DISPARITY IN QUALITY ASSURANCE - A CATALOGUE OF CHOICES OR IMBALANCE OF TRADE

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Abstract
'Big or Small, Consumer Rights is for All!'
With time immemorial, cross-border trade is something which nations have always relied upon for strengthening economic, political and cultural alliances and for the expansion of their territory in the quest of becoming global power. India was at the receiving end of this ambition of nations, which led to it being ruled by foreign powers who invaded India under the garb of trading with it. Post-independence, has India actually managed to free itself from the clutches of these dominating trans-national business powers, is still a question. When India opened its economy for foreign trade and became a signatory to WTO, it amended many of its restrictive frameworks and converted them into regulatory ones. But what India failed to do was to increase its quality assurance norms as per the western standards. This made it easy for the western countries to dump their products in India, but the same was not reciprocated. This was because the standard of quality of the products (with respect to both perishable and non-perishable goods) demanded by the western countries were much higher than what we accepted here in India. This led us to accept even the sub-standard products from these countries. But when it came to us exporting our products to them, they were extremely vigilant about the quality of the products that they accepted. This led to the imbalance of trade resulting in hardships being caused to Indian economy hereby leading to the weakening of Indian currency. The changes in consumer law were adopted to bring the consumer protection standards at par with the internationally recognized standards. The intention of doing so is to achieve the major goals of universally applicable minimum standard of consumer protection and to abolish the obstacles in cross-border trade, but the imbalance created has ultimately burdened the consumer. This has defeated the very objective of consumer protection laws. The authors in this paper wish to elaborate upon the reasons for the negative balance of payments and wish to suggest the changes in the trade policies which will ultimately prove to be beneficial for the consumers of our country.

Keywords: *Consumers, Consumer protection, Cross-border trade, Economy, Quality Assurance.*

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1. Caveat Emptor to Caveat Venditor: A Shift in Philosophy

'Man is a social animal who cannot stay is isolation' is a well-known and well accepted statement of a Greek philosopher Aristotle. To further add to his statement, it won't be wrong to state that man is never satisfied with the materialistic belongings he possesses and therefore he is forever in search of something new. Inventions and discoveries are the outcome of this very nature of man. In yesteryears when the globe was distinctly divided between the west and the rest, the likes, dislikes, requirements, and preferences of people amongst these two distinct cultures differed a lot. But with globalization, as the connectivity between and across the nations increased, the influx of trade and commerce saw new heights. The age-old concept of caveat emptor slowly changed to that of caveat venditor in this modern era. The consumer gained the position of the king in the eyes of the goods and service providers, and the entire quality assurance and quality control measuring standards changed drastically.[1] The markets became consumer centric and the consumer preferences were taken into consideration while making, distributing and marketing the product. The consumer movement gained momentum in mid-nineties and the consumers started gaining awareness about what they can lawfully expect from their product and service providers. The industrialists also realized that if they were unable to satisfy their customers, they would be losing out on such customers because of the varied choices available with them, which was a rare phenomenon before. But with increase in competition, one thing which the nations also realized was that, a need had arisen for them to device a detailed mechanism to encourage the indigenous industries to face the competition from the industries across the globe. There were international organizations (like World Trade Organization) being formed, which guided these nations in their endeavor of making the policies to promote as well as protect the competition within their country.[2]

This further encouraged the nations to stringently devise the legal mechanism to provide a boost to the local manufacturers. May it be enacting consumer protection law, competition law, bringing in amendments in the existing corporate law or drafting rules and regulations regarding acceptable quality of goods to be provided to their citizens, the nations started taking every possible measure in this regard. Amongst such measures were imposing tariff and non-tariff barriers on the products that they had to import. According to the researchers these trade barriers are necessary primarily for three reasons-

1. To exercise government control on the import-export ratio.
2. To protect indigenous industries from international competition.
3. To provide maximum choices to the consumers in the product and service market to enable them to choose the best quality resource at the best available price.

Since it is the responsibility of the government to maintain the balance of trade and also to be mindful towards developing the cross-border trade with other nations, it becomes necessary for the government to draft the EXIM policies accordingly.[3] Along with this, it also becomes the responsibility of the government to facilitate the growth of indigenous industries to make them worthy of facing the competition from the industries of the developed countries. This is because, when it comes to quantity, quality and cost efficiency, the consumer is bound to choose better quality product being made available to him at a cheaper prize over a costly product of sub-standard quality. The consumer will not prefer an inferior quality product just because it is produced indigenously. It is this balance between consumer welfare and industry welfare that is extremely hard to achieve. The maximum efforts of the government are to be lent towards finding and maintaining this balance.

One of the ways in which the government attains this goal is by enacting and enforcing several central and state legislations in this regard. May it be Export (Quality Control and Inspection) Act, 1963[4],

[1] "Quality Standards in India: A Comprehensive Guide Part 1 – Overview of India's Quality Standard Measures and Impact for Foreign Manufacturers - - India" (Quality Standards In India: A Comprehensive Guide Part 1 – Overview Of India's Quality Standard Measures And Impact For Foreign Manufacturers - - India March 1, 2022) lt;https://www.mondaq.com/india/compliance/1166824/quality-standards-in-india-a-comprehensive-guide-part-1-overview-of-india39s-quality-standard-measures-and-impact-for-foreign-manufacturers> accessed November 2, 2022.

[2] Petros C. Mavroidis (2013), "Drifting' too far from shore - Why the test for compliance with the TBT Agreement Developed by the Appellate Body is wrong and what should the AB have done instead", The World Trade Review (forthcoming) accesed on November 2, 2022.

[4] Export (Quality Control and Inspection) Act, 1963.

Prevention of Food Adulteration Act, 1956[5], The Drugs Act, 1940[6], Essential Commodities Act, 1955[7], ISI (Certification Mark) Act, 1952[8], Agricultural Produce (Trading and Marketing) Act, 1936[9], Aircraft Rules read with Sea Customs Act[10], Quality Control Orders (QCOs) imposed as a way of non-tariff measures along with other measures adopted as per the WTO, regional and bilateral agreements.

2. Quality Control Orders

To guarantee that products adhere to standardized safety norms, several countries have implemented rules in this regard. India has implemented strict inspections for non-essential and substandard imports entering India through the issue of QCOs, taking a lesson from certain industrialized countries like the US, EU, China, South Korea, Japan, etc. Imposing quality standards also ensures the rise in other standards such as those pertaining to health, security, and the ecology, ultimately resulting in the rise of the population's overall standard of living. From the standpoint of border protection, such exacting technical standards help limit the entry of cheap and subpar goods that could endanger the environment and the health of consumers while also preserving the price cost competitiveness of domestic production. Enforcing standards of quality would not only reduce low-quality imports but also help raise the standard of indigenous goods. In this accord QCOs play a pivotal role in achieving this goal. Quality control is an activity which is carved and practiced in a way to determine the standard of the goods and keep them according to the standards of the targeted economies where they are intended to be sold.

3. Challenges while adhering to Quality Control Orders

There are certain quality control measures which are to be adhered to by all the countries who export of import goods from across the borders. If these goods are not compliant with the standards of those countries, then corrective measures are taken to make the goods fit for consumption in the countries where they are targeted to be sold. A QCO may lead to number of difficulties for a foreign producer due to its strictness and lack of clarity in some areas. For instance, grouping rules for different goods that may be covered by a single license might not be completely clear. Another possibility is that items that were already on the market prior to the implementation date (existing stock) of QCO might be ambiguous. Similar to this, there may be a real need to request an extension of the date of implementation of QCO for a variety of practical reasons. These problems add to the time in conclusion of business transactions further increasing the ancillary cost burdening the consumer at the end.

In order to meet the Quality Control Measures in India, the producers have to follow a detailed procedure which makes them accountable at every step to maintain the standard of quality. A product must comply with specific Indian Standards (IS) that covers the particular goods production in its arena, get a valid license, and bear the standard mark on its packaging before being sold in India in order to be compliant to the Quality Control Order. Producers of the items which are supposed to be sold in the Indian market (whether manufactured by Indian and international manufacturers) are subjected to certain requirements that the producers first need to determine. They are required to cover the general scope of the quality control order and then target the specifically relevant product category. This is to be followed by establishing processes to be adhered to so as to guarantee proper compliance to applicable laws. Organizations formulating the standards and procedures in India and across the globe should keep the practical considerations in mind which will make these regulations more efficient and effective for the business as well as for the consumers.

India makes a distinction between the used and new items along with reconditioned, refurbished, or remanufactured ones while determining the necessity of licenses. In India, the use of imported capital goods is permitted for the end users if the residual life of the imported goods is at least 5 years. As India does not acknowledge that remanufactured goods have generally been restored to their former operational state and fulfil the technical and safety requirements applicable to items built from new

[5] Prevention of Food Adulteration Act, 1956.
[6] The Drugs Act, 1940.
[7] Essential Commodities Act, 1955.
[8] ISI (Certification Mark) Act, 1952.
[9] Agricultural Produce (Trading and Marketing) Act, 1936.
[10] Aircraft Rules read with Sea Customs Act.

materials, India requires import permits for all remanufactured goods. As a result, U.S. stakeholders claim that it has been difficult to get an import license for items that have been remanufactured in India. Stakeholders have voiced concerns about the license application's high information requirements, the quantity restrictions placed on particular part numbers, and the lengthy wait times between the license application and issuance. Additionally, in order to import manufactured goods—both refurbished and used, a Chartered Engineer's Certificate is required. Used things must not be older than five years, whereas refurbished items cannot be older than seven years and must still have at least five years of useful life. Further, India's tariff rates are prone to multiple exemptions that vary according to the product, the user, intended use, or particular export promotion programme, making India's customs system difficult to understand and subject to administrative discretion. In addition to being announced with the annual budget, tariff rates are modified 'on and as-needed' basis through notifications in the Official Gazette of India. These repeated changes in the tariffs, in Technical Barriers to trade and other non-tariff barriers not only make the business tough for the producers but after facing all these hurdles in carrying out trade when these goods cross the transnational borders. In addition to it the cost of these goods also lay undue burden on the consumers. This leads to the reduction in purchase power parity, introduce obstacles in the rising of standard of living and places hurdles in the international trade. As a result, the consumer suffers either because of the reduced choices or pays a very high price for the usage of the goods of his choice further fortifying the transnational boundaries of trade.

4. Role of WTO

World Trade Organization was formed to regulate trade and commerce amongst the nations across the world. Its main aim was to offer assurance and stability to international trade. In furtherance of this aim the WTO members meet regularly to discuss on varied topics like product quality, safety and standards etc. and also debate on the new concerns that grapple trade. The manufacturers and consumers are equally aware of the fact that with international trade, they have a wider selection from which they can choose final goods and services. Exporters and producers expect that overseas market will continue to be accessible, though much of it depends upon the geo-political situation amongst the nations. As a result, the globe becomes more affluent, and accountable when they recognise this inter-dependability of member states. In the WTO, decisions are normally reached by consensus amongst all members which eventually get approved by the countries' law making body. Trade disputes are resolved at the WTO through WTO dispute settlement body, where they emphasize more on interpreting the agreements rather than thinking about the trade related difficulties for producers and consumers.[11] The WTO adopts Technical Barriers to Trade Agreement (TBT) with the objective of regulating technical standards and ensure conformity assessment procedures. These TBTs are enacted to remove the hindrances in trade by ensuring that the adopted standards are not discriminatory in nature. These agreements also do recognize the rights of the member states to frame specific objectives which are aimed towards protecting the environment, human health and the other relevant concerning important issues[12]. The TBT Agreement strongly encourages members to base their measures on international standards as a means to facilitate trade. Through its transparency provisions, it also aims to create a predictable trading environment.[13]

The objective of TBT is to ensure that non-tariff barriers are fair and equitable. It discourages any method that would give domestically produced goods an unfair advantage. Even though WTO encourages the nations to have these policies, none of the nations have the uniform TBT or QCOs for accepting or sending their goods abroad. This dissimilarity in law is a cause of great inconvenience for trading nations. It does give rise to many contractual and other trade related disputes. That is why it is necessary to have a uniform internationally recognized standard which in essence would be acceptable in all the nations. Without recognition, the product of import or export unnecessarily gets tested twice, once in the country which exports the product and the once in the country which imports it. This leads to adding more to the commercial cost, the ultimate burden of which has to be borne by the consumer. If the

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[11] European Journal of Risk Regulation, 2013, Vol. 4, No. 2, Special Issue on Transnational Risks and Multilevel Regulation (2013), pp. 268-270.

[12] https://www.wto.org/english/news_e/news19_e/tbt_16nov19_e.htm

[13]"World Trade Organization", https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm accessed on November 2, 2022.

uniform standard is identified, it will help in conducting smooth trade across nations and will also help in promoting the ideology of equality amongst nations.

5. Need for Uniformity in the Quality Control Orders

With the changing times, the need for bridging the gap between the Quality of goods used in the west and rest has increased leaps and bounds. The governments of the developing nations have also started paying attention to the standard of goods used within the national boundaries to qualify the status of the quality conscious country and to mould the global benchmark of the quality standards as per the tailored need of their consumers. This has resulted in the increasing demand to issue the Quality Control Orders, the problem which still persists is the disparity between the set benchmarks depending on the status of development of the economies. The need of the hour is that there should be uniformity in the standard provided within the Quality Control Orders which apply on the manufacturers which are exporting their goods to different countries. The uniformity in quality control orders also solves the problem of producers as the goods produced will be of similar quality and assist in producing economies of scale which would lower the production cost. If these uniform standards are not set, the consequences of the inequality in the quality assurance standards can be detrimental for the cross-border trade. For the better understanding of this point the authors wish to take the example of quality assurance standards in the food industry. There are glaring differences in food quality standards that are considered acceptable in the lesser developed, developing and developed nations. According to the authors these differences mainly arise due to the reasons mentioned below. They are: -

1. Consumer education:

The awareness of the consumers differs with the countries with respect to the rights they have. There are certain countries which even struggle with fulfilling basic food requirements of their population. Therefore, making bevy of choices available to them is a distinct possibility. Educating them further in this regard is something that is never even considered by their governments. It is only when the basic requirements of food, shelter and clothing are met, that the consumer education can get momentum, like it did in other developing and developed nations.

2. Consumer preference:

Depending upon the culture, climate, ethnicity and attitude of the nations, the consumer preferences with respect to food also changes drastically. Some people are used to having limited choices in the edible products while some cannot survive without choosing from the options.

3. Consumer's tolerance to adulterated food:

If we take the example of the countries like India, we see that the people in India are far more accommodative and adaptive to the type of food that they consume. With the amount of food adulteration that is tolerated in India, no developed country in the world can survive with the quality of food products that gets sold in India. This unfortunately makes the Indian government lower their food quality assurance standards and therefore practically makes them permit the influx of even the sub-standard quality food products that get imported from other nations. But when we expect the reciprocity in this regard, these developed nations cannot reciprocate to our demands in the similar manner, thereby adding to the imbalance of the import-export ratio. Apart from this, expecting people from a lesser developed nation to compromise on the standard of food quality is against the principles of WTO.

4. Government policies with regards to food safety and punishments for food adulteration:

There are some nations which are extremely strict with respect to the punishments and penalties they impose on the people who are caught violating prevention of food adulteration laws. The examples of nations which are strict in this policy are the countries like USA, Mexico, Canada, and France. The imposition of penalty in these countries ranges from imprisonment from few years to penalty of up to few million dollars. The more the amount of penalty, the lesser the chances of the people and the companies flouting these norms, because of the deterrent effect.

Taking into consideration all the above parameters, if we would have had a uniform food quality assurance mechanism, it would have proved to be extremely convenient for all the nations across the globe to easily trade with one another on an equitable basis, thereby bringing in the parity amongst the trading standards.

Another example to substantiate this argument can be seen through an example enumerated below. In the landmark case of US COOL[14], a system of origin-based beef product labelling was implemented by US legislation in 2009. The law made a distinction between beef products that were: -
(a) entirely obtained in the US,
(b) that were born, grown, or slaughtered in the US,
(c) that were imported and immediately slaughtered,
(d) or that were entirely obtained from overseas.
Mexico and Canada appealed the measure before the WTO court, and the Appellate Body (AB) maintained the judges of first instance's opinion despite disregarding the Panel's determination that the US regulation's goal was not legal who claims that by treating meat products from countries other than the US less favourably, the measure violated Art. 2.1 TBT. Although it is occasionally possible for incorrect tests to produce accurate results, as was the case in at least one of the judgments (US - Clove Cigarettes), the AB made relatively few contributions to our understanding of the TBT Agreement and our ability to predict outcome of future cases. An examination of the cases indicates that the judges largely drew from GATT precedent rather than considering the problems in light of the TBT Agreement's intent and purpose. The bad results of the actions under investigation are caused by this original sin for two broad groups of reasons: unlike GATT, the TBT deals with a default situation in which governments are dissatisfied. "Likeness" in the TBT refers to policy-likeness rather than market-likeness. The evaluation should focus on how they express their "unlikeness," not how customers react. The TBT Agreement deals by definition with a scenario when a government disagrees with the observed market outcome, in contrast to Art. III GATT, where similarity is determined by reference to customer preferences[15] (otherwise, there would be no need to intervene in the first place). As a result, consumer preferences cannot serve as a useful standard.[16]

Conclusion

When the world began to be recognized as a 'Global Village,' along with it, also came the responsibility on all the national governments and international organizations to curb the gap in the living standards of the people belonging to different nationalities. This responsibility heightened with time as and when international trade and interdependencies amongst the nations started increasing, as now the market for manufacturers is not only restricted to the national boundaries but extends way beyond them. This also puts an onus on the manufacturers to treat all their consumers equally and to keep the consumer preference at priority. To ensure that consumers are not only the namesake kings of the market who otherwise bear the undue burden of cost escapes of the businesses, it becomes necessary that a strong but uniform Quality Control mechanism is introduced globally which is not only policy centric but also looks for the welfare and development of the consumers and caters to their needs. Though it is understood that the QCOs for each industry are going to differ, depending upon the nature and demands of that particular industry, there could still be uniformity that can brought in across nations with regards to each of such industries separately. This shall ensure that there remains no disparity in the quality assurance and similar quality standards then can be maintained globally, which will ensure uniform pricing mechanism for all the consumers across the globe. If this uniformity, even while implementing trade barriers is achieved, it will ensure catalogue of choices for the consumers without risking the trade balance and violation of consumer rights. And for the manufacturers/industrialists, universally acceptable uniform standard of goods will ensure that their goods will remain saleable across globe, without being subjected to distinct norms of different jurisdictions.

[14] United States - Certain Country of Origin Labellin (COOL) Requirements, DS386, 2008.
[15] Japan - Taxes on Alcoholic Beverages, DS8, 1998.
[16] European Communities - Measures Affecting Asbestos and Asbestos Containing Products, DS135, 2001.