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Conflicts between Environment and Free Trade

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ABSTRACT

In the global value chain, Free Trade Agreements (FTAs) play a critical role. In the meantime, these are upsetting the global environmental equilibrium. Not only is global trade increasing at a rapid pace, but global industrialization, which is linked to trade and regional economic development, has resulted in serious degradation of the environment. As a result, this research aims to provide a broad overview of the major issues surrounding economic relations between environmental and trade policies and basic concepts of free trade and their subsequent impact on the environment. Such a review is required due to the stresses that the rapid pace of globalization is exerting on the environment and trade. The data is collected through various secondary sources such as law journals, newspapers, magazines, books, etc. The data analysis yields conclusions, and the necessary recommendations are made. When Free Trade Agreements are between solely developing or developed nations, there is no aggregate environmental harm but when developed and developing countries reach an agreement on trade, however, overall environmental quality suffers as a result of higher Greenhouse Gases emissions.

I. INTRODUCTION

Economists have researched and discussed the ideas and impacts of international trade policy since the time of the Ancient Greeks. Do trade barriers benefit or harm the countries that apply them? And which trade policy, ranging from tight protectionism to complete openness optimal for a specific country? In this age of globalization, trade liberalization is seen to be crucial in boosting global economic prosperity, and here is where the world's leading economists urge the policy of "Free Trade." Free trade, in its most basic form, is the absence or minimization of government rules that restrict the entry of goods and services. In this view, free trade is the polar opposite of protectionism, which is a defensive trade policy aimed at preventing foreign competition. For countries to pursue free trade policies, an FTA (Free Trade Agreement) is required. Free Trade Agreements are aimed towards frameworks that facilitates lower import

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and export tariffs. Trade under a free trade policy can be carried out with little or no taxes, subsidies and hinderances across borders.

One of the most controversial topics surrounding globalization, however, is the fear that free commerce harms the environment, both locally and worldwide. Global Development and Environment Institute (GDAE) suggests, that the negative environmental consequences of free trade are inevitable.

In 1948, more than 100 countries including the U.S signed the Global Agreement on Tariffs and Trade that aimed towards promoting smooth trade with lesser tariffs. This was succeeded by the World Trade Organization in 1995. The W.T.O now comprises of 164 member nations, regulating more than 95% of global trade.

(A) Review of Literature:

- **Grossman and Kruger** (1991) studied impact of trade on environment basing the research on three aspects: - scale, technique and composition. They concluded that the environmental impacts change with the scale of economic activity and the methods adopted for the same.

- **Nemati et al.** (2016) in his research paper talks about an empirical relationship between Free Trade Agreements and Greenhouse Gas emissions. The paper takes three different FTAs to compare the emission rates and comes to a conclusion that in an FTA between a developed and a developing country particularly, the overall Greenhouse Gas emission rates go higher which is degrading for the environment.

- **Thomas J. Shoenbaum** (2017) in his paper published in the American journal of International Law talks about the role of GATT in environmental degradation and the backlash faced by them⁴.

- **Jha S. and Rabindran S.** (2020) in their research paper contributed to the literature on liberalization of trade and its impact on environment based on factors such as pollution intensive and extensive manufacturing and export.

(B) Objectives:

- The research paper defines the basic concepts of free trade and their subsequent impact on the environment. The same has been backed with a number of cases to get a better understanding.

⁴ Schoenbaum, T. J. (2017). Free International Trade and Protection of the Environment: Irreconcilable Conflict?

- The paper strives to provide an in-depth analysis of the conflicting arguments and opinions on free trade and the environment.
- The paper showcases limitations as well as caters to a number of recommendations upon analysing the future trends in the conflict between Free trade and Environment.

(C) Research Methodology:

This Research Paper is based on deep secondary research carried out extensively. Credible and relevant sources such as Law Journals, Research Papers, Articles and International Treaties have been preferred to conduct the research. The claims and findings in Research Paper have been reinforced by many international landmark cases available at the official websites of World Trade Organisation. The paper strives towards the identification and solutions to the conflicts that arise between Free Trade and Environment.

II. WHAT IS IMPACT OF FREE TRADE AGREEMENTS ON ENVIRONMENT?

Trade deals may be made between developing or developed nations or developing and developed nations. Based on the scale of economy of the nation's participating in the FTA, various hypotheses concerning the influence of FTAs on Green House ejection have been developed.

Pollution Haven Hypothesis (1996)⁵, suggests that as a result of their weak environmental laws, developed countries would have more emissions after an FTA, as polluting industries will relocate to emerging countries from countries with strict environmental restrictions. Developed countries, appear to manufacture greater polluting goods. Environmental harm rises in the early phases of economic development but diminishes as countries reach higher income levels, as per environmental Kuznets curve theorem⁶.

According to Factor Endowment Hypothesis, international trade is governed by the form and amount of capital owned by trading partners. In affluent economies, physical capital is generally endowed, whereas labor capital is typically endowed in emerging ones. As a result, developing countries produce more labor-intensive items, whereas industrialized countries produce more capital-intensive goods, which consume more resources. As a result, FTAs have the potential to increase pollution in developed countries.

Mukhopadhyay, K., and Chakraborty, D. (2006) examined these two hypotheses using Indian

⁵Johnson, P. M., & Beaulieu, A. (1996). *The environment and NAFTA: Understanding and implementing the new continental law*. Island Press.

⁶ Korves, N., Martínez-Zarzoso, I., & Voicu, A. M. (2011). *Is free trade good or bad for the environment?*

data. They uncover no evidence for the PHH, but they do discover evidence for the FEH, because the country exports cost-effective and more labor-intensive items. Their findings also revealed that policy differences alone do not imply that trade liberalization will drive "dirty industries" to nations with less regulation.

According to Porter hypothesis proposes, emerging economies will continue to implement new and more stringent environmental restrictions in order to encourage innovation and, as a result, improve the environmental performance of all contracting parties⁷.

A 'race to the bottom' theory suggests that developing countries would reduce current environmental regulations in order to be competitive with countries with fewer environmental regulations and lower production costs. Large-scale rise in output will result in a "race to the bottom" for national environmental standards, but new industrial facilities, on the other hand, will introduce sustainable processes and creative power generation.

(A) Diverging Views and Attitudes toward Free Trade and Environmental Protection

There are various perspectives and attitudes toward the relationship between environment and trade. When developed countries economic growth reaches a certain level, they begin to take measures to improve their environmental standards. Singapore, for example, developed its own eco-labelling system, the Green Label, in 1992. Previously, the eco-labelling system was thought to be used primarily by developed countries to preserve the environment⁸.

There must be no inherent dispute between environment and trade as business is considered as a means to achieve sustainable growth and trade regulations should be used to assist protect the environment rather than environmental restrictions being used to limit trade. They claim that as countries grow, they spend more on environmental regulations and, as a result, contaminate less than they did when they were less economically advanced.

Developing countries contend that economic growth and trade liberalization play an important role in achieving sustainable development. The developing nations also claimed that developed countries appear to be more concerned about the atmosphere, but they are not because they consume more energy and therefore produce more emissions and are unable to reduce their energy consumption⁹.

On the other hand, many environmentalists are opposed to trade liberalization. According to

⁷ Porter, M. E., & Van der Linde, C. (1995). Toward a new conception of the environment-competitiveness relationship.

⁸ Benjamin, D. K. (2002). *Is Free Trade Good for the Environment?*

⁹ Romanchyshyna, I. (2019). *The Environmental Effects of Free Trade Agreements*.

them, free trade is to blame for many forms of environmental destruction as well as policymakers' inability to properly protect the environment. Moreover, trade liberalization will lead to both developing and industrialized countries lowering their environmental standards at the same time.

(B) Addressing the Environment v/s Trade Conflict under current W.T.O Framework

The World Trade Organization was set up to ensure free flow of trade yet the preamble of W.T.O does provide for some considerations for environmental protections. The same goals have been laid in the Marrakesh Declaration too.

Article 20 (b) and (g) of the G.A.T.T talks about exceptions granted to the nations for the conservation of exhaustible environmental resources. Article 20 (g) when talking about the exhaustible sources not only includes minerals but also endangered plant and animal species¹⁰.

- ✓ Examples of the implementations of exceptions under **Article 20 (b)** include the policies that aimed towards reducing consumption and export of cigarettes, reducing tire waste accumulations that poses a threat to human as well as animal and plant life¹¹.
- ✓ Moreover, the policies adhering to **Article 20 (g)** aim at preserving marine biology and life including turtles, fishes like tuna, salmon, shrimp and clean air¹².

In addition to these, there have been a number of agreements within the WTO framework that allow the nations to opt for exceptions in order to enforce environmental measures like: -

- ✓ **Agreement On Technical Barriers on Trade**- Deals with regulation of products that cause potential damage to the biodiversity.
- ✓ **Agreement On Sanitary and Phytosanitary Measures**- Relates to food safety and safeguarding of plant and animal health being affected due to trade practices.

(C) Landmark Cases Relating to Environmental Protection Under W.T.O And G.A.T.T Framework

CASES WHERE TRADE INTERESTS WERE GIVEN PREFERENCE.

The Tuna-Dolphin Case (1991)

The United States imposed a condition that asked other countries to show that the regulation of fishing in those countries is comparable to the U.S as defined under the Marine Mammal Protection Act, 1972. Additionally, the U.S refused to take the dolphins caught incidentally in

¹⁰ Khan, M. A. (2011). *Environment and Trade Matters under GATT Article XX*.

¹¹ GATT Exceptions Article 20 (b)

¹² GATT Exceptions Article 20 (g)

the tuna-fishing nets due to a huge public outcry and because of the aforementioned Act. U.S was challenged by Mexico at W.T.O s's dispute forum. The defense initiated by the U.S was of a "green exception", but the committee did not uphold the validity of this on the basis that the provisions of the M.M.P Act of the U.S are not "necessary" towards animal protection to be used under Article 20 (b) of the G.A.T.T. This decision by the WTO was widely criticized by environmentalists and later changed in the favor of the U.S in 2014.

Gasoline Case (1995)¹³

The dispute arose between Central American countries and U.S over the sale of only reformulated gasoline (Clean Air Act,1990). The foreign refiners were not capable enough of having 3 types of gasoline, as a result U.S stopped import of such gasoline. The Appellate body did not consider the defense by U.S on grounds of Article 20 (g) i.e., protection of environment and ruled the policy of U.S as discriminatory towards other weaker nations¹⁴.

CASES WHERE ENVIRONMENTAL INTERESTS WERE GIVEN PREFERENCE.

Asbestos Import Dispute¹⁵

Asbestos, a very important material that is also highly toxic has been an essential in the construction industry. This at the same time is harmful towards human health causing lung cancer and a ban was imposed on the import of these by European Nations. Canada a major exporter to France objected and raised its grievance based on the argument that France is violating Article 3(4) and 9 of the Technical Barrier to Trade Agreement. The committee ruled in favor of the EC as they found that France could be justified under Article 20(b) of the G.ATT.

Shrimp-Turtle Case¹⁶

The United States banned issuance of import certificates to nations supplying shrimp if they did not use a specific kind of a net that avoids catching of turtles along with shrimps. This was due to an Act passed in the US for marine life protection. The exporting countries took the case to the W.T.O dispute forum stating that this was violative of Article 11 of the GATT. In response the US replied that the norm was non-discriminatory and applied for marine life safety. The committee held the defense by US to be true as it was valid under Article 20(g)

¹³ WTO Case Number 2 and 8.

¹⁴ World Trade Organization Appellate Body: Report of the Appellate Body in United States - Standards for Reformulated and Conventional Gasoline.

¹⁵ WTO Case DS135 Dispute Settlement.

¹⁶ WTO Case Number 58.

exceptions of the GATT for environmental protection¹⁷.

(D) Approaches to balancing the trade and environment

The pre-existing dispute settlement system set forth by the WTO failed to settle and tackle the conflict in terms of environmental protection. Several potential solutions have been suggested since then.

1. Exempting multilateral environmental agreements under GATT through a waiver.

The WTO agreement allows parties to not exercise GATT obligations under certain exceptional circumstances. Hence, exemption of multilateral environmental agreements from the GATT rules is a wise move. To bring this into action and pass this waiver, it should be approved by three fourth majority of GATT parties. It is possible in certain circumstances.

2. Changes to the GATT/WTO resolution procedure.

Assuming for a minute that the GATT/WTO is the correct forum for trade and environmental dispute resolution, there are methods to make future WTO courts more conducive to fair and informed decision-making. For instance, consider the selection of panelists. Panelists' goal is to provide a suitably diversified background and a broad range of experience. As a result, one may argue that environmental specialists should be included in WTO tribunals, both trade and environmental problems should be addressed by the panel member. In that scenario, perhaps things will be different.

3. Eco labelling of products.

Eco label; also referred to as green label would create an awareness and inform consumers of a product's environmental-friendly character. It is born out of a political awakening and a growing popular concern for environmental conservation. The primary goal of eco-labelling initiatives is to harness market forces and direct them toward more ecologically friendly manufacturing practices¹⁸. Consumers may readily recognize an eco-label since it indicates that the product's environmental friendliness has been reviewed and certified by particular organizations or governments.

III. SUGGESTIONS

✓ Switching the dispute resolution venue from the World Trade Organization (WTO) to a recognized international organization like the International Court of Justice (ICJ) will provide

¹⁷ Shaffer, G. C. (2010). The WTO Shrimp-Turtle Case (United States - Import Prohibition of Certain Shrimp and Shrimp Products)

¹⁸ *Introduction to Ecolabels and Standards for Greener Products*. (2021, May 19)

greater neutrality to both sides.

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IV. CONCLUSION

Whether there is a theoretical conflict between environmental protection and free trade or not, there is a debate in practice about the two topics that are both essential to us. Conversely, because the WTO is indeed a trade organization, environmentalists are perturbed and disillusioned with the current WTO approach. As a result, an increasing number of countries prefer eco-label programs, particularly voluntary schemes to protect the environment. The goal is to inspire a growing number of individuals to care about environmental issues. Humans can have even more clean air, clean water, and clean everything if larger consumers are concerned about the environment. As we only have one planet, what we do tomorrow is crucial.

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