



## Deconstructing Symbiotic Relationship of Trade and the Environment

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**Abstract:** Trade and the environment have symbiotic relations having the negative and positive impact on each other. It is the post industrialisation phase of trade and that has a detrimental impact on environment in fact many studies suggests that uninterrupted growth of traditional form of trade has resulted into global warming posing a serious challenge to environment. Therefore one may ask is trade good or bad for the environment? The answer is not obvious. One of the potential responses to this challenge has come in form of web of national and international laws regulating the trade for protection and promotion of environment. The past two decades have seen a proliferation of national environmental laws and international environmental agreements along with a rapid expansion of international trade and investment. For the most part, the two regimes environmental protection and international trade have developed independently. Many of the rules for trade were put in place before the environment was widely viewed as a matter for global concern. A number of environmental laws and agreements, including some of the most far-reaching, might conflict with current trade rules. The environmental implications of efforts to liberalize trade are poorly understood, and efforts by governments and international bodies to determine how different trade patterns and policies affect the environment are still in their infancy. Generalizations about whether the net environmental effects from liberalizing trade will be positive or negative are usually too simplistic to be much use for policymaking. The actual effects depend on the specific context, including different nations' capabilities to implement effective environmental protection regimes. The trade community is concerned about the trade impacts of measures taken in the name of the environment. These measures include both domestic environmental regulations, which can have side effects on trade, and explicit trade restrictions taken in the name of environmental concerns. The World Trade Organisation (WTO) from last two decades taking it seriously and try to creating balance between the environment and trade. To meeting the challenges of nature conservation the

governments of the countries must state their policies without any ambiguity with clear perception and implement them wisely and create the collective responsibility with the duty of individual. The state's government must focus on the sustainable development and reduce the carbon emissions in this regard the trade communities must help the developing countries. This research papers makes a modest approach to study the symbiotic relationship between trade regulating laws and their impact on the environment with specific reference to India.

**Keywords:** Trade, Environment, Global Warming, World Trade Organisation, governance

## Introduction

Trade and environment emerged as an issue of academic and public concern in the 1980s and has gained primacy in national policy-making and international conferences since the 1990s, particularly since the 1992 Rio Earth Summit, which adopted Agenda 21 and the Rio principles. Trade and environment is a complex and cross-cutting subject, which is still relatively new. In recent years, the international trade and environment debate has moved from emphasis on a situation of inherent conflict between these two areas to a greater political preparedness to identify and to make trade an engine of sustainable development. This is reflected in the various conferences like Doha Ministerial Declaration (DMD) of the World Trade Organization and the World Summit on Sustainable Development (WSSD). In the WTO context, the subject is still perceived by many developing countries as being driven by the developed countries. On the other hand, many developing countries are wary of the intent of the subject's proponents to "mainstream" trade and environment and make the issue an integral part of the WTO negotiations and discussions on agriculture, services, market access for non-agricultural products and trade-related intellectual property rights etc. It is now widely recognized that trade and environment are inextricably linked. International trade also drives changes in national patterns of production of goods and services, which in turn impact on the domestic environment (through scale, structural and dynamic efficiency effects of trade). This impact is further influenced by domestic environmental regulations. As an engine of growth, trade can also provide the necessary resources for environmental conservation.

The need to ensure that the trade and the environmental policy are mutually supportive and have a symbiotic relationship and this is more pressing today than ever before however successful integration of these policies can only be achieved through a constructive dialogue based on far or beyond border awareness and

understanding of the complex interlinkage between trade and environment. For achieving this the developed countries must help the developing countries and the world communities like WTO and others help for making the bridge between them to achieve the goal of green economy.

### **International Trade and Environment**

International trade is highly increasing in the 21st century and further highly impacting the environment globally in both manner negative and positive but negative is far more than positive. Trade means more goods produced and thus in many cases more environmental damage. Trade and environment are related because all economic activity is based on the environment, the wealth created by trade will not necessarily result in improvement of the environment. The lust of the more and more wellbeing and luxury means more and more new industries and for this land acquisition, raw materials, machines, labour, then carbon and other poisonous gases emission increasing in the air, land will be barren near the industrial areas, ground and other water resources become effluent due to the various types of waste from these industries. Environment and trade are not isolated, they are fundamentally related. Much of the environmental damage due to the increased scale of global economic activity, International trade constitute a major portion of that growing scale making it most important as a driver of environmental change. As economic globalisation proceeds and the global nature of many environmental problems become more evident there is bound to be friction between the multilateral system of law governing both domestic and international trade. There are physical, legal and institutional linkage between international trade and the environment.

### **Developed and Developing Countries**

One-Fifth of the world's population live in absolute poverty, most of them in developing countries and the gap between the developed or we can say rich and developing(poor) countries widening continuously. Developing countries must focus with priority to reducing that poverty and minimizing that gap. Openness to trade and investment may be a key way to do so, by increasing exports through the links between economic and the openness because it will not increase automatically but rich or developed countries protect their industries through various means like subsidies, special trade rule on the name of environment and tariff system that hurt industries and exports of developing countries.

Demands that developing countries comply with developed country's environmental standards are unacceptable and unfair to the developing countries. Particularly if they are not accompanied on financial assistance but priority is differ for example in many poor countries clean water is paramount and the rich countries often caused most of the damage and in the first place in carbon emissions. For example :-

### World Co<sup>2</sup> Emission by Top Ten Countries

| 1990's         | 2000's         | 2010 - 2014  |
|----------------|----------------|--------------|
| USA            | China          | China        |
| China          | USA            | USA          |
| Russia         | Russia         | India        |
| Japan          | India          | Russia       |
| Germany        | Japan          | Japan        |
| India          | Germany        | Germany      |
| United Kingdom | Canada         | Iran         |
| Canada         | United Kingdom | Saudi Arabia |
| Italy          | Iran           | South Korea  |
| Mexico         | Mexico         | Canada       |

Source: CDIAC Estimated Carbon emissions Data

The table clearly shows that most of the carbon emissions released by the developed countries and this is unfair to developing countries to take similar steps as the developed countries in the protection of the environment. Developed countries should take ten steps further and then inspire the developing countries to comply with those policies which help the trade as well as the environment.

### Is Trade good or bad for the Environment

Constantly increasing the world population consumes the goods and services it means more production of goods and requirement of services which further impact the trade itself internationally. Some problems become with wealth, so a lot of environmental problems, they are better with when the country becomes wealthier. Countries take various measures to improve their environment, as they become wealthier they simply want to live in a clean setting. A smaller number of environmental problems seems to become worse with wealth, and here the carbon

emissions would be a clear example. As countries produce more, they tend to emit more carbon into the atmosphere, some environmental problems first become worse with wealth and then become better. So countries like USA, China the top most carbon emissions countries in the world, in China Beijing was the one of the most polluted city in the world and now its situation is changing day by day as China grows rapidly. It means-

- Wealthier countries become cleaner
- Poorer but desirous or ambitious countries become dirtier but growing faster
- The latter, eventually become more cleaner

The environmental economist found an economist theory called **Kuznet Curve** as **Environmental Kuznet Curve (EKC)** which simply means after a certain period or time an economy of a nation decreasing unequally in the same manner in the theory of **EKC** the environment first worsen then become cleaner as the country become wealthier.

Another and much longer factor is that greater wealth tends to lower birth rates and the rich or developed countries have better education and living standard than the poor or developing countries. It means aware, educated and less population that will in some ways, put minimum burden on the environment. It is clear now that the trade is not bad for the environment.

### **WTO and its Role in Trade and the Environment**

The WTO successor of the General Agreement on Tariff and Trade (GATT) found on 1 January 1995. From its very first day the WTO's objective and principles clearly support the free and fair trade for this WTO with different types of agreements minimise the tariffs and various type of trade barriers. But in reality the WTO and other trade related organizations are highly influenced by the powerful and rich countries who dominate international trade. These countries don't follow the rules and regulations made by the WTO and signed by these countries and also make various types of obstacles and barriers to the poor or developing countries to increase their economy. But the WTO can play an important role in promoting environmental-friendly trade on international level.

The WTO mainly after the Rio summit also know as earth summit and Kyoto Protocol consider the issue of environment and mentioned in its list as an important issue.

At the event of 20<sup>th</sup> years of WTO, answers of some questions given by the eminent professors of various Universities which clear the most of aspects of the WTO related to trade and the environment.

1. How has the debate on trade and environment evolved over the past 20 years?

*The debate on trade and environment has become a very constructive part of the WTO system, 25 years ago one was careful not even to mention the word environment in this building but now a days it's recognized that trade sustainable development linkage is an important part of the WTO and in the environment regime unit and multilateral environmental agreements also recognize that their connection with trade are very important..... you have to make sure that the WTO dispute settlement system to make sure that the environment side gets a fair hearing in the WTO dispute settlement system..... We have found that at the national level policy makers weren't linking these issues very well but because there was an international debate and governments had to prepare a position for the international organization that we had much more cooperation and coordination between the ministries in environment development, trade, commerce even in labour than there had been in previous times.*

Steve Charnovitz "George Washington University"

2. How much policy space do WTO members have under WTO rules to adopt trade related environment measures?

*The WTO rules are carefully designed so that they provide members with maximum policy space but they're also designed to make sure that the policy space is not abused to engage in protectionism, that is hidden behind the exercise of policy space so sometimes that takes some working out and take some judgement by the WTO panels and the appellate deal of policy space so that it so long as it is not abused.*

Joel P. Tractman "Tufts University"

3. What are the main challenges governments faces in trying to ensure that trade and environment policies are mutually supportive?

*I think there are challenges for government at two levels International which is what we deal with here in the WTO and in many other places like the UN climate change negotiation but also there are important domestic challenges for government and the very first thing that you need to do at home is to make sure*

*that your environment sustainable development objectives are well aligned with the setting in your economy.....there are some very legitimate concerns which we see right through out this trade and environment discussion by some countries who feel that they will be uncomfortable disadvantaged by other countries deciding to put in place very high environmental standards and then using pressure and threat of trade measures against those countries who are unable perhaps to meet those standards for reasons of their own stage of development and this requires a degree of confidence building and the sense that countries are not going to be forced into action and standards that at this stage of development are inappropriate for them so I think that's where the WTO along with its other partner, agencies has made a big contribution over the last twenty years.*

Abrian Macey “University of Wellington”

4. How has WTO dispute settlement dealt with complex measures that try to pursue environmental and other policy objectives?

It's early days for WTO dispute settlement dealing with issues like this I think one also has to distinguish between two different types of measures with multiple.....the much more difficult question is what do you do about measures where the two objective conflict with each other where it's a zero-sum game and it's only really now that we're starting to see cases like that coming through and a few of those have been decided..... if we are limiting ourselves to the uncontroversial topic which is that one can protect one's own environment at least how can this be reconciled with trade interest it's tricky but essentially the way that the rules are structured say that you have to adopt the measure in a sensible way and that sensible way is then defined in terms of being the least trade restrictive to me, I think this is reasonable the good administration should be able to meet these conditions its essentially the principle of proportionality and usually when cases fail to do this when the measure doesn't achieve the right balance between apparently protecting the environment and trade interest it's usually the floor of the measure rather than a floor in the rules.

Lorand Bartels “University of Cambridge”

### **Environmental Impact on Trade in India**

India is one of the fastest growing economies and the 3rd largest carbon emissions country in the world. The environment concern domestic as well as on the

international level also impact the Indian economy unfortunately, trade and environment issues are increasingly clashing with each other and development suffers, India is in the same position, nearly 2000 Himalayan glaciers have melted in past few decades, air become worst in the most of the cities in India, Delhi was the most polluted city in the world in 2019. These are some serious issues which highly impact on Indian society and its economy in both stages whether it is domestic or international. But the question is whether India should minimize its trade and take environmental measures according to the developed nation like the US , which is the 2<sup>nd</sup> largest carbon emissions country in the world. The answer is not obvious. Because India is a developing country, the theory of EKC as applied in the case of the US and the China must be applied in the case of India because if India takes measures as equivalent to the developed countries then the new and growing economy of the India will slowly die in its first stage. But countries like India should take some measures to slowly decrease the carbon emissions without hurting its economy and India is doing well in this field even in a better way than the other developing and most of developed countries. Taking one step further and signifying its commitment to sustainability, India installed the Solar Panels on the roof of the United Nation headquarter which are valued a million dollars. India's solar power 25,000 megawatts, making a milestone in its 2022 target. India is also changing its motor vehicle engine to Bharat Stage IV (BS- IV) norms to direct Bharat Stage VI (BS- VI) norms in 2020.

### **Constitutional Provisions on Environment in India**

The Indian constitution has very clear and unambiguous provisions for the protection of the environment but before 1976, the Indian constitution didn't have these provisions. When Indira Gandhi signed the United Nations Conference on the Human Environment at Stockholm in 1972, after that the Indian Constitution was amended in 1976 by the Constitution (42<sup>nd</sup> Amendment) Act. Inserted in the Directive Principles of State Policy in Part IV of the Indian Constitution, Article 48A obliges the State to "endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." Simultaneously, Article 51A(g) in Part IV(A) of the Constitution, the part on Fundamental Duties, imposes a duty on every Indian citizen "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

The Indian Parliament also passed various act in protection of environment for example-

- The Water (Prevention & Control of Pollution) Act, 1974
- The Water (Prevention & Control of Pollution) Cess Act, 1977
- The Air (Prevention & Control of Pollution) Act, 1981
- The Environment (Protection) Act, 1986
- The Wild Life (Protection) Act, 1972
- Forest (Conservation) Act, 1988
- The National Green Tribunal Act, 2010

### **Role of Judiciary in Protecting Environment and Sustainable Development**

In Indian, like any other developing country, there has been environmental degradation due to over exploitation of resources, depletion of traditional resources, industrialization, urbanization and population explosion. However, India has never been oblivious of this fact, in fact, India has always been in the fore-front of taking all possible steps for the protection and improvement of the environment and aiming at sustainable development.<sup>1</sup> At the same time the judiciary in India has played a pivotal role in interpreting the laws in such a manner which not only helped in protecting the environment but also in promoting sustainable development. In fact, the judiciary in India has created a new “environmental jurisprudence.”<sup>2</sup>

The compliance with the principle of sustainable development is now a constitutional requirement. How much damage to the environment and ecology has been done has got to be decided on the facts of each case. Therefore, the courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the state under our Constitution to devise and implement a coherent and co-ordinated programme to meet its obligation of sustainable development based on inter-generational equity.<sup>3</sup>

In another case **R.L. & E. Kendra, Dehradun v. State of U.P.**<sup>4</sup> (popularly known as *Doon Valley Case*) was the first case of its kind in the country involving issues relating to environment and ecological balance which brought into sharp focus the conflict between development and conservation and the court emphasized the need for reconciling the two in the larger interest of the country, mining which denuded the Mussoorie Hills of trees and forests cover and accelerated soil erosion resulting

in landslides and blockage of underground water which fed many rivers and springs in the river valley. The court appointed an expert committee, to advise the Bench on the technical issues and on the basis of the report of the committee, the Court ordered the closure of a number of limestone quarries.

The Court was also conscious of the consequences of the order which rendered workers unemployed after the closure of the limestone quarries and caused hardship to the lessees. The Court observed that “this would undoubtedly cause hardship to them, *but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoiding hazard to them* and to their cattle, homes and agriculture land and undue affectation of air, water and environment”<sup>5</sup>

**Public Interest Litigation (PIL)**-: A public interest litigation is a good and easy method to file a case by the aggrieved or for the aggrieved person by someone in any matter related to right and other lawful causes. The PIL in the area of environment protection helps a lot. The one of the most famous advocate *M.C. Mehta*, known as an advocate of the environment in India litigation, has filed a number of cases through **PIL** for the protection of the environment.

In *M.C. Mehta v. Union of India*<sup>6</sup>, a public litigation was filed seeking direction from the court to stop the mining activities in the vicinity of touring resorts of Badkal lake and SurajKund in Haryana. The Haryana Pollution Control Board recommended that mining activities within a radius of 5 km. from the tourist resorts should be stopped. Similar recommendations were also made by the National Environmental Engineering Research Institute (NEERI). Having regard to the vicinity of tourist resorts were bound to cause severe impact on the local ecology and therefore, mining activities should be stopped within 3 kms. of such resorts.

**Absolute Liability**-: In another case *M.C. Mehta v. Union of India*<sup>7</sup>, (popularly known as **Oleum Gas Leak Case**) the Supreme Court of India rightly rejected the century old principle of “strict liability” evolved in *Rylands v. Fletcher*<sup>8</sup>, and evolved a new principle of liability called absolute liability. In this case Court further observed that the enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer of the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

There are lots of examples of India judiciary in which courts rightly use the law passed by legislation on protection of environment which reflects in the courts judgment in various cases. Recently the Supreme Court ordered to demolition of 500 flats in four posh apartment complexes in the Maradu area of Kochi which were built in violation of Coastal Regulation Zone (CRZ) rules.

## Conclusion

Trade is necessary for the development and wellbeing of the human but it's never going without the good environment but it's the bitter truth that the trade is for some extent harmful to the environment in its growing stage but later on the trade also helpful on cleaning the environment. The impact of international trade on climate change due to which high temperature and environment pollution are serious issues.

Without hurting the trade the international communities like WTO without being influenced and prejudiced by the developed countries along with individual countries should make the policies for sustainable development and multilateral sustainable development for saving nature and further make a green bridge between the trade and environment with green economy. If we want to see the general consensus in the world on this issue then we have to set some good examples in our country first as above mentioned. The government must separate the law from the environment for the laymen and for the farmers in India because in India a laymen, a farmer afraid of whenever they heard about law, court etc. but they have to be a little more educated and aware to preserve the environment with agriculture with minimum use of pesticides. At the same time the government has to apply the law with the environment in the case of multinational companies and businessmen and strictly implement it.

## Notes

1. S. Jaswal, Nishtha Jaswal and Vibhuti Jaswal "Environmental Law".
2. S. Jaswal, "Directive Principles Jurisprudence and Socio-Economic Justice in India.
3. T.N. Godavarman Thirumulpad v. Union of India, (2008) 2 SCC 222.
4. Rural Litigation and Entitlement Kendra v. State of U.P. A.I.R. 1985 S.C. 1259.
5. J. Bandhyopadhyaya "India's Environment : Crisis and Responses, and Nishtha Jaswal "Comment on Rural Litigation and EntitlementKendra v. State of U.P.(1986).
6. M.C. Mehta v. Union of India A.I.R. 1997 3 SCC 715.

7. M.C. Mehta v. Union of India A.I.R. 1987 S.C. 1086.
8. Ryland v. Fletcher (1869) (19) L.T. 220.

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