
GAPS IN INTERNATIONAL TRADE LAW: TRADE RESTRICTIONS AS AN UNDUE ADVANTAGE

Lakshmi Chandana, Army Institute of Law, Mohali

ABSTRACT

This study examines the scope of using trade restrictions as a foreign policy instrument to favourably influence the internal political dynamics and national level decision-making of a targeted state. Different forms of trade control work because international trade is linked to economic growth, and it subsequently affects political stability of a state. It provides evidence on how economic growth affects political stability and why trade is an important contributor to economic growth. Indicators of economic growth and political stability have been discussed and their causal relationship has been examined. Trade restrictions are primarily used in cases where peace and stability have to be accomplished without using any armed force, which in turn might cause larger consequences. It also explores the possibility that such measures might be misused by more powerful countries to preserve the geopolitical world order in their advantage. In the era of globalization, developing and under-developed countries due to absence of self-sufficiency are increasingly relying on economically powerful states for the provision of essential goods and minerals. Thus, weaponization of international trade law is as much as exploitation of this dependency relationship. This study concludes by examining gaps in international trade law. It observes that international institutions that promote fair trade sometimes fail to ensure that trade restrictions should be utilized in consonance with international trade law on credible humanitarian grounds and not with the purpose of selfish economic coercion.

Keywords: Economic Growth, Political Stability, Trade Restrictions, Geopolitical World Order, Economic Coercion.

INTRODUCTION

Adam Smith and other economists have been of the opinion that free movement of goods and fair trade between countries always benefits those taking part.¹ Notwithstanding the contemporary trends in globalization and increasing interdependence of countries, there is a growing emphasis towards imposition of trade restrictions with the intent to regulate international trade.

There are different kinds of measures that are used by the countries which are inclined towards regulating exports and imports. The most commonly used measures are high export taxes, anti-dumping, bans on export, sanctions and trade embargoes, to name a few. These measures have different legal backing under the General Agreement on Tariffs and Trade (GATT) rules². Some are considered illegal measures, while others adhere to international trade agreements.

In international trade law, trade restrictions are not duly regulated. Moreover, the legality of their execution remains vague in many situations. In a world where countries are increasingly becoming interdependent, their application can highly affect import-export volumes between countries and disturb their trade balance.

ECONOMIC PERFORMANCE AS A SOURCE OF POLITICAL STABILITY AND EFFICACY OF TRADE RESTRICTIONS

Before we examine trade restrictions in detail, we must understand how trade restrictions work. We analyse the thesis that trade restrictions are effective in countries because it is somewhat linked to political stability. Political stability refers to the rule of law, strong democratic institutions, a responsive and effective bureaucracy, low corruption, good social integration and stable governance. It is characterized by continuity, order and the absence of significant political upheavals. Stability attracts investment, both internally and externally.

It is observed that by influencing the indicators of economic growth, there is significant variation in dimensions of a country's political stability. To access the economic growth, following indicators can be utilized: real gross domestic product, consumer price index, income inequality and level of unemployment. For gauging political stability, 4 dimensions stand out-

¹ Jonathan Baron & Simon Kemp, *Support for Trade Restrictions, Attitudes and Understanding of Comparative Advantage*, 25 J. ECON. PSYCH. 565 (2004).

² General Agreement on Tariffs and Trade, Jan. 1, 1948, 55 U.N.T.S. 187 [hereinafter GATT].

stable government (*does it have a majority?*), stable political system (*do governments change smoothly in line with the Constitution?*), internal law & order (*is the crime rate low and under control?*) and external stability (*are the nation's boundaries actively threatened by an adversary?*).³ It must be understood that effects of economic growth are more complex in nature and relationship between the two is not linear as it also depends on the country's institutional and policy variables.

There is an ongoing debate on whether economic performance affect political stability or does political stability affects economic growth? The direction of causation acts in both ways. Political instability can contribute towards interference in long term economic policies where there is uncertainty as it can derail investment and eventually affect capital accumulation and savings. It may also lead to slower technological progress due to reduction in opportunities of research and development. Alternatively, economic growth adjusts structure of prices, increasing the standards of living by giving consumers the ability to decide their consumption preferences. Equal income distribution positively influences the social structure of a state which ensures a stronger coherence between different social strata of the society.

Import and export trade is an important factor of economic growth in the contemporary states. The volume of trade between countries has been further supplemented by globalization, also consequently increasing the interdependence among countries. Meanwhile, this interdependence is not completely uniform because powerful countries are less dependent, as compared to developing and under-developed countries. This aspect of interdependence is a form of leverage where there is potential that it can be exploited by robust and versatile economic powers of the world to influence the political decision-making of a target state by empowering it to impose trade restrictions. So, restrictions in trade which were traditionally used as rectifying measures to resolve conflicts without the use of armed force are now being used as a way for developed countries to project power and interfere in the political dynamics of nations.

Within the domain of international framework, Dahl⁴ gave a straightforward definition of power as: "A causing [or having the ability to cause] B to do something that B otherwise would not do." Similarly, a major power may threaten a smaller partner to disrupt the existing trade

³ Martin Paldam, *Does Economic Growth Lead to Political Stability?* in THE POLITICAL DIMENSION OF ECONOMIC GROWTH 171, 172 (Silvio Borner, Martin Paldam eds., 1998).

⁴ Robert A. Dahl, *The Concept of Power*, 2 BEHAV. SCI. 201 (1957).

and thus coerce the partner into making compromises.⁵ Trade restrictions such as tariffs and sanctions primarily work because the target state is dependent on doing trade with the other state which is imposing the control over it.

GAPS IN INTERNATIONAL TRADE LAW

As the US-China rivalry intensifies and the Russia-Ukraine conflict becomes more aggressive alongside the realigning international landscape, unilateral trade sanctions have emerged rapidly. The frequency and intensity of trade measures being taken for political purposes has increased which significantly undermines the stability of the multinational trade structure.

With respect to weaponization of international trade law, this study specifically targets the Article 21 of the GATT, which deals with “security exceptions”.⁶ Countries are obligated under provisions of GATT like Article V⁷ (Freedom of Transit) and Article X⁸ (Publication and Administration of Trade Regulations) to ensure unhindered movement of goods and fair trade. But a member state is authorized to take an action contrary to the aforesaid provisions under Article 21 without providing a justification, for the protection of its vital security interests⁹. This provision further provides that a member country cannot be compelled to furnish justification for such decisions.

This “national security” exception has already become a key legal instrument in conflicts, used to justify the prohibition or restriction of competitors’ goods, services, and investments under the guise of “legitimacy”.¹⁰ Further, there is a likelihood that application of this provision could become disadvantageous to the developing and underdeveloped countries, if used by more powerful economies. Its unreasonable usage by major powers diverges from the principles of Article 21 of GATT¹¹ which must be implemented in good faith.

Some trade measures are also administered to protect domestic industries- prohibiting and amending such measures is one of the principal objectives of the World Trade Organisation.

⁵ Yannick Stiller, *Bargaining Power in a Globalized World: The Effect of Global Value Chains in Trade Negotiations*, 25 BUS. & POL. 173, 173-74 (2023).

⁶ GATT, *supra* note 2, art. 21.

⁷ GATT, *supra* note 2, art. 5.

⁸ GATT, *supra* note 2, art. 10.

⁹ GATT, *supra* note 2, art. 21.

¹⁰ Jingdong Liu, *Analysis of the Application Boundaries and Development Trends of the “National Security” Clause- From the Perspective of International Trade and Investment Rules*, 2 LEGAL STUD. J. 136 (2023).

¹¹ GATT, *supra* note 2, art. 21.

Additionally, there are trade initiatives aimed at protecting non-trade concerns, such as the health and safety of humans and animals, environmental protection and national security. If these initiatives align with the exemptions outlined by the WTO, they are permitted. Some countries use different trade tactics for non-trade affairs, with a political intent. In such cases, these tactics are intended towards interfering in their internal affairs of other countries and these countries attempt to justify it under the guise of safeguarding the security of a state. It is in this manner that trade restrictions are employed as weapons by the major powers to preserve the geopolitical world order in their favour.

It must be understood that the aftermath of trade restrictions is not localised towards the targeted country. There is also a connection between the imposed sanctions and the transmission of corruption inside an affected region. By punishing ordinary market activity, sanctions give entrepreneurs a strong incentive to take the criminal route and they usually earn more than usual profits in the bargain.¹² Therefore, sanctions and illegal-market activities are conjoined. As Peter Andreas¹³ had illustrated in 2005, trade sanctions encourage the creation of organized crime syndicates and transnational smuggling networks. Sanctions do not just weaken the rule of law in the targeted country; it also does the same in bordering countries as well thus affecting the whole region.

Just 4 days after the invasion by Iraq on Kuwait, United Nations Security Council on 6 August 1990 had placed a comprehensive embargo on Iraq by enforcing the UNSC Resolution 661¹⁴. Subsequent to the enforcement of these measures, studies were conducted which found that child mortality rate had shown an exponential increase from 1990s to 2000s in Iraq.¹⁵ Many economists believe that more people died of hunger than of war, as a consequence of the sanctions regime. Taking into consideration the detrimental effect of such restrictive measures that were affecting the innocent local population, Kofi Atta Annan, the then UN Secretary General, described sanctions as a “blunt instrument” while inquiring if exerting pressure on

¹² Daniel W. Drezner, *Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice*, 13 INT’L. STUD. REV. 96, 98 (2011).

¹³ Peter Andreas, *Criminalizing Consequences of Sanctions: Embargo-Bustling and its Legacy*, 49 INT’L. STUD. Q. 335 (2005).

¹⁴ S. C. Res. 661, ¶ 3 (Aug. 6, 1990).

¹⁵ Alberto Ascherio et al., *Effect of the Gulf War on Infant and Child Mortality in Iraq*, 327 NEW ENG. J. MED. 931 (1992).

political leaders of a targeted country must come at the cost of innocent local's lives.¹⁶

CONCLUSION

International trade between countries forms a crucial aspect of economic growth. Findings have been provided which illustrates how economic growth affects the political stability of a particular country. In modern times, where all the economies in the world are increasingly dependent on each other, any restriction on fair trade and free movement of goods and services will have a profound negative impact on the targeted state.

International trade law, like other international legislation, suffers from absence of binding value as it is not applicable to the major powers of the world as they dominate the world order. Notably, provisions of the GATT face challenge from its inherent ambiguity that infects all other international legislations. Trade restrictions are imposed not only to protect a country's domestic economy, but it is also used as a way for it to effectively project a dominant power on a weaker state which is dependent.

Even though it is recognized that trade restrictions were taken for political needs of a state, affected members countries are often incapable to obtain effective remedies or redressal within the current framework of international trade law. This mainly happens because provisions given by the WTO does not focus on the inherent political aspirations behind trade measures but rather assesses whether they infringe the existing rules. When a trade provision is found to breach specific rule, the country imposing the provision may still attempt to rationalize it by invoking special cases, like national security. It is essential to keep international commerce and political disputes distinct and maintain a degree of separation in order to prevent misuse of trade restrictions for selfish purposes.¹⁷

¹⁶ Darren Hawkins & Joshua Lloyd, *Questioning Comprehensive Sanctions: The Birth of a Norm*, 2 J. HUM. RTS. 441 (2003).

¹⁷ Yong-Shik Lee, *Weaponizing International Trade in Political Disputes: Issues Under International Economic Law and Systemic Risks*, 3 J. WORLD TRADE 428 (2022).