

Trade Liberalization and Environmental Protection

Written by Marvin Spence

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MARVIN SPENCE, MAR 15 2011

Introduction

According to the theory of mercantilism, preferential trade is the gateway towards economic development. This was seen in the mercantilist argument that exports should exceed imports. The theory of absolute advantage however, challenged the protectionist nature of mercantilist policy, and argued that liberalized trade would lead to economic development. Following absolute advantage, there was the theory of comparative advantage, which modified tenets of absolute advantage and linked trade liberalization to economic development. Through the theory of comparative advantage, David Ricardo argued that liberalized trade would be beneficial to countries if their relative efficiencies differed.

Economic globalization is driven by factors that are seen as both within and outside the control of nation states. Its emergence has led to substantial liberalization of international trade, as will be further shown in this paper. The liberalization brought by economic globalization has led to countries signing agreements at both the regional and international level to regulate how states engage with each other in the international arena. These agreements are especially seen as important to developing countries as they have highly open economies (Bernal 2008). This makes international trade extremely important to the economy.

Economic globalization has further led to trade liberalization being linked to environmental protection issues. Opponents of trade liberalization argue that the liberalization of international trade is bad for the environment, as it will lead to countries maintaining lax environmental standards. They further argue that trade liberalization leads to the unsustainable utilization of natural resources. Proponents of free trade, on the other hand, argue that trade liberalization is good for the environment. They assert that free trade leads to the transfer of 'environmentally-friendly technology'. They further assert that free trade will lead to countries producing those goods in which they have a comparative advantage.

The debate between free traders and environmentalists has led to various environmental innovations to the multilateral trading system. The establishment of the Committee on Trade and Environment (CTE) and the introduction of sustainable development to the multilateral trading system were two innovations to the multilateral trading system that will be further examined in this paper. These innovations were seen as one way of quelling the concerns of environmentalists that trade liberalization is bad for the environment.

This paper will begin with an examination of the link between trade liberalization and economic development. This is followed by an examination of how globalization has influenced trade liberalization and has led to the emergence of environmental concerns. Following this will be an examination of the trade-environment debate. The final part of the paper examines the attempts made to forge a balance between free trade and environmental protection.

Trade Liberalization and Economic Development

The link between trade and economic development, it can be argued, started with the policy of mercantilism.

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Mercantilist policy was highly protectionist in nature and, was the dominant view of international commerce in Western Europe from approximately 1500 to 1800. The protectionist nature of mercantilist policy was evident in its underlying objective, which was to maintain a favourable balance of trade. This was to be achieved by countries exporting more than they import. The restricting of imports was seen as one way of promoting the manufacturing of raw materials at home.

Adam Smith, in *The Wealth of Nations* (1776), challenged mercantilist policy, particularly its protectionist nature. Smith argued that if two nations traded with each other voluntarily, both must gain otherwise trade would not take place. He further asserted that mutually beneficial trade would emerge if each country specialized in the production and export of the good in which it had an 'absolute advantage'. By absolute advantage, Smith meant that in a two country two good world one country could be more efficient in producing one good, while less efficient in producing the other. In such a case a country should export the good that it is more efficient in producing and import the good that it is less efficient in producing.

Smith's theory of absolute advantage was challenged by David Ricardo's theory of comparative advantage. Ricardo asked the question: what if one country was more efficient in the production of all commodities, would countries cease to trade since the more efficient country could produce the goods it needed more cheaply in terms of real resources? The answer to this was no. Ricardo argued that as long as their relative efficiencies differ, trade will take place and be beneficial to both countries. He further argued that the country with the absolute advantage in the production of both goods should specialize in the production and export of the good in which its absolute advantage is greatest. It should however, import the good in which its absolute advantage is least.

Economic Globalization, Economic Development and the Environment

Jones (2005) posits that "economic globalization is a process leading to increased economic interdependence as well as changes in underlying economic structures" (Jones 2005: 34). Economic globalization is driven by factors that are seen as both within and outside the control of national governments. These factors are often referred to as endogenous and exogenous factors respectively. Advances in telecommunications technology (such as the internet) and transportation are two exogenous factors that have driven economic globalization. The policy decision of governments to liberalize trade, on the other hand, is one endogenous way in which economic globalization is fostered.

Economic Globalization led to the massive elimination of national barriers to the international flow of goods, services, capital, finance and information. During the 1990's the services exports of developing countries grew more rapidly than the export of manufactured goods (Bernal 2008). Bernal (2008) notes that "the annual growth in trade commercial services between 1990 and 2000 was 7 percent compared to 6 percent for merchandise trade" (Bernal 2008: 15). It is further noted that world output grew by 2.7 percent during the years 1981 and 1990 compared to a growth rate of 4.5 percent per annum for world trade (Bernal 2008: 15).

With the liberalization of international trade in the latter part of the twentieth century, there was the need for an institution to regulate this trade. This was especially seen as necessary since the GATT 1947^[1] did not have rules to govern issues such as services. The establishment of the World Trade Organization (WTO) was seen as the answer to the wave of liberalization brought by economic globalization. The WTO emerged out of the Uruguay Round of trade negotiations (1986-1994), and brought new international rules to govern trade in agriculture, manufacturing, services and intellectual property. These were issues that were not covered by the GATT 1947.

Economic globalization has not only led to the liberalization of international trade, it has further led to the emergence of global concerns – one such concern being the environment. Concern over the environment is partly driven by the argument that the environment is a common concern of all nations, and as such each nation should strive towards alleviating environmental problems. Concern over the environment is also driven by the argument that trade liberalization negatively affects the environment.

The environment being viewed as the common concern of all nations is evident in the *Climate Change Convention*

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(1994) which acknowledges that “change in the earth’s climate and its adverse effects are a common concern of humankind”. The *Convention on Biological Diversity (CBD)* (1992) similarly affirms that “the conservation of biological diversity is a common concern of humankind”. Climate change and the loss of biological diversity being the “common concern of humankind” have led to the argument that each country in the global community has a role in alleviating these problems.

Despite the view that each state must assume responsibility for global environmental problems, the principle of ‘common but differential responsibility’ stipulates that developed countries should assume a greater responsibility in alleviating these problems than developing countries. Developed countries assuming the bulk of the responsibility is due to the argument that they are largely responsible for, and they are better able to alleviate these problems. Evidence of this is seen in the Climate Change Convention which notes that “the largest share of historical and current global emissions of greenhouse gases has originated in developed countries”. The Climate Change Convention further recognizes that “the specific needs and special circumstances of developing country Parties...that would have to bear a disproportionate or abnormal burden under the Convention”[2] should be given full consideration.

Trade – Environment Debate

The importance attached to trade liberalization and the environment, has sparked a debate between free traders and environmentalists about how trade liberalization affects the environment. This debate may also be interpreted as one between developed and developing countries. This is seen in the argument that developed countries are ‘greener’ than developing countries and often argue for the inclusion of environmental protection measures in trade relations[3]. While environmentalists argue that trade liberalization is bad for the environment, free traders argue that trade liberalization is good for the environment.

Trade Liberalization is bad for the environment

Environmentalists argue that trade liberalization is bad for the environment, as it has led to countries with lax environmental standards, in some instances, having a comparative advantage in the global marketplace. This argument is linked to the pollution-haven hypothesis, which suggests that trade liberalization allows firms to take advantage of cross-country differences on environmental regulations, and that falling trade barriers induces pollution-intensive industries to relocate to countries with weaker environmental regulations (Zhang and Yang 2007; Esty 1994). The relocation of these industries will not only negatively affect the country with the high environmental standard, it will further aid in the environmental degradation of the country with the lax environmental standards.

Environmentalists not only believe that trade liberalization will lead to industries relocating to ‘pollution-havens’, they argue that lax environmental regulations in one jurisdiction will give credence to business arguments about competitive disadvantage in another jurisdiction (Esty 1994). This, it is believed, will lead to countries lowering their environmental standards or maintaining lax environmental standards to appease business interests.

The growth in economic activity that trade liberalization causes, it is further believed, is likely to result in increased pollution and unsustainable consumption of natural resources (Brack 1995). This was one issue that compounded the debate over the North American Free Trade Agreement[4] (NAFTA). North American environmentalists held that higher level of economic activity in Mexico, accompanied by lax environmental enforcement, would cause greater depletion of natural resources and worsen pollution (Schatan 2000).

Trade Liberalization is good for the environment

Despite the view that trade liberalization is bad for the environment, there is a school of thought that identifies trade liberalization as being good for the environment.

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With the liberalization of trade it is believed that countries will utilize their comparative advantage and specialize in the production of goods and services in which they are most efficient (Brack 1995). This will reduce the possible negative impact on the environment from the unsustainable utilization of natural resources.

Trade liberalization being associated with the transfer of 'environmentally-friendly' technology, has also led to the argument that it is good for the environment. Zhang (2003) attests to this as he states that open markets may "stimulate social progress as contact among societies leads to the sharing of new ideas, [and] more rapid diffusion of technological advances" (Zhang 2003: 117).

It is also argued that trade liberalization will improve environmental standards, as countries with high environmental standards will impose sanctions on countries with low environmental standards causing them to improve their environmental standards. This explores the issue of extraterritoriality and raises the important question: Does a Country A has the right to infringe on the sovereignty of a Country B, by telling that state how to manage its own environment? In Tuna-Dolphin I (1991)[5] the GATT Panel ruled that a state could not violate the sovereignty of another state by telling that state how to manage its own environment. The Panel interpreted GATT Article XX(g) as only permitting measures aimed at resource conservation within the jurisdiction of the enacting country (Condon 2006). The Tuna-Dolphin II (1994)[6] Panel however, rejected the view that Article XX(g) limited the location of the resources in question. It was argued by the Panel that other provisions in Article XX (General Exceptions) did not exclude measures aimed at actions outside a Contracting Party's territorial jurisdiction. Evidence of this is seen in GATT Article XX(e) which allows Members of the World Trade Organization (WTO), subject to various requirements, to block the importation of goods relating to prison labour. The Panels decision was further influenced by the U.S argument that it had not ceded national authority to the GATT to adopt international environmental policies unilaterally.

Supporters of trade liberalization further argue that the opening up of markets will lead to rising incomes and an increased demand for education. It is believed that with more income and education, there will be more skillful management of resources and more forceful demands on governments to pass and enforce stringent environmental policies (Anderson 1996).

The Multilateral Trading System and Environmental Protection

In an effort to appease the concerns of environmentalists various innovations have been made to the multilateral trading system. Prior to the Uruguay Round, environmental protection under the GATT came in the form of an exception. GATT Article XX[7] (General Exceptions) was the only Article in GATT 1947 that addressed the issue of environmental protection. Paragraph (g) of GATT Article XX allows WTO Members to adopt measures aimed at the conservation of exhaustible natural resources, once these measures do not constitute a disguised restriction on international trade.

With the conclusion of the Uruguay Round of negotiations (1986-1994) there were significant developments to the environmental provisions of the multilateral trading system. The conclusion of the Uruguay Round led to the Multilateral Trading System being 'greener' on paper. This is evident within the Preamble of the Marrakesh Agreement[8], where it is noted that there should be "optimal use of the world's resources in accordance with the objectives of sustainable development". Unlike the Preamble of GATT 1947, which 'allowed' for the "full use of the resources of the world", the Preamble of the Marrakesh Agreement underlined the importance of interpreting trade commitments within the context of 'sustainable development'. In other words, the economic development brought by trade liberalization was not supposed to cause irreversible damage to the environment.

The conclusion of the Uruguay Round further led to the establishment of the Committee on Trade and Environment (CTE). The CTE was, among other things, to examine the relationship between trade measures and environmental measures in promoting sustainable development and the environmental effects of trade liberalization (Anderson 1996).

In spite of the provisions, brought by the Uruguay Round to improve environmental protection under the multilateral

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trading system, environmentalists assert that the rules are inadequate. GATT Article XX(g) is criticized for being too narrow in scope. Esty (1994) notes that "it fails to cover important natural resources such as the atmosphere, the oceans, the ozone layer and other elements of the global commons" (Esty 1994: 49). GATT Article XX(g) is further criticized as it creates a high hurdle for measures aimed at protecting the environment. In order for an environmental protection measure to be brought under Article XX(g) it has to first, be concerned with the conservation of an exhaustible natural resource. Second, the measure has to be one that is "relating to" the conservation of an exhaustible natural resource. And third, the measure has to be made effective with domestic consumption or production.

The Shrimp-Turtle^[9] case provided an example of how difficult it is to bring an environmental protection measure under Article XX(g). In the Shrimp-Turtle case the Appellate Body ruled that sea turtles were an exhaustible natural resource, rejecting arguments that the term refers to non-living natural resources. It was also found that the requirement to use Turtle Extractor Devices (TEDs) was directly connected with the policy of conserving sea turtles. This was partly linked to the fact that the United States required its fishermen to use similar devices to protect the lives of sea turtles. While the United States requirements were seen as largely in keeping with the provisions of Article XX(g), the panel found that they were not in keeping with the chapeau of Article XX and as such amounted to arbitrary and unjustifiable discrimination. The Appellate Body's decision was linked to its argument that identical requirements failed to take into account differences in conditions in other countries, rather than effectiveness of other countries programs in conserving sea turtles (Condon 2006).

The CTE on the other hand, is seen as only making modest achievements in terms of trade and environmental issues. Charnovitz (2007) argues that "one measure of its meager output can be seen in the annual report of the CTE" (Charnovitz 2007: 690). The reports for the years 2003 to 2006 were less than two full pages. Wallach and Woodall (2004) similarly cite that the CTE "has proven entirely ineffective as a mechanism for promoting environmental interests within the WTO" (Wallach and Woodall 2004: 20). They note that in its several years of existence, the CTE has failed to agree to any recommendations for pro-environment changes to the WTO system.

Sustainable Development

The concept of sustainable development explores the relationship among economic development, which is fostered by trade liberalization, environmental quality and social equity (Rogers et.al. 2008). Sustainable development has been evolving since 1972, when the international community first explored the connection between quality of life and environmental quality at the United Nations Conference on the Human Environment in Stockholm. It was however, not until the Brundtland Report of 1987 that sustainable development was defined as "development that meets the needs of present without comprising the ability of future generation to meet their own needs".

The 1992 Rio Declaration on Environment and Development played a significant role in evolution of sustainable development. In protecting the environment, the Rio Declaration called for the further development of international law in the field of sustainable development. Agenda 21, adopted at the Rio Conference, is a programme of action containing 40 Chapters and a nonbinding action plan for achieving sustainable development (Rogers et.al. 2008).

The Rio Declaration was one of the most universally endorsed statement of general rights and obligations of states on matters affecting the environment. Birnie and Boyle (2002) identify three factors that gave the Rio Declaration significant authority in the articulation and development of international law on the environment. First, unlike the Stockholm Declaration, the Rio Declaration is written in obligatory terms. Second, the twenty-seven principles of the Rio Declaration represent something of a 'package deal', negotiated by consensus. While there are provisions that represent the interests of developed countries, there are others that represent the interests of developing countries^[10]. Thirdly, the declaration reflects a consensus between developed and developing states on the need to identify agreed norms of international environmental protection.

Developing countries playing a major role in the Rio Declaration led to various issues that were addressed in the

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Stockholm Declaration not being repeated in the Rio Declaration, mainly at the insistence of developing countries. Unlike the Stockholm Declaration, the Rio Declaration does not make reference to animal rights or to the conservation of flora, fauna, habitats or ecosystems (Bernie and Boyle 2002).

Sustainable development, international law and environmental protection

In terms of environmental protection, the most potentially far-reaching aspect of sustainable development is that for the first time it makes a states management of its own domestic environment a matter of international concern in a systematic way (Bernie and Boyle 2002). Despite this however, the various social, political and economic value judgements in determining what is sustainable has made it difficult for an international court to review national legislation and conclude that it falls short of a standard of 'sustainable development' (Bernie and Boyle 2002).

While international law may not require development to be sustainable, it does require that decisions made about economic development be the outcome of a process that promotes sustainable development. In order to achieve sustainable development, states are encouraged to implement the main elements employed by the Rio Declaration and other instruments for facilitating sustainable development. The conducting of Environmental Impact Assessments (EIAs), public participations, integrating of development and environmental considerations and the inclusion of inter- and intra-generational equity^[11] in decision-making are some of the elements required to achieve sustainable development.

The Gabcikovo-Nagymaros case^[12] further supported an interpretation which made the process of decision-making the key legal element in sustainable development. In its decision, the International Court of Justice (ICJ) required the Parties in the interest of sustainable development to "look afresh" at the environmental consequences and to carry out monitoring and abatement measures to contemporary standards set by international law (Rogers et.al. 2008: 195). This approach allows international courts to further the objectives of sustainable development without having to decide what is and what is not sustainable.

With this in mind, it can be argued that the incorporation of sustainable development within trade agreements is an attempt to impose legally binding obligations on states regarding the protection of the environment. This is seen in the argument that states would have to ensure that legislations are in place to conduct various environmental assessments required to ensure that economic development is sustainable.

Conclusion

The link between international trade and economic development was evident in the policy of mercantilism. Mercantilists tried to achieve economic development by exporting more than they import. The policy of mercantilism was challenged by Adam Smith in his theory of absolute advantage. Smith outlined that if two nations traded both would have to gain, otherwise trade would not take place. He further argued for countries to specialize in the production and export of those goods in which they had an advantage over their trading partner. Smith's theory of absolute advantage was challenged by David Ricardo's theory of comparative advantage. Ricardo argued that in a two country two good world, one country might be better at producing both goods than the other. For trade to be beneficial in such a case, Ricardo argued that the country that is better at producing both goods should export the good that it is more efficient (compared to its trading partner) at producing and import the other good.

Economic globalization led to the liberalization of international trade in areas that were not covered by the GATT 1947. This led to the establishment of the WTO, which was seen as necessary to regulate these new areas of international trade. Economic globalization further led to environmental protection being seen as the global concern of all states.

The importance attached to the environment has led to environmentalists criticizing free trade as they view it as a precursor to environmental degradation. Environmentalists argue, among other things, that trade liberalization has

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led to the unsustainable utilization of natural resources. Free traders, however, argue that trade liberalization is beneficial to the environment. They argue that trade liberalization has led to the transfer of 'environmentally-friendly' technology that is beneficial to the environment.

The debate between free traders and environmentalists has led to the introduction of numerous innovations to the environmental provisions of the multilateral trading system. It has further led to the development of the concept of sustainable development, which aims to forge a balance between economic development and environmental protection. In ensuring that economic development is sustainable, international law calls for decisions about economic development to be the outcome of a process that promotes sustainability.

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[1] GATT 1947 was the 'system' used to regulate the international trade in goods following the failure of negotiations to form the International Trade Organization. GATT 1947 was replaced by the WTO in 1994.

[2] Article 3 Paragraph 2 of the United Nations Convention on Climate Change.

[3] See Steinberg (1997)

[4] The NAFTA is a free trade agreement between Mexico, the United States of America and Canada. The NAFTA took effect in January 1994.

[5] Tuna-Dolphin I was a case brought by Mexico against the U.S under the GATT in 1991. The case was in relation to the U.S banning of the importation of tuna and tuna products from Mexico on the grounds that the method used to catch tuna was endangering the lives of dolphins. Mexico argued that the U.S ban against the importation of tuna and tuna products was inconsistent with Articles XI, XIII and III of the GATT. The U.S, on the other hand, argued that the ban was consistent with GATT Article III, and in any event was covered by GATT Article XX(b) and XX(g). The Panel found that the U.S ban was inconsistent with GATT Articles III, XI(I), XX(b) and (g).

[6] Tuna-Dolphin II was a case brought by the EU against the U.S under the GATT. The Panel report was circulated in 1994 but not adopted. The EU argued that the U.S restriction on the importation of tuna was not covered by Article III, XI(I) and did not fall under any of the exceptions of Article XX. The Panel ruled in favour of the EU.

[7] Article XX outlines a number of specific instances in which WTO Members may be exempted from the GATT rules of Article I.

[8] The Marrakesh Agreement led to the establishment of the WTO at the end of the Uruguay Round of Negotiations.

[9] The Shrimp-turtle case started in 1997, following the U.S ban on shrimp and shrimp products from India, Malaysia, Pakistan and Thailand. The U.S argued that the ban was necessary to protect the lives of endangered sea turtles and required the complainants to use Turtle Extractor Devices (TEDs) to protect the lives of sea turtles. The complainants however, argued that the ban was inconsistent with various GATT Articles, among them are Article I, Article XI.

[10] Principle 4 (Integration of Environmental Protection), Principle 10 (Public Participation) and Principle 15 (the precautionary approach) of the Rio Declaration are seen as representing the interests of developed countries. On the other hand, Principle 3 (Right to development), Principles 6 and 7 (Special needs of developing states and Common but differentiated treatment) represent the interest of developing countries.

[11] Inter-generational equity implies that the present generation owes it to the future generations to leave the earth and its environment in no worse a condition than they received it. Intra-generational equity, on the other hand, refers to fairness in the utilization of resources among humans of the present generation, both domestically and globally.

[12] The Gabčíkovo-Nagymaros dam case arose out of the signature on September 16, 1977 by the Hungarian government and Czechoslovakian government of a treaty concerning the construction and operation of the Gabčíkovo-Nagymaros system of Locks in the Danube River. The 1977 Treaty entered into force on June 30, 1978. It provided for the construction of a system of locks, one in Hungarian territory (Nagymaros) and the other in Czechoslovakian territory (Gabčíkovo), by the parties as a joint investment. The dispute arose when the Hungarian government decided to suspend the work on the Nagymaros project pending the completion of various environmental studies. This led to the Slovakian government, despite Hungarian protests, beginning work on an alternative project "Variant C". The case was brought before the ICJ in 1993 and was decided in 1997.

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Written by Marvin Spence

Written by: Marvin Spence
Written at: University of the West Indies, Mona
Written for: Dr. Lucy Eugene
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