

Chapter 1 : Download Reconciling Environment And Trade Second Revised Edition

The subject matter of these cases reflects five basic issues in the clash between trade and the environment: public health, air pollution/ozone depletion, food safety, destruction of endangered species, and biosafety.

But it also has the power to pull the world onto an environmentally sustainable track--if environmental protection is included in the evolving rules of international trade, according to *Costly Tradeoffs: Reconciling Trade and the Environment*, a study by the Worldwatch Institute, a policy research organization based in Washington, D. It has grown eleven-fold since , while economic output rose five-fold over the same period. Trade in services and foreign direct investment are also climbing rapidly. *Costly Tradeoffs* documents a growing number of short-term clashes between protecting the environment and promoting free trade. Yet the report rejects the view that these aims are incompatible. French, author of the report. And an environmentally sustainable global economy depends on some of the benefits of freer trade. The report cites a number of cases where trade now fuels unsustainable economic activity, including depletion of natural resources, and the creation of pollution havens where enforcement of environmental laws is lax. But overfishing is endangering the future prosperity of the industry. But the trade is rapidly decimating forests in the state of Sarawak, homeland to the Penan. Somalian exports of sheep, goats, and cattle have increased ten-fold since , contributing to the breakdown of the traditional, more ecologically- sensitive nomadic system of livestock rearing. Only 35 percent of the U. In addition, current rules of trade can allow tough national and international environmental laws to be attacked as "non-tariff barriers. The law prohibits U. The GATT ruling raised concerns that a number of national laws--and several international environmental agreements could be jeopardized. These treaties include the Montreal Protocol on ozone depletion and the Basel Convention on hazardous waste exports, which employ trade measures as carrots and sticks. *Costly Trade-Offs* documents a growing number of environmental trade disputes. For instance, the Association of Southeast Asian Nations has complained that an Austrian law requiring tropical timber to be labelled as such violates GATT, and the European Community has leveled similar charges against the U. Foreign competition has spurred a spate of environmental innovations including improved auto efficiency, more water-conserving toilets, and more effective pollution control devices. Foreign investment also helps distribute environmentally friendly technologies--ranging from compact florescent light bulbs to cleaner paper-making processes. An added benefit of freeing trade is that it can produce income that could be used in part for environmental protection. The European Community has passed hundreds of common minimum environmental standards on products and processes. An side agreement to be negotiated under the NAFTA will create a new North American Commission on the Environment that may have the power to penalize lax enforcement of environmental laws as a trade violation. Trade can either contribute to the process of sustainable development, or undermine it.

The volume focuses on five cases, all of which remain cornerstone trade-environment cases of the WTO. The subject matter of these cases reflects five basic issues in the clash between trade and the environment: public health, air pollution/ozone depletion, food safety, destruction of endangered species, and biosafety.

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Chapter 3 : Reconciling Climate Change and Trade Policy

This quantity makes a speciality of 5 situations, all of which stay cornerstone trade-environment circumstances of the WTO. the subject material of those instances displays 5 uncomplicated matters within the conflict among alternate and the surroundings: public health and wellbeing, air pollution/ozone depletion, nutrition defense, destruction.

Protecting the Environment B. Article XX b B. Article XX g C. Brief History and Current Status B. Environmental Threats Possible under the Treaty V. Advancing Trade and the Environment: Import Bans that are Justified by the Exceptions and the Chapeau The author was the Lead Editor for Vol. This rapid growth has been driven in large part by international efforts to remove barriers to the flow of goods, services and capital. At the same time, however, it cannot be denied that free trade can conflict with 2. History World, History of Trade, available at [http: A Dictionary of World History](http://www.encyclopedia.com), Free trade, available at [http: General Agreement on Tariffs and Trade](http://www.encyclopedia.com), Oct. One topic that dominates this realm of debate is the relationship between trade and the environment. This Note aims to delineate the existing trade and environment debate, recognizing the importance of both these regimes of International Law. At the same time, it shall also reconcile both, citing recent decisions of the World Trade Organization WTO Appellate Body and recent developments in this particular discussion. Reconciliation of these two seemingly conflicting sub-systems is most certainly possible, but only with resort to certain qualifications. As a practical application, this Note will also endeavor to see if it is possible to apply the foregoing principles, albeit under certain assumptions, to the recently concurred Japan Philippines Economic Partnership Agreement JPEPA , specifically with regard to its controversial provisions on the trade of wastes. It was through this structure that the GATT was given a medium to enforce the multilateral trading system as well as to resolve 9. It is not always the case, however, that a conflict between these two will occur. It is perfectly possible for them to operate without ever having to clash with each other. Nevertheless, there are some international transactions wherein the application of both norms is inevitable and a question as to which has primary application may arise. Nothing manifests this more than a situation where one State institutes a trade barrier in the name of environmental protection which an affected State can argue as a violation of the tenets of free trade. Protecting the Environment The debate regarding trade and environment has long been ongoing and both sides have equally meritorious points. In general, trade specialists support, while environmentalists oppose, the existence of a liberalized and free trade or, at least, reduced barriers to trade. Those in favor of such a system claim numerous benefits such as: Promotion of Sustainable Development; Enhancement of Geopolitical Stability “ liberalized trade fosters the peaceful settlement of disputes between countries that are interdependent or who have shared interests; 3. First, liberalized trade encourages nations to specialize in their production of goods and services, thereby ensuring that goods and services are produced most efficiently “ . By giving producers access to larger markets, international trade allows production to occur at a volume at which economies of scale are maximized. Third, exposing domestic companies to the discipline of international competition forces them to innovate, to upgrade and to anticipate demand “ . The resulting efficiencies and cost- savings benefit consumers “ ;19 4. Wealth Creation “ greater wealth is generated by a more liberalized trade and as such, States, developing countries in particular, are taking initial steps in creating not only the political demand but also the capacity for environmental protection; and 5. Dissemination of Information and Technology “ free trade acts as a catalyst in the sharing of experiences, policies, and ideas including environmentalism, and thus results in creating the means that can make such concepts into something real. Environmentally Destructive Growth “ liberalized trade, under the current models of development, has contributed in the increasing of industries which have consequently resulted in the increase of pollution sources; 2. Threats to Domestic Social Preferences “ in essence, if a country decides to enter into trade agreements, national policies which may include environmental priorities may be compromised in the name of trade. One such example is the possibility of increasing trade in dangerous products, such as Protecting National Defense and Sovereignty “ a liberalized free trading system may result in the increased dependence on outside sources of goods, so much so that these same sources find themselves in a position that it can dictate and influence domestic policy;

and 5. For example, there are those who perceive that [t]he WTO has been a disaster for the environment. Threats “often by industry but with government support” of WTO-illegality are being used to chill environmental innovation and to undermine multilateral environmental agreements. Already, WTO threats and challenges have undermined or threatened to interfere with U. Clean Air rules, the U. Things only stand to get worse “! Nevertheless, the system does recognize Marine Mammal Protection Act of GATT, supra note 8, art. 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 measures: Additionally, from a political perspective, the debate has often been polarized by both camps. On one hand are the passionate pro-trade parties who foster the position that protectionism must be avoided, and so, notwithstanding the fact that a barrier may be said to protect the environment, it must nevertheless be struck down for hindering trade. On the other hand, environmentalists argue that because of the protection such a measure can afford to the preservation of the environment, it must nevertheless be upheld, at the cost of trade. Understanding the Relationship between the WTO Law and International Environmental Law As stated, trade and environment are considered to be independent sub-systems of international law, being established clearly for different reasons. However, as both operate within the same legal system, one can see why a conflict may arise between these two. This, however, is not an uncommon occurrence under international law. As far as norms of international law are concerned, there are a number of variables that make conflict an even more inevitable occurrence. The debate based on the existence of these seemingly conflicting realms of international law must, however, not be deemed as a hindrance to any form of harmonization. On the contrary, it is asserted that despite the possibility for conflict between these two, recent developments “both in Focusing now on trade and the environment, a perusal of the WTO law will lead one to the conclusion that the same cannot be applied without reference to other rules of international law. Vienna Convention on the Law of Treaties, May 23, , art. Danilenko, *International Jus Cogens: Issues of Law Making*, 2 E. Additionally, other reasons have been advanced to foster the contention that the enforcement of trade law does not necessarily exclude the application of environmental law, nor does its existence result in destroying the same altogether. It does not have, as a primary objective, the protection of the environment. Report of the U. Through its interpretation of Article XX, the WTO has taken some tentative steps towards the creation of a framework that can help resolve whatever conflict that may arise between liberalized trade and the environment, notwithstanding the fact that the protection of the environment is not its primary objective. Essentially, what the whole system tries to avoid is for States to become protectionists of their own industries to the extent that international trading is detrimentally affected. Exceptions to this practice which are deemed to address various issues are, however, acknowledged in the GATT itself. A number of exceptions that pertain to the environment and its protection are found in Article XX, which reads: 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 General Agreement on Trade in Services, Apr. Gaines, supra note 31, at Charnovitz, supra note 58 citing U. Charnovitz, supra note 58, at In determining whether a particular exception applies, it must first be established whether the measure properly falls within the ambit of any of the paragraphs under the said provision and whether there is in fact a genuine interest on the part of a State in preventing the risk involved. No general standards exist for this and it has been deemed as the easier of the two tests. To illustrate, the GATT Panel of the Thailand-Cigarettes case⁷² decided that an importation ban measure established to help reduce the expenditure and use of cigarettes was well within this policy question. Yavitz, supra note 8, at Yavitz, supra note 8, at citing Thailand-Cigarettes, supra note To begin with, the test of necessity is not one that is applied to the policy itself. Instead, the test is satisfied when the question of whether the measure taken is necessary to realize the policy is answered in the affirmative. Yavitz, supra note 8, at citing WTO Agreement, supra note 8. Yavitz, supra note 8, at citing U. And third, is the measure made effective in conjunction with restrictions on domestic production or consumption? Charnovitz, supra note 58, at emphasis supplied. The authors of the book have indicated that paragraph g of Article XX

has been advanced by these two cases. It is not required that their treatments be absolutely identical;⁹⁸ but similar restrictions should be placed on producers and products of the same category. The Chapeau After having delineated the provisions of Article XX that one may resort to for the protection of the environment, the procedure by which a measure may be justified is still not complete. Apart from satisfying the requirements discussed earlier, a government that has imposed a measure must likewise satisfy the requirements of the Article XX Chapeau. Simply stated, a measure is not to be permitted if it is established as an 1 arbitrary discrimination, 2 unjustifiable discrimination, and 3 a disguised restriction on international trade. It is reported to be the first of many FTAs to be negotiated by the Philippines, certainly with others to follow. However, before any considerations in this regard can be made, it is first important to understand what the JPEPA essentially is and to determine the environmental controversies pertinent to the discussion. Many of the contentions made were based on supposed unconstitutionality and the fact that its provisions were simply not beneficial at all in various fields. To determine, therefore, whether there is substantial basis for the claims against JPEPA, a look into its provisions is but proper. These show that certain hazardous wastes have been included at zero-tariff. Basel Action Network, an international organization specifically constituted to monitor the compliance of States to the Basel Convention compiled the following in its report, indicating that the following wastes have been reduced to zero tariffs under the JPEPA note that their corresponding tariff number and the schedule where they may be found is likewise indicated: Ash and residues from the incineration Annex 1, part 2-schedule 2, of municipal waste tariff no. JPEPA, supra note , art. As such, the inclusion of waste products as tradable goods and their immediate zero-rating create the market condition that will encourage and facilitate trade in toxic waste between Japan and the Philippines. Lat, supra note , at 1. Basel Action Network, supra note , at 3 emphasis supplied.

Chapter 4 : Reconciling Environment and Trade

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Chapter 7 : Reconciling Trade and the Environment

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