

# TRADE AND ENVIRONMENT LINKAGES AND CHALLENGES FACING EAST ASIAN WTO MEMBERS\*

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## ABSTRACT

*The relationship between free trade and environmental protection has been under intense debate during the last two decades. Trade and environment (T&E) issues have undergone to various studies as a result. This article will examine T&E issues from the perspective of the environmental aspect and regulatory impact of trade rules. After fleshing out the legal perspectives of the analytical framework concerning T&E issues, a brief analysis of T&E issues in the GATT/WTO will be presented. East Asia is a region whose engine of growth lies in the promotion of free trade. This region has also been plagued with various environmental problems as a result of rapid industrialization. How this region can deal with T&E issues will be a main focus of this article. The main conclusion of this article is that T&E issues remain a big challenge to East Asia as both regional trade cooperation institutions, such as the Asia Pacific Economic Cooperation and the Association of Southeast Asian Nations, and a complex web of free trade agreements concluded within or by East Asian WTO Members have paid insufficient attention to T&E issues. Regional practices and*

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*positions mainly adopt the GATT/WTO approach. It is suggested in the conclusion that East Asia, both as a region and in individual country, should at least start to study the environmental regulation impact of trade rules if the region is committed to the mutual supportiveness of trade and environment.*

**KEYWORDS:** *trade and environment; FTA; East Asia; APEC; ASEAN*

## I. TRADE AND ENVIRONMENT: DEBATE AND AN ANALYTICAL FRAMEWORK

Trade and environment (T&E) has become a very “hot” issue since early 1990s when environmentalists were highly unsatisfied with how the panel of the then General Agreement on Tariffs and Trade (GATT) handled the first tuna/dolphin dispute between the United States and Mexico.<sup>1</sup> Research concerning the relationship between trade liberalization and environmental protection has been undertaken by scholars from various disciplines.<sup>2</sup> Drawing from this T&E literature, the relationship between trade rules and environmental rules, and the pursuit of free trade and environment protection is summarized in Table 1 and Table 2. For example, the effect of environmental rules and standards on free trade (box B in Table 1) can either be positive or negative, depending on the nature of such rules. “ASEAN [Association of Southeast Asian Nations] countries and

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<sup>1</sup> The US banned the importation of Mexican tuna because the way that Mexican fishermen catch tuna does not comply with US domestic law regulating the incidental killing of dolphins. Mexico complained to the GATT in 1990 alleging that the US embargo violated several GATT provisions, including the general elimination of quantitative restrictions. The Panel ruled that the US measures in question did not comply with the GATT and was unable to be justified under the general exception provisions of Article XX. Report of the Panel, *United States – Restrictions on Imports of Tuna*, DS/21/R (Sep. 3, 1991), GATT B.I.S.D. (39th Supp.) (1993) [hereinafter *Tuna*] (unadopted).

<sup>2</sup> In the area of economics, scholars from the disciplines of environment economics and development economics have conducted research on T&E, for example, GERALD M. MEIER & JAMES E. RAUCH, *LEADING ISSUES IN ECONOMIC DEVELOPMENT* §§ IV.A & X.2 (7th ed., 2000); DAVID PEARCE, *BLUEPRINT 4: CAPTURING GLOBAL ENVIRONMENTAL VALUE*, ch. 6 (1995). In addition, international organizations such as the World Bank have also conducted research and case studies on the T&E relationship, for example, WORLD BANK, *WORLD BANK DISCUSSION PAPER NO. 402, TRADE, GLOBAL POLICY, AND THE ENVIRONMENT* (1999); UNCTAD has a dedicated website on T&E issues, [http://r0.unctad.org/trade\\_env/index.htm](http://r0.unctad.org/trade_env/index.htm). In the legal profession, literature concerning T&E abounds. For example, using the phrase “trade and environment” (narrow search with addition terms: GATT/WTO) to search for legal periodicals on Lexis-Nexis database for the previous five years resulted in 243 articles, and using the term “trade AND environment” AND GATT/WTO to search for legal periodicals on Westlaw database also resulted in 330 articles.