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Balancing Growth and Sustainability: The Impact of International Trade Law on the Environment

Pallavi Chikkala* & Adith Iyer⁺

Abstract

The rapid expansion of international trade since the mid twentieth century has been a key driver of global economic growth. At the same time, this expansion has intensified environmental degradation, giving rise to complex legal and policy challenges at the intersection of trade liberalisation and environmental protection. This paper critically examines how international trade law, particularly under the framework of the General Agreement on Tariffs and Trade and the World Trade Organization, impacts environmental governance and sustainable development. It analyses the inherent tension between the objectives of free trade and the need for environmental conservation, focusing on the role of exceptions such as Article XXIV of GATT and the evolving jurisprudence of the WTO dispute settlement mechanism. The study explores the growing relevance of Multilateral Environmental Agreements and their interaction with trade obligations, highlighting how inconsistencies and enforcement gaps often undermine environmental objectives. Through an examination of landmark disputes and unilateral trade measures adopted for environmental protection, the paper evaluates whether existing legal frameworks effectively balance economic growth with ecological sustainability. Special attention is given to issues such as resource exploitation, hazardous waste trade, eco labelling, and process based trade restrictions. The research adopts a doctrinal and analytical approach, drawing from international treaties, case law, and scholarly literature to assess the adequacy of current mechanisms. It argues that while international trade law has gradually acknowledged environmental concerns, significant structural and institutional limitations remain. The paper concludes by emphasising the need for greater coherence between trade and environmental regimes, stronger enforcement of environmental commitments, and reforms aimed at integrating sustainable development as a central objective of global trade governance.

Keywords - International Trade Law, Environmental Protection, Sustainable Development, World Trade Organization, Multilateral Environmental Agreements

I. INTRODUCTION

International trade law has played a significant role in determining the world order and ensuring smooth trade worldwide. Since commerce is essential to national economies, international trade law affects many facets of national policies and the lives of their citizens. The expansion of international trade has coincided with an exceptionally high global economic growth rate since World War II. At the same time, there has also been a sharp rise in environmental deterioration worldwide, including deforestation, drought, climate change, biological species extinction, and

* Faculty Associate at School of Law, Vijaybhoomi University

⁺ 4th Year Student, Vijaybhoomi University

increased air and marine pollution. This sequence has become increasingly important in recent decades because of the expanding environmental issues brought on by economic development and the growing significance of commerce as an economic source of growth.

The General Agreement on Tariffs and Trade (GATT) was negotiated in the 1940s to govern international trade⁸⁵. GATT is currently a part of the World Trade Organisation (WTO) as an annexure, known as GATT-WTO⁸⁶. Establishing an open and transparent trading system that guarantees equitable access to markets, commodities, materials, and investment opportunities is the main goal of the GATT-WTO⁸⁷. The Most-Favoured-Nation (MFN) clause is also acknowledged⁸⁸. Environmental deterioration is a complicated topic with many ramifications, which is why this study has a lot to say about it⁸⁹. Economic independence depends on acknowledging people's freedom to handle their natural resources. Both positive and negative effects result from the growing awareness of this issue, which also puts residents' lifestyle aspirations in danger⁹⁰. These repercussions can cause both dread and excitement, and they are felt locally, nationally, regionally, and globally⁹¹. The UN's Permanent Sovereignty over Natural Resources (PSNR) resolution acknowledges states' inherent ability to make use of their resources⁹². Resource conservation is a prerequisite for economic democracy. One of the key components of sovereignty is the capacity to manage and utilise resources. The UN Conference on the Human Environment and the UN Conference on Human Environment (UNCHE) both state that careful planning or management, as appropriate, is required to protect Earth's resources⁹³. The widespread adoption of Multilateral Environmental Agreements (MEAs) has increased the interdependence of trade and the environment, resulting in the emergence of a new era of international law. Another International Organisation of significance is the United Nations Environment Programme (UNEP), which implements the guiding principles of UNCHE. Article XX(g) of the GATT acknowledges the entitlement of member nations to implement measures aimed at safeguarding the well-being and security of their inhabitants and environment, even if these policies have repercussions on global commerce. Therefore, the interlinking of trade and environment has been recognised a few decades back. However, many disputes have arisen between WTO and its predecessor, GATT, due to the actual application of Article XX(g). The paper also emphasises how important it is to balance these objectives and the ideas of free and fair trade among participating countries. Therefore, the goal of unfettered international trade

⁸⁵ "General Agreement on Tariffs and Trade (GATT), 30 October 1947, 61 Stat. A3, 55 U.N.T.S. 187"

⁸⁶ "Annex The Results of the Uruguay Round Negotiations: The Legal Texts, WTO, Geneva, 1995, April 15, 33 ILM 1144 (1994), (in force 1st January, 2005)."

⁸⁷ "Somendra Kumar Banerjee, The Concept of Permanent Over Sovereignty Natural Resources - An Analysis, 8 IJIL 12, 36 (1968)."

⁸⁸ GATT, *supra* note 1, Article I.

⁸⁹ "Ginther Handl, Territorial Sovereignty and the Problem of Transnational Pollution, 69 AJIL 50, 76 (1975)."

⁹⁰ "Dr. A. David Ambrose, Directive Principles of State Policy and Distribution of Material Resources with Special Reference to Natural Resources – Recent Trends, 55 JILI 1, 2 (2013)."

⁹¹ "Sanford E. Gaines, International Trade, Environmental Protection and Development as a Sustainable Development Triangle, 11 REV. EUR. COMP. & INT'L ENVTL. L. 259 (2002)."

⁹² "UNGA Res. 1803 (XVII), 14 December, 1962, 17th Session, Supplement No. 17 (A/5217); UNGA Res. 1314 (XIII), 1958; 2 ILM 223 (1963)."

⁹³ "UNGA Res.2994, 2995 and 2996; of the Stockholm Declaration, June 16, 1972 UN Doc. A/CONF 48/74 and corr. 1., reprinted in 11 ILM 1416 (1972)."

clashes with the goal of protecting the Earth's ecosystem and resources through national and international activities⁹⁴.

Trade limitations imposed for environmental quality can be of many types. The first category includes import and export regulations put in place by all countries to safeguard their environment and domestic resources and protect public health and safety. A less-than-ideal distribution of resources would result from producers imposing adverse externalities on society without environmental restrictions. As a result, putting such criteria into practice encourages increased welfare and efficiency. Enforcing safety and environmental laws could lead to international conflicts⁹⁵. The European Community (EC) outlawed importing hormone-treated cattle in 1989. As a result of this action, the US imposed \$100 million in sanctions on European exports⁹⁶. There have been numerous such examples. Regulations controlling the export of hazardous products, technology, and waste materials fall under another category of environmental trade restrictions. Events like the 1984 unintended explosion at the Union Carbide plant, have spurred attempts to create new international laws governing the export of hazardous chemicals, waste, and pesticides to developing countries.

II. STATEMENT OF THE PROBLEM & RESEARCH QUESTIONS

The sustainable development goal is compromised by the problematic balance of trade law and environmental law as international trade is simultaneously a necessity and a cause for environmental harm. The eco-friendly measures sought by international treaties such as the General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) face challenges, along with free trade policies to stimulate economic growth. However, international agreements fail at maintaining a balance in destruction of natural resources, capitalistic pollution, and public health concerns.

Depending on the existing legal system, the actual problem is almost always more simple or less conclusive than one suggests. The problem regarding international law concerning boundary-less trade due to region and environmental protection policies/cap laws are deeply rooted in policy ambiguity that exists between trade, economy, and international law. With the existence of Multilateral Environmental Agreements (MEAs), trade becomes a one sided playing field legally and ethically allowing for the abolition of trade barriers, thus undermining environmentally driven policies. What is critical to determine is the validity of such proposed measures alongside the power international governing bodies have to eliminate conflicting factors induced by policies stemming from trade and environmental concerns.

RESEARCH QUESTIONS

1. How effective are legal instruments (GATT/WTO) in solving environmental problems caused by economic activity and international trade?
2. How effective are the existing international legal frameworks in combating environmental degradation arising out of trade activities?

⁹⁴ "Ernst-Ulrich Petersmann, Trade Policy, Environmental Policy, and the GATT, 45 AUSSSEN- WIRTSCHAFT 197 (1991)."

⁹⁵ ROBERT NICOLAISENY & KENNETH HOELLER, ECONOMICS AND THE ENVIRONMENT (OECD 1990).

⁹⁶ "Michael B. Froman, Recent Developments Note, The United States-European Community Hormone Treated Beef Conflict, 30 HARV. INT'L L.J. 549 (1989)."

3. In which way do unilateral trade measures contribute to environmental improvement, and how do such measures fit into the international law of trade?
4. In what way the existing trade laws can be aligned with the MEAs to promote sustainable development?
5. Do unilateral trade actions taken by countries for environmental protection comply with international trade laws?

III. LITERATURE REVIEW

The connection between international trade law and environmental protection has become more prominent over the years due to the correlation between global economic activities and the environment. In the 1940s, GATT sought to promote trade between countries and remove barriers to trade. However, the impact of environmental policies on trade practices was not emphasized until the second half of the 20th century, especially after the 1992 Earth Summit focused on sustainable development. There is a pro-competitive imbalance and lack of sufficient measures in place to protect environmental concerns, which has been studied more deeply. The emergence of MEAs has intensified the assessment of the relationship between trade and environmental policy, particularly with regard to the appropriateness of trade reprisals for the purposes of environmental conservation.

Cases of trade measures for environmental protection have been spotlighted the most, and the conflict resolution frameworks of the WTO have faced the most scrutiny. Examples of both aggravating frameworks and balancing frameworks include the landmark Tuna-Dolphin and EC-Asbestos cases. Critics claim that in the attempt to remedy this challenge using GATT Article XX(g), which allows for trade restrictions to a certain extent under the pretext of conserving resources, undue protectionism camouflaged as conservation is employed. Some how, in one empirical study concerning the impact of trade policies on the environment, the outcome was trade liberalization is positive for economic development even though the context was deteriorating ecological conditions.

It is recommended that the policy literature improve the verbiage of harmonizing policies on trade and environmental laws by proposing coherent arguments for increasing enforcement of MEAs aimed at trade and the inclusion of ecological components in treaties. With the acceleration of climate change and the depletion of biological diversity, merging eco-friendly policy perspectives and policies becomes vital for sustainable development. In conclusion, the literature mostly overlooked the global perspective and emphasized the caution that while the economy must be nurtured, nature should not be overlooked.

C. LEGAL INTERPLAY OF TRADE AND ENVIRONMENT

The WTO's Committee on Trade and Environment (CTE) was established by the 1994 Marrakesh Ministerial Decision on Trade and Environment and the Marrakesh Agreement, which founded the World Trade Organisation. The Trade and Environment ruling has assigned particular tasks to do, and as a result, it is answerable to the WTO General Council. The CTE was initially granted extensive power to ascertain the relationship between trade and environmental laws to promote

sustainable development⁹⁷ and to offer suitable suggestions in line with the system's open, equitable, and non-discriminatory nature.

The Committee's broad goal was reduced to a 10-item work agenda, and was again significantly changed by the 2001 Doha Declaration, which gave the members three primary responsibilities:

- The connection between MEAs and the WTO;
- The criteria for giving MEAs observer status in WTO meetings, as well as the protocols for the exchange of information between MEA Secretariats and the WTO; and
- Reducing or eliminating barriers to trade in environmental goods and services.

In addition, the CTE was instructed to closely monitor the following three issues as it worked on the 10-point agenda:

- The impact of trade distortion removal on the environment and the effect on the market access of environmental measures;
- Pertinent TRIPS Agreement provisions; and
- Environmental labelling requirements.

Because it has been violated in a number of environmental conflicts when governments have imposed import limits on certain items, Article XI is pertinent to discussions concerning trade and the environment. Article XX offers the most notable exemption to the previously listed GATT limitations, except for fulfilling the necessity test. According to the Chapeau Convention, measures cannot be understood as a disguised restriction on international trade or as arbitrary and unjustifiable discrimination between countries with similar conditions. In this sense, non-discrimination is the only condition the GATT rules impose. WTO members can enact national environmental protection laws if they do not discriminate between similar commodities imported from various trading partners (MFN clause) or between identical goods produced domestically and abroad (NT principle). It will assure predictable access to markets, safeguard the economically disadvantaged from the powerful, and ensure consumer choice⁹⁸. GATT is a highly competent institution. Its stature as a dispute-resolving tribunal falls far short of the Supreme Court or the Court of Justice. There exists an urgent need to make its decisional processes more transparent and accessible⁹⁹.

Considering the lack of global jurisdiction to settle environmental disputes, the sluggishness of international agreement negotiations, and the challenges associated with putting these accords into effect and upholding them, it is not unexpected that some countries have supported unilateral national action to address environmental externalities after being urged to do so by environmental organisations. Among these measures are prohibitions on the import and export of garbage, natural resources, and things that are deemed to be harmful. Trade international agreements have occasionally permitted restrictive measures intended to address non-signatories alleged insufficiencies in environmental management¹⁰⁰. In other cases, the restriction is imposed

⁹⁷ 1994 Marrakesh Ministerial Decision on Trade and Environment https://www.wto.org/english/docs_e/legal_e/56-dtenv.pdf (visited March 18, 2025).

⁹⁸ WTO Environmental Negotiations, https://www.wto.org/english/tratop_e/envir_e/envir_negotiations_e.htm (accessed March 18, 2025).

⁹⁹ "John H. Jackson, World Trade Rules and Environmental Policies: Congruence or Conflict?, 49 WASH. & LEE L. REV. 1227 (1992)."

¹⁰⁰ "Richard B. Stewart, International Trade and Environment: Lessons from the Federal Experience, 49 WASH. & LEE L. REV. 1329 (Fall 1992)."

unilaterally, and no meaningful international agreement has been reached on the matter. Adopting good regulatory legislation in an international setting is significantly more challenging than in a federal one. This distinction has supported unilateral action to save the environment in a world with little legal protection. However, other countries may contest such moves as breaching the GATT. These difficulties not only call into question the legality of trade restrictions under the terms of the GATT agreement but also raise more significant questions regarding the proper function of trade restrictions in advancing global environmental protection objectives and whether the GATT is the proper forum for resolving alleged conflicts between trade and the environment. The United States challenged a Canadian export prohibition on raw sockeye and pink salmon, herring, and herring roe as an illegal export restriction in the Canada-Herring and Salmon Case. Canada tried to enforce the prohibition under GATT Article XI(2)(b) and Article XX(g) as a domestic measure required to enact norms or regulations for the classification, grading, or marketing of commodities in international trade. However, the GATT panel concluded that the export ban was not justified by the previous paragraph because, although Canada may ban fish exports that did not meet its requirements, it could not ban all fish exports because some would conform¹⁰¹. Protection of the environment, animal or plant life, and human health or safety are all considered to be legitimate goals for governments to target under Article 2.2 of the Agreement on Trade-Related Technical Barriers.

IV. TRACING THE EFFECT OF ENVIRONMENTAL CONCERNS ON TRADE LAW

As long as trade restrictions are non-discriminatory, principally focused on the conservation of the resource, implemented in conjunction with restrictions on domestic production and consumption, and intended to safeguard resources, they are permitted under Article XX(g) to protect finite natural resources¹⁰². A nation may expressly forbid the export of endangered plant and animal species that exist inside its boundaries under this exception¹⁰³. Since there isn't an equivalent domestic prohibition on the production or consumption of timber, the export restrictions on raw logs put in place by a number of countries don't seem to meet the standards. The prohibition only applies to raw logs; it has additional uses, such as preserving the sustainability of the domestic wood processing and manufacturing sectors, and is not primarily intended for conservation¹⁰⁴. To rightly assess the effects of environmental concerns and agreements on international trade law, it is important to distinguish between trade-restrictive measures undertaken unilaterally by a nation and those taken in relation to an international convention. It is also pertinent to distinguish between the different types of environmental externalities addressed by a given measure. While multilateral measures include conventions and agreements signed by a number of countries, as given above, some unilateral measures are explained below:

A. Products

¹⁰¹“Canada-Unprocessed Salmon and Herring, GATT, BISD, 35th Supp. 98 (1989).”

¹⁰² GATT, *supra* note 1, Art. XX(g).

¹⁰³ “EDMOND MCGOVERN, INTERNATIONAL TRADE REGULATION, 405 (2d ed. 1986).”

¹⁰⁴ GATT, *supra* note 1, Art. XI(2)(a).

Imports of products are subject to unilateral restrictions based on laws intended to reduce hazards to the importing country's environment, health, and safety. The problems encountered when evaluating the arguments. The arguments made in federal-type systems are strikingly similar to those made for such regulations, their effect on competition, and the proper ratio between free trade and product regulations. In theory, there seems to be no reason why a tribunal of the GATT kind shouldn't be able to develop an adequate corpus of international law to regulate the topic. However, in reality, trade rivalry will probably be more intense and it will be harder to settle disputes over risk science and suitable risk management measures in an international setting than a federal one. The challenge of determining the degree of environmental justification for policies that have the impact of protecting domestic producers is further demonstrated by the conflict between the United States and Canada over Canada's high tax on non-usable beer containers¹⁰⁵. Limiting the export of goods like pesticides and other chemicals or goods that are prohibited from being used in their manufacturing country has been a contentious topic in international environmental policy, and there is no federal-type system precedence. At least in theory, there is no reason why a pesticide that is prohibited in a developed country with a fragile ecosystem may occasionally be used in a less developed country with a higher capacity for assimilation. The government's ability to make and implement sound risk assessments is seriously questioned in practice of many least developed countries (LDCs), though, due to a combination of factors such as corruption, inexperience, and a lack of administrative capacity that place regimes under undue pressure to advance development goals.

B. Natural Resource

In an effort to promote domestic processing or consumption, several countries have attempted to restrict the export of natural resources. For instance, several countries have limited the sale of raw timber, while the United States has prohibited the transfer of Alaskan oil to Japan. Both of these limits and dual price tariff systems – for instance, a significantly higher tax on imported processed timber than on raw timber intended to encourage processing within the importing state – clearly violate the FTR principles established in federal-type systems. Domestic producers' subsidies are problematic from an economic and environmental standpoint since they frequently promote excessive and wasteful resource use. However, principles of state sovereignty are more strongly held with respect to resources than products, and there is a sentiment that natural resources stand on a different footing than manufactured products. However, the US Supreme Court has recognised that this cannot be squared with an FTR. Nor is it required by considerations of environmental policy. Restricting the exploitation of natural resources to nationals does not ensure their wise maintenance. In many LDCs, infusions of foreign capital, technology, and know-how, combined with the development of improved property-right incentives, will be needed to maintain the resource base and promote sustainable development.¹⁰⁶

C. Wastes:

The waste analysis is comparable to the natural resource analysis. In addition to violating FTR standards, a prohibition on the importation of garbage from outside the state is not sound from an environmental standpoint over the long term. Additionally, some land disposal is unavoidable for

¹⁰⁵ "Nancy Dunne & Bernard Simon, Canada-U.S. Beer War Gets Green Tinge, FIN. TIMES, July 31, 1992, at 5."

¹⁰⁶ "Richard B. Stewart, Tort Liability for Natural Resource Damages: A Category Mistake (forthcoming); Lobsters from Canada, USA 89-1807-01, Final Report of the Panel, 1990 WL 299945 (Binational Panel May 25, 1990)."

the foreseeable future, and depending on geology, population density, and other considerations, different countries are better or less equipped to offer proper disposal. A rule mandating that every country disposes of all of its waste on its own would not be environmentally or economically sound, even though the hazards involved in transporting hazardous materials must also be taken into account. International attempts to forbid the importation of any dangerous or radioactive waste have been derided by the illegal transportation and disposal of waste¹⁰⁷. However, there are still valid worries about how well less developed countries can control how imported waste is disposed of. These issues support specifications such as those in the Basel Convention requiring prior consent, notification, and the exporting state's ultimate obligation for appropriate disposal¹⁰⁸. However, such regulations by themselves are unlikely to stop incorrect, dishonest, or unlawful trash disposal and transportation.

D. Processes:

It is conceivable that a country may prohibit technology transfer to countries that would utilise it in manufacturing processes that harm the environment. Export restrictions on pesticides could be interpreted in this way, but no more widespread practice has yet to be established. Product limitations following a GATT panel's ruling invalidating U.S. bans on the import of tuna caught through fishing practices that result in the incidental taking of more porpoises than permitted by U.S. law, imports targeted at negative environmental effects associated with the processes by which those products are produced present challenging issues and have become a hotbed of controversy¹⁰⁹.

As said before, federal-type systems have no precedent for these kinds of actions. This situation could be a result of several things, such as the comparatively recent increase in environmental concerns, the reality that process compared to other countries, the United States and the European Community have more easily addressed spillovers through law, and a single state would have comparatively little power¹¹⁰. Differentiating between the many forms of environmental externalities produced by various processes and regulatory policies in various countries is crucial when evaluating the viability and wisdom of such actions without precedent. Due to the challenges of determining the degree of competitive disadvantage that could arise from a country implementing stricter environmental regulations, disagreements about the rationale behind import taxes and other trade restrictions that are purportedly intended to counteract such disadvantage will rely on who is responsible for providing the evidence. Those who would impose trade restrictions should be able to demonstrate a significant competitive disadvantage to prevent abuse of such laws. However, there is a deeper criticism of these actions. As the GATT panel notes, there is no reason why variations in national environmental conditions and preferences, and hence in process laws, shouldn't be considered a legitimate component of comparative advantage. Proposals to equalise environmental compliance costs are based on the "level playing field"

¹⁰⁷“Eli LouKA, THE TRANSNATIONAL MANAGEMENT OF HAZARDOUS AND RADIOACTIVE WASTES (1992).”

¹⁰⁸“Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 28 I.L.M. 664 [hereinafter Basel Convention].”

¹⁰⁹“General Agreement on Tariffs and Trade: Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, 30 I.L.M. 1594. (1991) [hereinafter Tuna/Dolphin Panel Report].”

¹¹⁰“Richard B. Stewart, Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy, 86 YALE L.J. 1196 (1977) [hereinafter Stewart, Pyramids of Sacrifice?].”

principle, which admits no stopping point. Any attempt to separate "natural" advantages from those brought about by governmental policy is futile in the modern world. If all manufacturing costs were equal, there would be no trade at all. Furthermore, the difficulties in determining cost differences and allocations create such unsolvable issues that unilateral tariffs or other policies purportedly intended to address competitiveness disparities would really be incredibly capricious.

Resource Exploitation in the Global Commons: The situation is a little different regarding resources that are entirely outside of a country's borders and are part of the commons. Antarctica, the oceans, and the stratosphere are a few examples. The interests of the populace, supported by the possibility of trade, including tourism, offer at least some incentives for creating property rights and regulatory frameworks to safeguard resources located within the country. Furthermore, significant national sovereignty reasons strongly oppose other countries' unilateral use of trade restrictions to pressure the host country into enacting more environmentally friendly domestic policies. In the case of Antarctica and ocean resources, neither of these factors is present. Free commerce without restrictions will just speed up the catastrophe rather than improve everyone's quality of life. It is much simpler to defend limits on goods from other countries that were made using methods that deplete the common resource base under these conditions.

V. SUGGESTIONS AND RECOMMENDATIONS

In order to appropriately balance international trade with the protection of the environment, it is necessary to incorporate sustainability targets within trade agreements as goals to be met and ensure that environmental aspects are considered so that trade liberalization does not weaken eco-standards. Strengthening the enforcement provisions of Multilateral Environmental Agreements (MEAs) is critical because it will increase compliance among member states by providing better monitoring and reporting protocols through the system of trade and environmental relations. This balance can also be promoted by the advancement of United Nations guidelines that focus on the management of economically important resources to foster sustainable development while caring for the environment. Further, improving capacity building and technical assistance to developing countries will enable these countries to establish efficient environmental laws and policies regarding international trade. International collaboration addresses environmental problems that cross borders and allows for the development of common policies to resolve such issues as the climate problem as well as the extinction of biological species. Eco-labeling and environment-friendly certification programs help the general public distinguish between friendly products and otherwise, therefore motivating producers to positively change their policies and practices. Adjustments are needed, after evaluating stepwise their progress through systematic reviews of trade policies, which periodically check for and evaluate imbalances by pseudo-eco sustainable practices policies. While I would assume there exists a parole or unilateral approach to climate obstruction policy without justification unilateral policies do tend toward creating protective barriers to trade.

Finally, involving a wide array of stakeholders such as businesses, environmental groups and local populations in policy formulation concerning trade and the environment aids in crafting more

effective and fair policies. Altogether, these suggestions seek to design an integrated structure that enhances economic development while encouraging environmental protection which helps in efforts toward sustainable development.

VI. CONCLUSION

The proposed new legal order aims to create an international agreement that integrates trade and environmental considerations, establishing its own adjudicating body. This agreement would incorporate the principles of sustainable development, recognize trade-restrictive environmental measures, and ensure coherence between international environmental law and trade law. It seeks to address current challenges and effectively promote trade and environmental objectives. Even at the local level, measures to address pollution can result in global competitive advantages. Creating efficient solutions for these externalities is a key institutional and political difficulty. The experience with federal-type systems highlights the necessity of balancing environmental protection measures with the FTR, which is crucial for economic well-being. It also points to the necessity of an international tribunal to judge the legality of trade restrictions claimed to be justified on the basis of environmental protection and laws passed by international agreements¹¹¹. In certain situations, such laws may impose trade restrictions in order to encourage coordinated environmental preservation activities. But occasionally, expanding market-based incentives globally rather than relying solely on command regulation can stimulate interest in free trade and environmental protection.

Environmentalists' stance is predicated on the notion that there isn't a practical means of getting around the GATT's requirements when implementing environmental regulations¹¹². It should be noted that the Appellate Body acknowledged the validity of unilateral trade measures for environmental protection in both EC-Asbestos and Shrimp Turtle I, notwithstanding other judgements. Therefore, the Appellate Body recognised the validity of unilateral trade restrictions meant to protect the environment, but it was also aware of how easily they may be abused. The WTO must carry out this type of intricate balancing act to decide whether a policy is a legitimate exercise or a covert limitation on free commerce. Establishing the WTO's emphasis on sustainable development as a declared goal for the global trading system is a step in the direction of environmental consciousness. For this reason, the Appellate Body has concurred that implementing extraterritorial environmental protection measures is permissible under WTO law¹¹³. Although this jurisdictional view is at least more permissive than the previous interpretations, it only applies to Article XX (g) discussion.

Eco-Labeling: Although most labelling laws will fall under the purview of both the GATT and the TBT¹¹⁴, these laws cannot be regarded as voluntary. If voluntary eco-labelling pertaining to product qualities qualifies as standard under the TBT Agreement, then the Agreement will apply. This means that a recognised entity, such as a governmental institution, must decide the measures.

¹¹¹ Supra at note 16.

¹¹²“Brandon L. Bowen, The World Trade Organization and Its Interpretation of the Article XX Exceptions to the General Agreement on Tariffs and Trade, in Light of Recent Developments, 29 Ga. J. Int'l & COMP. L. 181, 182 (2000).”

¹¹³“Shrimp-Turtle case Appellate Body Report, United States - Import Prohibition of Certain Shrimp and Shrimp Products (WT/DS58/ABIR) adopted on 6 November 1998.”

¹¹⁴“Agreement Establishing the World Trade Organization, General Interpretive Note to Annex 1A, 33 I.L.M. 1 144, 1154 (1994).”

GATT has provided for the protection of the environment in the form of an exception clause in Article XX. The Dispute Settlement Body of the WTO, in the beginning, interpreted the terms of Article XX in a very restrictive way, but with the growing relevance of sustainable development, the balance was tilted towards a more environment-friendly interpretation.

With time WTO has also established a Committee on Trade and Environment to oversee the connections between trade and environment. The GATT and WTO still fall short and have been unable to keep pace with the development of environmental law and recognition of sustainable development as a legal principle of international law. There is a need to bring coherence between international trade and environmental law. This entails taking into account a number of elements, including statutory and informal regulations as well as soft and hard legislation, in order to redraw boundaries and accomplish shared goals. Significant changes must be made to the current international trade legislation in order to address environmental issues and advance sustainable development. Consequently, it is more practical to establish a new legal system with its own adjudicating authority that addresses both trade and the environment. International negotiations should be held to draft a new agreement that would address significant environmental concerns while still incorporating the key elements of trade law.