



Article XX Of GATT: Territoriality Of Unilateral Trade Measure And Sustainable Development

Sheikh Inam Ul Mansoor Research Scholar School Of Law, Lovely Professional University.

Dr. Meenu Chopra Associate Professor and Deputy Dean School of Law, Lovely Professional University.

Abstract:

Understanding the connection between international commerce law, international environmental law, and general international law has become increasingly dependent on the interpretation of GATT Article XX. Since the standards for provisional explanation of trade measures in paragraphs XX(b) and XX(g) are different, it follows that the policies and measures addressed in each paragraph should be distinct. The question of whether paragraphs XX(b) and XX(g) have been read in conformity with the norm of effective treaty interpretation is raised by the jurisprudence on paragraph XX(g), which seems to render paragraph XX(b) rather superfluous.

More explanation is needed for the connection between commerce and development, with its striking focus on resource conservation. Historically, humans have begun their lives in very small groups, as hunter-gatherers who rely on the whims of nature when it comes to the availability of supplies. Every single aspect of our economy and our progress depends on the extraction of raw materials. The last decade of the twentieth century saw the realization of economic and developmental objectives at all levels, thanks to the combined effects of rapid technical progress on the one hand and Liberalization, Privatization, and Globalization (LPG) on the other. While international law has always been tested, the final decade of the twentieth century and the beginning of the twenty-first century provide the greatest test to yet.

One of the fastest expanding disciplines on the global, regional, and national levels is resource conservation for the benefit of current and future generations. Sustainability advocates for a future when people don't have to worry about the consequences of their actions now. The Rio Declaration's goals apply not just during times of peace and prosperity, but also during times of war.

This idea is useful in establishing equitable society. Recognizing the urgency of the environmental sustainability issue, the UNCED provides a detailed description of the necessity for a policy framework based on guiding norms and principles, which neither

the UNCHE nor the UNCED provide. From the perspective of the principles and aims of free trade, which have brought more emphasis to the complementarities between development and the environment, these principles have been crafted to safeguard the global environment.

Keywords : WTO ,GATT, Rio Declaration, Article XX.

Introduction

State governments are given the green light to implement whatever trade restrictions they see necessary under Article XX of the GATT in order to safeguard the country's natural resources and ecosystems. Article XX of the General Agreement on Tariffs and Trade (GATT) recognizes a country's right to take environmental measures to preserve its resources and domestic products and markets, and this has led to an increase in trade-environmental disputes.ⁱ However, whether a government may prohibit or limit exports of natural resource on the basis that it is required for conservation purpose is questionable under the GATT-WTO.ⁱⁱ And the "extraordinary circumstances" standard is too broad. The duty to preserve "natural resources" has been interpreted by the notion of evolutionary interpretation of words, according to several court interpretations, even though the aforementioned "cheap" is not immediately causing any difficulty with the MEAs. It is easiest to understand the scope limitations of these subsections by looking at a concrete example.

Principle 12 of the Rio Declaration emphasizes, among other things, that trade policy measures for environmental goals should not be a veiled limitation on international commerce or a means of arbitrary or unjustified discrimination.ⁱⁱⁱ Environmentalism and free commerce are urged to work hand in hand in Agenda 21's Section 2.19.^{iv} To the greatest extent feasible, international agreement should underpin environmental policies meant to solve trans-boundary or global environmental challenges.^v Importing nations should not take unilateral measures to solve environmental problems that fall beyond their borders. Rio's 12th guiding principle promotes three essential ideas:^{vi}

- i. International agreement is necessary for the implementation of environmental measures that address trans-boundary or global issues;
- ii. Avoid taking unilateral measures to address such issues; and
- iii. Environmental protections shouldn't be used as a backdoor trade barrier or to target certain groups unfairly.

For example, the phrases "relating to" and "primarily aimed at the conservation of natural resources" and "in conjunction with" to be interpreted as "primarily aimed at rendering effective the restrictions on domestic production or consumption," respectively, would apply to any unilateral measures, as would the other constraints of Article XX. When interpreting the word "exhaustible natural resources" as used in Article XX (g), environmental preservation and conservation considerations must be given priority.

These MEAs detail how three distinct sorts of environmental goals—wildlife protection, protection of the importing state’s environment from dangerous species and goods, and protection of the global commons—have been met through trade restrictions.

There are THREE main categories of justifications for why trade restrictions have been included in MEAs; To enforce the MEA by prohibiting trade with non-parties or non-complying parties; to comply with the MEA’s obligations; and to monitor and regulate trade in items where the uncontrolled trade might lead to or contribute to environmental harm.

It was agreed to form the Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances in order to regulate the export of items that are banned inside the country due to potential risks to human, animal, or plant life or health, or to the environment.^{vii} Although most of these treaties are not legally enforceable, Lowenfeld explains that they nonetheless generate a moral duty among the parties and nonparties to the conventions.^{viii}

Principle 12 of the Rio Declaration makes a similar point about the efficacy of such unilateral actions.^{ix} Trade restrictions enforced unilaterally by one country in an effort to influence the environmental policies of another are typically forbidden and only tolerated in extreme circumstances when no other viable alternatives exist to halt environmental damage. It has also been argued that unilateral trade measures taken to safeguard global commons resources may be a stimulus for the formation of international accords.^x The ability of a GATT member to safeguard the health of its people, its animals, and its plants is called into severe doubt. There is either territorial or extraterritorial authority over the environmental and commercial measures.^{xi}

It is clear from reading Article XX that the national protection is grounded on domestic legislation.^{xii} The location of the environmental benefit being safeguarded is less important than the existence of an agreed-upon legal order to do so when it comes to national activities taken to protect the environment. If this legal order is in place, the presumption that an activity is lawful no longer holds. GATT rules still apply to any policy that relies on this legal framework. Sustainable development, as described by Holder, is a technique pitting resource protection versus state economic expansion.^{xiii}

Both prescribing and enforcement jurisdiction are unaffected by any MEAs or MTAs. Most would agree, nonetheless, that a state’s ability to enforce its legislation is constrained by international law.^{xiv} It is also commonly accepted that territoriality and nationality are the primary grounds of jurisdiction.^{xv} The first and fundamental restraint placed upon a state by international law is that it may not use its authority in any form in the territory of another state, the Permanent Court of International Justice said in the Lotus Case. The lack of a permissive norm of international law does not, however, prevent a state from

exercising jurisdiction on its own territory in relation to any matter relating to activities which have taken place overseas.

It's also important to highlight that there is uncertainty about whether the scope of these exclusions should be narrowed in any attempts to reconcile trade rules with environmental concerns. Justification for the action may serve as a justification that is as legitimate as the national interests considered by the GATT panel reports.^{xvi} A panel in Tuna-Dolphin has limited where it may exercise its authority.^{xvii}

Nonetheless, it is unclear whether any given trade action is extraterritorial or territorial.^{xviii} Surprisingly, the employment of such measures was denounced as protectionist, jurisdictional, and eco-imperialist due to the clear mention to the idea of Sustainable Development in MEAs and GATT WTO covered agreements.^{xix} In its study, WCED highlights the need of adequate governance of newly recognised extraterritorial areas for *res communis humanities*.

Multiple resolutions, declarations, conventions, accords, and studies from the early 1980s helped propel the notion of Sustainable Development forward.^{xx} Conservation of resources is an obvious precondition for achieving Sustainable Development's primary goal of securing the interests of both current and future generations. The principle of resource conservation for environmental sustainability is reaffirmed in both Principle 4 and Principle 12 of the Rio Declaration. The most crucial aspect of the impact of soft law remedies is the shift in the prevailing political mindset.^{xxi} The concepts themselves are often nebulous and open to interpretation.

In a somewhat surprising turn of events, the legal aspects of the concept of Sustainable Development are explicitly required to be included into the WTO member states' developmental agenda in the Preamble of the WTO. The principles of Sustainable Development, which are enshrined in law, are universal and obligatory; they should inform all of our actions.^{xxii} The inclusion of MEA measures in the World Trade Organization and other covered agreements has prompted important doubts and difficult questions about the binding and process of norm-making within the framework of Sustainable Development and its legal validity on a national and international level.^{xxiii}

Although the idea of sustainable development is not legally enforceable, the application of the different principles plays a significant role in determining the concept's legal standing in international law. Challenges to the unilateral actions of national governments under environmental exceptions might arise from the possible clash between MEAs and WTO covered agreements. When it comes to the WTO-mandatory DSB's interpretation of GATT Article XX, the body takes its job considerably more seriously than its predecessor ever did. Similarly, international law presents no contradiction. Though the WTO DSB has the authority to set its own environmental policies in accordance with WTO standards and covered agreements,^{xxiv} WTO law cannot

function independently of other areas of international law.^{xxv} When arguing for Sustainable Development, it's important to consider how different jurisdictions' laws are applied when deciding how international trade regulations governing access to shared resources are to be interpreted.^{xxvi} Is the idea of sustainable development something that can be codified in law? Existing legislation allows for a wide range of interpretations when it comes to the legal components of the Sustainable Development concept.^{xxvii}

More crucial than the actual appearance of these agreements is the clarity with which any responsibilities they generate are stated.^{xxviii} In the absence of a codified source, the norms of public international law are used to interpret the WTO and the covered agreements in light of the importance of protecting human rights and the environment.^{xxix} For the purposes of applying the proposed specific provisions in the DSB, the basic concept of Law of Treaties also includes some participation criteria.^{xxx}

In resolving commercial and environmental problems, which might lead to interstate conflicts, the WTO-DSB is using *lex posterior* and *lex specialis* as the basis for interpretation,^{xxxi} unless there is *contractus out*. When nations fail to obtain consensus based on *ultima ratio*, modern environmental accords provide the states the authority to interpret some terms on their own. Since different agreements in the same field may be said to share the same object and purpose, according to which they must be interpreted, theological aspects of interpretation may help to harmonise them.^{xxxii} That the WTO's dispute resolution mechanism is an essential part of making the multilateral trade system more secure and predictable is said. The Members understand that it will help to protect their rights and explain their duties under the relevant agreements in light of public international law norms and precedents. The rights and duties set out in the agreements under consideration will not be altered or amended as a result of any DSB recommendations or judgments.

According to Jagdish Bhagwati, the World Trade Organization does not have an aversion to protecting the planet. According to AB, it is a matter of legal characterization whether or not a fact or group of circumstances satisfies the criteria of a particular treaty article. It's a legal grey area.^{xxxiii}

Criticism has been levelled against the idea of Sustainable Development's legal components, particularly its applicability and enforceability. This basic term is used again and over by many different organisations on a global scale, some of which are completely unrelated to governmental procedures. When a body of resolutions asserts the same thing over and over again, it shows that there is an *opinio juris* supporting that notion.^{xxxiv} Explain the distinction between a single resolution and a series of resolutions. This reaffirmation of the weight of precedent is what ultimately led to the acceptance of customary international law.^{xxxv} Through near-universal acceptance, extensive involvement or support, and consistent implementation, an international standard may

evolve into customary law. Customary law's scope of application and use is limited. It seems that a state has accepted a different kind of rule of law and is now applying it.^{xxxvi}

Surprisingly, the WTO-DSB has not made any judgements that make the position of the term "Sustainable Development" very obvious. However, the concept of Sustainable Development has been emphasised by both the Arbitral tribunal and the ICJ as a component of customary law. The Rio Declaration was recognised by the United Nations General Assembly, which called its principles "essential" to achieving sustainable development. Some people have false impressions regarding the WTO's structure, the DSB's competence, treaty interpretation, binding, and enforcement of WTO rulings, among other things. The WTO DSB has also been the subject of numerous reform proposals.^{xxxvii}

The court has been accused of misinterpreting customary law since doing so requires looking at things like United Nations resolutions and specialized entities like, say, banks. Yet others have pointed out that Sustainable Development's legal tenets may be broken down into smaller ideas that can be evaluated on their own.^{xxxviii} In order to ensure the effectiveness of international law in safeguarding human rights and providing redress for environmental damage, two sources are checked: custom and state practice.^{xxxix}

Conclusion

Based on the examination of the provisions of MEAs and MTAs, as well as the contribution of the WTO-interpretation DSB's of Article XX GATT and the decisions of the Arbitral Tribunal and the ICJ, it is determined that these factors lead to substantial changes and advances in the current law on trade and environmental problems. The World Trade Organization's Dispute Settlement Body has reaffirmed unequivocally that the World Trade Organization and the covered Agreements need to be interpreted in the context of the contemporary concerns of the international community regarding the preservation and protection of the natural environment. Regardless of the extent to which it may be enforced, the notion of sustainable development does in fact reflect a long-term objective to improve environmental protection on a global scale. The notion of sustainable development serves as a bridge between environmentalism and economic growth. It brings together the two fields of study that are sometimes at odds with one another. The idea also persuades those in charge of formulating public policy to take the measures that are necessary to preserve natural resources for the benefit of both current and future generations. The position of the idea of Sustainable Development in society is unmistakable.

As the 20th century came to a close, worldwide environmentalism gathered steam, and the term "Sustainable Development" entered the mainstream and eventually became codified at the state, federal, and international levels. The necessity of achieving the concept of Sustainable Development is described in detail in documents such as the

Stockholm Declaration, the World Conservation Strategy, the Brundtland Commission Report, the Rio Declaration, the Vienna Declaration on Human Rights, the World Summit on Sustainable Development, and the United Nations Convention on Sustainable Development. Among the most basic tenets of Sustainable Development is the idea of preserving material goods for the benefit of future generations as well as the present. One interpretation of the aforementioned MEAs is that governments have an obligation to refrain from acts that are beyond their national authority (*in sic utero tuo non lades*). On the other hand, the MEAs establish a clear relationship between development and environmental preservation, and they acknowledge that environmental right is the third generational human right as a solidarity human right. Permanent Sovereignty over Resources and Obligation not to create harm, Right to Development, Intergenerational and intergenerational justice, Precautionary Principle, Environmental Impact Assessment, and Polluter Pays Principle are only few of the tangible concepts outlined in the Rio Declaration as a strategic means of achieving the notion of Sustainable Development on a national and worldwide scale. As stated in Rio Declaration Principles 4 and 12, commerce and environmental protection can and should coexist.

The WTO's Principle 12 makes it clear that member states, especially developing and least developed nations, are adversely affected by unilateral policy moves that threaten the openness and stability of the multilateral trading system.

An effective tool for economic growth is the GATT-liberalization WTO's of international trade via the consolidation of its predecessors. In an interesting twist, Article XX of GATT allows states to use environmental exclusions (such as trade restrictions) in order to safeguard public health, safety, and resource conservation. These steps significantly aid in achieving environmental safety on every level. The Millennium Declaration outlines, as one of its primary goals, the need of national governments implementing effective conservation policies in order to attain environmental security.

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