentives including subsidies which are harmful for biodiversity in a proportionate, just, fair, effective and equitable way while substantially and progressively reducing them by at least \$500 billion per year by 2030 starting with the most harmful incentives and scale up positive incentives for conservation and sustainable use of biodiversity.

So this requires the international community, the national governments and different convention secretariat to identify the subsidies which are harmful for biodiversity. So the international agencies as well as the national governments will have to identify subsidies or incentives which are harmful for biodiversity and will have to develop policies for significantly reducing such incentives or subsidies by the year 2030. So this will also have significant impact on trade regime because all these subsidies incentives are coming under the trade regime. The subsidies incentives under the trade regime will have to be in conformity with the biodiversity targets. So this will help in creation of positive incentives for the conservation and promotion of biodiversity.

The Target 20 requires capacity building and development, access to and transfer of technology and promote development of access to innovation and technical and scientific cooperation including the south-south, north-south and triangular cooperation to meet the needs of effective implementation particularly in developing countries fostering joint technology development, joint research programs for the conservation and sustainable use of biodiversity, strengthening scientific research, monitoring capacities, commensurate with the ambition of goals and targets of the framework. So the objective of the Target 20 is to promote technology transfer. So technology transfer is an important requirement or an objective under the convention on biological diversity as well as under the trade regime. So the technology transfer is another important objective under both the biodiversity regime as well as the trade regime. So this requires that the aspect of technology transfer has to be promoted whether it is through south-south cooperation, north-south cooperation

or through triangular cooperation.

So this emanates from the feeling that there is lack of access to technology in the developing countries while the developed countries have adequate access to technology. So both the CBD regime and the WTO regime intends to promote technology transfer at some levels but many times this objective or this goal will come in direct conflict with intellectual property rights as many of these technologies will be protected by intellectual property rights and this becomes a major impediment in technology transfer. There are different policy concerns in relation to trade and biodiversity. The biodiversity is directly related to food and agriculture, livelihood and survival of rural population and the sustenance of mankind. So that means any policy decision which is taken on biodiversity aspect is going to have significant impact on the rural economy and the food and agriculture aspects of a country.

So this means that the policy aspects with regard to biodiversity and trade has to be carefully taken so as to not to run in conflict with the goals of a national government. The trade agenda and development goals are also directly related. So the country's economic prosperity is directly related to the policy decisions taken with regard to biodiversity and trade. The national commitments under the trade regime can also many times conflict with the objectives of the biodiversity regime. So the trade regime casts several obligations on national governments which has to be taken in order to ensure a uniform regulation of trade aspects but many times this will run in conflict with the objectives of biodiversity regime and there are also interrelations and linkages with different treaty regimes like the UPOV, the TRIPS, the ITPGRFA and many other bilateral and multilateral agreements which will be discussed in detail in the coming lectures.

Sustainable development is another aspect which the national governments as well as the international community is equally interested in. Both the trade regime and the biodiversity regime have set objectives to promote sustainable development. There are also several concerns about biotrade. For example, if you start with access and benefit sharing, it is an objective under the Convention on Biological Diversity but many times the biotrade or the actors involved in biotrade may not be fulfilling the commitments in relation to the access and benefit sharing regulations. Another concern is with regard to citrus or the trade related to endangered species of wild flora and fauna.

So many times the biotrade will also involve the species which are of endangered nature. So adequate care has to be taken to prevent such trades and take proper legal action. Another concern is the spread of invasive alien species. So the invasive alien species relates to species which are of foreign nature and then once they are introduced into an ecosystem, it spreads in a higher rate compared to natural species and over a period of

time it will have serious repercussions on the natural ecosystem. So the spread of invasive alien species is another important concern with regard to biotrade.

And then comes the genetic contamination. So the genetic contamination relates to the spread of certain species due to genetic contamination. So when the biotrade happens in unregulated manner, there is also serious concerns about possible genetic contamination which will lead to disappearance of natural species. The patenting and monopolization of different components of biodiversity is also another serious concern. Many countries have raised their concern about biopiracy. When the international biotrade happens, it becomes possible to access biodiversity in different countries and for the multinational companies it becomes possible to access these components and then do research and develop inventions which can be patented and monopolized.

So patenting and monopolization without complying with the legal regulations becomes a problem and a concern about biotrade. Another important concern is sustaining the livelihood of rural population. The livelihood of rural population is directly linked with the conservation of biodiversity. So many times their life is dependent on the agriculture and biotrade. So the policies which are adopted in relation to biotrade should take into consideration the values which are upheld by the traditional communities and also it should aim at promoting the livelihood of rural population.

So the biodiversity acquires a central position in the modern economy and plays an important role in development. So the international trade is extremely important for strengthening the national economy and promoting development. The agendas of trade regime many times conflict with biodiversity regime. So, maintaining an effective balance between these competing interest is important for sustenance of mankind. The Kunming-Montreal global biodiversity framework provides a fresh opportunity for reexamining how international cooperation on trade and trade policies could support the global biodiversity agenda.

So these are the references related to this lecture. Thank you very much for listening this lecture. I hope you enjoyed the course.