

Trade, Technology and IPR Dimensions of Energy Use and Climate Change

Final Dissemination Workshop

13th December 2013

Venue: Magnolia Hall, India Habitat Centre, New Delhi

Background Note

The nexus between trade, energy use and climate change has been receiving considerable attention in the last few years. The adoption by developed countries of emission reduction measures and competitiveness concerns in these countries, have led to proposals for tariff or border tax adjustments to offset any adverse impact of capping carbon emissions. However, such adjustment measures can impose significant economic costs upon developing countries by affecting market access and reduced export revenues. This might in turn affect their ability to adopt clean energy and energy efficient technologies.

Imposing environment related trade restrictions has been discussed in economic and legal spheres. Opinion is divided, however, on whether such border tax adjustments are permitted under the World Trade Organization (WTO) rules for taxable inputs that are not physically incorporated in the final product. There is also an apprehension that carbon or energy efficiency related standards, both government and private, may multiply affecting exports from developing countries. As per the WTO Agreement on Technical Barriers to Trade (TBT), standards and conformity assessment procedures should not create unnecessary obstacles to trade or be used as protectionist tools.

Moreover, Article 3 of the UNFCCC states that: "The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade." The Kyoto Protocol provides that its parties "shall strive to implement policies and measures ...in such a way as to minimize adverse effects, including... effects on international trade" (Article 2).

Interestingly, proposals have been mooted to impose trade sanctions/barriers against countries that do not impose controls on carbon emissions, either through use of renewable energy or use of energy efficient technology (e.g. the Waxman-Markey Bill introduced in the US Congress). However, it is not clear whether such unilateral measures can really tackle the global problem of climate change or impact the competitiveness of developing countries. Some studies have also shown that the competitiveness impact of emission measures is not significant.

Developing countries may want to deploy energy efficient technologies and rely more on renewable energy sources as such a strategy would also improve their energy security situation. But such plans may be difficult to implement due to limited access to technologies. One of the reasons could be the global intellectual property rights (IPR) regime which may not be sufficiently conducive for diffusion of such technologies. In fact, IPRs constitute one of the most contentious aspects of the international negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) on technology transfer to developing countries for dealing with the problem of climate change. The debate on IPRs has been quite polarized; while developing countries want IPRs to be addressed as a barrier within the technology transfer discussion, developed countries assert that weak IPRs in developing countries constitute the major impediment to technology transfer.

Given this context, TERI has undertaken a study under the Norwegian Framework Agreement to understand the trade, technology and IPR issues related to energy use and climate change. This workshop is in the nature of a final dissemination workshop to discuss some of the key findings emanating from the study and deliberate on a way ahead with respect to the following key issues:

- What are the potential bases of imposition of border adjustment tax at developed country destinations?
- How serious is the threat of carbon or energy efficiency related standards affecting trade of developing countries?
- What can be the potential solutions/reactions to those emerging challenges?
- How important is it to make changes in the global IPR regime to facilitate greater access to efficient and clean technologies for developing countries?
- How can developing countries' devise IPR regimes which while honouring TRIPs obligations are able to achieve the twin goals of achieving technological innovation and facilitating technology transfer?