
**MANAGING THE TRADE-PUBLIC HEALTH LINKAGE IN DEFENCE OF TRADE
LIBERALISATION AND NATIONAL SOVEREIGNTY: AN APPRAISAL OF
*UNITED STATES-MEASURES AFFECTING THE PRODUCTION AND SALE OF
CLOVE CIGARETTES***

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SUMMARY

Under the legal framework of the World Trade Organisation (WTO), countries have great flexibility to unilaterally adopt environmental regulations that have effect within their territories only. However, the same discretion does not apply to measures that adversely affect imports or exports. An absence of clear guidelines on how to address some of the attendant issues poses challenges to the effectiveness of a trade-environment linkage. Not surprisingly, attempts to link the environment and trade have resulted in a number of jurisprudentially significant cases in which the WTO's Panel and Appellate Body have tried to address critical questions about the Organisation's capacity to address or manage legal or quasi-legal subjects falling outside the scope of its legal framework. In this regard the Panel and Appellate Body reports in the case of *United States - Measures Affecting the Production and Sale of Clove Cigarettes* (*US-Clove Cigarettes*) have re-ignited the debate on the Organisation's existential challenge of balancing the rights of the sovereign to freely regulate matters pertaining to health or the environment within its domestic domain with the need to maintain the sanctity of the multilateral trade order. This article demonstrates that in the *US-Clove Cigarettes* case the WTO Panel and Appellate Body, whilst managing to successfully defend the integrity of WTO Member States' treaty commitments and the overarching importance of trade liberalisation within the organisation's policy foundations even in the context of public health-related

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regulations, failed to provide any substantive affirmation of the development-related challenges facing developing countries that are part of the WTO family.

KEYWORDS: World Trade Organisation; trade - public health linkage; trade liberalisation; trade and environment linkage; national sovereignty and trade regulation