



Balancing Trade and Environmental Sustainability: A Comprehensive Analysis of International Relations, Legal Frameworks, and Case Studies

Sreelatha

Student

christ deemed to be university

ABSTRACT

The relationship between international trade and environmental protection is a complex. International trade is an exchange of goods and services across boarder which in turn improves economic growth. But on the other hand by excessive trade it can harm the environment also. So Environmental sustainability is crucial for safeguarding our planet. This research paper delves with historical context of trade and its environmental consequences, and further highlights the relationship between trade and environment. And highlights the case studies about trade and environment. And in conclusion, this research paper speaks about the importance of finding a harmonious balance between economic growth and environmental sustainability in the context of international trade.

KEYWORDS

Trade, Environmental sustainability, Climate change, International trade law, Environmental protection.

THEORITICAL / CONCEPTUAL FRAMEWORK

Exchange of goods and services across the broader is called as International trade.¹ As international trade help countries grow their economies and by which our lives become better. But on the other side excessive trading can harm the environment by causing problems like pollution, climate change and damage to our natural world. As now-a-days we buy and sell goods with other countries more often than ever before in history.

¹ <https://www.investopedia.com/insights/what-is-international-trade/>

HISTORY

Throughout history, trade has frequently resulted in adverse environmental consequences. In ancient times, the demand for valuable resources, such as timber and spices, drove extensive deforestation as people cleared vast forests to meet trade demands, resulting in the loss of precious ecosystems. Moreover, trade-induced over-cultivation and monoculture farming which led to soil erosion, depleting land fertility and causing enduring environmental damage. Resource extraction, particularly in the pursuit of precious metals and minerals, left lasting scars on landscapes, disrupting the natural balance and polluting both soil and water. One of the important aspect is dumping of hazardaze waste which lead to pollution. Apart from this during the colonial era, European powers expanded their empires and exploited many resources from their colonies, often causing harm to the environment and their ecosystems. Then in the late 18th and 19th centuries the Industrial Revolution took place, because of invention of new technology which in turn led to economic growth but on the flip side polluted the environment by hazardous emissions released through it in air and water. Because of which many awareness programme started And need for international framework was necessary. So General Agreement on Tariffs and Trade (GATT) came into picture which focused on decreasing trade barriers and to increase trade which had certain environmental clauses also. After this there was necessary for an international agreement for protection of environment so in 1972, the United Nations held the first Earth Summit in Stockholm, tackle environmental issues internationally. This event paved the way for future laws, rules and regulations relating to trade and environment. Out of which one among it is The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was established in 1973, which creates a framework to safeguard the endangered species from the adverse effects of trade.² The Montreal Protocol of 1987 focuses depleting of the ozone layer.³ The Earth Summit in Rio de Janeiro also called as Rio submit in 1992 led to the creation of the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD), which deals with development, and preserving biodiversity.⁴ The North American Free Trade Agreement (NAFTA), 1993 contains more detailed environmental provisions than previous trade agreements.⁵ Additionally, the adoption of the Kyoto Protocol in 1997 marked a pivotal step in addressing climate change, reinforcing the connection between trade, environmental sustainability and climate action.⁶ The World Trade Organization (WTO) established the Committee on Trade and Environment (CTE) in 1995 to address trade-environment issues. Notably, the 1999 WTO Ministerial Conference in Seattle faced significant protests, with environmental activists expressing concerns about globalization's environmental impact. Trade agreements now-a-days include environmental clauses, out of those agreements the United States-Mexico-Canada Agreement (USMCA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), have rules about the environment. These rules are there to deal with different environmental issues, like stopping illegal wildlife trade and cutting down fewer trees. Whereas coming to 21st century

² <https://cites.org/eng/disc/what.php>

³ <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol>

⁴ <https://unfccc.int/process-and-meetings/the-rio-conventions>

⁵ <https://www.trade.gov/north-american-free-trade-agreement-nafta>

⁶ https://unfccc.int/kyoto_protocol

there is a surge for development of green technology. And lastly United nations has come up with sustainable development goals.

ISSUES INVOLVED

1. Examine how International trade agreements include Environmental provisions in it. And what are its effectiveness in protecting environmental Sustainability.
2. What are the Challenges faced by Harmonizing Environmental regulation in trade agreement across nations.
3. The conflict between Wto's free trade policy and environmental regulations can hinder trade.
4. What is the role of WTO's dispute settlement board in addressing disputes related to trade and environment.

TRADE AGREEMENTS AND ENVIRONMENTAL PROVISIONS

International trade agreements often include environmental provisions that aim to address environmental concerns while promoting economic growth through trade. These provisions are intended to strike a balance between facilitating international trade and in turn protecting the environment. International trade agreements are like promises between countries, These agreements make it easier for countries to buy and sell things across their borders. Whereas Environmental provisions are special rules within trade agreements. These rules focus on protecting the environment. They can be strong or weak, depending on the agreement. These provisions are meant to make sure that trade doesn't harm the environment. However Environment related problems doesn't stop at borders. Because pollution of one country can affect other country also. So, trade agreements should include environmental provisions to deal with these global issues. They encourage countries to work together to protect the environment while they trade. Historically, international trade agreements focused only on reducing trade barriers, tariffs, and quotas to stimulate economic growth. But Environmental concerns were often neglected, resulting in unsustainable practices which lead to adverse environmental impacts. However, as global awareness on environmental issues grew, it was a challenge to incorporate environmental provisions in trade agreements.

One of the pivotal moments in the integration of environmental considerations into trade agreements was the inclusion of the environment chapter in the North American Free Trade Agreement (NAFTA) in 1994. NAFTA's environmental provisions aimed to address concerns related to pollution, conservation of natural resources, and trade-related environmental damage. It set a precedent for future agreements by acknowledging the inextricable link between trade and the environment.⁷

The World Trade Organization (WTO) also plays a significant role in shaping international trade rules. And WTO recognizes a special exception to trade rules under Article XX for resource conservation and environmental protection, its panel rulings have interpreted this narrowly. WTO authorities tend to be

⁷ Block, J. G., & Herrup, A. R. (1994). THE ENVIRONMENTAL ASPECTS OF NAFTA AND THEIR RELEVANCE TO POSSIBLE FREE TRADE AGREEMENTS BETWEEN THE UNITED STATES AND CARIBBEAN NATIONS. *Virginia Environmental Law Journal*, 14(1), 1–50. <http://www.jstor.org/stable/24782339>

suspicious of “green protectionism” – the use of trade barriers to protect domestic industry from competition under the guise of environmental regulation. They are also unsympathetic to efforts by nations to use trade measures to affect environmental policy outside their borders.⁸ The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Agreement on Technical Barriers to Trade (TBT) include provisions that permit members to take environmental measures. While not explicitly environmental agreements, they allow for policies related to the protection of the environment and public health.⁹

In recent years, the Trans-Pacific Partnership (TPP) and its successor, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), have incorporated extensive environmental provisions. These provisions include commitments to combat illegal wildlife trade, protect marine ecosystems, and promote sustainable forestry.

TRADE LAW AND ENVIRONMENTAL PROTECTION

The intersection between trade law and environmental protection is important for our world. Trade law deals with rules that how countries exchange goods and services, while environmental protection focuses on keeping our planet healthy. These two areas often meet, and it's vital to understand how they work together under international trade law. International trade law is governed by the agreements basically this agreements are like promises between countries about how they should trade with other countries. Some of these agreements also include rules relating to protection of environment. These rules can sometimes be weak or strong depending on the countries, but there purpose is meant to help countries to balance trade and on the other hand to protect environment also. But there is a problems when one country tries to protect the environment through its laws., but the other countries might not follow. When this happens, it leads to trade disputes. These disputes are governed World Trade Organization WTO's dispute settlement redressal. WTO looks at these cases to decide if a country's actions to protect the environment is fair or not. The WTO has special rules that allows countries to make laws to protect their people, animals, and plants. These laws can also be for the protection of environment. But the WTO says these laws can't be unfair or are made to stop trade. Because it is tricky balance to find, as Environmental rules can sometimes be seen as trade barriers.¹⁰ These are like walls that make it harder to sell products from one country to another. Out of all WTO also has certain agreements which provide barriers to conduct trade one of those agreement is Technical Barriers to Trade i.e TBT Agreement helps to make sure that these walls are fair and needed. It says that countries can make rules for a good reason, like protecting the environment, but these rules should not be unfair or used to block trade.¹¹ Investors, or people who put money into businesses, can also challenge environmental rules. They can do this through investment protection agreements. These agreements give investors a way to say that a country's environmental laws are unfair to them. This can lead

⁸ Jonathan M Harris, Global Development and Environment Institute. "Trade and Environment: Theory and Policy." (2004). <http://www.ase.tufts.edu/gdae/Pubs/rp/Trade&Environ.pdf> (Accessed: August 25, 2021).

⁹ Santarius, Tilman, Holger Dalkmann, Markus Steigenberger, and Karin Vogelpohl. Balancing Trade and Environment: A Proposal for an Ecological Reform of the WTO. Wuppertal Institute for Climate, Environment, Energy, 2012. <https://wupperinst.org/a/wi/a/s/ad/2926/>.

¹⁰ https://www.wto.org/english/tratop_e/envir_e/envir_e.htm

¹¹ https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm

to disagreements between trade law and environmental protection. On one way trade can help the environment is by trading environmental safe goods and services. On the other hand, trade can also harm the environment. When countries trade natural resources like wood or minerals, it can lead to too much harvesting or mining. This can damage the environment and harm our planet. Trade agreements basically stress on the importance of nations sharing their rules and regulations, fostering mutual understanding and facilitating rules to enhance environmental safeguards.

LEGAL REGIME

The conflict between international trade and environmental interests is one of the key areas of controversy. GATT general agreement on Trade and tariff came into existence for reduction trade barriers. This agreement had 8 rounds of trade negotiation out of this 8th round i.e uruguay round of negotiation led to formation of world trade organisation (WTO) in 1995, under the roof of WTO several agreements were brought into picture those agreements are Agreement on Trade related aspects on intellectual property rights (TRIPS), General agreement on trade in services (GATS), Agreement on technical barriers to trade and Agreement on sanitary and phytosanitary measures etc and much more.

Both in the GATT and in the WTO agreement, we find direct or indirect references to the environment. The Preamble to the WTO states of “allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development”. The GATT provides for important exceptions in Article XX (b) and (g):

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures”:

(b) necessary to protect human, animal or plant life and health;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.”¹²

Apart from this WTO agreements has environmental provisions out of those agreements Agreement on trade-related Aspects of intellectual property rights(TRIPS) has an implication for sustainable development by addressing the protection of intellectual property rights, and encourages to invent environmentally safe technologies.

The agreement on technical barriers to trade and agreement on sanitary and phytosanitary measures establishes certain principles relating to human, animal and plant safety. As these standards are essential for ensuring public health and consumer safety and sometimes it reaches environmental objectives.

¹² Santarius, Tilman, Holger Dalkmann, Markus Steigenberger, and Karin Vogelpohl. Balancing Trade and Environment: A Proposal for an Ecological Reform of the WTO. Wuppertal Institute for Climate, Environment, Energy, 2012. <https://wupperinst.org/a/wi/a/s/ad/2926/>.

Apart from WTO lot of conferences took place to protect environment. First conference took place 1972 in Stockholm for addressing environmental issues later in 1992 United Nations conference on Environment and development also called as RIO conference took place

CASE STUDIES

1. Tuna - Dolphin Case

It is one of the important case related to trade disputes concerning the environment.

The case focuses on the conservation of dolphins in context of tuna fishing practices. These practices take place in Eastern Tropical Pacific Ocean. As tuna fishing operations often involve casting of large nets around schools of dolphins to catch the tuna, inadvertently leading to the capture it harms the dolphins sometimes it leads to death of dolphins. To address this issue and to protect dolphins, the United States introduced the Dolphin Protection Consumer Information Act (DPCIA) in 1990. This legislation states that the tuna products sold in the U.S. should meet certain specific dolphin protection standards and carry "dolphin-safe" labels, indicating that the tuna was caught without causing significant harm to dolphins. However, this initiative led to a trade dispute, particularly with Mexico, which is the major exporter of tuna to the U.S. Mexico argued that the U.S.'s dolphin-safe labeling rules are discriminatory against the tuna products. The dispute eventually reached WTO, the U.S. and Mexico reached to a settlement that involves modifying of certain labeling standards.¹³

2. US Gasoline Case

US Gasoline Case is one of the important environmental case. Which relates to the quality of gasoline used in cars and other vehicles in US and its impact on the environment. Gasoline usually contains additives like ethanol, which can be helpful in reducing air pollution. However, there have been instances where these gasoline contains too much of like sulfur. As emission of sulfur in environment causes air pollution and have an adverse effects on human health. To address this issue, the U.S. Environmental Protection Agency (EPA) has put certain rules in place to limit the amount of sulfur and other harmful substances in gasoline. These rules aim to make gasoline cleaner, which, in turn, helps reduce pollution and protect the environment.¹⁴

3. Shrimp-Turtle case

The "Shrimp-Turtle Case" is one of the significant case related environment and trade dispute which aims to protect sea turtles from shrimp trawling which is a method used in the shrimp fishing industry. which involves dragging large nets along the ocean floor to catch shrimp, which unintentionally traps and harm the sea turtles. Many species of sea turtles are endangered or threatened, so their protection is vital for the conservation of marine biodiversity. To address this concern, the United States introduced regulations to

¹³ Schoenbaum, T. J. (1997) "International Trade and Protection of the Environment: The Continuing Search for Reconciliation," American Journal of International Law. Cambridge University Press, 91(2), pp. 268–313. doi: 10.2307/2954212.

¹⁴ Panel Report, United States—Standards for Reformulated and Conventional Gasoline, 2.5–2.7, WT/DS2/R (Jan. 29, 1996); Appellate Body Report, United States—Standards for Reformulated and Conventional Gasoline, § I.B, WT/DS2/AB/R (Apr. 29, 1996) [hereinafter U.S.–Gasoline AB Report].

protect turtles. These measures included the use of Turtle Excluder Devices (TEDs), which allow trapped turtles to escape from the shrimp nets. The U.S. argued that these regulations were necessary to prevent harm to sea turtles. However, several countries, particularly those with significant shrimp-exporting industries, objected to these regulations and considered them to be unfair trade barriers. This led to a trade dispute and eventually, the case was taken to the World Trade Organization (WTO). The WTO, in its ruling, stated that while the U.S. had a legitimate reason to protect sea turtles, the measures it imposed were not consistent with international trade rules. The ruling emphasized the need to balance environmental protection with international trade interests and called for a more harmonized approach to addressing such issues.¹⁵

4. Chilean Salmon farming and environmental impact

Chile is one of the world's largest producer of farmed salmon. However, because of the rapid growth of the salmon industry this led to environmental issue which includes the wide spread of disease, pollution and habitat degradation. So Countries like US and Japan have raised the concerns about the environmental impact of Chilean salmon production. So this case highlighted to use sustainable aquaculture practices before exporting.¹⁶

5. Palm oil production in southeast Asia

The palm oil industry, mainly in places like Indonesia and Malaysia has received worldwide criticism for causing deforestation, destroying habitats and reducing biodiversity. European union, have limited the import of unsustainably produced palm oil. As the production of the palm oil was affecting the environment.¹⁷

6. Ban on Ivory trade to protect Elephants

As International trade in ivory has long been associated with poaching and decline of elephant populations. The convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has imposed ban on ivory trade and some countries have implemented even stricter measures.¹⁸

7. Conflict over Electronic waste (E-waste) trade

Electronic waste, including discarded Electronic device, can pose significant environmental hazards if not properly managed. Developed countries often export E-waste to developing nations, Creating concerns about improper disposal and its environmental and health impacts.¹⁹

8. Conflict over Rare Earth Elements Exports Restrictions

¹⁵ Appellate Body Report, United States—Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (Oct. 12, 1998) [hereinafter Shrimp/Turtle AB Report].

¹⁶ Quinones, Renato & Fuentes, Marcelo & Montes, Rodrigo & Soto, D. & León-Muñoz, Jorge. (2019). Environmental issues in Chilean salmon farming: a review. *Reviews in Aquaculture*. 11. 10.1111/raq.12337.

¹⁷ <https://www.worldwildlife.org/industries/palm-oil>

¹⁸ <https://eia-international.org/wildlife/protecting-elephants/saving-elephants-from-the-ivory->

¹⁹ Electronic Waste: A Case Study Gupta Reena1, Sangita and Kaur Verinder 1Research Scholar, Jodhpur National University, Jodhpur, INDIA 2 Senior Scientist, Flexible Pavement Division, Central Road Research, New-Delhi, INDIA 3 Principal, Guru Nanak Khalsa College, Yamunanagar, INDIA

China is a major producer of rare earth elements used in various high tech products. China's export restrictions on these materials raised concerns among importing countries, including the US and European union.

9. Trade in genetically modified organisms

Genetically modified crops have been a subject to debate from the day they are in existence due to concerns about potential environmental and health impacts. The European union has imposed a de facto ban on GMO imports, leading to disputes with exporting countries such as US and Canada.

CONCLUSION AND SUGGESTIONS

The intersection of international trade and environmental protection is a complex and multifaceted issue that has evolved significantly throughout history. As the global economy has expanded, the environmental consequences of trade have become increasingly apparent, leading to efforts to incorporate environmental provisions in the trade agreements. These provisions play a crucial role in addressing environmental concerns while promoting sustainable trade practices. They offer numerous benefits, including the promotion of environmentally responsible economic activities, the protection of ecosystems and natural resources, and the mitigation of climate change. However, environmental provisions in trade agreements also face various challenges and criticisms. And these provisions have the potential to shape the future of trade by promoting sustainability and responsible practices while safeguarding our planet.

SUGGESTIONS
1. **Strengthen and Harmonize Environmental Provisions:** Trade agreements should include strong and consistent environmental provisions. These provisions should be based on international environmental standards and should set high benchmarks for sustainability.

2. **Enhanced Enforcement Mechanisms:** Robust enforcement mechanisms are crucial to ensuring compliance with environmental provisions. These mechanisms should include effective dispute resolution processes and penalties for non-compliance.

3. **Transparency and Information Sharing:** Countries should continue to share information about their environmental regulations and policies as part of trade agreements. This promotes a better understanding of each other's approaches and encourages best practices.

4. **International Cooperation:** Collaboration between countries is essential in addressing global environmental challenges. Trade agreements should promote international cooperation to tackle issues such as trans boundary pollution and conservation of shared ecosystems.

5. **Innovation and Investment:** Encourage investment in green technologies and sustainable practices. Trade agreements can promote innovation and incentive businesses to adopt eco-friendly practices.

6. **Public Awareness and Engagement:** Raise public awareness about the environmental impact of international trade. Engaging the public can create pressure for more environmentally responsible trade policies.

7. **Balance Sovereignty and Sustainability:** While respecting national sovereignty, trade agreements should emphasize the importance of environmental conservation as a shared global responsibility. This balance can be achieved through diplomacy and dialogue.

8. Strive for Ambitious Commitments: Trade agreements should not shy away from ambitious commitments to address pressing environmental issues, such as climate change and biodiversity loss. These agreements should evolve to meet the challenges of our time.
9. Incorporate Scientific Expertise: Incorporate the input of scientists and environmental experts in the negotiation and implementation of environmental provisions. This will help ensure that these provisions are evidence-based and effective.
10. Evaluate and Adapt: Periodically evaluate the effectiveness of environmental provisions and adapt them to changing environmental and economic circumstances. Flexibility and adaptability are essential in addressing emerging challenges.

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