

# THE ROLE OF INTERNATIONAL TRADE LAW IN ADDRESSING ENVIRONMENTAL PROTECTION

**Dr. Hemant Kumar Harit**

Assistant Professor, Mewar Law Institute Ghaziabad

## Abstract

This paper examines the intersection of international trade law and environmental protection, emphasizing the importance of balancing trade liberalization with sustainable environmental practices. It explores the key principles of international trade law, focusing on the role of the World Trade Organization (WTO) and its provisions concerning environmental protection, such as Article XX of the General Agreement on Tariffs and Trade (GATT). The paper delves into the challenges of reconciling trade regulations with environmental concerns, analyzing how international trade law permits environmental exceptions and trade barriers. Through case studies such as the US–Canada Softwood Lumber dispute and the EU's ban on genetically modified organisms (GMOs), the paper highlights the complexities and lessons learned from global trade disputes involving environmental issues. Finally, it discusses potential opportunities for strengthening the integration of environmental sustainability into international trade agreements, proposing strategies for a greener trade future.

**Keywords:** International Trade Law, Environmental Protection, World Trade Organization (WTO), Trade Agreements, GATT Article XX, Environmental Exceptions, Trade Barriers

## I. Introduction

International trade law governs the rules and agreements that facilitate the exchange of goods and services across national borders, while environmental protection involves the regulation and preservation of the natural environment to prevent degradation. The balance between trade and environmental sustainability is increasingly critical as globalization fosters economic growth, yet poses significant challenges to environmental preservation. Striking this balance is essential to ensure that trade policies do not undermine efforts to protect the environment, but instead contribute to sustainable practices. This paper examines the role of international trade law in fostering environmental protection, exploring how trade agreements, such as those governed by the World Trade Organization (WTO), can be structured to support both economic development and environmental sustainability.

## II. International Trade Law: An Overview

International trade law is a framework of rules and agreements that governs the exchange of goods, services, and intellectual property between nations. The primary objective of international trade law is to promote fair competition, economic cooperation, and the peaceful resolution of trade disputes between countries. Key principles of international trade law include most-favored-nation (MFN) treatment, national treatment, transparency, and reciprocity. One of the most influential organizations in this framework is the World Trade Organization (WTO), which provides a platform for negotiating trade agreements and resolving disputes. Regional trade agreements (RTAs), such as the European Union (EU) and the North American Free Trade Agreement (NAFTA), also play a crucial role in shaping global commerce by fostering economic integration and trade liberalization within specific geographic regions.

Trade agreements serve as the backbone of global commerce, setting the rules for trade between nations and determining the conditions under which goods and services are exchanged. They enable countries to gain access to new markets, enhance productivity, and achieve economic growth. By reducing tariffs, quotas, and other trade barriers, these agreements stimulate competition, reduce costs, and increase the availability of goods and services in the global marketplace. Additionally, trade agreements provide mechanisms for resolving disputes, ensuring that countries adhere to the agreed-upon rules and obligations, fostering stability in international trade relations. However, these agreements often come with challenges, as they must strike a balance between promoting economic growth and addressing concerns such as environmental protection, labor rights, and public health.

The relationship between trade and environmental concerns is increasingly significant in international trade law. While trade liberalization can drive economic growth and development, it can also lead to environmental degradation if not properly regulated. The trade of goods and services often involves resource extraction, production processes, and

transportation that can harm ecosystems, contribute to climate change, and deplete natural resources. As a result, integrating environmental protection into trade agreements has become a key issue. The WTO's General Agreement on Tariffs and Trade (GATT) Article XX, for example, allows for exceptions to trade liberalization measures when they are necessary to protect public health, the environment, or biodiversity. These provisions highlight the growing recognition that international trade should align with sustainable development goals and contribute to environmental stewardship. Balancing economic and environmental priorities within trade law remains an ongoing challenge, as nations strive to find solutions that promote both prosperity and ecological sustainability.

### **III. The WTO and Environmental Protection**

The World Trade Organization (WTO) plays a central role in regulating global trade by providing a platform for negotiations, creating trade rules, and resolving disputes. As the only international body overseeing global trade regulations, the WTO aims to facilitate smooth, predictable, and transparent international commerce. It ensures that trade flows as freely as possible, which helps promote economic growth, development, and prosperity. The WTO's core principles, such as non-discrimination, trade liberalization, and fairness, seek to reduce barriers to trade, while its dispute settlement system ensures that member states comply with international trade agreements. In this way, the WTO acts as a regulator that coordinates and oversees the implementation of trade rules and resolves conflicts arising from breaches of trade agreements.

One of the key provisions related to environmental protection within the WTO framework is GATT (General Agreement on Tariffs and Trade) Article XX, which allows exceptions to the general rules of trade liberalization for specific environmental and health protections. Under this provision, countries can restrict trade in order to safeguard public morals, human health, animal or plant life, and the environment, provided that these measures do not result in disguised protectionism or unjustifiably discriminate against trade partners. Article XX is crucial because it recognizes that economic activities should not come at the cost of environmental degradation and that countries should have the right to regulate in order to protect their natural resources and public health. However, these exceptions are often contested and subject to scrutiny, which brings trade and environmental protection concerns into direct conflict.

The WTO's dispute resolution mechanism has been instrumental in addressing conflicts between trade liberalization and environmental protection. Over the years, several high-profile cases have highlighted the tension between the two. For example, in the case of United States – Shrimp (1998), the WTO ruled on the legality of a U.S. law that imposed restrictions on shrimp imports from countries that did not use turtle-excluding devices in their fishing practices. The U.S. argued that the measure was necessary to protect endangered sea turtles, but the WTO found that the U.S. law violated international trade rules. Despite the ruling, the case demonstrated how the WTO attempts to balance trade liberalization with environmental goals by allowing for environmental exceptions under Article XX. Similarly, in the EC – Hormones case (1998), the European Union imposed a ban on hormone-treated beef for health and environmental reasons, but the WTO determined that the ban was inconsistent with trade rules. These cases underscore the complexities involved in reconciling trade liberalization with the protection of the environment. As such, the WTO's handling of these disputes continues to evolve, reflecting the ongoing challenges of aligning trade and environmental policies at the global level.

### **IV. Environmental Exceptions and Trade Barriers**

International law recognizes the need for environmental exceptions within the framework of trade regulation to address the growing concern that trade liberalization may undermine environmental protection efforts. The right to protect public health, biodiversity, and other essential environmental factors is enshrined in various international agreements, providing countries with the legal basis to adopt environmental regulations that may conflict with trade liberalization principles. One key example of this is the exceptions allowed under GATT Article XX, which permits countries to implement measures that restrict trade in order to protect public morals, human health, and the environment. These exceptions provide flexibility in ensuring that trade policies do not undermine the ability of nations to safeguard their natural resources, biodiversity, and public health. Countries may, for example, introduce restrictions on hazardous products, ban the importation of species that threaten native biodiversity, or regulate the trade of pollutants and chemicals. By offering these exceptions, international law acknowledges that environmental protection is an essential right and that trade policies should not override environmental priorities, particularly in the context of global challenges such as climate change, biodiversity loss, and the health of ecosystems.

However, the implementation of environmental exceptions within trade law inevitably creates a tension between trade liberalization and environmental regulation. Trade liberalization seeks to reduce barriers to the movement of goods and services across borders, thereby promoting economic growth and development. The core goal of trade agreements is to eliminate tariffs, quotas, and other forms of protectionism to create an open, free market. On the other hand, environmental regulations may impose trade restrictions, such as bans, quotas, or tariffs, in order to protect natural resources, reduce pollution, or prevent the spread of invasive species. This conflict can lead to disputes, as trade restrictions intended to protect the environment may be viewed as disguised protectionism or trade barriers by trading partners. A significant challenge lies in finding the appropriate balance between the two objectives: promoting free trade while ensuring the protection of the environment. In practice, this balancing act often involves determining whether a country's environmental measures are necessary, proportional, and non-discriminatory, which is evaluated through legal mechanisms such as the WTO dispute settlement process. For example, while a country may justify an environmental restriction under the guise of protecting public health or biodiversity, the restriction must not unnecessarily impede international trade or violate trade obligations. This tension creates a complex landscape for policymakers, as they must navigate both trade rules and environmental imperatives in the design of national policies. One of the most controversial trade barriers that have emerged in recent years is the imposition of carbon tariffs, or border carbon adjustments (BCAs), which are designed to address the carbon emissions associated with imported goods. These tariffs aim to level the playing field by charging foreign goods a carbon price equivalent to that imposed on domestic producers, thereby discouraging carbon-intensive imports and encouraging more sustainable production practices globally. However, carbon tariffs have sparked debates over their potential to violate international trade agreements. Critics argue that they could be used as a form of protectionism, potentially leading to trade wars and unfair discrimination against developing countries that may lack the resources to reduce carbon emissions. Proponents, however, contend that carbon tariffs are essential for addressing the global challenge of climate change and encouraging countries to adopt more sustainable practices. The WTO has not yet ruled on the legality of carbon tariffs, but the increasing support for carbon pricing mechanisms globally suggests that these trade barriers will become more prominent in future international trade discussions.

Another example of controversial trade barriers related to environmental concerns is eco-labeling, which involves the use of labels or certifications to indicate that a product meets certain environmental or sustainability standards. Eco-labeling is a popular tool used to inform consumers about the environmental impact of their purchasing decisions, such as whether a product is organic, energy-efficient, or made from sustainable materials. While eco-labels aim to promote environmentally friendly products and encourage sustainable consumption, they have faced criticism for potentially creating unnecessary trade barriers. Companies in some countries argue that eco-labels, particularly when applied to food or agricultural products, can be discriminatory or overly burdensome. Some argue that the criteria for eco-labeling can be arbitrary and vary across countries, leading to confusion and trade restrictions. This has led to concerns that eco-labels, while promoting sustainability, may inadvertently hinder trade by creating non-tariff barriers. However, advocates of eco-labeling argue that these standards help create a market for green products, encourage transparency, and incentivize producers to adopt more sustainable practices. The challenge lies in ensuring that eco-labeling schemes are fair, transparent, and aligned with international trade principles, so that they do not become unjustified barriers to trade but instead serve as a tool for promoting global environmental sustainability.

In sum, environmental exceptions and trade barriers represent a complex intersection of trade law and environmental policy. While international law allows for environmental exceptions, it also creates challenges in balancing the need for free trade with the imperative to protect the environment. Carbon tariffs and eco-labeling exemplify the ongoing debates surrounding the intersection of trade and environmental protection, highlighting the tension between promoting economic growth through liberalized trade and ensuring that trade policies support global sustainability efforts. As environmental concerns continue to gain prominence, addressing these issues within the framework of international trade law will be increasingly important in shaping the future of both global commerce and environmental protection.

## **V. Case Studies: Trade Law and Environmental Protection**

### **1. US–Canada Softwood Lumber Dispute (1980s–2000s)**

The US–Canada Softwood Lumber dispute is one of the most prolonged trade conflicts in North America, largely

centered around the environmental implications of timber harvesting and the related trade practices. The conflict revolves around Canadian softwood lumber exports to the United States, where U.S. producers argued that Canadian timber was being sold at an unfairly low price due to Canadian government subsidies and regulations on timber pricing. Environmental concerns were central to the case, as the U.S. argued that these subsidies encouraged unsustainable logging practices, leading to deforestation, environmental degradation, and the depletion of forest resources.

The WTO and the North American Free Trade Agreement (NAFTA) tribunals have been involved in resolving this dispute, with the U.S. imposing antidumping duties on Canadian lumber imports, arguing that Canada was violating trade rules. Canada, on the other hand, claimed that these measures were unjustified and discriminatory, arguing that its forestry practices adhered to sustainability standards and were governed by environmental regulations.

#### **Lessons Learned:**

- **Balancing trade with environmental standards:** This dispute highlighted the difficulty in reconciling environmental protection with international trade rules. The U.S. stance on "unfair" trade practices related to environmental concerns reflected a growing awareness of the need for sustainable resource management. However, it also illustrated how trade protectionism can conflict with environmental goals.
- **Environmental exceptions under trade law:** The case emphasized the importance of allowing environmental exceptions in trade agreements (like GATT Article XX), which can justify measures taken to protect natural resources. However, it also pointed to the challenge of defining and justifying such measures in the context of trade laws.
- **Long-term impact of environmental trade barriers:** Despite multiple resolutions, the dispute reinforced the complexity of using trade law to address environmental concerns, particularly when economic interests and environmental protection collide.

## **2. European Union's Bans on Genetically Modified Organisms (GMOs)**

Another significant trade dispute involving environmental protection concerns is the European Union's (EU) long-standing ban on the import and sale of genetically modified organisms (GMOs) and GMO-derived products. The EU imposed these restrictions on the basis of environmental and public health concerns, arguing that GMOs could pose risks to biodiversity, ecological balance, and long-term agricultural sustainability. This policy was challenged by trade partners, particularly the United States, Argentina, and Canada, which argued that the bans were not scientifically justified and violated international trade agreements under the WTO's Sanitary and Phytosanitary (SPS) Agreement, which requires that trade restrictions be based on sound scientific evidence.

The WTO ruled in favor of the complainants, stating that the EU's ban on GMOs lacked sufficient scientific justification and violated WTO rules. However, the EU maintained its ban, arguing that it was a necessary precautionary measure to protect the environment and human health. This dispute highlighted the difficulty in balancing environmental protection with trade obligations under the WTO framework.

#### **Lessons Learned:**

- **Precautionary principle in trade law:** The case emphasized the importance of the precautionary principle in environmental regulation, where trade measures are justified based on the potential risks of new technologies like GMOs, even in the absence of conclusive scientific evidence. This principle is now embedded in many international environmental treaties, yet its application in trade disputes remains contentious.
- **Scientific standards and trade barriers:** The GMO dispute illustrated the tension between scientific evidence and policy decisions in trade law. While the WTO demands that trade barriers be based on scientifically sound evidence, environmental protection policies often rely on precautionary approaches that do not always align with the WTO's standards.
- **Sovereign rights and trade sovereignty:** The EU's insistence on maintaining its GMO ban, despite WTO rulings, demonstrated the ongoing conflict between a country's right to regulate for public health and

environmental protection versus obligations under international trade agreements. The case underscored the complex interaction between national sovereignty and global trade rules, particularly in sensitive areas like biotechnology and food security.

### 3. The US–Brazil Dispute on the US Clean Air Act and Biofuels (2000s)

Another important case involving environmental concerns in international trade law is the US–Brazil dispute over biofuels. Brazil challenged U.S. subsidies for its biofuel industry under the Clean Air Act, arguing that the U.S. was providing subsidies to ethanol producers in a manner that distorted international trade, particularly against Brazilian sugarcane ethanol, which is considered more environmentally friendly due to its lower carbon footprint. Brazil claimed that U.S. ethanol was being produced using inefficient processes, leading to greater carbon emissions than Brazilian biofuels, thus undermining the environmental benefits of biofuels globally.

This case raised important questions about how trade law should account for the environmental impacts of products. The dispute highlighted the challenge of reconciling trade liberalization with environmental protection in emerging industries like biofuels, where production processes have varying environmental impacts.

#### Lessons Learned:

- **Environmental sustainability and trade subsidies:** The case underscored the need for trade agreements to consider environmental sustainability when evaluating subsidies and trade-distorting measures. It pointed out the complexities in assessing the environmental costs and benefits of trade practices, especially in emerging industries like renewable energy.
- **Environmental criteria in trade regulations:** The dispute illustrated the difficulty of incorporating environmental criteria into trade regulations. As nations push for greater integration of environmental sustainability into trade, there is a need for a consistent framework that evaluates both the environmental impact of production processes and the trade implications of green technologies.
- **Trade vs. sustainable production:** This case emphasized that trade policies should not only focus on market access but also consider the environmental sustainability of the products involved. It also raised the issue of whether countries should be allowed to subsidize industries that are harmful to the environment, even if they are purportedly “green” industries, like biofuels.

These case studies reflect the complex interplay between trade law and environmental protection. They demonstrate how international trade regulations often face challenges when environmental concerns conflict with economic interests. The US–Canada Softwood Lumber case and the EU's ban on GMOs highlight the difficulties in balancing sustainable resource management with free trade, while the US–Brazil biofuels dispute raises concerns about the environmental impact of production processes in emerging industries. From these cases, it is clear that trade agreements and dispute resolution mechanisms must evolve to better incorporate environmental concerns and ensure that trade policies support global sustainability efforts. The lessons learned from these disputes will be crucial for shaping future trade policies that promote both economic growth and environmental stewardship.

## VI. Opportunities for Strengthening the Relationship Between Trade and Environment

### Proposals for Integrating Sustainable Development Goals (SDGs) into Trade Agreements

One of the most promising opportunities for strengthening the relationship between trade and environmental protection is the integration of sustainable development goals (SDGs) into trade agreements. The United Nations' SDGs, established in 2015, provide a comprehensive framework for addressing global challenges such as climate change, environmental degradation, and poverty. These goals emphasize the importance of sustainable development, which includes the need for economic growth, social inclusion, and environmental protection. By embedding the SDGs into trade agreements, countries can align their trade policies with global sustainability objectives, ensuring that trade liberalization contributes to, rather than undermines, sustainable practices.

Trade agreements, particularly those negotiated through the World Trade Organization (WTO) or regional trade agreements (RTAs), can be structured to incorporate environmental provisions that promote sustainability. This can be achieved by including specific clauses in trade agreements that require parties to adopt policies that align with the

SDGs, such as reducing carbon emissions, promoting renewable energy, and protecting biodiversity. For example, trade agreements could mandate that signatories adopt measures to reduce pollution or encourage the sustainable use of natural resources, thereby ensuring that economic growth does not come at the expense of environmental health. Moreover, trade agreements can also include mechanisms for monitoring and reporting on progress towards SDG-related goals. For instance, countries could be required to submit annual reports detailing their environmental policies, their progress in meeting emission reduction targets, or their efforts to improve energy efficiency. Such provisions would ensure accountability and provide a platform for dialogue between countries on how to achieve sustainable development. Additionally, linking trade preferences to the achievement of environmental and social goals could create incentives for countries to adopt more sustainable practices. For example, preferential access to markets could be granted to products that meet certain environmental or social criteria, such as those certified as organic or fair trade. Incorporating SDGs into trade agreements would also provide a way to resolve the tension between trade liberalization and environmental protection. By explicitly recognizing the importance of sustainability, countries can negotiate trade agreements that balance the benefits of free trade with the need for environmental preservation. The SDGs could serve as a guiding framework to ensure that trade policies contribute to achieving global sustainability goals, thus fostering both economic and environmental well-being.

#### **Role of International Treaties and Agreements in Fostering Green Trade Practices (e.g., Paris Agreement)**

International treaties and agreements play a critical role in fostering green trade practices by setting global standards for environmental protection and promoting cooperation between nations. These agreements create a platform for countries to collaborate on addressing global environmental challenges, while also providing a framework for integrating environmental considerations into trade policies.

The Paris Agreement, adopted in 2015 under the United Nations Framework Convention on Climate Change (UNFCCC), is a landmark international treaty that sets binding targets for reducing global greenhouse gas emissions. The Paris Agreement emphasizes the need for countries to take collective action to combat climate change and limit global warming to well below 2°C, with an aspiration to limit it to 1.5°C. While the Paris Agreement itself does not directly address trade, it has significant implications for trade law and policy. For instance, the agreement encourages countries to adopt low-carbon and climate-resilient economies, which could influence trade policies and the global supply chain. As nations work towards their climate targets, they may need to implement policies that restrict or incentivize certain types of trade, such as carbon pricing, green tariffs, or subsidies for sustainable technologies.

The Paris Agreement also creates an opportunity for countries to negotiate trade policies that align with climate goals. For example, countries could negotiate trade agreements that promote the exchange of green technologies, such as renewable energy equipment or electric vehicles, or that create markets for low-carbon products. Trade agreements can also help facilitate the flow of finance and technical assistance to developing countries, supporting them in their transition to low-carbon economies. This would ensure that trade does not exacerbate climate change but instead contributes to the global effort to mitigate its effects.

Other international treaties, such as the Convention on Biological Diversity (CBD) and the Kyoto Protocol, also play an important role in fostering green trade practices. The CBD focuses on the protection of biodiversity and the sustainable use of natural resources, which has direct implications for international trade in species and natural resources. By integrating biodiversity conservation into trade agreements, countries can ensure that the trade of goods such as timber, agricultural products, and wildlife does not contribute to habitat destruction or the overexploitation of species. The CBD provides a framework for countries to cooperate on biodiversity conservation while facilitating trade in sustainable products.

The Kyoto Protocol, although superseded by the Paris Agreement, remains relevant for its role in promoting carbon trading and emissions reductions through mechanisms like the Clean Development Mechanism (CDM) and Joint Implementation (JI). These mechanisms allowed countries to invest in projects that reduce emissions in developing countries in exchange for emission reduction credits. Such initiatives helped integrate environmental objectives into trade by linking international carbon markets with global trade practices. The lessons learned from these mechanisms continue to inform the design of new trade policies and agreements that aim to reduce emissions and promote sustainable development.

Moreover, other environmental treaties, such as those related to marine pollution, waste management, and

transboundary air pollution, offer opportunities to align trade with environmental goals. These treaties often include provisions for cooperation in managing shared resources and reducing environmental harm, creating a platform for countries to negotiate trade agreements that promote sustainable practices. For example, the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal can influence trade in waste products, ensuring that international trade in hazardous materials is conducted in a manner that minimizes environmental harm. The role of international treaties in fostering green trade practices is clear: they provide the legal framework and cooperative mechanisms necessary to integrate environmental protection into global trade. These treaties not only address specific environmental concerns but also help create a broader, more cohesive approach to sustainable development that includes both environmental protection and economic growth. By aligning trade agreements with international environmental goals, countries can foster a trade system that supports the transition to a green economy, where environmental sustainability is prioritized alongside economic prosperity.

### Conclusion

In conclusion, international trade law plays a crucial role in balancing the goals of economic growth and environmental protection, especially as the global community increasingly recognizes the need for sustainable development. While trade liberalization fosters economic cooperation and growth, it must be aligned with environmental objectives to avoid detrimental impacts on natural resources, ecosystems, and public health. The integration of environmental provisions into trade agreements, such as those within the WTO framework and the implementation of environmental exceptions, offers a way to address these challenges. Additionally, international treaties like the Paris Agreement and the Convention on Biological Diversity provide essential mechanisms for fostering green trade practices, supporting the transition to low-carbon, sustainable economies. Moving forward, strengthening the relationship between trade and the environment requires not only incorporating sustainable development goals into trade policies but also creating robust frameworks that enable cooperation and accountability. This integrated approach will ensure that international trade contributes to both economic prosperity and environmental stewardship, helping to achieve a more sustainable and equitable global future.

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