
ARTICLES

Restricting Biofuel Imports in the Name of the Environment: How Does the Application of WTO Rules Affect Developing Countries?

Haniff Ahamat* & Nasarudin Rahman**

There are calls for biofuel imports from developing countries to be restricted. The imports which are either in the form of end-product (bioethanol or biodiesel) or feedstock (oil palm, sugar cane molasses, etc) are allegedly produced in ways which can threaten the environment and violate human rights. This article finds that there is no specific regime for trade in biofuels within the WTO system. Hence any restriction on such trade is governed by the existing trade regimes including tariffs and non-tariff measures. However, the existing WTO tariff and non-tariff (TBT, anti-dumping and anti-subsidy) regimes are still inadequate in ensuring that measures are taken against biofuel feedstock and products that were produced in unsustainable ways. The use of these measures without being subject to clear defining rules will create a danger that they serve a protectionist rather than social or environmental objectives.

Keywords

WTO law, international Environmental law, Renewable Energy, Like Products, Sustainable Development, Special & Differential Treatment

* Assistant Professor at International Islamic University Malaysia (“IIUM”) Ahmad Ibrahim Kulliyah (Faculty) of Laws. LL.B. (IIUM), LL.M. (UKM), Ph.D. (Essex). ORCID: <https://orcid.org/0000-0003-4026-3633>. The author may be contacted at: ahaniff@iiu.edu.my / Address: AT O. Box 10, 50728, Kuala Lumpur, Malaysia.

** Assistant Professor at International Islamic University Malaysia Ahmad Ibrahim Kulliyah (Faculty) of Laws. LL.B., MCL (IIUM), Ph.D.(Macquarie). ORCID: <http://orcid.org/0000-0003-3093-559>. The author may be contacted at: nasarudin@iiu.edu.my / Address: ATO. Box 10, 50728, Kuala Lumpur, Malaysia.

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I. Introduction

As the surge in global oil prices has increased the demand for production and trade of both biofuel feedstocks and products, trade in biofuels is becoming a more relevant topic of discussion in the international community. This has led to an increase in demand for crops, like soybean, corn and sugar cane, which is processed into not only biofuel feedstock, but also for biofuel end products like bioethanol and biodiesel. This has pressured supply, which has in turn led to the inflation of the prices of food. This can be witnessed in the skyrocketing prices of tortillas in Mexico, which was partly due to the lucrative demand for corn from bio-ethanol producers in the US.¹ Food supply may be threatened by disincentives to farmers; they would rather focus on producing ‘fuel-friendly’ grains. As evidenced in the US, some farmers switched from wheat to maize for this purpose.²

The mass production of biofuels could lead to the clearing of large tracts of rainforests. Grand scale developments of palm oil plantations in Malaysia and Indonesia, and sugar cane plantations in Brazil for the production of biofuels are vivid examples of devastation. They have led to deforestation, mono-cropping and the deprivation of human rights of indigenous people which is to be protected under the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) as well as the regional human rights treaties. Biofuel crop plantations disrupt communal living of the indigenous, deprive their right to health³ and deny their cultural rights.⁴ These arguments have been used consistently by developed countries as a means to restrict biofuel imports from developing countries like Malaysia, Indonesia and Brazil in that they inform the discussions on trade in biofuels.⁵

¹ Jo Tuckman, *Tortilla turmoil*, THE GUARDIAN, Aug. 22, 2007, available at <http://www.guardian.co.uk/society/2007/aug/22/guardiansocietysupplement.environment> (last visited on Apr. 6, 2014).

² J. Vidal, *The looming food crisis*, THE GUARDIAN, Aug. 29, 2007, available at <http://www.guardian.co.uk/environment/2007/aug/29/food.g2> (last visited on Apr. 6, 2014).

³ An example is Inter-American Commission on Human Rights case of *Yanomami v. Brazil* (Res. No. 12/85, Case 7615). See C. Scott, *Multinational Enterprises and Emergent Jurisprudence on Violations of Economic, Social and Cultural Rights*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS 577 (A. Eide, C. Krause & A. Rosas eds., 2001); C-f. Lo, *Plurilateral FTAs to Enhance Human Rights Protection in Asia*, 8 ASIAN J. WTO & INT’L HEALTH L. & POL’Y 608 (2013).

⁴ Scott, *id.* at 581.

⁵ Friends of the Earth, *The use of palm oil for biofuel and as biomass for energy: Friends of the Earth's position*, Briefing, Aug. 2006, available at http://www.foe.co.uk/sites/default/files/downloads/palm_oil_biofuel_position.pdf (last visited on Apr. 6, 2014). See also A. Barber, G. Pellow & M. de Pereira, *The Sustainability of Brazilian Sugarcane Bioethanol: A Literature Review*, May 2008, available at http://s3.amazonaws.com/zanran_storage/www.ceca.govt.nz