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ROLE OF WTO ON TRADE AND ENVIRONMENT POLICIES

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Abstract

The post-World War II development of the global economy, as well as the awareness in the 1960s that some natural resources were non-renewable generated worries about the potentially high environmental implications of the Bretton Woods system's economic progress. Environmental concerns sparked movements and the establishment of lobby organizations as a result of rapid industrialization and a steep increase in trade flows, putting pressure on governments to take active actions to safeguard the environment. To limit pollution and conserve environment for future generations, governments throughout the world began establishing legislation that may be seen as direct or indirect trade restrictions. It was well recognized that international commerce might compound both the good and negative consequences of economic activity on social and environmental development. This article critically assesses how trade affects environment at domestic as well as international level. What is the relation between environment and trade and how international body WTO plays an important role in protecting environment and in achieving sustainable development and how subsidies play role to affect our environment. Apart the role of WTO we will discuss GATT rules and exceptions and discuss case laws¹. This model specifically addresses the ongoing debate between economists and environmentalists over the costs and benefits of free trade. Such a review is necessary because of the pressure that the accelerated pace of globalization is placing on environment and trade.

Keywords: GATT, WTO, MFN, UN, Sustainable Development, International Laws, Environment

¹https://www.researchgate.net/publication/5107421_Environment_and_Trade_A_Review_of_Issues_and_Methods

Introduction

The WTO's primary aims are sustainable development and environmental protection and preservation. They are codified in the Marrakesh Agreement, which formed the World Trade Organization, and they support the WTO's goal of reducing discrimination and economic barriers in international trade relations. Under WTO there is no special agreement among the states regarding environment rules. States may impose trade-related conservation policies so as to protect the environment from being exploited and achieve sustainable goals.

The goals of WTO of ensuring sustainable development and avoiding protectionism, its rules and enforcement mechanisms, and participation in several WTO organizations all contribute to environmental conservation and preservation².

The importance of trade's contribution to sustainable development and environmental initiatives has been highlighted in venues such as the “Rio Summit 1992, Johannesburg Summit 2002, UN World Summit 2005, and the UN Agenda for Sustainable Development 2002.”

Trade and Environment: Issues

The conflict over trade and the environment is not new. As early as 1970, the relationship between trade and environmental protection has been observed, covering how trade impacts on environmental policies. As a result, “The Stockholm Conference 1972 on the Human Environment” was held trade-related environmental concerns and the need for the creation of a WTO by the end of the Uruguay Conference.

The question of the interaction between trade and the environment has arisen as a result of global trade expansion. Is trade beneficial to the environment or harmful? The solution isn't evident. Imported and exported commodities, like all other types of manufacturing, have environmental consequences.³

Most environmental issues are caused by polluting manufacturing processes, specific types of consumption, and the disposal of waste products—trade, with the exception of pollution related with goods transportation, is rarely the underlying cause of environmental deterioration.⁴

Rather than trade, the manufacturing, consumption, and disposal processes are the second fundamental source of environmental concerns. The only exception is pollution created by items being transported

³Solheim Erik, *Why trade can save planet if we do it better*. <https://www.unep.org/news-and-stories/story/why-trade-can-save-planet-if-we-do-it-better>.

⁴Frankel Frankel, *Environmental Effects of International Trade*.

<https://www.government.se/contentassets/006470cc2f544bd793924f11cad8f068/environmental-effects-of-international-trade>.

across borders by ships, trucks, railroads, and planes, although this is a negligible source of global pollution⁵.

Subsidies and Trade-Related Environmental Policies

Subsidies have the ability to have a beneficial or negative impact on the environment. When they collect favorable environmental externalities, they may be able to make a beneficial contribution. However, if they induce environmental stress (for example, by encouraging the exploitation of natural resources), they may have a detrimental impact. In the agricultural and energy industries, subsidies are frequently viewed as trade-distorting and, in some circumstances, as the source of environmental degradation. Environmentalists have urged that international trade laws should allow for more flexibility in giving subsidies to boost environmentally friendly enterprises or technology.

During the Uruguay Round, both the positive and negative Externalities of environment by giving subsidies were studied, and the Agreement on Agriculture and the SCM Agreement incorporated a number of additional disciplines as well as exemptions.

Environmental issues are a negative externality in either production or consumption, according to this assertion. There would be a market for pollution if manufacturers and consumers had to pay for the environmental consequences of their actions. Costs and benefits are embodied in the decision-making process in a market. Producer and consumer impacts occur "external" if there is no market, this is called as "externality"⁶.

Key GATT disciplines

Certain steps have been taken to achieve the aims of protecting the environment, even though our trade business is restricted by its very specific nature and affects the rights of the WTO and other members. They may breach basic trade norms, including the prohibition of quantitative limits and the responsibility of non-discrimination. And that is why exceptions to these norms, such as those found in Art XX, are especially relevant in the context of trade and the environment. As Art XX is an exception provision, it only applies when a measure is deemed to be in violation of GATT norms.

⁵WTO rules and environmental policies: GATT exceptions WORLD TRADE ORGANISATION https://www.wto.org/english/news_e/news_e.htm.

⁶ Harri Jonathan M *Trade and the Environment*. https://www.bu.edu/eci/files/2019/06/Trade_and_the_Environment.

The rule of non-discrimination

Member countries shall not discriminate, according to the rules of non-discrimination. Between "like" items from different trading states (providing them equivalent "most favoured-nation (MFN)" GATT Art I), or (giving them "national treatment," under GATT Art III).⁷

Like products

The measures related to trade and environment must not discriminate between "like" items in order to comply with WTO standards. As a result, the non-discrimination principle presents two important questions: Are the items in question "like" products? Whether the imports of foreign product regarded differently than the exports of domestic product? One of the popular case i.e. 'European Communities — Asbestos case'⁸, Canada — the complainant — had to prove that products (including asbestos) brought from Canada to France were similar to French domestic equivalents (PVA, cellulose, and glass fibres) and that the French legislation acceded to this.

Indeed, the Panel decided that local and imported items were "like" in this situation. However, the Appellate Body overturned this decision, explaining that the Panel should have considered various factors in determining resemblance, including the competitive connection between the goods, as well as the "risk" to health caused by the two items because of their physical differences

The Mexican government challenged a United States statute prohibiting the import of tuna from Mexico in 1991, drawing international attention to the subject. The Marine Mammal Protection Act of the United States barred tuna fishing practices that killed significant numbers of dolphins, as well as tuna imports from nations that did. The Mexican government claimed that the General Agreement on Tariffs and Trade's regulations (GATT) was in violation of US statute.⁹

WTO Members reiterated their commitment to health and environmental protection during the Doha Ministerial Conference, and decided to begin a new round for discussion on trade, which is inclusive of discussions on those elements of the trade-environment relationship which are specific. The negotiations during that round ensure that it will provide the developing countries with those market opportunities which will improve their economic growth. In addition to launching new negotiations, the Doha Ministerial Declaration asked the CTE who will serve as a platform for resolving the conflict between the environmental and developmental aspects and to focus on the items in its terms of reference.¹⁰

⁷ Barrett, Scott. (1994). Strategic Environmental Policy and International Trade. *Journal of Public Economics*, 54:3, pp. 325- 38.

⁸ Castleman Barry, *The WTO Asbestos Case and its Health and Trade Implications*. http://ibasecretariat.org/bc_wto_seattle.php.

⁹ Paula Nicole de, *Trade and the Environment: The Search for Sustainable Solutions* <https://www.iisd.org/articles/trade-and-environment>.

¹⁰ *TRADE AND ENVIRONMENT IN THE WTO* WTO OMC

https://www.wto.org/english/tratop_e/envir_e/bkgrnd_climate_e.pdf.

The WTO Committee on Trade and Environment, to look into the connections between these two issues, released its Trade and Environment report in October 1999. "There is no basis for the broad generalizations that are frequently heard in the public discourse, stating that trade is either good for the environment, or terrible for the environment," the research said. The real-world connections are a mix of the two." "Trade liberalization strengthens the need for environmental cooperation," according to the World Trade Organization.

GATT Exceptions

Art. XX of the GATT (General Exceptions) outlines a variety of particular situations which are not considered as violation in WTO rules and members are excused from domestic goals.

Art. XX states:

Sub-para (a) Morality related to public be protected.

Sub-para (b) Health and Safety of Biotic & biotic factors

Sub-para (d) enforcement of customs and border regulations

Sub-para (g) conservation of non-renewable resources etc.¹¹

There are two cumulative conditions under GATT Article XX on General Exceptions. A member must conduct a two-tier examination to justify a GATT-inconsistent environmental policy under Article XX.

Art. XX applies to every GATT article and serves to balance member nations' regulatory powers with the benefits of trade liberalization enjoyed by other members. GATS Art. XIV, which regulates services trade, has rules that are comparable to GATT Article XX. GATT Article XX is mostly discussed in this Chapter since they are identical and there are few examples pertaining to General Agreement on Trade & Services Art. XIV.

The member nations who proposed the measures of concern (respondent countries in WTO dispute settlement procedures (hereafter referred to as "respondent countries")) bear the burden of evidence under GATT Article XX in theory. Respondent nations are the parties who profit from the alleged exception.

¹¹ *WTO rules and environmental policies: GATT exceptions* WORLD TRADE ORGANISATION
https://www.wto.org/english/news_e/news_e.htm.

GATT Chapeau of Art XX

The very first clause of Article XX (its chapeau) stresses the way in which the law is implemented and to protect from abuse reasons.

Firstly: A member country must ensure that Art XX should be used in a manner which would be justiciable and not in a harsh manner.

Secondly: A member country must also ensure that Art. XX does not impose any hidden constraints.¹²

GATT Policies

Countries must take serious concern over such trade practices, which are depleting our natural resources and affecting the lives of biotic as well as abiotic factors according to GATT Article XX. However, how this specific exemption to free trade laws is interpreted has resulted in bitterly disputed conflicts among governments.

Consider the EU, which has refused to import hormone-treated beef from the United States. The United States has contended that the use of hormones is an unlawful trade barrier because there is no recognized harm to human health. The EU cites the precautionary principle, i.e., in the situation of scientific uncertainty, the precautionary principle states that the government may take necessary steps in proportion to the probable danger. The EU's refusal to import hormone-raised cattle has been recognised by the World Trade Organization.

Conclusion

Trade expansion frequently has environmental consequences. At the national, regional, and global levels, trade may raise environmental externalities. While achieving country's economic development through trade, it may often have negative environmental consequences such as increased pollution or destruction of natural resources.¹³

Some measures for resource conservation and environmental preservation are included in international trade agreements, although they are generally minor exceptions to the fundamental idea of free commerce. Countries are authorized to consider the environmental implications of goods in the World Trade Organization, but not those linked with manufacturing methods. As a result, there have been several trade disputes about whether certain regulations are justifiable on the basis of life and health protection.

¹² Hettige, H., P. Martin, M. Singh, and D. Wheeler (1994). IPPS: The Industrial Pollution Projection System. World Bank, Policy Research Department, Working Paper.

¹³Alpay Savas, *Is trade Good for the Environment? General Conclusions*. Trade and The Environment, pp 103–108
https://link.springer.com/chapter/10.1007/978-1-4615-0271-5_8.

National policies are required to handle trade-related environmental challenges as effective environmental protection measures are absent at the regional or global level. Governments and private nonprofit groups can use certification and labelling standards to improve consumer awareness and "greener" company practices in international commerce.

