

**STRIKING A BALANCE BETWEEN ENVIRONMENT AND TRADE
IMPERATIVES**

By

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Dedication

This dissertation is dedicated to my mother. Mpolokeng Senatsi, a single mother, who has done everything in her power to see me through law school. I will forever be thankful. Mom, this is for you.

Acknowledgements

On completion of this dissertation, I will love to say glory to God my Lord and saviour Jesus Christ. I am thankful father, for the wonders you keep doing to my life.

The success and final outcome of this dissertation required a lot of guidance and assistance from my supervisor, advocate Maqakachane. I owe my deep gratitude to him for taking keen interest in my work and guiding me all along till its completion.

I also extend my grateful thanks to my family and friends and everyone who participated to ensure that this dissertation is successfully completed.

Declaration

I, *Lineo Edith Senatsi*, hereby declare the originality of this study. No part of the work referred to in this dissertation has been submitted in support of an application for another degree of this or any other university or institution. Where necessary, due reference and acknowledgement has been made to the works used.

Names:

Date:

CHAPTER 1

1.1. Introduction

This chapter being the first chapter will deal with the definition of trade law and environmental law, and the link between the two. The chapter will further look into the historical background of environmental protection and trade focusing mainly on motor vehicle importation and its adverse effects on the environment. The chapter will also cover the statement of the problem, hypothesis, methodology, literature review and aims and objectives relating to the topic of this dissertation.

1.2. Historical background

Environmental law refers to the protection of natural resources; this includes resources considered valuable to humans, such as water, and minerals as well as endangered species and other aspects of the natural world, and the regulation of businesses that impact them¹. Trade law refers to the body of rules and regulations which govern the relationship of nation states for regulating their domestic markets in relation to international trade². In short, trade law regulated the global exchange of goods and services. The world's environment is facing global changes at a pace and on a scale unknown to humankind³. Air pollution is a problem in all major cities in the world. Large regions are at risk from the effects of climate change and acidification, with the demand for energy to fuel economic development rapidly rising. There is an urgent need for national, international and local measures to control pollution and to conserve natural resources and ecosystems. The body of both national and international law that has merged is diffuse and expanding⁴.

At the same time that environmental concerns grow, there is an urgent and defined need for continued economic growth worldwide. The international trading system, which is built upon the principle of comparative advantage, is intended to promote economic growth. It obligates countries to reduce barriers to efficient trading, such as tariffs, import quotas, subsidies, and other non-tariff barriers, so as to enable economies to grow.⁵

In contrast to environmental law, trade law is almost exclusively concerned with reducing barriers to trade in products and services and has not often addressed processes by which

¹ United Nations Environment Programme; Trade and Environment, A Handbook, 2005

² United Nations Environment Programme; Trade and Environment, A Handbook, 2005

³ E. Brown Weiss, Reconciling Environment and Trade, 2nd Ed, 2008.

⁴ E. Brown Weiss, Reconciling Environment and Trade, 2nd Ed, 2008.

⁵ E. Brown Weiss, Reconciling Environment and Trade, 2nd Ed, 2008.

products are produced and resources harvested⁶. Trade law thus has not been concerned with whether the processes of production are environmentally sustainable and indeed is worried about environmental regulation directed to process as being barriers to trade.

However, environment and trade linkages are not isolated, they are fundamentally related. Much environmental damage is due to the increased scale of global economic activity. International trade constitutes a growing portion of that growing scale, making it increasingly important as a driver of environmental change. Not surprisingly, the two efforts- to protect the environment and to promote liberal trade, clash.

In Lesotho, the law applicable in situations of environmental protection is the Environmental Act 2008. Every environmental problem is encamped within the Act; as a result, there is a need for environmental laws which deal specifically with the friction between both trade law and environmental law.

1.3. Statement of the problem

Lesotho's environmental law allows trade at the expense of the environment. There is no restriction as to which second hand imported cars are allowed in the country, every car is allowed even those whose level of carbon emission is very harmful to the environment. Thus, Lesotho's laws should not allow trade at the expense of the environment, there should be restrictions, hence the need for the emissions act or pollution act.

1.4. Hypothesis

Environmental law and trade law have traditionally been taken as two separate international laws, but there is a huge link between the two as each affect the other. In as much as environmental law is there to protect the environment and trade law is there to ensure nation states' economic growth and that there is free trade between them, when we strive for economic growth we pollute the environment during the production and consumption of goods. Those goods not only have adverse effects when being produced but also when they are finished. For trade and environment to balance there has to be some laws enacted or improvement on the already enacted or existing laws. In second hand motor vehicle importation, an importing state has to enact laws which allow only cars that have reached certain level of carbon emission to be imported so as not to pollute the air for the importing state.

⁶ E. Weiss, *Reconciling Environment and Trade*, 2nd Ed, 2008.

1.5. Methodology

This work is a desktop based research, data will be gathered from legislation establishing and governing environmental protection and trade in developing countries. It will also be gathered from available trade and environment text books, law journals, legal article and reports from the library and the internet. Much reliance will also be placed on the conventions governing and enforcing environmental protection.

1.6. Literature review

There are legion of writings and debates on reconciliation of trade and environment which all agree that, although the two clash, it would be best if they are reconciled for sustainable development for both present and future generations. However there are still issues that this would be against the concept of free trade as established by the World Trade Organizations.

The UN Millennium Report warns that we now face an urgent need to secure the freedom of future generations to sustain their lives on these planet and we are failing. According to the report, today's world faces two urgent imperatives; to protect the environment globally and to ensure continued economic growth. On one hand, national economies are increasingly integrated in a global economic structure. The trend towards globalization has been driven in part by new technologies and in part reduced barriers to international trade and investment flows. Possibly as a result, the world has seen a steady increase in the importance of international trade in global economy⁷.

On the other hand, the world has also seen the enormous environmental change. The ground breaking Millennium System Assessment found that in the last 50 years humans had altered the world's ecosystem than at any point in human history⁸. Global carbon emissions have quadrupled, and evidence mounts that we are approaching tipping points of catastrophic climate change. The steady increase in nitrogen releases from cars and fertilizers is creating deserts of lifelessness in our oceans and lakes⁹. Thus, the reconciliation of the two would create a more stabilized environment.

E. Brown says that environment and trade can, and indeed, must be reconciled in order to achieve sustainable development¹⁰. She says however that environmentalist are concerned that the World Trade Organisation (WTO) will decide that national and international

⁷ United Nations Environment Programme; Environment and Trade, A Handbook, 2005.

⁸ United Nations Environment Programme; Environment and Trade, A Handbook, 2005.

⁹ United Nations Environment Programme; Environment and Trade, A Handbook, 2005.

¹⁰ E. Weiss, Reconciling Environment and Trade, 2nd Ed, 2008.

measures to protect the environment are inconsistent with the General Agreement on Tariffs and Trade (GATT) and other WTO agreements and will hold them invalid¹¹.

V.Jha in the book *Reconciling Trade and Environment* says;

The link between trade and the environment has focused on two broad issues; how changing trade regimes have affected the environment and how stricter environmental regulations have affected trade. The answers are of particular importance to developing and transition countries where the relationship between trade and the environment has a major impact.¹²

1.7. Aims and objectives

This dissertation is aimed at pointing out the flaws and shortcomings that riddle Lesotho's environmental law on reconciliation of the environment and trade particularly in motor vehicle importation. Secondly, the dissertation is aimed at examining the legislations or laws made on motor vehicle importation and protection of the environment in other developing countries with the sole aim of painting a clear picture as to why Lesotho should follow models in those jurisdictions in reforming its own law. Lastly, the dissertation is aimed at putting forward recommendations for the Kingdom of Lesotho to initiate environmental laws which will reduce the adverse effects of environmental pollution for current and future generations in Lesotho.

1.8. Chapter breakdown

1.8.1. Chapter 1 Introduction

This chapter will deal with the definition of trade and environmental protection, and the link between the two. The chapter will further look into the historical background of trade and environmental protection focusing mainly on motor vehicles importation by Lesotho and its effects on the environment. The chapter will also cover the statement of the problem, hypothesis, methodology, literature review and aims and objectives relating to the topic of this dissertation.

1.8.2. Chapter 2 Legal framework on environment and trade in Lesotho

This chapter will discuss how trade influence environmental protection, review of trade law, that is, if it has had any influence on environmental protection to Lesotho up to date. A review of the Environment Act 2008 to outline any efficiency it has to a sustainable development and together with its shortcomings on environmental protection. Lastly, this

¹¹ E. Weiss, *Reconciling Environment and Trade*, 2nd Ed, 2008.

¹² V.Jha, *Reconciling Trade and the Environment*, 1999.

chapter will look into the readiness of Lesotho to adapt Emission Act or Pollution Act that will render a highly sustainable development, in regard to the air pollution control.

1.8.3. Chapter 3 Comparative Study

This chapter will discuss the international conventions or treaties which Lesotho has ratified which look into human induced activities either part of or alien to the environment that look into air pollution and hence its control. It will deal with the comparative studies of countries that have ratified to such conventions and how they have put them in place within their domestic laws. And continue to deal with whether Lesotho has taken steps towards the fulfilment of aims and objectives of these conventions in effort for better trade and enhancement of environmental protection in the Country.

1.8.4 Chapter 4 trade and environment linkage

This will be the concluding chapter of the dissertation. This chapter will provide summaries from the preceding chapters. It will look into the finding and conclusions that were obtained based on the dissertation of how different countries dealt with balancing of trade and environment in second hand motor vehicle importation. It will also look into the limitations that the dissertation had the suggestions for further research. It will further look into the recommendations based on the totality of the dissertation. Lastly, the chapter will make the concluding remarks in light of the study.

CHAPTER 2

LEGAL FRAMEWORK ON ENVIRONMENT AND TRADE IN LESOTHO

2.1. Introduction

This chapter will discuss how trade influence environmental protection, review of trade law, that is, if it has had any influence on environmental protection to Lesotho up to date. A review of the Environment Act 2008 to outline any efficiency it has to a sustainable development and together with its shortcomings on environmental protection. Lastly, this chapter will look into the readiness of Lesotho to adapt Emission Act or Pollution Act that will render a highly sustainable development, in regard to the air pollution control.

2.2. Trade and environment

The United Nations Environment Programme (UNEP) in its handbook¹³ says;

Trade law defines how countries should design their domestic laws and policies in areas such as intellectual property rights, investment policy and environmental protection¹⁴... It is through conventions such as The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, The Convention on International Trade in Endangered Species, The Vienna Convention for Protection of the Stratosphere, and the Montreal Protocol on Substances that Deplete the Stratospheric Ozone Layer, United Nations Framework Convention on Climate Change and Kyoto protocol that such a law has been evident.¹⁵

The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal occasioned from the distress of developing countries, mainly in Africa, that they might become the dumping site for harmful wastes whose removal in the developed world had become difficult and expensive¹⁶. In short this convention is of the outmost importance to protect the environment from pollution by hazardous waste hence a more sustainable environment especially for Africa. It is true that pollution knows not of any environmental boundaries, but at the very least countries should maintain a healthy and conducive environment for the current and future generation. The mandate of this convention is also evident in trade law, especially in the importation and exportation of automobiles in and out of the African continent.

¹³ United Nations Environment Programme, Environment and Trade;A Handbook 2ND Edition,2005.

¹⁴ United Nations Environment Programme, Environment and Trade;A Handbook 2ND Edition,2005. Page 2

¹⁵ United Nations Environment Programme, Environment and Trade;A Handbook 2ND Edition,2005.page 20

¹⁶ United Nations Environment Programme, Environment and Trade;A Handbook 2ND Edition,2005

Furthermore, UNEP says,

The Basel Convention outlines that parties may only export a hazardous waste to another party that has not banned its import and that consents to the import in writing. Parties may not generally import from or export to a non-party. They are also obliged to prevent the import or export of hazardous wastes if they have reason to believe that the wastes will not be treated in an environmentally-sound manner at their destination.¹⁷

However, some developing countries administer such hazardous wastes at the expense of the environment in order to fulfil the economic and social aspects. This includes the need of some of the hazardous wastes such as automobiles by the people for transportation, water treatment chemicals such as biohazards and fertilizers which are needed for crop growth and later end up affecting the environment.

The trade law is important to Lesotho as it allows the importation of the materials of any nature from other countries. It also influences free trade, therefore also helps in the domestication of environmental legislation that will render a protected nation from such activities of trading with others nations. The domestication of such legislation will be of utmost importance in the protection and conservation of the environment. Therefore a review of Environment Act 2008 will be of importance to signify the influence that the scope of trade has had on the domestication of environmental legislation.

2.3. Review of Environment Act 2008

The main objective this is Act to make provision for the protection and management of the environment and conservation and sustainable utilization of natural resources of Lesotho and for connected matters.

2.3.1. Functions of the Director of the Department of Environment in terms of section 29(1) on the environmental quality standards

The Director in consultation with the relevant Ministry shall have the power to establish the criteria for the measurement of air quality and the criteria and guidelines for air pollution control for both mobile and stationery sources. He or she shall take measures to reduce existing sources of air pollution and make guidelines to minimize emissions of greenhouse gases, to identify suitable technologies to minimise air pollution. He or she has the power to consider the best practicable technology available in controlling pollutants during the emission process.

¹⁷ United Nations Environment Programme, Environment and Trade; A Handbook 2ND Edition,2005. Page 20

The Director has the power to order or carry out investigations of actual or suspended air pollution including pollution produced by aircrafts, motor vehicles, factories and any other thing which may be necessary for the monitoring and controlling of air pollution. This section talks about the minimization of the emissions, but we do not have the standard set for such emissions that one would be said to be in breach if ever in contravention of this section. It also talks about the technology used to minimize the air pollution; there is this law in paper but no initiatives taken for its implementation.

The section further talks about carrying out investigations of actual or suspected air pollution which can be by aircraft or motor vehicles on the basis of one of its general principle of healthy and clean environment, however this on paper is an interesting initiative but when it comes down to what needs to be done on everyday basis to keep the environment healthy and clean, it can be said that its rather an “on paper” initiative which cannot be implemented. Reasons being that Lesotho lacks such technology to help this statement a practical one in nature and also that it requires a financial aid to keep up with such objectives.

Section 29(2) and (3) further detail that no person shall emit a substance that causes air pollution above the emission standards set by the line ministry, and if such has been breached a person is liable to being fined a fee not less than M5 000 or imprisoned for a term not less than two years or both, however this is a rather low amount that one can be fined at the expense of the environment. It is apparent that the importance of the environment is highly neglected by those who sets penalties because causing a breach to those standards leaves a lot of species endangered and thus lead to a decline in biodiversity. Not only is a below standard fine, it seemingly does not understand the Principle of intergenerational equity and sustainable development. And those two principles care so much current and future generations not at the expense of the environment.

Section 45¹⁸ states that;

(1) A person who-

- (a) Owns or operates a motor vehicle, train, boat or aircraft or any similar conveyance shall not operate it contrary to the established emission standards; or

¹⁸ Environment Act 2008.

- (b) Imports machinery, equipment or any similar device which is likely to cause emissions into the ambient air shall not import it contrary to the prescribed emissions standards for the machinery, equipment, or any similar device.
- (2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

This section outlines that a person who owns or operates a motor vehicle for instance, shall not operate it contrary to the established emission standards or imports machinery which is likely to cause emissions into the ambient air shall not import it contrary to the prescribed emissions standards for machinery, however the people do not know about such emission standards without any doubt they definitely import such materials as motor vehicles to meet their own needs, for instance importation of motor vehicles has emerged to be one of the serious activities of the decade for Lesotho, since no assessment or monitoring of the likely pollution do such have on the environment hence putting environmental quality at jeopardy. And such section on the act clearly shows a need for revision of the Act or at least initiation of legislation that will thoroughly which such matters.

Lastly, the issue of fines and imprisonment is one of the most important ways of making sure that environment quality is enhanced and hence environmental protection however, the legally binding to portion of the Act clearly shows that there is not care for the environment. However, this has been clearly discussed on the previous section and it still stands even to this section.

Having to understand the scope of Environment Act 2008 a need for carbon emission act (Automobile Nitrogen Oxides and Particulate Matter law) would be evident. Because the scope of air pollution from automobiles specifically is a wide so requires an in depth study of such matters. These matters are of the greatest importance as they determine the quality of Environment which influences the state of human well-being and other biotic species on Earth and further looks into the future to at least allow the then generation to enjoy environmental benefits such as exploration of natural resources for instance air as the current generation also enjoy the benefits of the environment or the very least leave the environment unchanged.

2.4. Is Lesotho ready for the Carbon emission legal framework?

2.4.1. Climate and some of its environmental legislation

The Mountainous Kingdom of Lesotho is landlocked with an area of 30,355 square kilometres and a population of about 2.2 million.¹⁹ Climate has already shown a change in increasing average annual temperature²⁰. The temperatures have increased by about 0.70c over the period of 1970-2000²¹. There is also an expectation of an increase in annual temperature by 1.78 – 2.2 c by 2060²². Rainfall is also expected to decrease significantly in the country and the most notable decrease will be evident in the lowlands.²³

Due to this increasing temperatures, National Adaptation Plan of Action (NAPA) of Lesotho has observed that perennial springs have ran dry and dams are almost dry through the year²⁴. And a number of factors render Lesotho vulnerable to the adverse effects of climate change, the first set of factors relates to natural conditions and worsening environmental degradation in the face of rapid population growth²⁵.

Having all these factors that makes the country of Lesotho almost certain to experience climate related adverse impacts, and some of these factors are natural in nature almost certain to be out of control from human control or containment. Having a flawed environmental legislation or having no legislation which focuses on specific human educed activities sums up to the problems in hand. Therefore requirement of such laws is of utmost importance or otherwise climate change will definitely signify itself at the expense of Human healthy as environmental quality deemed to a decline.

Domestication of laws that help save the environment as aided by trade law needs to be beyond just being laws on paper. A look into some of the laws (Acts) or policies that Lesotho has already domesticated to improve environmental protection. Firstly, National Climate Policy 2017-2027 will be looked at to assess the readiness to adapt Automobile Nitrogen Oxides and Particulate Matter Law or Carbon Emission Act in Lesotho.

¹⁹ Bureau of Statistics Lesotho 2018.<http://www.bos.gov.ls/> (accessed 28 November 2019)

²⁰ Irish Aid annual report 2015.

²¹ Ministry of Energy, Meteorology and Water Affairs 2013. <http://unfccc.int/resource/docs/natc/isonc2.pdf> [accessed 28 November 2019]

²² Ministry of Energy, Meteorology and Water Affairs 2013. <http://unfccc.int/resource/docs/natc/isonc2.pdf> [accessed 28 November 2019]

²³ Ministry of Energy, Meteorology and Water Affairs 2013. <http://unfccc.int/resource/docs/natc/isonc2.pdf> [accessed 28 November 2019]

²⁴ Irish Aid annual report 2015.

²⁵ Ministry of Natural Resources, Lesotho (2007): National Adaptation Programme of Action (NAPA); <http://unfccc.int/resource/docs/napa/isoo1.pdf> [accessed 28 November 2019]

2.4.1.1. National Climate Change Policy 2017-2027

Policy statement 1: Strengthen climate early warning systems and improve climate information including research and systematic observations

The main purpose of this policy statement is to address for a strengthened early warning system to protect communities. Challenges include lack of equipment, skills and funding.²⁶ In trying to achieve its aims and objectives there are impractical activities that would lead it nowhere as this require inter-sectoral coordination and this is a problem in Lesotho. Therefore a need to involve different sectors to try and save the environment is also of utmost. For instance objectives in financing department, trade and environment and more should be more towards a single goal. Therefore, in that way then it would be easier to adapt Automobile Nitrogen Oxides and Particulate matter Law or Carbon Emission Act.

2.4.2. Export trading of cars from Japan to Lesotho

As a developing country there are a lot of changes made to increase our economy. Use of products that are harmful to the environment for the betterment of our economy but failure to implement such laws relating to the harms caused by the products and processes used to achieve them is evident. Lesotho is now dependent among others on the sale of imported Japanese used cars. According to Prime Minister Junichiro Koizumi;

Japanese used vehicle exporting is a grey market in international trade involving the export of used cars and other vehicles from Japan to other markets around the world since the 1980s. Despite the high cost of transport, the sale of used cars and other vehicles to other countries is still profitable due to the relatively low cost and good condition of the vehicles being purchased. Contributing factors to the feasibility of such export include Japan's strict motor-vehicle inspections and high depreciation which make such vehicles worth very little in Japan after a period of six years, and strict environmental protection regulations that make vehicle disposal very expensive in Japan. Japan has very stringent vehicle emission test standards. In 2006 Japan exported about 1.4 million used vehicles to a number of countries, Lesotho included.²⁷

These cars which have already been used for a period not less than six years hence such automobiles are not in the best quality and in time will definitely have a negative impact on the environment to almost all biotic factors. And thereafter since they have reached the certain maximum required carbon emission or Nitrogen oxides and/or suspended particulate

²⁶LMS 2017. Lesotho's National Climate Change Policy. Ministry of Energy and Meteorology, Lesotho. Page 14

²⁷ Opening Statement by Prime Minister Junichiro Koizumi at the Press Conference on the Passage of the FY2003 Budget, 28-03-2003.

matter such motor vehicles are removed from the road²⁸. Furthermore automobiles can be removed from the road if one cannot afford to retrofit their vehicles with approved nitrogen oxides and Particulate matter control devices²⁹. These cars and are then sold to Lesotho or any country that does not say much about air pollution. That is Lesotho is treated as a dumping post for unwanted cars in Japan because as a developing country free trade is highly feasible and imposed less to none obligations or restrictions on goods imported in the country.

2.4.3 Japan's Environmental (Air) Pollution Law

In 1968, the Japanese government enacted the air pollution control law to regulate emissions from cars as well as from factories. This law resulted in reductions in smoke and soot, including nitrogen oxides and suspended particulate matter emitted from gasoline-fuelled vehicles.³⁰

At the FY2003 Budget Conference the then Japanese Prime Minister, Junichiro Koizumi said that;

In 2005 Japan will establish the world's most stringent emissions gas standards for diesel vehicles and measures are already underway". This shows that Japan had taken much care in environmental protection, to try and protect the environment as much as possible. He continues to say that he will put into priority the environmental protection and economic revitalization³¹.

Furthermore, in 1992, the Ministry of Environment adopted a Law concerning special measures to reduce the Total amount of nitrogen oxides emitted from motor vehicles in specified areas³². This Law was called the motor vehicle Nitrogen oxides Law. Under such Law, a number of procedures were taken to control nitrogen oxides from in-use automobiles, this included enforcement of emission standards for specific categories of vehicles. The rule

²⁸ Tokyo Metropolitan Government 's Efforts to Control Diesel Vehicle Emissions, April 12,2011.

http://www.metro.tokyo.jp/en/attachement/diesel_vehicle.pdf or https://www.japanfs.org/sp/en/news/archieve/news_id030871html [accessed 28 November 2019]

²⁹ Tokyo Metropolitan Government 's Efforts to Control Diesel Vehicle Emissions, April 12,2011.

http://www.metro.tokyo.jp/en/attachement/diesel_vehicle.pdf or https://www.japanfs.org/sp/en/news/archieve/news_id030871html [accessed 28 November 2019]

³⁰ Tokyo Metropolitan Government 's Efforts to Control Diesel Vehicle Emissions, April 12,2011.

http://www.metro.tokyo.jp/en/attachement/diesel_vehicle.pdf or https://www.japanfs.org/sp/en/news/archieve/news_id030871html [accessed 28 November 2019]

³¹ Opening Statement by Prime Minister Junichiro Koizumi at the Press conference on the Passage of the FY2003 Budget,28.03.2003.

³² Japan : Automotive Nitrogen Oxides and Particulate Matter Law.

<https://www.dieselnet.com/standards/jp/index.php> [accessed 28 November 2019]

was amended in 2001 to tighten the prevailing nitrogen oxides requirements and to enhance particulate matter control provisions³³. The corrected law was named the Automobile nitrogen oxides and Particulate matter Law³⁴.

In-use automobiles in the affected classes had to meet 1997/98 emission standards for the respective new automobile types (in the case of heavy-duty engines Nitrogen Oxides = 4.5g/KWh, particulate matter = 0.25g/KWh).³⁵ Automobile Owners had two methods to comply: The first being to substitute old automobiles with fresher, cleaner models and the second being to retrofit old automobiles with permitted nitrogen oxides and particulate matter control devices.³⁶ The Nitrogen oxides and Particulate Matter was enforced in connection with Japanese automobile inspection program, where non-complying vehicles cannot undergo the inspection in the designated areas.³⁷

2.5. Conclusion

It is important to note that in an effort to efficiently and/or sufficiently protect our environment from air pollution, it is through adaptation of laws like the Japanese Automobile nitrogen oxides and particulate matter law or air pollution Act which rather put more focus in depth on air pollution. It narrows its scope of focus to a specific component of the environment, that is, it excludes focus on land and water. Therefore, for such a law it is understood that a thorough study will be feasible. It helps experts in environmental protection to fully understand exactly what they are dealing with, reducing all the synergic activities that could result from all the processes in the environment. It will help with the understanding of all the aspects of gaseous component of the environment that will need to be of focus.

This will be a rather important Act which would require inter-sectoral coordination of all connected matters. For instance, the Ministers of Environment, Finance, Water affairs, Energy and Meteorology and Justice should also understand that matters of such a nature requires working towards a common goal, even though activities done by each minister or department will differ. A more common activity of such a nature is the signature of different

³³ Japan : Automotive Nitrogen Oxides and Particulate Matter Law <https://www.dieselnet.com/standards/jp/index.php> [accessed 28 November 2019]

³⁴ Japan : Automotive Nitrogen Oxides and Particulate Matter Law <https://www.dieselnet.com/standards/jp/index.php> [accessed 28 November 2019]

³⁵ Japan : Automotive Nitrogen Oxides and Particulate Matter Law <https://www.dieselnet.com/standards/jp/index.php> [accessed 28 November 2019]

³⁶ Japan : Automotive Nitrogen Oxides and Particulate Matter Law <https://www.dieselnet.com/standards/jp/index.php> [accessed 28 November 2019]

³⁷ Japan : Automotive Nitrogen Oxides and Particulate Matter Law <https://www.dieselnet.com/standards/jp/index.php> [accessed 28 November 2019]

Countries to Kyoto Protocol or Paris agreement, that both developing countries and developed countries sees that there is a problem of climate change but the responsibilities will differ.

CHAPTER THREE

COMPARATIVE STUDY

3.1. Introduction

This chapter will discuss the international conventions or treaties which Lesotho has ratified which look into human induced activities either part of or alien to the environment that look into air pollution and hence its control. It will deal with the comparative studies of countries that have ratified to such conventions and how they have put them in place within their domestic laws. And continue to deal with whether Lesotho has taken steps towards the fulfilment of aims and objectives of these conventions in effort for better trade and enhancement of environmental protection in the Country.

3.2. International conventions

Reducing the Carbon and non-carbon emissions of the global fleet is a priority for both climate and air quality issues. According to United Nations Environment, the numbers of the on-road fleet is to double by 2050, with most future car purchases taking place in developing Markets³⁸. Yet while ownership is a near-universal aspiration and second-hand vehicles provide an opportunity to increase personal mobility at a lower cost, not all second-hand vehicles have the same impact on the environment³⁹. Older vehicles that are either newly imported or existing stock can emit a disproportionate amount of pollutants. *Vanherle*⁴⁰ says that a European Commission research recommended that the majority of profits in terms of fuel economy add to second possessors of ‘young used’ 4-9 year old cars.

The first international convention of interest in regard to striking balance between trade and environmental protection is *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*. This convention was adopted on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland and it was enforced on 5 May 1992. It is one of the most widespread global environmental agreements known to man on hazardous wastes and other wastes⁴¹.

³⁸ United Nations Environment ;United Nations Economic for Europe,page 1.

³⁹ United Nations Environment ;United Nations Economic for Europe

⁴⁰ Vanherle,K,&Vergeer,R., Data Gathering and Analysis to Improve the Understanding of 2nd Hand Car and LDV Markets and Implications for the cost of Effectiveness and Social Equity of LDV CO2 regulations, TML/DG Climate Action,2016.

⁴¹ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1992, page 5 (Introduction)

This convention aims to protect human health and the environment against the adverse effects resulting from the current generation, transboundary movements and management of hazardous and other wastes. Its scope of application covers a wide variety of wastes defined as “hazardous wastes” based on their origin and/or composition and their traits, as well as two types of wastes defined as “other wastes”⁴². It is of outmost importance to note that hazardous wastes are any waste that causes harm to human health and the environment can be in different forms, that is, liquids, solids or contaminated gases⁴³. Lastly, the Convention regulates the transboundary movements of hazardous wastes and other wastes and obliges its parties to ensure that such wastes are managed and disposed of in an environmentally sound manner⁴⁴.

The second Convention of regard is *the United Nations Framework Convention on Climate Change (UNFCCC)*. This convention was adopted at Rio Conference in 1992. Article 2 of this Convention is the Objective which states that:

The key objective is to achieve stabilization of greenhouse gas concentration in the atmosphere at a level that prevents hazardous anthropogenic interference with the climate system. Such a level is to be achieved within a time frame enough to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to ensure sustainable economic developments⁴⁵.

This Convention is on the basis of the following principles; principle of intergenerational equity, intra-generational equity, and common but differentiated responsibilities, precautionary principle and principle of sustainable development⁴⁶.

The third is the *Kyoto Protocol* which is an international agreement linked to the United Nations Framework Convention on Climate Change⁴⁷. The major feature of the Kyoto Protocol is that it sets binding targets for 37 industrialized countries and the European Community for reducing greenhouse gas (GHG) emissions⁴⁸. This amounts to an average of five per cent against 1990 levels over five-year period 2008-2012.⁴⁹ The protocol was

⁴² Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1992, page 5(Introduction)

⁴³ Resources Conservation and Recovery Act, US EPA

⁴⁴ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1992

⁴⁵ United Nations Framework Convention on Climate Change 1992, Article 2.

⁴⁶ Article 3 of the United Nations Framework Convention on Climate Change 1992.

⁴⁷ Kyoto Protocol 2005. (Background)

⁴⁸ Kyoto Protocol 1997. (Background)

⁴⁹ Kyoto Protocol 1997. (Background)

adopted on the 11th December 1997 in Kyoto Japan; it then came into Force on 16th February 2005. Under the Protocol, parties must meet their targets primarily through national measures⁵⁰. But, the Protocol offers other means to meet the targets by way of three mechanisms⁵¹.

The Kyoto Mechanisms are International emissions trading under article 17, clean development mechanism under article 12 and joint implementation under article 6⁵². These mechanisms help motivate green investment and help parties meet their emission targets in a cost-effective way. Countries' actual emissions have to be kept off the trades carried out.⁵³

The last is *Paris Agreement* which is also linked to the United Nations Framework Convention on Climate Change, the Agreement builds upon the Convention, therefore parties are brought into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so.

The Agreement 's main aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius⁵⁴. The Agreement further aims to increase the ability of countries to deal with the impacts of climate change and at making finance flows consistent with a low greenhouse gas emissions and climate-resilient pathway.⁵⁵

The Agreement continue to provide for an enhanced transparency framework for action and support, and it requires that all parties to put forward their best efforts through “nationally determined contributions” and to strengthen these efforts in the years ahead including requirements that all parties report regularly on their emissions and on their implementation efforts⁵⁶. The Agreement opened for signature on the 22nd April 2016 at United Nations headquarters in New York, it entered into force on the 4th November 2016.⁵⁷

⁵⁰ Kyoto Protocol 1997.

⁵¹ Kyoto Protocol Mechanisms; International Emissions Trading Clean Development Mechanism Joint Implementation

⁵² Kyoto Protocol 1997

⁵³ Kyoto Protocol 1997

⁵⁴ Article 2 of The Paris Agreement 2016

⁵⁵ Article 2 of The Paris Agreement 2016

⁵⁶ Article 13 of the Paris Agreement 2016.

⁵⁷ Paris Agreement 2016.

A number of parties to some of the Conventions enlisted above have domesticated laws or ways that signify aims and objectives of those Conventions. A comparative study between Lesotho and those countries will show how Lesotho has not done much in air pollution control regarding trade. What is going to be established is how far other countries are in air pollution control when it comes to importation of second hand motor vehicles. These countries are Kenya, Mauritius and Costa Rica.

3.3. Kenya

Kenya is categorized fifth on Africa in automobile market, after South Africa, Algeria, Egypt and Morocco⁵⁸. In his journal Lithaa J. N says,⁵⁹

In today's global environment, change rather than stability is the order of the day. Increased trade liberalization reduces country-based trade barriers, thus increasing the opportunity for cross-border entry. If new entrants have adopted new technologies and/or developed more efficient business operations systems, the competitive intensity will increase pressure of existing industry to internationalize by weakening their competitive position. Virtually, most industries across the globe are currently experiencing increased pressures for globalization. Environmental forces of change are the forces which are increasing pressure for globalization and have led to trade liberalization and opening of international market. These forces have also increased the rate at which companies need to alter their strategies in order to survive in the market.

According to Kenya's clearance process; vehicle importing, Clearance Registration of Cars should be a carefully carried out procedure, with assistance and in consultation with experts and customs clearing agents⁶⁰. Motor vehicles of over eight (8) years old are not allowed into Kenya as per the KS 1515:2000 quality standard by the Kenya Bureau of Standards⁶¹. And because of environmental reasons, cars aged more than eight years are not allowed into the country except with distinctive permission granted through the Kenya Bureau of Standards the Kenya Revenue Authority⁶². Kenya Customs enforces this requirement.

⁵⁸ Influence of Regulation and Practice on Growth of Second Hand Motor Vehicle Dealers in Dagoretti District, Nairobi County, Kenya.page 6, Vol 2, Issue 1, 2014

⁵⁹ Influence of Regulation and Practice on Growth of Second Hand Motor Vehicle Dealers in Dagoretti District, Nairobi County, Kenya.page 6, Vol 2, Issue 1, 2014.

⁶⁰ Influence of Regulation and Practice on Growth of Second Hand Motor Vehicle Dealers in Dagoretti District, Nairobi County, Kenya.page 6, Vol 2, Issue 1, 2014

⁶¹ Influence of Regulation and Practice on Growth of Second Hand Motor Vehicle Dealers in Dagoretti District, Nairobi County, Kenya.page 6, Vol 2, Issue 1, 2014

⁶² Influence of Regulation and Practice on Growth of Second Hand Motor Vehicle Dealers in Dagoretti District, Nairobi County, Kenya.page 6, Vol 2, Issue 1, 2014

Furthermore, not only does Kenya focus more on reducing the dominance of second-hand cars but it plans to restrict the importation of such vehicles in order to boost the domestic automobile sector⁶³. It is understood that the East African nation undermined what was a thriving vehicle assembly industry in the 1990s with legislation favouring import of second-hand cars⁶⁴. The Kenyan government intends to prohibit the importation of cheap used cars to vehicles that are three years old or brand new by 2021. It is known that imported used vehicles takes about 85% of Kenyan car purchases, giving about 86,626 vehicles in 2017 and consuming up precious Foreign exchange estimated at about 60-Billion shillings⁶⁵.

The East African nation aims to gradually but systematically reduce and replace over 80% market share of second-hand vehicles and used parts with new products assembled in Kenya.⁶⁶ Furthermore, it continues to be more apparent that imports of second-hand cars from wealthy country markets is, in part, a function of stringent environmental measures imposed in exporting countries to boost their domestic new car sales and encourage emission-efficient vehicles⁶⁷. The outcome is that these older used vehicles have little value inside these countries and exported at low cost. And Kenya is a signatory to various agreements, protocols and conventions per se aimed at preserving the environment. The policy promotes manufacture of environmentally sound vehicles and products, and ensures adherence to internationally set standards of emission⁶⁸.

3.4. Mauritius

Despite African countries having the lowest motorization rates worldwide, ownership of cars is increasing, mostly because of the importation of second-hand vehicles⁶⁹. Out of 45 countries on the continent, 27 countries do not place any restrictions on the import of used vehicles. In the duration of ten years (2006-2016), the vehicle fleet in Mauritius escalated by 59%, from 319,440 to 507,676. During this time, passenger vehicles increased by 120%, buses 19% and two-wheelers by 44%.⁷⁰ Of the newly registered vehicles, 51% were imported as new mainly from European Union and 49% as used cars mainly imported from Japan. In

⁶³Republic of Kenya Draft National Automotive, February 2019.

⁶⁴ Republic of Kenya Draft National Automotive, February 2019.

⁶⁵ Republic of Kenya Draft National Automotive, February 2019.

⁶⁶ Republic of Kenya Draft National Automotive, February 2019.

⁶⁷ Republic of Kenya Draft National Automotive, February 2019.

⁶⁸ Republic of Kenya Draft National Automotive, February 2019.

⁶⁹ United Nations Environment, Addressing the Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019.

⁷⁰ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 17-20

2012, the country mandated 50 parts per billion (ppm) of sulphur fuels with an intent to move to ultra-low sulphur fuels soon⁷¹.

Furthermore, the country has experienced a significant improvement in its vehicle fuel economy because of government policies to importation of cleaner and more fuel-efficient vehicles. In 2005, the country's average vehicle fuel economy level was 7.0 litres/100 kilometres. This improved to 5.9 litres/100 kilometres in 2015. There are a number of legislative measures enlisted to promote the importation of cleaner vehicles.⁷²

3.4.1. Clean vehicle fiscal regime (registration duty and road tax) in Mauritius

The country is among the few African countries that have used fiscal measures to influence the quality of the vehicles that are imported in the country. Various Taxation regimes the Country used to promote cleaner vehicles and hence a cleaner environment.⁷³ Vehicle owners are required to pay a one-off registration duty on purchase of their vehicles and a yearly road tax based on the types of vehicles and the engine displacement (cc). No distinction is made for persons driving less, compared to those covering high mileages annually. Motorcycles owners are presently exempted from the yearly road tax. The road tax is currently paid to the National Transport Authority. However, owners of electric and hybrid cars benefit from fiscal incentives, namely registration duty and road tax⁷⁴.

3.4.2. Excise tax

Mauritius Excise Act provides for a taxation system for vehicles to promote the use of more energy efficient vehicles, based on their capacity. Since 2011, the excise tax has been together used together with the fee bate scheme and remains even after the suspension of the fee bate scheme. As from July 2016, excise duty on electric cars up to 180 kw has been

⁷¹ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 17-20

⁷² United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 17-20

⁷³ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 17-20

⁷⁴ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 17-20

waived. There is a further reduction by 30% points of the charged on the hybrid cars depending on their engine capacity⁷⁵.

The Mauritian government bring about the consolidated interventions. In October 2018, the fleet of fuel-efficient vehicles comprised of 9,383 hybrid vehicles and 76 electric vehicles. The combustion of policies adopted, including favourable rates in registration duty and road tax on hybrid and electric vehicles has acted as a catalyst in boosting the demand and sales of fuel-efficient vehicles in particular, hybrid vehicles. This is an indication that the existing policy intervention is incentivizing the adoption of cleaner vehicles.⁷⁶

Furthermore, the country has also taken additional measures to make sure that vehicles imported to the country are clean. The country is now working to reinforce its capacity to monitor roadside vehicular emissions and ambient air quality as well as ensuring that imported vehicles meet at least Euro 4/IV emission standards.⁷⁷

3.5. Costa Rica

The vehicle market in Costa Rica is values at an annual average of USD 314 Million. Most vehicle imports originate from the United States of America, Thailand, Japan and China. Ads from 2005 the vehicle imports started to shift towards new instead of used vehicles due to fiscal adjustments. In 2015, new light duty vehicle imports reached more than 70%, according to data facilitated by the customs agency. Through importation of used vehicles has declined, it isn't negligible. On average, at the time of registration, most used vehicle imports have an average age of more than 11 years from the year of manufacture. On the other hand, the new vehicles imported are not necessarily equipped with the best technologies available due to lack of updated regulations⁷⁸.

Unluckily, the available fuels in the Costa Rica can run the latest internal combustion engine vehicle technology. The country currently has good fuel quality that would allow the introduction of more efficient technologies that could increase the fuel economy and lower the emission of pollutants. It is recorded to have imported fuels with an average of around 23 parts per billion (ppm) sulphur concentration for gasoline and 12 ppm sulphur for diesel

⁷⁵ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 17-20

⁷⁶ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, Pages 17-20

⁷⁷ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, p pages 17-20

⁷⁸ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019 ,pages 21-23

(ARESEP, 2018). Furthermore, there is no age restriction to the vehicles that are imported into the country and this could be the explanation for the national vehicle fleet age restriction in the country. In the 2016 the 39724 MOPT-MINAE-S regulations were adopted that establishes vehicle emission standards and also states that vehicles that do not present a certificate of conformity cannot be over 12 years⁷⁹.

3.5.1. Clean vehicle fiscal regime in Costa Rica

The Country imposes several taxes when a vehicle is imported into the country including import duty, consumption tax, sales tax, luxury tax. There are also other vehicle management measures the government is using to attract cleaner vehicles.⁸⁰It uses a selective import duty taxation scheme that varies with the age of vehicle imported.⁸¹ The Country's government levies a 35% to 53% consumption tax on vehicles on vehicles depending on the model, engine size, and car type.⁸²

3.5.1.1. Incentives for used electric vehicles

In 2018 the Law of incentives and promotion of electric transport was adopted which provides economic incentives for zero emissions vehicles. The regulation extends the benefit to used electric vehicles of no more than 5 years old will only apply to vehicles with a cost insurance freight (CIF) value at customs of USD 30 000 and under. In addition, the used electric vehicles will not be subject to vehicle restriction and may use blue parking spaces within public parking lots, as well as supermarkets, shopping centres and other private parking. The benefit covers automobiles, motorcycles, cargo transport vehicles, minibuses and buses. They will be equipped with a badge issued by the ministry of environment and energy. However, the limit will not apply to public transport vehicles or freight transportation.⁸³

⁷⁹ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 21-23

⁸⁰ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 21-23

⁸¹ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 21-23

⁸² United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 21-23

⁸³United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019 , pages 21-23

3.5.2. Vehicle Emission Standards

In 2016, the country approved a regulation that requires that every light duty vehicle imported or produced in the country complies with Euro 3 standard in 2016, Euro 4 standard in 2017 and Euro 6 standard by 2021. Used vehicles imports must comply with an Environment Protection Agency smog test. Catalytic converters are required to be on the vehicle and operational. Furthermore to this, there is an annual requirement for vehicle inspection⁸⁴.

3.5.3. Financing

Financing is also used to incentivize the purchase of newer vehicles. Loans issued for the purchase of new vehicles are granted longer repayment periods like 7 years as compared to shorter repayment periods for used vehicles, which are usually granted 3 years. This could be part of the reason that there are a higher number of new vehicle imports.⁸⁵

3.6 Conclusion

Lesotho ratified the Basel Convention on the 31st May 2000, and entered into force on the 29th August 2000. The main question according to the aims and objectives of this convention is whether Lesotho has obliges to such aims and objectives? If so, what activities indicates that trade does not negatively pressurize the environment at the expense of Socio-Economic fulfilment?

Furthermore, since Lesotho signed to United Nations Framework Convention on Climate Change on the 11th June 1992 and ratified to the Convention on the 7th February 1995, has it at its best tried to oblige to the aims and objectives of the Convention? If it has, what are the well-known activities indicative of it complying with the rules and regulations of the Convention? Has its trade law, if any, favoured the gaseous component of the Environment, for example is Lesotho monitoring and/or controlling air pollution at the very least?

Kyoto Protocol and Paris Agreement are rather stringent links or parts of the United Nations Framework Convention on Climate Change (UNFCCC) to which Lesotho is a party to. And as mentioned above aims and objectives of the two are linked to those of UNFCCC, therefore if the Country is obliged to that of UNFCCC then it is likely that it is obliged to that of Paris Agreement and Kyoto Protocol even though the rules and regulations of the Protocol and

⁸⁴ www.imprentanacional.go.cr/pub/2016/05/30, accessed 1st January 2020

⁸⁵ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 21-23

Agreement are more strongly binding to the parties. If Lesotho is playing its part to the rules and regulations of the above mentioned Conventions it would show its readiness or if it does not then, that shows how not ready it is towards adopting this laws.

CHAPTER 4

Trade and Environment Linkage (Conclusions and Recommendations)

4.1 Introduction

This chapter will provide summaries of the preceding chapters, that is, chapter 1, chapter 2 and chapter 3. It will also look into findings and conclusions that were obtained based on the dissertation of how different countries dealt with balancing of trade and environment in second hand motor vehicles importation. It will also look into the limitations that the dissertation had and suggestions for further research. It will further look into the recommendations based on the totality of the dissertation. Lastly, the chapter will make the concluding remarks in light of the study.

4.2. Chapter Summary

4.2.1. Chapter 1

The chapter provided for definitions of key words of the topic, that includes trade and environmental law. It also provided historical background on trade and environment that is where the issue between the two began hence the need to reconcile them. It provided literature review on the topic, what different authors and studies have been made about the balancing of trade and environment. Also how the research was going to be carried and the statement of the problem was outlined in this chapter.

4.2.2. Chapter 2

According to the United Nations Environment Programme (UNEP) trade law defined how countries should design their domestic laws and policies in areas such as intellectual property rights, investment policy and environmental protection. And it is through conventions such as Basel Convention on the control of transboundary movement of hazardous wastes and their disposal which enhance domestication of such Law on basis of environmental consideration.

The Basel Convention is motivated from the distress of developing African countries, that it might be converted into a dumping site for harmful wastes whose removal in the developed world had become difficult and expensive. The convention ensures the protection of developing African countries from disposal of harmful wastes from first world countries. UNEP signifies that according to Basel Convention parties may only transfer hazardous waste to another party that still allow the importation of such and that consents to the import in writing.

Furthermore, trade law is important to Lesotho as it allows the importation of supplies of any nature from other parties or countries. It allows free trade hence assisting in the domestication of environmental legislation that will render a protected nation from such activities of trading with other nations.

In regard to trade influencing environmental protection, the Environmental Act 2008 was reviewed to outline any efficiency it has to sustainable development and together with its shortcomings on environmental protection. The chapter reviewed the readiness of Lesotho to adapt Acts such as the Emission Act or Pollution Act that will render a highly sustainable development in regard to air pollution control. Furthermore, the chapter, in effort to relate environment and trade, outlined specific conventions which included the Basel convention on the control of transboundary movement of hazardous wastes and their disposal.

The chapter also discussed climate legislation and some of Lesotho's environmental legislation for accessibility. And according to National Adaptation Plan of Action (NAPA) of Lesotho, due to increasing temperatures it is observed that perennial springs have ran dry and dams are almost dry through the year. This marks Lesotho vulnerable to environmental damage therefore having a flawed environmental legislation or having no legislation which focuses on specific human induced activities such as automobile industry effects and clothing industries sums up to problems that the country is already experiencing. Therefore, such law is highly required by Lesotho.

The chapter also looked into export trading of motor vehicles from Japan to Lesotho. As a developing country, Lesotho, use products that are harmful to the environment for the betterment of the economy and social aspects of the environment but fail to implement laws that regulate activities relating to the products. The country also considers the importation of used motor vehicles from Japan. And according to Japanese Environmental (air) pollution Law, Japan do not use these motor vehicles for a period higher than six years, therefore Japan export them to other countries at that condition. Japan environmental Pollution Law was born in order to regulate emissions from cars as well as factories in japan to help reduce environmental deterioration.

4.2.3. Chapter 3

The Chapter discussed international conventions or treaties which Lesotho is a party to, the conventions included those that looked into human induced activities that are part of the

environment, hence control and monitor of air pollution. It dealt with comparative studies of other countries in regard to trade and environment.

First international convention of importance in striking balance between trade and environmental protection is Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Its adaptation being on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland and enforced on 5 March 1992. The convention is aimed at protecting human health and the environment against adverse effects resulting from the current generation, transboundary movements and management of hazardous and other wastes.

The second convention is the United Nations Framework Convention on Climate Change (UNFCCC). It was adopted at Rio Conference in 1992. And the key objective of this convention is to achieve stabilization of greenhouse gas concentration in the atmosphere at a level that prevents hazardous anthropogenic interference with the climate system. This convention employs specific fundamental environmental principles; principle of intergenerational equity, intra-generational equity, common but differentiated responsibilities, precautionary and principle of sustainable development.

The third being Kyoto Protocol, it was adopted on the 11th December 1997. in Kyoto, Japan. Unlike UNFCCC it sets binding targets for industrialized countries and European community for reducing greenhouse gas emissions. The last is Paris agreement and it is also linked to UNFCCC, therefore parties are brought into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so.

Furthermore, countries that have domesticated laws or ways that proves aims and objectives of the above conventions are looked at. These countries include Kenya, Mauritius and Costa Rica. These countries were selected as a result of their responses to combat environmental degradation of trade related activities such as the importation of used motor vehicles.

4.3. Findings and Conclusions

During the research data was captured that was indicative of seeking balance between trade imperatives and environmental protection. Therefore, this section provides data that was found during the research and what conclusions can be drawn from it. Significant data was

captured from Japan as the main second hand motor vehicles exporting country to countries like Lesotho, Kenya, Mauritius and Costa Rica.

4.3.1. Findings

- Due to strict Japanese motor vehicle inspections and high depreciation which make motor vehicles worth very little in Japan after a period of six years, and strict environmental protection regulations that make vehicle disposal very expensive in Japan. The country has very stringent vehicle test standards. And in 2006 the country exported about 1.4 million used vehicles to a number of countries including Lesotho.⁸⁶ In 1992, Japanese ministry of Environment adopted a Law concerning special measures to reduce the total amount of nitrogen oxides emitted from motor vehicles in specified areas, the motor vehicle Nitrogen Oxides Law.⁸⁷
- According to the Automobile nitrogen oxides and particulate matter Law, there are two methods that automobiles owners comply to. The first one is to replace old automobiles with fresher, cleaner models and the second is to retrofit old automobiles with permitted nitrogen oxides and particulate matter control devices.
- The Basel Convention tries to protect African continent from hazardous and other wastes. It protects human health and the environment against these wastes. The UNFCCC together with Kyoto Protocol and Paris Agreement employs fundamental principle of international environmental law in order to protect the environment from adverse effects of greenhouse gases due to auto industries and other industries.
- Countries like Kenya, Mauritius and Costa Rica implemented laws or legislations that seeks to strike a balance between trade and environment and more focus is on auto industrial trading between such countries and others. Kenya implemented a very stringent clearing process, motor vehicles of over eight years old are not allowed into Kenya for environmental reasons except with distinctive permission granted through the Kenya Bureau of Standards the Kenya Revenue Authority. It also plans to restrict the importation of such vehicles to boost its domestic sector.

⁸⁶ Opening Statement by Prime Minister Junichiro Koizumi at the Press Conference on the Passage of the FY2003 Budget, 28-03-2003.

⁸⁷ Japan : Automotive Nitrogen Oxides and Particulate Matter Law.

- Between 2006 and 2016 the vehicle fleet in Mauritius escalated by 59% from 319,440 to 507,676. And of the newly registered vehicles, 51% were imported as new mainly from European Union and 49% as used cars mainly imported from Japan.⁸⁸ Because of government policies that enhance importation of cleaner and more fuel-efficient vehicles the country's vehicle fuel economy improved significantly. The country uses fiscal measures to influence the quality of the vehicles that are imported in the country, Various taxation regimes that promote cleaner vehicles. Uses Excise Act for a taxation system for vehicles to promote the use of more energy efficient vehicles, based on their capacity.⁸⁹
- And lastly, Costa Rica imposes several taxes when a vehicle is imported into the country including import duty, consumption tax, sales tax, luxury tax. The government also uses a selective import duty taxation scheme that varies with the age of vehicle imported. The government levies a 35 to 53% consumption tax on vehicles depending on the model, engine size and car type.⁹⁰ In 2018 the country adopted the law of incentives and promotion of electric cars which provides economic incentives for zero emissions vehicles.

4.3.2. Conclusions

Due to strict Japanese motor vehicle inspections and high vehicle depreciation, Japan's motor vehicle trading with countries such as Lesotho has led to a decline in environmental degradation due to decreased number of old automobiles on the road that emit into the environment unwanted emissions. These emissions include both particulate matter and nitrogen oxides. Also countries like Kenya, Mauritius and Costa Rica have implemented laws and/or ways which influence automobile trading but not at the expense of environmental quality.

These initiatives include the use of stringent automobiles clearing processes and emissions standards, which aids in the making sure that imported automobiles are those that the country does not allow because of environmental reasons and use in promotion of local auto industry.

⁸⁸ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019

⁸⁹ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019

⁹⁰ United Nations Environment, Addressing The Used Vehicle Market; Potential Strategies for Importing and Exporting Countries to Improve Safety, Fuel Economy and Emissions, February 2019, pages 21-23

Excise Act helps in provision of taxation systems that ensures complies with environmental standards and ensures an environmentally sustainable region whilst motor vehicle trading is still allowed. And lastly, the use of consumption, sales and luxury taxes which ensure that the environment is not deteriorated due to unacceptable automobiles on the road. Therefore, all these initiatives stated above ensures that automobile trading do not negatively affect the environment on the baseline of socio-economic reasons that a country and its people has.

4.4. Limitations of the study

4.4.1. Data Accessibility

One of the main hurdles of the study was the accessibility of data relevant to the research from specific institution, such as the Lesotho Revenue Authority (LRA), about average number of second hand motor vehicles imported by Lesotho from Japan yearly.

4.4.2. Scope of Focus on the study

The study did not focus on trade in general but rather focused on trade in regard to importation of Japanese second hand motor vehicles.

4.5. Suggestions for further research

In any effort to directly access data relating to the number of second hand motor vehicles imported by Lesotho, a researcher must be given an opportunity to easier access such data or at the very least the relevant institute must make such data readily available either electronically or physically. Also for further research one must look further into trading in general to see the scope of coverage it goes to and how it influences environmental protection.

4.6. Recommendations

The environment is one of the utmost important aspects of the universe. It harbours both biotic and abiotic factors, keeps ecosystems flourishing and ensures interconnectivity between living and non-living things residing in it. It harbours one of the most important biotic components, human beings. It ensures survival of the human species and other species hence enhancing ecosystem balance. Therefore, it is of utmost importance to protect and/or conserve the environment from any anthropogenic activity.

Firstly, Lesotho should show a great concern towards environmental protection at the very least by incorporate issues dealing with both trade and environment in its environmental legislations. Because as of yet, environmental legislations such as Environment Act 2008 only depict issues relating to the environment and does not relate or focus on trade. Specifically, second hand automobile trading which possess a significant distress to the environment due to hazardous wastes they release into the environment in the form of gases such as nitrogen oxides and release of radioactive chemicals from their degradation. And a letter of note is that Lesotho has been involved in Japanese old automobiles trading over the years and there is a great concern to incorporate trade and Environment as a result.

Secondly, Since Lesotho is a party to Basel Convention on transboundary movement of hazardous and other wastes, it must ban some of the motor vehicles in an effort to try to protect the environment from trading because importing any second hand automobile threatens environmental quality since these vehicles are not clean, hence threatening the state of biotic components of the environment mostly human health. It is of important to note that gases component of the environment is at stake and requires attention. And therefore air component of the environment is hence one important factor that environmental legislation should protect and protect.

Also, in making sure that second hand automobile trading and environment do not negatively influence each environmental legislation have to incorporate clear air quality standards and stringent motor vehicles clearing process just like Kenya which provides a very stringent clearing process to restrict the importation of second hand motor vehicles. However, since Lesotho does not have any local auto industry, it must not hundred per cent restrict the importation of such vehicles but permits certain aged second hand automobiles with specific engine sizes to restrict a high of environmental degradation vehicles. For instance, maybe only allow the importation of 2-4 years old Japanese used automobiles. In this way socio-economic needs would be meet and also considering environmental protection. Otherwise clean brand new motor vehicles must be imported.

Furthermore, like Mauritius and Costa Rica Lesotho's environmental legislations should also incorporate issues making it hard for motor vehicle owners to use them. This issues include implementation of acts like Excise Act which imposes high taxation costs. And also the provision of taxes like consumption tax which makes it somehow difficult to incur costs of

that nature for use of motor vehicles for no rational reasons, motor vehicle owners should feel a need to use their vehicles when important matters arise.

4.7. Concluding Remarks

The chapter began by providing summaries from all precedent chapters including the aims or purposes of the research which were to point out flaws and shortcomings in Lesotho's environmental legislation in regard to automobile trading and environmental protection, examination of other countries' environmental legislations in regard to automobile trading to protect the environment and how Lesotho can adapt some of the ways within these legislations to ensure automobile trading does not negatively affect environmental quality and what conclusions can be withdrawn. Some of the countries like Lesotho are parties to the Basel Convention which seeks to balance automobile trading and environmental protection.

Furthermore, due to limitations the study faced suggestions were made as a reason to aid further research. Lastly, recommendations were provided as to how Lesotho can in its environmental legislations consider automobile trading to influence an environmentally sustainable nation.

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