

Conflict between International Trade Provisions and Climate Change Policies

Neelam Rai¹ & Veer Mayank²

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Abstract

This research study explores the tricky chemistry between “international trade agreements and environmental concerns,” focusing on “climate change.” Address the conflicts that frequently arise between the principles and objectives of the “MEAs” and the "Trade Agreements", especially within the structure of the “WTO”. The document examines how the 'WTO' rules have managed to adequately integrate the 'climate change' policy, which has led to a dispute between commercial law and environmental regulations. It also uncovers possible solutions and policy recommendations to reconcile these conflicting regulations and promote both economic growth and green and environmentally friendly global business practices.

Keywords: *International Trade Law, WTO (World Trade Organization), Global environmental law, Multilateral Environmental Agreement, Climate Change, Convention, Protocols*

Introduction

Advances in technology and science have improved our ability to understand the environmental consequences of both natural phenomena and human actions [5]. While several treaties such as "The Vienna Convention of 1985" which safeguards the “*Ozone Layer*”, have proven effective in achieving their goals [6]. As a result, environmental agreements have rapidly expanded to include various solar specialties such as the “*Biodiversity Act*”¹ and the “*Law of the Sea*”². Among these branches, 'Climate Change Law'³ has emerged as a significant and complex area, similar to a symbolic environmental law tree taking shape. [7]

Trade liberalization plays a vital role in improving global economic well-being and expanding opportunities for billions of people to lead fulfilling lives. However, the rapid growth of international trade and the integration of value chains have raised many questions about the trade-environment interactions.[8] Despite the growing pressure to address the border between International commerce and the changing climate neither the 'GATT' nor the WTO [9] explicitly address climate change. This oversight is due in part to the scientific community's growing understanding of the effect of changing climate caused by international trade.

The position of the WTO [10] on environmental protection raises questions about how effectively its institutional framework contributes to safeguarding the environment. The current debate revolves around the connection between trade regulations and environmental measures aimed at reducing the consequences of climate change, highlighting the complex and critical nature of this discourse.

On one hand, trade can be viewed positively as it generates resources that can be invested for the defense of the ecology and enhances resource efficiency, fostering multilateral cooperation to tackle cross-border environmental issues. However, there's also a negative aspect to free trade which reduces biodiversity and increases ecological risks. Additionally, trade-driven growth may result in environmental damage due to unsustainable resource consumption and increased waste production. Moreover, trade agreements sometimes categorize economic interest over environmental measures, potentially undermining environmental protection efforts [11].

The (Trade) laws and the UN Framework Convention on Climate Change⁴ (UNFCCC) highlight how commerce and the ecosystem are inextricably connected. Using trade law tools in "international environmental law" highlights the significance of the connection amid commerce and the ecology under the "WTO" framework. Despite their distinct problems, both trade and environmental issues are managed using similar tools such as taxes, tariffs, regulations, and subsidies [12].

The differences between "World Trade Organization" and "Multilateral Environmental Agreements"⁵ have sparked debates about their norms; however, international trade may offer "climate change" key principles from WTO law, such as non-discrimination⁶ under the (MFN) and "*National Treatment Principles*".

Environmentalists are urgently investigating the mechanism behind climate disruption, while governments are actively formulating policies and initiatives to mitigate its root causes and prepare for the inevitable. This collaborative effort involves multiple global negotiations that have been ratified by many countries, symbolizing collective commitment through negotiations, discussions and workable compromises among the parties involved. [13] When Parties ratify environmental agreements, there is a risk that their standards will clash with the trade regulations. In addition, some countries are adopting green industrial policies aimed at supporting competitive industries in environmental sectors such as renewable energy. Still, they may face obstacles imposed by global trade and contract regulations unless trade rules change towards a more outward-looking approach. [14]

Currently, there are many "MEAs" operating under the leadership of "UNEP"⁷ and "UNFCCC". Some of these agreements also include trade measures. However, not all global environmental treaties are truly multilateral, as some initiatives are regional in scope. [15]

For MEAs to be effective, they must be based on international cooperation and consensus among participating parties. Before delving into MEAs, it is essential to familiarize yourself with the essential aspects of both trade regulations and environmental agreements. Trade regulations under MEAs often

take the form of import or export bans that may violate the standards of the” (GATT) and the “*World Trade Organization*” (WTO). Although trade bans are permitted under the “*General Exception*”⁸ clauses of the GATT/WTO [16], they must meet certain criteria.

Another key issue is that trade provisions in some MEAs may create discrimination between Parties and non-Parties. The implementation of such provisions could potentially conflict with core elements of the GATT/WTO, such as the “*Most Favored Nation Principle*” (Article 1) [17]

It is necessary to address the key legal issues posed by "MEAs" in "climate policy", especially the complex interplay between WTO rules and international environmental agreements. This research is crucial for navigating complex issues of commerce and ecological relations promoting harmony in trade and environmental policy.

Challenges in Harmonizing Trade and Environmental Principles

Concerns about the relationship between trade policy and environmental measures, particularly climate change legislation, have increased in recent decades. The focus on “sustainable development” has led to questions about the interplay between market access and environmental concerns, highlighting the blurred boundaries between trade provisions and green procedures. Various literatures highlight these challenges in harmonizing both trade policies and environment measures.

“*Christina Voigt*” (2005) has highlighted that international law is complex and includes numerous fragmented treaties with different norms and principles. This complexity often leads to legislative overlaps, making it challenging to harmonize these different elements [18]. Although these mechanisms aim to address ecological concerns, they can potentially conflict with multilateral rules, especially WTO rules, as they are discriminatory and distort free trade.

According to “*Vanda Jakir*” (2013), there is a tendency for some entities to reject their members' environmental measures because they perceive these measures to have a harmful effect on trade rules. This view quickly examines recent developments in WTO law, highlighting in particular the ongoing conflict between liberalization of trade and environmental protection. [19]

“*Thomas Cottier and Manfred Elsig*” (2011) argue that the cross-cutting nature of 'environmental law' is a fundamental reason for its inherent fragmentation. This fragmentation has prevented environmental law from being consolidated under the umbrella of a single international organization, highlighting the complexities and challenges in harmonizing 'trade and environmental regulations' worldwide. [20]

“*DiMatteo*” (2003) analyzes how 'environmental law' is inextricably linked to societal and commercial development as suggested by the preamble principle of sustainable development of the “*World Trade Organization*”. It cannot be considered in isolation, but rather as an understandable framework that intersects with different areas of law at national, regional and international level. [21]

“*Yamina and Depledge*” (2004) examine the legal and institutional aspects on climate change law, with a focus on the application of public international law to nation states on climate change. They also highlight unique legal concerns and uncertainties of the "Kyoto Protocol".[22]

On the contrary, “*Doelle*” (2005) outlines the agreement structure under the 'Kyoto Protocol' and assesses the possible impact of the WTO on climate change measures. The author's main goal is to appraise the ability of this mechanism to encourage countries to carry out environmentally friendly actions and conform to the "climate change regime".[23]

“*D. Gerandi*” (1997) proposes harmonization and modernization of the "GATT" dispute settlement system as a solution to the conflict between "trade and environmental" measures; nevertheless, their argument recognizes that coordination can be a costly strategy, especially for poorer countries. [24]

“*Nicola Anna May Durrant*” (2008) notes the lack of comprehensive legal analysis of the operation of an effective integrated legal response to "climate change" at both international and national levels. This includes using regulatory, accountability and market mechanisms to effectively address “climate change”. [25]

“*James Bacchus*” (2019) highlights that international agreements lack a clear definition of measures to respond to "climate change". Nevertheless, there is a broad understanding that such instruments should not involve arbitrary, inconsistent and unjustified discrimination against trade. He questions how to regulate the soundness of these measures without agreed definitions. [26]

“*Runnalls*” (1998) stated that emerging countries are not opposed to increasing the level of environmental protection. However, they have suffered huge losses due to duties and exemptions obstacles set up by rich countries. This has led to the assumption among developing countries that developed countries can use environmental protection measures to advance their interests. [27]

Aligning Trade Rules with Climate Policies

This research article, resulting from an academic's thesis, investigates the convergence between “trade rules and climate policies.” Its main objective is to recognize strategies within the trading system that can effectively address “climate issues” while being aligned with environmental standards. Recognizing the seriousness of global ecological problems, the document emphasizes the imperative of international cooperation between nations. The scholar arrived at this specific research problem after carrying out extensive research in the area.

Each nation may favor a different set of climate policy tools to counteract climate change. Environmentalists have defended the effectiveness of climate change instruments such as taxes, and many nations are adding subsidies to their efforts to reduce greenhouse gas emissions. Therefore, there are major points of caution when designing climate change policy. Therefore, differences may arise with fundamental legal and institutional issues between “free trade and environmental measures”.

Trade and Climate Policy Conflicts under WTO Law

A. Environmental policy:

In recent decades, free trade development and climate change programs have developed independently, and their paths are more divergent. Trade sanctions against non-parties to climate change treaties, i.e. actions that discriminate against goods and services from non-parties to the treaty to force them to join are likely to be in violation of WTO law and are not intended to achieve the objectives of the UNFCCC. So, no country is allowed to impose climate related policies outside their territorial jurisdiction which is against the main principles of WTO in the name of preserving the environment, human and animal safety etc.

Similarly, we have another norm conflict that arises between trade and ecology on the main components of the WTO, which are 'National Treatment' (Article III)⁹ and 'Most Favored Nation'¹⁰ (Article I). Likewise, another issue is related to "*Article Eleven*" of the GATT/WTO, which does not speak of restrictions or prohibitions other than taxes, duties, other charges, etc. As a result, the majority of environmental trade prohibitions are quantitative.

Another problem is process and production problems, which are closely related to "Article XX exception" and "Article III". Suppose an importing country decides to ban the sale of domestic or imported cars that generate more pollutants in their exhaust than allowed by a specific standard. If the products themselves cause pollution, the administration of the importing country can ban their sale on a non-discriminatory basis, thereby causing a dispute between the GATT/WTO article and domestic environmental policy.

Inflexible climate policies:

Another issue is dispute settlement and transparency, as the WTO's dispute resolution tool is not effectively established to deal with environmental disputes, according to many environmentalists. Many trade-related environmental issues or disputes lend themselves to non-judicial alternative dispute resolution mechanisms such as arbitration, mediation, conciliation, etc.

Another source of trade restriction debate for environmental goals is the use of stricter environmental mechanisms in the name of trade-related measures, which are inspired not only by ecological concerns but also by concerns about excessive competition from foreign companies. Furthermore, GATT/WTO law applies to the provisions of "multilateral environmental agreements" and many of these clauses are inconsistent with trade standards.

Thus, questions have arisen regarding whether trade is beneficial or harmful to the environment, its overall impact on both exporting and importing nations, and who holds the responsibility for addressing trade-related environmental issues. These concerns have gradually gained attention in recent years.

Case Studies

a) Renewable Energy Subsidies:¹¹

The case is with regard to renewable subsidies known as Feed-in-Tariff Program run by the Canadian Government. This program offered a guaranteed rate to private households and commercial producers that generated solar PV. To benefit from the scheme, electricity suppliers had to comply with „minimum required domestic content levels“ when designing and constructing solar PV or wind power electricity generating facilities. The Complainant argued that FIT program was inconsistent with the WTO fundamental principle i.e “Article III”¹² of GATT, “Article 2.1”¹³ of the Trade-Related Investment Measures Agreement because the said program’s requirements unfairly discriminate imported domestic goods and infringement of “national treatment obligation”.

b) Solar Cells and Modules:¹⁴

Indian solar mission known as “Jawaharlal Nehru Solar Mission” was the subject of dispute between Indian solar energy producers and imported solar energy producers. The Indian government committed to buy power at a set price from solar energy producers but the solar energy producers had to impose obligatory local content standards on the amount of energy they generated from solar cells and modules made in India. The United State asserted that India’s Domestic contained requirement measures were in conflict with “Article III” of GATT and the TRIMS Agreement. The Appellate Body opined that measures i.e „domestic content requirements”¹⁵ for solar cells and modules as a prerequisite for the sale of the solar energy (electricity) to the government is a violation of the fundamental principle of national treatment. Further, the dispute settlement body rejected India’s justification under Article III: 8 (a)¹⁶ GATT and Article XX (j) (d)¹⁷ GATT.

Managing the Interface between Trade Policies and Climate Measures

The connections between trade guidelines and climate policies are complex, with potential tensions and obstacles. It investigates the impact of trade policy over the environment and vice versa, emphasizing the significance of intensive efforts to address global environmental concerns and promote sustainable business practices. Trade serves a dual function in terms of environmental implications by facilitating the diffusion of environmentally friendly technologies. Similarly, environmental regulations contained in multinational agreements may have an impact on trade, creating compliance issues with existing trade laws.

There are differences between trade laws and ecological guidelines, which have different goals, objectives and principles. While trade provisions encourage economic growth and competition, environmental agreements address specific environmental concerns through restrictions.

To overcome the worldwide conflicts between 'trade' and 'environmental' measures, the study proposes drafting laws, encouraging dialogue and cooperation, integrating policies, establishing a

dispute resolution system, and building stakeholder capacity. It promotes a just strategy that prioritizes economic interest and ensures sustainable environmental sustainability.

Thus, the paper proposes a promising approach for managing the interface concerning commerce and climate, focusing on coherent international frameworks and coordinated efforts to facilitate the management of labor-environmental challenges and promote global sustainable development.

Conclusion

The paper concludes that without a clear international approach to balancing climate change and trade rules, conflicts may arise, potentially undermining both climate policy and free trade policy. Achieving win-win outcomes requires a comprehensive analysis of how trade and climate policies can support each other. Involvement from international organizations such as the WTO and UNFCCC, regional bodies, local governments, and collaboration between private and public sectors is crucial for effective implementation. By aligning trade and climate policies, it is possible to create fair incentives despite conflicting norms in international law. Given the lack of specific agreements on climate change within WTO provisions, member countries must harmonize their climate actions with environmental agreements through negotiations, thus avoiding conflicts with commercial principles.

Notes:

- 1 Biodiversity Act- Conservation of biological diversity, sustainable use of its components and equitable sharing of benefits arising out of the use of biological resources. Available at <https://www.indiacode.nic.in> (assessed on 4.5.2024)
- 2 Law of Sea- set of international agreements, treaties, and customs that governs the oceans and seas. Their main objective is to maintain order, productivity, and peaceful relations in the sea. For example The United Nations Convention on the Law of the Sea (UNCLOS) is one of the key international treaties that govern the law of sea. Available at <https://www.blog.ipleaders.in> (assessed on 4.5.2024)
- 3 Climate Change Law- is a broad term for the laws and policies that govern how governments respond to climate change. Available at <https://www.ise.ac.uk> (assessed on 4.5.2024)
- 4 UNFCCC- is the UN process for negotiating an agreement to limit dangerous climate change. It is an international treaty among countries to fight against dangerous human interference with the climate system. The Convention's main objectives are interpreted in Article 2 i.e. „stabilized of greenhouse gas concentration in the atmosphere at level that would prevent dangerous anthropogenic (human-caused) interference with the climate system“. available at <https://treaties.un.org> (assessed on 10.5.2024)
- 5 MEAs- it is legally binding agreement between multiple countries to address environmental issue. MEAs are especially designed to address environmental problems that are global, transboundary,

- or affect multiple countries. MEAs are usually written as convention, protocols, or agreements, and are approved by each country's parliament. There are some well-known MEAs such as UNFCCC, Kyoto Protocol, and Convention on Biological Diversity etc. Available at <https://www.fao.org> (assessed on 10.5.2024)
- 6 Non-discrimination- is the fundamental principle of WTO that applies to all member countries during trade between member nations. Available at <https://www.humanium.org> (assessed on 20.5.2024)
 - 7 UNEP- it is the leading environmental authority in the United Nations system. UNEP uses its expertise to strengthen environmental standards and practices while helping implement environmental obligations at the nations and global level. Available at <https://www.unepfi.org> (assessed on 20.5.2024)
 - 8 General Exception- are those key provisions of the GATT which allow member nations to justify on a number of non-trade policy grounds measures includes protecting the environment and public health etc. Available at <https://www.wto.org> (assessed on 20.5.2024)
 - 9 National Treatment- One of the fundamental principle of the WTO that requires member nations to treat imports and domestic products equally to prevent nation from taking discriminatory measures against imports. The principle is applied on a case-by-case basis for example, charging customs duty on an import is not a violation of national treatment, even if locally-produced products are not changed an equivalent tax. Available at <https://www.investopedia.com> (assessed on 23.5.2024)
 - 10 Most-favored Nation- is a principle that requires countries to treat all their trading partners equally. It means non country should give special treatment to goods or services coming from one particular trading partner. Available at <https://www.wto.org> (assessed on 23.5.2024)
 - 11 WT/DS426, available at https://www.wto.org-dispu_e-ds426_e (assessed on 3.6.2024)
 - 12 Article III of GATT- National Treatment
 - 13 Article 2.1 of TRIM- National Treatment and Quantitative Restrictions
 - 14 DS456: India- Certain Measures relating to Solar Cells and Solar Modules, available at https://www.wto.org-dispu_e-cases_e-ds456_e (assessed on 3.6.2024)
 - 15 Domestic Content Requirement- trade regulation that requires a certain percentage of a product's value to be sourced locally to promote domestic production and employment. Available at <https://www.mondaq.com> (assessed on 3.6.2024)
 - 16 Article III:8 (a)- Government Procurement Derogation available at https://www.wto.org-res_e (assessed on 3.6.2024)
 - 17 Article XX (j) and (d) of GATT- General Exception available at https://www.wto.org-res_e (assessed on 3.6.2024)

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