

SUSTAINABLE TRADE AND DEVELOPMENT: INTEGRATING ENVIRONMENTAL NORMS INTO INTERNATIONAL ECONOMIC LAW

Rahmonov Jaloliddin,

Tashkent State University of Law,

Lecturer of the Department of International Law and Human Rights

E-mail: jaloliddin.rakhmanov@gmail.com

Abstract:

This article explores the integration of environmental norms into international economic law, focusing on recent developments at the World Trade Organization (WTO) and beyond. It highlights the tension between trade liberalization and environmental protection, tracing the evolution of legal frameworks such as the WTO's Fisheries Subsidies Agreement and the European Union's Carbon Border Adjustment Mechanism. The article examines how international trade and investment agreements are increasingly embedding sustainability goals and reflects on the challenges and opportunities presented by this shift. In conclusion, it argues for a more coherent and sustainable global economic legal framework.

Keywords: Sustainable development, WTO, environmental norms, trade agreements, climate action

Introduction

Sustainable development has become a central objective of the international community, demanding a balance between economic growth and environmental protection. Nowhere is this balance more contested than in international economic law, where trade and investment rules have historically prioritized market access and capital flows over ecological concerns. The Marrakesh Agreement establishing the World Trade Organization (WTO) famously enshrines sustainable development and environmental protection as fundamental goals of the trading system. In practice, however, integrating environmental norms into trade and investment regimes has proven challenging. As global ecological crises – from climate change to biodiversity loss – intensify, policymakers and scholars are increasingly insisting that international economic law must evolve to support, rather than undermine, environmental sustainability. This article examines recent efforts to embed environmental norms into international economic law, analyzing doctrinal developments at the multilateral and regional levels, and engaging in a critical polemic on the promises and pitfalls of “greening” the architecture of global trade.

Historical Tensions Between Trade and Environmental Norms

For decades, trade liberalization was pursued with the belief that it did not conflict with environmental protection, or that conflicts could be managed separately. International economic law (IEL) and international environmental law developed on parallel tracks, with minimal overlap. The GATT/WTO framework incorporated only a narrow exception for environmental measures: Article XX of the GATT allows trade restrictions necessary to protect life, health, or exhaustible natural resources, but only if they are not arbitrary or disguised protectionism. This exception signaled that environmental concerns were external to trade rules, not integral to them. Early WTO disputes like US–Shrimp/Turtle (1998) and EC–Hormones tested these waters, with the Appellate Body cautiously allowing some leeway for bona fide environmental measures. However, questions arose about who defines what environmental protection justifies deviations from free trade.

By the 2000s, evidence mounted that unregulated economic activity contributes significantly to climate change and ecological degradation. The idea of “mutual supportiveness” between trade and the environment gained traction, suggesting that trade rules should support environmental policy. The principle of “common but differentiated responsibilities” emerged, but its application within WTO law remained limited. Despite aspirations for sustainable development in the WTO's preamble, it took years for these goals to materialize in concrete legal disciplines. The Committee on Trade and Environment (CTE), established in 1995, offered dialogue but no binding rules.

New Developments at the WTO

In recent years, the WTO has made strides to integrate sustainability into trade law. Notably, the 2022 Agreement on Fisheries Subsidies, the first multilateral agreement with environmental sustainability at its core, prohibits harmful fisheries subsidies, signaling a doctrinal shift where trade rules can serve environmental ends. Similarly, the Trade and Environmental Sustainability Structured Discussions (TESSD), launched in 2020, explored new trade policies to support climate and green transitions. In addition, discussions on eliminating tariffs on green technologies and reforming fossil fuel subsidies reflect the growing inclusion of environmental norms in trade.

The European Union's Carbon Border Adjustment Mechanism (CBAM), introduced in 2023, is another bold move linking trade to climate action by imposing a carbon price on imports of emissions-intensive products. This has sparked debate over WTO compatibility, with critics concerned about its fairness, while proponents argue it could push the WTO to update its rules on global carbon reduction norms. Similarly, the Agreement on Climate Change, Trade and Sustainability (ACCTS) signed in late 2024 by countries like New Zealand and Costa Rica,

integrates environmental norms into trade policy, prohibiting fossil fuel subsidies and liberalizing trade in green goods.

Regional Trade Agreements and Environmental Provisions

Regional and bilateral trade agreements are also increasingly incorporating enforceable environmental clauses. The EU's Trade and Sustainable Development (TSD) chapters, which have been strengthened to include binding dispute settlement procedures and potential trade sanctions for breaches of environmental obligations, exemplify this evolution. Similarly, the USMCA (2020) includes an enforceable Environment Chapter, marking a shift from dialogue-based to sanction-driven enforcement of environmental commitments.

International investment law has also evolved to incorporate environmental considerations. Historically, investment agreements prioritized investor protections over environmental goals. However, newer treaties increasingly safeguard states' rights to regulate for environmental and public health objectives. For example, Canada's updated investment agreements prohibit indemnifying investors for compliance with environmental laws. The controversy surrounding the Energy Charter Treaty (ECT), which allowed fossil fuel investors to sue governments over climate policies, underscores the ongoing tension between investment protection and environmental regulation. Several European countries withdrew from the ECT, highlighting the need for investment agreements that support climate action.

The integration of environmental norms into international economic law is accelerating. Key areas for future development include reforming subsidy rules to prioritize sustainability and leveraging trade agreements for climate action. Future trade agreements may tie benefits to climate commitments and create "climate clubs" to incentivize carbon pricing. These developments signal a shift toward aligning trade with sustainability goals, fostering a global legal framework that supports both economic growth and environmental protection.

Conclusion

The integration of environmental norms into international economic law is a defining challenge – and opportunity – of our era. Recent developments show both the *promise* of this integration and the *difficulties* it entails. On one hand, we see concrete progress: a WTO agreement curbing harmful fisheries subsidies to protect ocean life; trade pacts like ACCTS directly targeting fossil fuel subsidies and promoting green goods; and major economies revising trade agreements to enforce compliance with climate accords. These steps illustrate that sustainable development is no longer a mere slogan appended to economic treaties, but is beginning to be operationalized with binding commitments. On the other hand, the polemics remain intense. Ensuring that such measures are fair, scientifically justified, and not abused for protectionism is an ongoing concern. The withdrawal from the Energy Charter Treaty

underscores that if economic agreements don't bend toward sustainability, they may break apart under the strain of new realities. International economic law must therefore be dynamic and responsive to our planet's limits.

In moving toward a truly sustainable global economy, the old dichotomy between free trade and environmental regulation is giving way to a vision of *trade for sustainable development*. This requires rethinking legal doctrines: redefining what counts as a trade distortion, what constitutes an unjustifiable restriction, and how we value long-term ecological welfare versus short-term commercial gains. It also demands unprecedented cooperation – a re-globalization that brings *pressing issues* like climate change into the center of trade policy deliberations. The path forward will likely be iterative: through trial and error, states will refine the balance between open markets and green safeguards. *Integrating environmental norms into international economic law is not a one-time legal adjustment, but an evolving project* – one that must adapt as environmental science advances and as sustainable development imperatives sharpen (for example, the eventual need to regulate carbon removal credits, or climate-induced migration, through economic frameworks).

Ultimately, the success of this endeavor will be measured by outcomes: Does global trade and investment become a driver of *climate mitigation, biodiversity conservation, and equitable growth*, rather than a vector of harm? The law can play a pivotal role by setting standards and accountability. The evidence from the last three years is encouraging: despite political headwinds, a greening of international economic law is underway, led by innovative agreements and informed by robust scholarly debate. The task now is to consolidate these gains, address the legitimate concerns of all stakeholders, and build an international economic order where “trade” and “**environment**” are allies in the quest for sustainable development. In that world, economic prosperity and environmental stewardship would reinforce each other – fulfilling the WTO's founding promise and our generation's responsibility to future ones.

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