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International Trade and the Environment: An Outright Concern of the WTO

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ABSTRACT

Trade and the environment have always been contentious global issues. With the implementation of multilateral, plurilateral, and bilateral agreements, international trade has increased significantly over the years. Free trade and trade liberalisation increases economic activity, which further enhances a nation's wealth and progress. On the other side, this may also lead to the use of all of our nation's natural assets, whether they are minerals, woodlands, fish stocks, and other natural reserves. International trade thus creates huge environmental degradation when the environmental determinants are not properly looked into. If there are appropriate global trading practices that increase a nation's national wealth, it can lead to greater as well as better sustainable standards. Conserving the environment through the implementation of appropriate plans and policies is critical to achieving the goals of international environmental sustainability. The World Trade Organisation plays a major role in the international law realm in balancing the tension between trade and the environment, though it was not established with the aim of protecting the environment as such from the negative impact of world trade. The various multilateral and plurilateral agreements of WTO, along with Article XX exceptions of the GATT, constantly address all these issues. Hence, the object of this paper is to carefully examine the interrelationship between WTO, trade, and the environment, as well as to look into the impacts of trade on the world environment and how the WTO agreements and key provisions address these critical issues.

Keywords: *International trade, trade liberalisation, environment, Article XX, GATT, WTO.*

I. INTRODUCTION

The trade, environment, and development of the nation are inextricably linked. International trade has serious environmental consequences because it quickens the overuse of a country's natural resources, which can lead to deteriorating environmental practices. International trade and the environment have a two-way relationship- multidimensional and often conflicting. When it comes to trade liberalisation, the poor and developing countries face devastating effects on the environment when compared to the other developed nations. There is an overuse of

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resources, which jeopardises a country's natural ecosystem. To sum up, developing and poor countries simply lack technological facilitation. Even though organic product trade is environmentally friendly, other hazardous substances damage the environment.

In this globalised economy, the import and export of goods frequently elevate environmental risks.² The depletion of natural resources leads to higher income but also environmental problems. The level of trade liberalisation and the volume and regularity of large transactions determine the environmental effect dimension. Thus, environmental protection in the context of international trade is always a severe problem that garners a lot of attention, exerting strain on developing or poor countries.

This research paper attempts to examine the relationship that exists between trade and the environment and how the various WTO agreements help defend various environmental issues that arise in connection with global trade. The paper also examines the impacts of trade on the environment and analyses the measures taken by WTO to address environmental damage induced by global trade. In addition, the paper explores the application of GATT Article XX in the current framework of sustainable development and global trade.

II. THE INTERRELATIONSHIP BETWEEN INTERNATIONAL TRADE, ENVIRONMENT, AND GATT/WTO

International trade and the environment have a complicated relationship. The Preamble to GATT is limited to economic goals. There is no specific mention of environmental goals, and the language of the Preamble implies a prejudice toward the exploitation of resources rather than conservation. The WTO's concern for the environment begins with the treaty itself. The parties state in the Preamble to the Agreement Establishing the WTO that they are acting to establish the WTO -

“ . . . recognising that their relations in the field of trade and economic endeavour. . . with a view to raising standards of living . . . while allowing for the optimal use of the world's resources by the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development. . . .”³

The WTO's primary objectives are environmental protection, preservation, and sustainable

² Belcher, Ken, Anna L. Hobbs, and William A. Kerr, The WTO and environmental sustainability: is there a conflict?, International Journal of Environment and Sustainable Development 2.1, 2-18 (2003).

³ Preamble to WTO- WTO, Wto.org. Available at: https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm (Accessed: November 16, 2022).

development. This furthers its principal goal, which is to remove unfair practices from global commercial relations and lower trade barriers.⁴

A. WTO Agreements Vis-À-Vis Environmental Agreements:

Multilateral environmental agreements (MEAs) are the most practical means of resolving global environmental issues. Rather than one country attempting to change the environmental policies of other countries on its own. Nothing in international law indicates that WTO agreements trump MEA trade measures or vice versa.⁵ Around 20 of the many international agreements currently in force that deal with various environmental issues outside of the WTO are agreements that include provisions that can affect trade.

Most significant agreements, such as the Montreal Protocol, Cartagena Protocol, and the Convention on International Trade in Endangered Species (CITES), include trade-related measures, such as the requirement for licenses before allowing trade or outright bans on trade in controlled products with non-parties to the agreement. All of these measures were successful in ensuring the proper implementation of treaties where trade was the primary cause of environmental harm.

Trade measures are among the regulatory tools included in the MEAs as they address environmental damage, comply with, and encourage participation in environmental regimes. Concerns are growing that as trade restrictions become more popular in international environmental policymaking, they will conflict with WTO rules. Some MEAs are intended to govern trade, like the Montreal Protocol, and may use trade restrictions as one of several mechanisms to support their main environmental goal, such as imposing a phase-out schedule for certain chemical compounds that are harmful to the ozone layer.

Any trade interference that results could be considered as violating WTO duties when environmental treaties target products because of the underlying process and manufacturing methods rather than the environmental quality of the finished product itself.⁶ When one party to an MEA enforces trade sanctions on a third party while both sides are WTO members, there may be a discrepancy between the MEA and the WTO rules in this situation. The party that receives a trade sanction could then file a complaint with the WTO, alleging a violation of trade laws. No WTO member has yet to dispute an MEA through the WTO's dispute resolution

⁴ Steve Charnovitz, Trade and the Environment in the WTO, *Journal of International Economic Law* 10 (2007).

⁵ Aparna Sawhney, WTO-related matters in trade and environment: Relationship between WTO rules and MEAs, No. 133, Working paper (2004).

⁶ Dominic A. Gentile, International Trade And The Environment: What Is The Role Of The WTO?, *Fordham Environmental Law Review*, 197-232 (2009).

process. But a future dispute over the implementation of MEA-based trade restrictions may arise.

B. The WTO Committee On Trade And Environment:

The importance of sustainable development is mentioned in the preamble of the Marrakesh Agreement, which founded the WTO. The ministers also agreed to a "Decision on Trade and Environment," which stated that "upholding and preserving an open, non-discriminatory, and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and promoting sustainable development on the other, should not be, nor need not, any policy contradiction."⁷

The Uruguay Round of discussions led to the establishment of the Committee on Trade and Environment (CTE) in 1995. The group was tasked with finding a balance between trade and environmental policy and, if necessary, developing suggestions for changes to the WTO regulations governing environmental policies. The essential WTO values of non-discrimination and transparency, according to the WTO's committee, do not contradict trade measures required to safeguard the environment, including those enacted by environmental agreements. It also emphasises that because of the provisions in agreements on goods, services, and intellectual property, governments are free to prioritise their domestic environmental policy. With the introduction of the Doha Rounds in 2001, the CTE's function within the WTO changed. There, it was acknowledged that "improving the mutual support of commerce and the environment" and "reducing or eliminating tariffs and non-tariff obstacles to environmental goods and services" was necessary.

III. ENVIRONMENTAL IMPACTS OF INTERNATIONAL TRADE

International trade indirectly harms the environment by influencing how goods are produced and consumed. Even though free trade can encourage increased production efficiency and the global adoption of environmental technology and standards, it frequently results in polluting manufacturing and excessive use of natural resources.⁸ Due to trade liberalisation, this is the situation in nations that specialise in producing items that cause significant pollution. One example is the rise in air and water pollution brought on by manufacturing that is focused on exports. International trade can be hampered by environmental protection measures, which are

⁷ José María Figueres Olsen, José Manuel Salazar-Xirinachs, and Mónica Araya, Trade and environment at the World Trade Organization: the need for constructive dialogue, pp137–54 (2001).; *Supra note 2*.

⁸ Erich Vranes, Trade and the environment: Fundamental issues in international law, WTO law, and legal theory, Vol. 174. New York: Oxford University Press (2009).

frequently accused of being veiled protectionism.

The increased trading activity, according to free traders, is a key factor in facilitating the spread of environmentally friendly goods, services, and manufacturing methods around the world. The goal of trade liberalisation is to get rid of anti-competitive pricing and distortionary subsidies. Profits from trade help to provide the financial resources, technological capabilities, and organisations needed to support environmental issues.⁹ Global trade, however, is seen by environmentalists as having the greatest impact on environmental degradation. They believe that rising economic growth, trade liberalisation, and free trade all have the potential to harm the environment. Environmental problems are brought on by factors such as increased cross-border commerce in goods, transportation pollution, the trade in dangerous goods and endangered species, and expanding economic activity.¹⁰

As free trade among nations constantly aids the country to specialise in the area of production based on comparative advantage theory, the growth in international trade should have a good effect on the global environment. However, trade may also have a detrimental effect on the global ecosystem. The price of a product should represent the relationship between environmental protection and the cost of production and use of commodities. Unsustainable economic activities, such as the increase in pollution levels, the depletion of natural resources and reserves, etc., result when environmental variables are not taken into account. Market failures and policy failures are additional major factors. Liberalising trade might boost welfare. However, since this does not always occur, it is possible that the detrimental effects of bad environmental policy would be magnified.

(a) Direct Effects:

These include the effects brought on by the type of exchanged products and the means of transportation. Global commodities movement results in increased energy use, pollution from oil and chemical spills, port pollution, extensive fossil fuel burning, etc. The type of items traded and how they are handled or disposed of can hurt the environment in another nation. Meat, fish, fruits, and vegetables, as well as hazardous waste, may bring dangerous pests or contagious diseases into the country of importation.

(b) Indirect Effects:

They are about the wider implications of the shifting of goods. According to economic theory

⁹ Bradly J. Condon, *Trade and Environment: How WTO Law Helps*, Society of International Economic Law (SIEL), Sixth Biennial Global Conference (2018).

¹⁰ Nicole de Paula, *Trade and the Environment: The Search for Sustainable Solutions* (2022).

models on commerce and the environment, the effects of economic integration on the environment depend on three factors: scale effect, composition effect, and technology effect.

The increased economic activity causes the scale effect. Unless production processes become cleaner and less resource-intensive, and customers show a strong desire to recycle garbage, this could be hazardous to the environment. Industrial restructuring is referred to as the composition or structural effect. Depending on whether the export sectors are less environmentally destructive than its importing sectors or not, the effects on the environment will either be beneficial or negative. According to the technique or income effect, governments from various nations should respond to popular demands and update their environmental laws as and when their income increases, so offsetting the effects of the scale effect.

IV. INTERNATIONAL TRADE RULES AND ENVIRONMENTAL PROTECTION

As environmental rules vary from country to country, trade and the environment are at tension. When we understand how trade, and environmental policy interact, some of the key issues include the distinction between legitimate and commercial protectionist measures, the WTO's authority to supersede national sovereignty in environmental matters, the position of international environmental laws in the international legal system, the methods used to resolve environmental disputes, etc.¹¹ The interdependence of trade and environmental policies is a point of emphasis for international policymakers.

There were no officially stated provisions for environmental protection in the GATT itself. The GATT's Article XX gives each of its members the freedom to choose the level of environmental protection they want to have within their borders by using the proper trade sanctions. The Montreal protocol relates to the substances that deplete the ozone layer of the atmosphere. The Basel convention is in connection with hazardous waste substances. Genetically modified organisms are dealt with under the Cartagena protocol. The Kyoto protocol controls the carbon emission standards in the environment. The Rotterdam convention deals with environmentally hazardous chemicals and pesticides. The Stockholm convention covers all the matters relating to environmental protection. The 1975 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), along with its three Annexes, deals with the regulation of trade in endangered species, their parts, and the products made from them. The 1992 Earth Summit put a focus on the contribution that global trade makes to reducing poverty and halting environmental damage. It supported sustained economic growth and the needs of

¹¹ Nihar Lalas, WTO and Environmental Standards Issues concerning Trade in India, 3 INT'L J.L. MGMT. & HUMAN. 224 (2020).

poor countries through its action plans, Agenda 21, and the Rio Declaration on Environment and Development. This ultimately had an effect on the discussions of the Uruguay Round, which created the WTO. However, trade-related environmental issues remained a constant on the agendas after then.

The GATT agreement contains two principles that define non-discrimination: the most-favourable-nation (MFN) principle (Article I), which mandates that each GATT member accord all other members the same privileges as they have given to their "most-favourable nation," and the "national treatment principle" (Article III), which requires that GATT members treat "like products" imported from foreign producers the same way they treat those produced domestically. Since the inception of the WTO in 1995, it has handled trade-related issues in accordance with GATT principles. The "non-discrimination" and "most-favourable-nation" principles ensure that member states do not arbitrarily discriminate in their import and export policies.

Even if there is no clear meaning of the concept of like products in GATT/WTO law and jurisdiction, it is crucial in the context of discussions about commerce and the environment. Environmental protection was primarily considered to be a domestic policy issue, with the exception of a small number of treaties and institutions addressing transboundary environmental concerns. As a result, there hasn't been a specific agreement to address the environmental issue internationally since the GATT was established. Nowhere in any agreement was the relationship between trade and the environment discussed.

Article XX is the sole section of the GATT that clearly outlines environmental issues by articulating the justifications for restricting international trade for the protection of human, animal, or plant life or health, as well as the preservation of natural resources. The GATT makes concessions from its trade standards when it comes to environmental objectives by including these measures, but it also aims to ensure that they do not lead to discrimination or protectionism. But because these requirements are ambiguous, they have frequently given rise to divergent interpretations, which has resulted in several disputes in these areas. These clauses are in opposition to many different environmental programs.

V. THE APPLICATION OF GATT ARTICLE XX EXCEPTIONS

The only GATT clause that specifically outlines some environmental concerns is Article XX. The GATT's Article XX (a) to (j) lists the regulations that may be considered to be justifiable grounds, such as the preservation of human health, and also includes the chapeau, a provision that states that these goals must not be abused or used to unjustifiably restrict international

trade.¹²

Articles XX(b) and (g) of the GATT rules establish the exceptions that allow the member states to take actions to preserve the health of people, animals, and plants as well as to conserve and protect natural resources that are finite in nature. It integrates the benefits of trade liberalisation with the member countries' rights to regulate under every GATT article. The member nations that implemented the measures bear the burden of proof because they stand to gain from the alleged exception.¹³ Thus, the GATT permits exceptions to its trade restrictions where environmental goals are involved, but it also works to prevent the emergence of protectionism through these measures. Similar to GATT Article XX, GATS Article XIV, regulates the trade in services.

The Technical Barriers to Trade Agreement (TBT) establishes guidelines for the implementation of technical laws and standards. It acknowledges that nations have the right to enact such regulations to safeguard public health and the environment, but it mandates that they shouldn't be excessively trade-restrictive. Prior to the export and import of commodities, quality performance standards must be met. For the protection of food and product safety, the Sanitary and Phytosanitary Agreement (SPS) stipulates measures on import/export limitations and domestic laws. According to Article 2.2 of the Agreement, SPS measures must be supported by enough scientific data and scientific standards of risk assessment. The WTO DSB has heard cases using the SPM Agreement in the Hormones (1998), Salmon (1998), and Agricultural Measures cases (1999), among others. The Agreement on Agriculture (AoA) offers a framework for long-term changes to domestic and international agriculture trade regulations. For the first time in the history of the multilateral trading system, a definition of a subsidy is provided in the Agreement on Subsidies and Countervailing Measures (SCM). The agreement makes a distinction between targeted and general subsidies. CVMs based on a "lax standard" would not be allowed to be imposed; however, the rules may permit such duties if a nation exempts a particular business or industry from an environmental penalty. "Patentable subject matter" is defined under Article 27 of the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS). Article 27.2, which allows Members to exclude inventions from patentability if doing so would be necessary to protect, among other things, human, animal, or plant life or health or to avoid significant environmental harm, particularly mentions the

¹² Brandon L. Bowen, *The World Trade Organization and Its Interpretations of the Article XX Exceptions to the General Agreement on Tariffs and Trade, in Light of Recent Developments*, 29 GA. J. INT'L & COMP. L. 181 (2000).

¹³ Joel P. Trachtman, *WTO Trade and Environment Jurisprudence: Avoiding Environmental Catastrophe*, 58 HARV. INT'L L.J. 273 (2017).

environment. In line with Article 27.3, Members may also prohibit the patentability of plants and animals other than microorganisms as well as essential biological processes, excluding microbiological processes, that are necessary for the development of plants or animals.

Many important environmental issues have been dealt with under GATT/WTO. Many nations have come up with issues relating to trade and the environment like the following, among many others.

The *Tuna–Dolphin Case*¹⁴ (1991) is one of the most important and controversial cases concerning the environment and trade relationship. The case is concerned with Mexico filing a complaint with the GATT against the ban on tuna fish by the US as a part of their effort to protect the dolphins that were killed during fishing tuna under the Marine Mammal Protection Act (MMPA) of 1972. It was decided that because Mexican laws for tuna production did not satisfy US requirements, the US could not apply a boycott on Mexican imports of tuna products. In the *US - Gasoline case*¹⁵ (1996), in order to lower air pollution in the country, the US implemented legislation controlling the composition and emission characteristics of gasoline. The Appellate Body determined that the provision, which fell under Article XX(g), affected both domestic and imported goods and was principally intended to achieve the policy objective of protecting clean air in the United States. In the *Shrimp–Turtles Case*¹⁶ (1998), The Appellate Body determined that the measure in question-related to the conservation of a depletable natural resource within the scope of Article XX(g) and did not constitute a general ban on shrimp imports imposed without regard to the effects on sea turtles. To date, the issues regarding the trade and the environment interface persist as a global concern of world nations and international organisations.

VI. CONCLUSION AND SUGGESTIONS

For decades, the relationship between trade and the environment has been hotly debated. The liberalisation and expansion of international trade are partly to blame for what many now call the global ecological crisis. The current WTO-mandated environmental protection system requires further development. Governments must gain a better understanding of the intricate relationship that exists between international trade and environmental issues. This should aid in the development of policies that will assist governments in achieving greater coherence in their

¹⁴ Panel Report. Restrictions on Import of Tuna. 1991 (DS21/R) not adopted. Circulated on 3 September 1991.

¹⁵ Panel Report, United States - Standards for Reformulated Gasoline, 1996 (Wf/DS2/R). AB Report (Wf/DS2/ABIR) adopted on 20 May 1996.

¹⁶ Panel Report, United States - Import Prohibition of Certain Shrimp and Shrimp Products (Wf/DS58/R). AB Report (WT/DS58/ABIR) adopted on 6 November 1998.

sustainable development practices. There should also be proper channels for the international community to disseminate vital information about the various aspects of the trade environment and development strategies that may have serious consequences for the environment of other member nations.

There should also be proper channels for the global community to communicate and share vital information about the various aspects of the trade environment and development techniques that may have serious implications for the environment of other member nations. Policymakers can conduct research and lay the groundwork for improving the status and value of natural resources. Ensuring that stricter environmental regulations do not place countries at a competitive disadvantage or have a negative impact on the least developed countries. The WTO wishes to ensure that the goals of sustainable development are prioritised alongside those of trade liberalisation and to strengthen science-policy relations.
