



Protection of the Environment Under Trade and Investment Agreements: An Analysis Based on Existing Legal Frameworks

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ABSTRACT

Free trade causes damage to the environment substantially as it puts pressure on natural resources in its venture to expand economic activities. On the other hand, there is also an argument that free trade has the potential to improve environmental quality by contributing to growth. Such growth enhancement may help individuals, organizations, or governments raise funds and spend more on environmental protection. This paper highlights the links between trade and the environment. Besides, it also shows how international trade and environmental protection are both essential to the well-being of humanity and, conversely, how they are mutually supportive. This paper also scrutinizes how the WTO plays a role in balancing trade and the environment, as many WTO agreements have environmental exceptions.

INTRODUCTION

The issues regarding the correlation between environmental policy and international trade have been one of the major talking points in public policy discussion in the current decade. These issues became more prominent in the ongoing coronavirus pandemic as huge concerns gained momentum regarding the impact of climate change. Especially global awareness of continuously rising temperatures, ozone depletion, and climate change are among the major concerns (Alam 2008). Apart from that, concerns raised about pollution, liberalization of trade, and capital flows have appeared as a threat to the environment. The growing campaigns against globalization argue that trade liberalization will expand the production, use, and sport of goods, increasing environmental damage.

Moreover, setting stricter environmental policies than other countries to protect the environment will make the government more concerned about surviving competitive business. In addition, there is now a major trade dispute over ensuring quality control of national products (Matsushita et al. 2006). Acknowledgments have been made for the increasing integration of economic and environmental issues of international legal frameworks. The issue of environmental protection is a fundamental part of the development of the Rio Declaration. To realize the goals of environment and development, the "Agenda 21" of the Rio Declaration

emphasized making trade and environment supportive of each other. It also buoys macroeconomic policies favoring the environment and development and encourages financial support to developing countries (Rio Declaration 1992). To achieve the objectives of environmental protection, Agenda 21 also helps the countries to mitigate international debts. There are some conflicting aspects of the relationship between trade and the environment. The agreements like GATT are being used to undermine environmental control. On the other hand, it is feared that GATT environmental regulation is being used to protect local trade and industries. Discussing the relationship between trade and the environment, many argue that trade promotes economic growth but, in that case, degrades the environment.

On the other hand, there is a justification that trade increases the funds to protect the environment. Another argument is that imposing various kinds of environmental restrictions on trade can harm the environment by slowing down economic growth. Besides, the current world trade patterns create differentiating effects on natural resources and environmental standards in developing countries. The third major link is that within the trade measures, a country's citizens can protect against another nation's environmental degradation. In particular, the trading system can effectively establish and implement environmental laws and frameworks. Environmental measures aimed at domestic activities - such as natural resource exploitation, product

quality, and certain processes - are relatively uninterrupted by current trade law systems. The state governments enjoy the freedom to control and manage the exploitation of natural resources within their territories. Another link between the environment and trade is that the steps taken to implement international environmental agreements are less likely to be challenged under existing trade rules. Agenda 21 specifies the need for harmonization of trade and environmental policy. The CSD emphasizes the need for an integrated approach to sustainability by such a type of trading system that would be more open and equitable and simultaneously provide improved market access for products from developing countries. It would also provide environmental protection and mutually supportive trade and environmental policies. Environmentalists blame the multilateral trading system for many reasons (Faruque 2021). They argue that trade could lead to environmental damage without environmental protection through measures aimed at economic growth by misusing natural resources and generating environmental waste. If the business system does not ensure adequate environmental protection, trade liberalization policies can supersede environmental regulations. They say the sanctions imposed on trade must be eased to ensure environmental protection, especially global or cross-border environmental issues, and to strengthen international environmental treaties. And even if a country or its trade system causes pollution, it does not spread to other countries. However, countries with no strong obligation to safeguard the environment get some extra advantage in global business as they constantly try to defy environmental requirements and standards.

MATERIALS AND METHODS

The current paper uses secondary data, *i.e.*, books, articles, national and international law reports, Acts, etc., besides the primary data. All the relevant data and information from the existing paper were collected and used from primary and secondary sources. The secondary data sources include books, articles, different national and international law reports, Acts, etc. The information from books, journals, booklets, proceedings, newsletters, souvenirs, and consultancy reports available in the library of Daffodil International University, Bangladesh, was compiled chronologically to complete it successfully. The necessary support and figures were taken from the Department of Environment (DoE), Bangladesh; The World Health Organization (WHO); the *Daily Star*; Springer. And the Financial Express. The selected data (collected from the selected stations between July 2020 and August 2021) reveals that the first debate about environment and trade was incepted in the 1920s when preparation was going on for formulating the "Convention for the Abolition of Import and Export Prohibitions and Restrictions 1927",

the first multilateral law. It is the first legal instrument that empowers the state to restrict any trade for the sake of humans, animals, and the environment from disease and 'extinction.' Subsequently, the General Agreement on Tariffs and Trade (GATT) 1948 contains an exception that empowers the parties to take measures to conserve fish and wild animals. Article XX refers to "applying the measures 'taken in pursuance of an inter-governmental agreement for the conservation of fisheries resources, migratory birds or wild animals.'" However, the debate over trade and the environment gained momentum in the early 1970s.

RESULTS AND DISCUSSION

Trade Measures in Environmental Agreements

It is important to include trade provisions in environmental laws to achieve sustainable development and reduce the negative effects of trade. The trade sanctions have already been integrated into some of the environmental agreements. Those agreements include; (i) agreements to protect wildlife; (ii) agreements to protect the environment of the importing state from harmful organisms and substances; (iii) agreements to protect the global commons. To prohibit trade in listed species, state parties have undertaken the 1973 Convention on International Trade in Endangered Species of Wilde Life and Flora (Esty 1994). The Bamako Convention in 1991 has empowered to impose a complete ban on all imports of hazardous wastes. The 1987 Montreal Protocol has empowered stakeholders to prohibit exporting and importing substances that deplete the ozone layer. The 1992 UNFCC and the 1992 Convention on Biological Diversity also work for both trade and the environment. With a view of the present situation, it is evident from the existing suggestions that if there is a conflict between the obligations under the Environmental and Trade Agreements, the obligations under the Environmental Agreement will prevail over those under the Free Trade Agreement.

It is argued that Biosecurity Protocol-2000 restricts cross-border transportation of living organisms developed by modern biotechnology, which may adversely affect biodiversity. Therefore, with these issues in mind, the parties to the protocol must take the necessary steps to protect human health.

Trade-Related Measures in CITES

The measures prescribed related to trade in CITES must be implemented to ensure that those agreements do not threaten wildlife and plant survival. Its provision regarding the trade of listed species restricts business with non-party states or stakeholders. It also has a provision for taking measures in case of any such violation. Based on a specific species list,

CITES plays a role as a regulator for the trade of specific wildlife and plant specimens by providing certificates and giving permission to the concerned stakeholders after scrutinizing their appeals (Sturm 2002). Thus, the strict rules that protect the “Appendix I” species, which are in danger of extinction, restrict their trade in exceptional circumstances and play a more supportive role in their survival. As per the specimens of “Appendix I” species, the import of those is prohibited for commercial purposes. An export permit is required for Appendix I species and will only be granted if the following conditions are met: (a) the exporting party has advised that the export will not be detrimental to the species’ survival; (b) the exporting party is satisfied that the species has been legally acquired; (c) the exporting party is satisfied that the method of shipment for the specimens will minimize risks of injury, damage to health, and cruel treatment; and (d) the exporting party is satisfied that the specimens will be transported in.

Appendix II and III species, which are not currently threatened with extinction, require just an export license with some of the above-mentioned features or, in the case of specific Appendix III species, a certificate of origin. CITES further stipulated that a party’s authorization and certification must be in accordance with the Convention. Every certificate or permission bears the title of the Convention, and the names of the authorities concerned (Sturm & Ulph 2002). The authority will also assign a control number with permission or certification. These initiatives will encourage a transparent and harmonious system avoiding any misconduct and play an effective compliance monitoring role. There are some exceptions to the role of CITES. For example, CITES, through its provision of exemptions and special procedures, facilitates certain kinds of trade that do not affect wild animals. However, under some special circumstances, CITES permits any Party to trade with others not a signatory of the Convention.

The Measures Prescribed in the Montreal Protocol

The Montreal Protocol was finalized in 1987 to stop the generation or import of substances affecting the ozone layer. It also contains some measures that control the storage and use of ozone-depleting substances. Article 4 is one of the trade-related provisions, which prohibits the trade of the ozone-depleting substance with any non-party to the protocol, and controls the international movement of products containing the substances. Article 4B of the protocol obliges parties to maintain due process for getting or taking a license for importing or exporting those substances and preventing illegal trade and ensuring the availability of the related data. Montreal Protocol can play a significant role in decreasing global emissions of ODS.¹⁰ as the Protocol has endorsed some necessary measures.

Measures in Basel Convention

Basel Convention is a multilateral environmental agreement among the state parties. This agreement has been signed to protect human health and the environment from the harm caused by hazardous wastes (Basel Convention 1989). Article-4 of the convention restricts the parties from importing any type of harmful waste for disposal. It also obliges state parties or the authorities concerned to restrict the export of the wastes to other parties. Under this Convention, parties can stop the export-import trade of hazardous wastes if they think it may be unable to manage the wastes and maintain environmentally friendly processes. Article 4 also restricts parties from permitting exporting and importing hazardous wastes to or from a non-party of the Convention. Any transborder movement of harmful wastes is not allowed as it is no longer subject to a bilateral, multilateral, or regional agreement as Basel Convention does not compromise with the policies of environment-friendly management of hazardous wastes. Finally, Article 4 of the Convention obliges the concerned parties that they will have to package the wastes and label those before their transboundary movement. Those wastes must be transported properly, maintaining the generally accepted and recognized international rules and standards. Besides, related necessary documents must be collected and carried out during the transboundary movement of hazardous wastes.

As per Article 6, parties must notify the about the hazardous wastes in writing to the intended country before shipment. The party will also inform other countries that need to be crossed to transit. The documents must include all the necessary details, such as reasons for the export, identities, and description of the wastes and the waste generalization country, exporter and carrier, and other necessary details. Besides, details on special handling requirements -- including emergency steps to be taken in case of any accidents and waste disposal method -- will have to be mentioned. On the other hand, the importer of the waste or the Party concerned with the destination of the waste must give feedback to the notifier in written form on whether it is being done with its consent or not. Finally, the party supposed to import the wastes will not commence any transboundary movement until the written consent and other detailed necessary information are accepted.

Measures in Bio-safety Protocol

Biosafety Protocol is an international framework that provides a uniform requirement for ensuring the safe international transport and use of products. Although this Protocol contains a broader objective, it mainly sheds light on the transboundary movements of LMOs. Most of the

provisions of the Protocol are related to the trade, which encompasses the ALA mechanism significantly referring to parties involved with the trade and the systems of handling, transport, identification, and packaging LMOs. As per Article 8 of the Protocol, the exchange of notifications between both parties of export and import and the proposed transboundary movement in writing has been made mandatory for the trade.

Stockholm Convention on Persistent Organic Pollutants (POPs)

The Stockholm Convention instructs the parties to ban the trade regarding POPs between countries that abide by the provisions of the Convention to ensure that all POPs are used and disposed of within the compass of the imposed restrictions (The Stockholm Convention 2004). According to Article 3, the import of the listed chemicals has been banned if it is not bought from another Party and the shipment of chemicals is not prepared in such a way that helps dispose of the product in an environmentally friendly system or if the chemical is not covered maintain a proper discharge method. It also empowers the state parties to restrict the export of chemicals if there is any concern about disposing of the chemicals and not maintaining the environment. However, the parties who are signatories of the convention can import or export among them. Besides, the parties can export the chemicals to non-parties who have certified compliance related to the concerned provisions of the Convention.

Environmental Obligations in Trade Agreements

The first debate about environment and trade was inception in the 1920s when preparation was going on for formulating the “Convention for the Abolition of Import and Export Prohibitions and Restrictions 1927”, the first multilateral law. It is the first legal instrument that empowers the state to restrict any trade for the sake of humans, animals, and the environment from disease and ‘extinction’ (Buckley 1993). Subsequently, the General Agreement on Tariffs and Trade (GATT) 1948 contains an exception that empowers the parties to take measures to conserve fish and wild animals. Article XX refers to “applying the measures ‘taken in pursuance of an inter-governmental agreement for the conservation of fisheries resources, migratory birds or wild animals.’” However, the trade and environment debate gained momentum in the early 1970s.

WTO’s Provisions on the Environment

The World Trade Organization (WTO) deals with international trade rules between the member state parties. The WTO was formed in 1994 through negotiation among several nations to ensure smooth trade. The agreement has

already been ratified by the parliaments of over 160 member countries. The WTO and its annexes were born through the Marakesh Agreement 1994 (Charnovitz 2007). WTO was established after the General Agreement on Tariffs and Trade (GATT) was incorporated into the 1994 Agreement. However, the trade and environment issues were adopted at the conference of the ministers of the WTO member states in Uruguay. At the conference, the member states were assigned to determine the relations between trade and environmental measures for sustainable growth. They were also asked to modify the international trading system keeping relations between trade and environmental measures. The introduction of the 1994 Agreement encompasses an environmental provision that states that trade relations should be based on the objective of sustainable development goals (Taubman & Watal 2022). There are many exceptions to the trade rules in the Article XX of GA. Article XX reads as follows:

“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.

- Necessary to protect the human, animal, or plant life or health.
- Relating to the conservation of exhaustible natural resources, if such measures are effective in conjunction with restriction on domestic production or consumption.

The chapeau: The exceptions elaborated under Article XX are qualified by an introductory clause called the chapeau. Thus, even if a measure otherwise falls within one of the exceptions in Article XX, it would be illegal under the chapeau if it constitutes (i) arbitrary or unjustifiable discrimination between the countries where the same conditions prevail or (ii) a disguised restriction on international trade.”

Though the word “environment” has not been mentioned in Article XX, it can be used to justify some environment-friendly rules to influence free trade. However, environmental measures should not be the result of camouflage protectionism. The Appellate Body states that it is ‘necessary’ to set a measure under paragraph XX (b) if there is no alternative to the GATT-compliant. However, there is a condition that it should not contradict GATT provisions. However, Article XX (g) can be considered a special provision to the GAAT. Article XX (g) instructs the member states of the WTO to take the necessary steps to conserve extractable natural resources. In 1994, the WTO intervened regarding shrimp import into the US and its

impact on turtles. The ruling was adopted on November 6, 1998 (Mohammed 2022). From then, it was known as the “Shrimp-Turtle” case. The Appellate body used the WTO Preamble as an example of general exceptions in Article XX of GATT. Since then, the member states and other concerned stakeholders have been given reference to the example for justification for a stronger environmental dimension to the WTO. However, the preface to the WTO Agreement emphasized the need to follow the sustainable development objectives for global trade. Following the US “*Gasoline*” and the “*Shrimp-Turtle*” related cases, it has been stated that for dealing with any case of any exception under Article XX (b) and (g), it will have to be considered so that it would not be arbitrary, discriminatory on trade. Therefore, environmental exceptions have appeared in many agreements with WTO.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The TRIPS specifically addresses issues related to environmental protection. There are environmental exceptions to the agreement regarding patents. Under the TRIPS agreement, any member state may exclude an innovation from patentability if it thinks it works to safeguard the life and health of humans, animals, or plants and the overall environment in the region (TRIPS Agreement 1995). This treaty ensures the member states the right to revoke the innovation of any patents that could endanger the environment. WTO members can revoke patentability for inventions “the prevention of commercial exploitation of which is necessary within their territory to protect public order or morality, including to protect human, animal, or plant life or health, or to avoid serious prejudice to the environment, provided that such exclusion is not made solely because the exploitation is prohibited by their law,” according to Article 27.2. Article 27.3 states that member states may exempt (a) “diagnostic, therapeutic, and surgical methods for the treatment of humans or animals,” and (b) “plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes” from patentability. WTO members may also use patents, an “effective sui generis system,” or a combination of the two techniques to protect their plant varieties under subparagraph.

Technical Barriers to Trade (TBT) Agreement

TBT recognizes environmental protection, activities, and efforts to protect the environment as a legitimate objective. It assesses the quality of different products and their shape and performance of pro Moreover. It also deals with the technical quality of different products. Such quality and

other measurements of products can be used to hinder the trade of those products, and therefore, these measurements can be made only subject to certain requirements (TBT Agreement 1994). Therefore, these assessment measures of this article play a supportive role in materializing the goals of health or environmental protection. The TBT treaty emphasizes that no member state may impose such standards and technical rules, creating ‘unjust discrimination’ among the other countries where similar conditions exist. Under paragraph 2 of this Agreement, any member state cannot say anything or do anything that may appear as a barrier to any legitimate purpose. Apart from that, the agreement provides a list of legitimate objectives. It also takes measures for the protection of human and animal life as well as the environment.

Application of Sanitary and Phytosanitary Measures Agreement

The SPS provides some conditions for different issues, including the ‘ecology and environment, within its criteria, as a part of its effort to manage risks. It also obliges the member states to consider ecosystems as disease-free areas. This agreement insists the member states adopt sanitary and phytosanitary measures to protect animals and plants from diseases and ensure the supply of safe foods for consumers. The steps to ensure safety may vary based on the situations and topics. It may be related to the origination of the products, such as whether those are brought from a safe zone; processed or produced following a special procedure; contain only the permitted additives, or there has the maximum use of pesticide. By nature, they work to limit trade related to sanitary and phytosanitary systems. Adopting international standards also encourages harmonizing measures between the sanitary and phytosanitary. Apart from that, this agreement upholds the right of member states to adopt their higher standards in light of SPS. For initiating any measures, it should be aligned with the SPS, and it must be for the safeguarding of humans, animals, plants, or the environment. It should be based on scientific principles and evidence. Besides, the measures taken must not ‘arbitrarily or unjustifiably discriminate between Members’ or ‘constitute a disguised restriction at international trade. ‘Measures should be taken following the appropriate risk assessment based on the scientific evidence and following the related PPMs, economic and environmental situations.

The Agreement on Agriculture

This agreement was signed containing measures to safeguard the environment. It states that the member states must reform agriculture to protect the environment. It also states that the government of the member states will allocate budget

environment programs and have commitments for subsidy for the sake of the environment. According to Annex 2 of this agreement, the measures taken domestically with minimal impact on trade should be allowed and excluded from reduction commitments on the expenditures under environmental programs.

The General Agreement on Trade in Services, 1994

This agreement has a general exceptions clause asking the member states to adopt necessary policy measures to protect the environment. It is also an exception for taking necessary measures to protect human, animal, or plant health. However, this must not result in arbitrary or unjustifiable discrimination and must not constitute 1 protectionism in disguise.

Committee on Trade and Environment

Negotiators approved a decision on Trade and Environment at the WTO conference held in Uruguay in 1994 on formulating policies regarding international trade and the environment to support each other for multilateral trading. The WTO Committee on Trade and Environment (CTE) was formed in 1995. Here are the terms of reference mentioned in CTE in Marrakech:

- Identifying the relationship between trade and environmental measures to promote sustainable development;
- Preparing recommendations if there is a need for modifications of the provisions in the multilateral trading system aiming to make those compatible, equitable, and non-discriminatory to nature. However, the WTO committee has lessened the agenda of this broad mandate to 10 items for work, and the discussion for its framework is held based on this agenda. The 10 items on the agenda are:
 - The link between trade regulations and environmental trade measures, such as those found in MEAs.
 - The impact of trade on the link between trade rules and environmental policies.
 - a) The interplay between trade restrictions and environmental fees and taxes
 - b) The link between trade rules and environmental product requirements, such as packaging, labeling, and recycling restrictions and standards.
 - Trade standards governing the transparency (i.e., full and timely disclosure) of environmental trade measures and environmental policies with trade implications.
 - The link between the WTO's dispute-resolution systems and those of MEAs.
- The potential for environmental policies to obstruct developing country exports' access to markets, as well as the potential environmental advantages of eliminating trade restrictions and distortions.
- The issue of illegal items in the United States is exported.
- The environment and the TRIPS Agreement are inextricably linked.
- The connection between the environment and service trade.
- The World Trade Organization's (WTO) relationships with various organizations, both non-governmental and intergovernmental.
- Since establishing the Committee on Trade and Environment in 1994, it has been playing a vital role in bringing environmental issues to the agenda of WTO.

Environmental Dispute Settlement Under WTO

Though WTO has been playing a crucial role in protecting and preserving the environment while ensuring sustainable development, it has settled only a few environmental disputes. The cases --Tuna-Dolphin, US-Gasoline, US-Shrimp, and EC-Asbestos -- were dealt with in light of the GATT Article XX (general exceptions). In the 1991 Tuna-Dolphin case, the WTO panel dealt with an import ban on a certain type of tuna product from Mexico. The United States imposed a ban as yellowfin tuna were being caught for export using a method that also killed dolphins (Mexico etc., versus the US: 'tuna-dolphin,' 1991). Dolphins are considered an endangered species as per the Marine Mammal Protection Act of the US. In this case, the US argued that they had taken the decision of the ban for the sake of the lives of dolphins, and there was no other better option rather than imposing sanctions in that case. But, the ban on Tuna import violated Article XI (1) of GATT, which prohibits restrictions on imports or exports. However, a dispute settlement panel found that the reason behind the ban was not necessary for the US to protect dolphins as the panel did not find any evidence that the US had tried any other options, including negotiating international cooperative arrangements, before imposing the ban. The Tuna-Dolphin II case was filed on another incident of imposing a ban on tuna products from countries that processed tuna imported from the offending countries. But both panels in two Tuna-Dolphin cases reached the point that none of the Articles XX (b) and XX(g) of GATT can justify the ban.

However, both panels finally concluded that, per Article XX (b), the ban failed to conduct the 'necessary' test. They also explained that 'necessary' means no other reasonable

alternative exists. Later, the Appellate Body of WTO reviewed the decisions of the two panels on two Tuna-Dolphin cases and reached some decisions in light of the extra-territorial scope of Article XX(b) and (g). However, extra-territorial measures have been considered an important factor in these resources. In *Tuna-Dolphin* case-1, the appellate body concludes that the regional jurisdiction of a concerned country will be solely for its decision to protect living things and natural resources. GATT does not allow any measures regarding trade that goes against the environmental issues beyond the territory of a country. In detail, it can be stated that any nation can set environmental policies within its territory. Still, the state cannot take any measures regarding the environmental values outside its territory. Such a provision complies with standards or rules with the long-standing international legal principles of state sovereignty. So the Panel for Tuna-Dolphin case-1 decided that any nation can take measures to produce natural resources as this is under its territorial jurisdiction.

Meanwhile, the Panel of the Tuna-Dolphin Case 2 concluded that the government of a state party could impose restrictions in light of Article XX (g) in case of extra-territoriality only against a citizen or vessel in their own country. The decision of extraterritorial jurisdiction has been considered based on the concept of nationality on how a nation controls the activities of its citizens. However, in the Shrimp-Turtle case, some countries --India, Malaysia, Pakistan, and Thailand --jointly came up with objections in early 1997 against the US ban on importing certain shrimp and shrimp products.

The main purpose of the US ban was for the protection of sea turtles as the US had listed five species of sea turtles in the country's water bodies as endangered or threatened under the country's Endangered Species Act of 1973 (India etc. versus the US: 'shrimp-turtle,' 1998). The law also prohibited the harassment, hunting, capture, killing, or attempting to do any of these against the turtles within the US, in its territorial sea, and on the high seas. Under the law, US shrimp trawlers must use "turtle excluder devices" (TEDs) in their nets when fishing to protect the turtles. Section 609 of US Public Law 101-102 was ratified in 1989 to deal with import-related issues. It stated that the country would not import shrimps that are caught using the technology, which may affect sea turtles adversely if a nation's fishing environment does not appear to threaten the sea turtles. However, the appellate body stated that WTO member countries preserve the right to take any measures under the WTO rules to protect the environment for the sake of human, animal or plant and endangered species. It also stated that if any member states take measures to protect sea turtles, it would be legalized

under Section 20 of GAIT. Article 20 of GAIT deals with various exceptions to the trade rules of "O's" if certain criteria are met.

Although the lawsuit was filed to protect the environment, the United States lost the case only because of differences among WTO members. This is because the countries of the Western Hemisphere - mainly in the Caribbean - have not been able to take immediate steps to provide technical and financial assistance, as well as their fishermen to start using non-turtle devices. Thus, the United States unilateral measures to protect marine turtles violated Chapeau's standards against arbitrary and unreasonable discrimination. Besides, some evidence was found against the US as the authorities concerned of the state did not maintain due process in issuing the certificate for shrimp imports, following the basic standards and due process. The appellate body observed that GATT requires a strict adherence to the basic requirements of the proper process' complying with the exceptions to treaty obligations. Though the evidence of violations was found in the above two cases, it was determined that WTO would approve legal, environmental measures.

In the 1998 EC-Asbestos case, Canada stressed the need for discussion with the EC in response to the decree by France on 24 December 1996 regarding the ban on asbestos and products containing asbestos (Sander 2015). Canada said the measures taken by France violated Articles 2, 3, and 5 of the SPS Agreement, Article 2 of the TBT Agreement, and Articles III, XI, and XIII of GATT 1994. Later in 2000, the Panel found that: the part of the "embargo" of the Decree of 24 December 1996 was out of the purview of the TBT Agreement, but it's part of the "exception" in the decree fell under the TBT Agreement, and chrysotile asbestos fibers and other products substituted for them as per Article III:4 of GATT 1994. Besides, information regarding asbestos-cement and fibro-cement submitted to the Panel is similar to Article 111:4 of GATT 1994. On March 12, 2001, the Appellate Body ruled that the French Decree banning asbestos and asbestos-containing products had not been shown as contradictory to obligations under WTO agreements. Rather, it overturned the Panel's finding that the TBT Agreement does not allow such prohibitions. It also found that measures applied in light of the TBT Agreement were viewed as an integrated part of the whole. The Appellate Body determined that they could not scrutinize Canada's claims that the measure taken under the decree was not in light of the TBT Agreement. Then, the appellate body revised the Panel's findings concerning "like products," per Article 111:4 of the GATT 1994. In particular, the appellate body observed that the Panel did not take the

health risks associated with asbestos from its “similarity” test into account and excluded those issues. The appellate body, however, upheld the conclusion of the Panel, stating that the French Decree was “necessary to protect human life or health” in light of Article XX(b) of the GATT 1994. While ruling on the EC– Asbestos case, the appellate body said, “It is undisputed that WTO members have the right to determine the level of protection of health that they consider appropriate in a given situation.”

Investment Agreements

Moreover, many more multilateral and bilateral investment agreements have provisions for environmental protection. Notable among these agreements is a tripartite investment agreement of Canada, the United States, and Mexico, which is known as NAFTA.

NAFTA has provided that each treaty country will not encourage or allow foreign investment in providing low-quality health and safety or low environmental standards.

NAFTA also prioritizes obligations under certain environmental agreements, such as Montreal Protocol, CITES, and Basel Convention. In Article 1114(1) of the NAFTA, it has been stated that nothing in Chapter 11 shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns. Another agreement was signed as a subsidiary agreement to NAFTA, the North American Agreement on Environmental Cooperation. Significantly, both treaties were made effective from 1 January 1994. Although NAFTA’s environmental provisions have no legal obligations, the North American Agreement on Environmental Cooperation supports to environmental goals and objectives of NAFTA (Glick 1994). The general objectives of the agreement are to protect the environment, promote sustainable development, and increase compliance with environmental laws and regulations. Bilateral investment agreements (BITs) are gradually expanding for their consideration in terms of environmental law. In general, BITs encourage the flow of foreign investment and, at the same time, protect foreign investors in the host states against the nationalization or occupation of foreign investment. Most of the BITs which have been signed in recent times have provisions regarding environmental concerns.

CONCLUSION

Indeed, the issues regarding the correlation between environmental policy and international trade have been one of the major talking points in public policy discussion in

the current decade. These issues became more prominent in the ongoing coronavirus pandemic as huge concerns gained momentum regarding the impact of climate change. Especially global awareness of continuously rising temperatures, ozone depletion, and climate change issues are among the major concerns. Hence, an integrated approach through an open and equitable multilateral trading system is crucial for sustainable development. The concerned authorities, governments of different countries, environmental activists, business people, policymakers, trade organizations, and mass media should come together. At the same time, formulating and implementing trade and environment-friendly policies are vital to ensure environmental protection. Emerging trends in development and the environment suggest that environmental protection legislation is strongly integrated with multilateral trade-related instruments and investment agreements to facilitate sustainable development and minimize the negative effects of trade.

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