

GATT : TRADE & ENVIRONMENT

*Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirements
for the award of the degree of
MASTER OF PHILOSOPHY*

Meenal Sinha

Centre for International Politics,
Organization and Disarmament,
School of International Studies
Jawaharlal Nehru University
New Delhi - 110067
1995



जवाहरलाल नेहरू विश्वविद्यालय
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067


Centre for International Politics,
Organization and Disarmament
School of International Studies

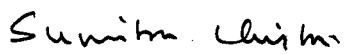
Date : 25-8-95

CERTIFICATE

Certified that dissertation entitled, "GATT: TRADE & ENVIRONMENT" submitted by MEENAL SINHA in Partial fulfilment of the requirements for the award of the degree of Master of Philosophy, has not been previously submitted for any other degree of this University or any other University and is her own work.

We recommend that this dissertation may be placed before the examiners for evaluation.


Dr. K.S. Jawatkar
Chairperson


Prof. Sumitra Chishti
Supervisor

Content

Acknowledgement		
Introduction		i-iv
Chapter - I	: HISTORY OF ENVIRONMENTAL CONSCIOUSNESS IN THE POSTWAR PERIOD	1-31
Chapter - II	: RELATIONSHIP BETWEEN TRADE AND ENVIRONMENT	32-78
Chapter - III	: GATT AND THE ENVIRONMENT	79-112
Chapter - IV	: WORLD TRADE ORGANIZATION AND THE ENVIRONMENT	113-147
Conclusion		148-157
Annex I		158-173
Annex II		174-185
Bibliography		186-196

ACKNOWLEDGEMENTS

I am ever so grateful to my supervisor, Prof. Sumitra Chishti, who encouraged me to work on this difficult but interesting topic and went out of her way to guide and help me. The complexity of the topic and my unfamiliarity with the field was so disheartening in the beginning^{that} I would have never been able to continue working on the same subject, but for her help.

Words are not enough to thank my friend, Sona, who not only gave me her whole-hearted support when I needed it the most but also bore with all my weaknesses as a person and a friend.

I would also like to thank all my other friends in JNU, and outside, for their warmth and affection.

Last but not the least, I am indebted to my parents to whom I owe everything in life.

Assuming full responsibility for all the weaknesses and errors in this work, I extend a big 'thank you' to my typist Mr. Govind Singh Rawat.

Date : 25-5-95

Place: New Delhi

Meenal
Meenal Sinha

Introduction

The increasing importance of both international trade and environmental protection has led to an intense debate over the linkages between these two critical areas. The rules governing the conduct of international trade have major implications for the environment and the countries' ability to protect it. At the same time, environmental policy can have equally serious implications for international trade. This study aims to examine how trade and environment affect each other within the framework of the GATT/WTO, as also the work undertaken to bring about a reconciliation between these dual concerns.

The GATT embodied rules governing international trade, providing a comprehensive regulatory framework for a wide range of governmental actions that affect trade both directly and indirectly. The incorporation of environmental concerns within the framework of the GATT became important as environmental problems assumed serious proportions demanding action from the GATT. The current GATT rules, however, did not specifically address environmental issues. Nevertheless, many of the GATT articles can be interpreted

to cover measures designed to enhance the environment. Acceptance of such interpretations combined with well targeted amendments to the current rules are expected to ensure a proper balance of environmental and trade policy considerations and hope to minimize the areas of potential conflict. The GATT activity in this area since the 1970s is also directed towards ensuring that trade generally enhances environmental protection and limiting the adverse effects of environmental protection on liberal trade.

The trade-environment debate has largely concentrated on complex issues related to compatibility between environmental and trade regulations, on the assumption that trade liberalization is a desirable policy goal. Serious attempts are being made to incorporate environmental concerns in the trade liberalisation policy framework.

On the one hand, defenders of the GATT argue that trade and environmental objectives can be, as Agenda 21 noted, 'mutually supportive', for a number of reasons. Trade being the principal engine of efficient allocation of resources and increasing per capita incomes of developed and developing countries. While others question the competence

of an international trade organisation to address environmental issues. However, a great deal more empirical analysis is needed to fully understand the environmental effects of free trade. What is now required is a careful delineation of specific areas which establish causal relationship between trade and environment.

To understand the problems of trade and environment in the GATT, it is essential that first and foremost, we understand the problems of environment and then its relationship with international trade. Then only can we understand the full implication of the problem within the framework of the GATT. Therefore, this study is divided into four parts which first examines the interrelationship between trade and environment and then the role of the GATT/WTO in this debate.

Chapter I traces the evolution of environmental consciousness over the years. It studies the progress of the environmental debate in the recent decades including the response of the international community to environmental concerns. It also includes the perspective of the developing countries in the past and the present regarding this issue.

Chapter II examines the relationship between trade and environment and the importance of integrating the two concerns. It also studies, in detail, the policy instruments which are designed to integrate trade and environmental issues.

Chapter III studies the role of the GATT with regard to environmental concerns. It takes into account its Articles with implications for environmental protection. Further, it studies work undertaken within the GATT to arrive at a workable synthesis between the trade and the environmental objectives.

Chapter IV discusses the changing nature and the scope of this debate in the post-Uruguay Round period. It also examines the role of the WTO as envisaged by the Marrakesh Declaration in the field of environment, with special reference to the implications for the developing countries.

Summing up the study, the conclusion also examines the future course and prospect of the debate.

Chapter - I

HISTORY OF ENVIRONMENTAL CONSCIOUSNESS

IN THE POSTWAR PERIOD

The world has changed a great deal in the fifty years since the United Nations came into being through the resolve of its founders to build up the means to influence their future destiny. The international community has expanded with the emergence of new nations and man has gone on increasing his intellectual and material power. The spectacular advances of science and technology have done much to improve the lot of many peoples. The exchanges of goods, capital, knowledge and skills is developing and there is much more intermingling of ideas and cultures. Anxieties, hopes and fears are being shared across the boundaries.

In spite of the momentous achievements of mankind, profound inequalities continue to divide peoples and individuals, and the pursuit of progress itself sometimes gives rise to contradictions, uncertainties and doubts. The interrelated issues of economic development, poverty and environment are emerging as a central item on the agenda of

global development challenges. Sever threats to the global environment and ecological systems caused by over production, consumption, on the one hand and poverty on the other, are rapidly increasing. The problems of chemical and nuclear pollution, depletion of natural resources, threats to biodiversity, ozone depletion, Greenhouse gas emission, etc. have assumed serious proportions and are posing a threat to the very existence of mankind.

Eliminating global poverty and sustaining the environment are inextricably linked courses of action. Because of a lack of viable economic opportunities, millions of poor people in the world are coerced into meeting their short-term survival needs at the cost of long-term ecological sustainability and the well-being of future generations.¹ In many instances, environmental considerations are still regarded as constraints to development, or vice versa.

At present, the major reason for the continuing deterioration of the world ecology and environment is the unsustainable patterns of production and consumption,

1. GATT, Trade and the Environment: Factual Notes by the GATT Secretariat, (Geneva, Feb.1992), p.5.

particularly in industrialized countries.² In developing countries, the persistence of poverty and restricted economic opportunities are the main sources of deterioration in the physical environment.

As the Twentieth Century comes to a close, not only are the number of people and their activities vastly increasing, but major unintended global changes are also occurring at a faster pace. If these trends of global warming, deforestation, desertification and so on, persist, neither human capacity nor technology may have the power to combat radically the deterioration of global systems.

Genesis of the Problem

Ecologist Barry Commoner³ has formulated four basic laws of ecology, the linchpins of human survival.

- i) Everything is connected to everything else, or that the existence of the elaborate network of interconnections in the ecosphere.

2. UN, The State of the World Environment - 1972-82 - Reports of the Executive Director; 10/3; (Jan. 29, 1982), p.4.

3. Barry Commoner "The Closing Circle: Nature, Man and Technology", (New York, 1971) pp.33-48.

- ii) Everything must go somewhere of what is excreted by one organism as waste is taken up by another as food.
- iii) Nature know best or that for every organic substance produced by a living organism, there exists in nature an enzyme capable of breaking that substance down: and
- iv) There is no such thing as free lunch or because the global ecosystem is a connected whole, in which nothing can be gained or lost and which is not subject to overall improvement, anything extracted from it by human effort must be replaced.

Human industrial activities have been overlooking these cardinal principles of ecology. Until recently, the prevailing notion in developed countries was that the effects of industrial pollution should be disregarded, as long as industry generated enough jobs.⁴ However, the biophysical environment whose resilience has been taken for granted in modern industrial societies, seems to be approaching its breaking-point.

It is only in the last three decade that nations began to engage in collective dialogue over the problems of

4. S.S.Kim, "The Quest for A Just World Order", (Colorado, 1984), p. 246.

ecological transgression.⁵ The age of scarcity has highlighted the common dilemma of all humankind. The ecological crisis is worst for the poor and the underdeveloped, in the long run, however, it will effect everyone.⁶

The global environment can be divided into a complex set of separate but closely intertwined and interacting subsystems.⁷ One needs to examine the condition of the atmosphere, marine and terrestrial environments, on the one hand, and the environmental impacts of such human activities as population growth, resource use and militarization, on the other. The former is the physical or natural environment and the latter is the social environment.

The physical environment is faced with the problems of pollutants, acid rain, ozone layer depletion, Green-House effect, oil spills, dumping of hazardous wastes, soil depletion, desertification, deforestation, water logging,

5. Jim Mac Neill, etc. (ed.), "Beyond Interdependence: The Meshing of the World's Economy and the Earth's Ecology", (New York, 1981), p.7.

6. William Ophuls, "Ecology and the Politics of Scarcity", (San Francisco, 1977), p.5.

7. John McCormick, "Reclaiming Paradise: The Global Environmental Movement", (Bloomington, 1981), p.10.

salinization, toxic and nuclear waste dumping and so on and so forth.

Practically all threats to the ecological stability of the natural environment originate from the man-made or social environment.⁸ The crisis is largely a result of certain authoritative patterns of global production, distribution and consumption of the planet's resources. The ecological crisis caused by the research, development and employment of destructive, anti-ecological technology is indeed a crisis of contemporary political economy.⁹ The Developing World's population explosion, with its own ecological toll, is a symptom rather than a cause of the ecological crisis; as the effects of affluence on resource consumption have been more pronounced than the effects of population increases.¹⁰

Another great environmental predator and polluter of the earth, is the war system.¹¹ The environmental impact

8. S.S. Kim, n.4, p.247.

9. William Ophuls, n.6, p.18.

10. John McCormick, n.7, p.16.

11. S.S. Kim, n.4, p.265.

here in not just confined to the execution phase but also to the preparatory and the post-eruption phases. Militarization has progressed so far and spread so widely that its arsenal now includes nuclear, chemical, biological, geophysical and environmental weapons. However, this is a separate aspect which can not be discussed in the limited context of this study. The point to be emphasized here is, that, the by-products as well as the end-products of this war industry have the potential of being more hazardous than any other environmental destabiliser.

Progress of the Debate

The Second World War transformed values and attitudes towards internationalism which in turn radically altered the debate of environmentalism.¹² Some political leaders felt that peace could only be achieved by removing the incentives to war, one of commonest of which was the demand for land and natural resources. Roosevelt thus wrote "conservation is a basis of permanent peace."¹³

12. Seymour J. Rubin and T.R. Graham (ed.), "Environment and Trade: The Relation of International Trade and Environmental Policy," (New Jersey, 1982), p.4.

13. Edgar B. Nixon, Ed., "Franklin D. Roosevelt and Conservation 1911-1945", Vol.2 (New York, 1957), p.45.

The UN Economic and Social Council (ECOSOC) and the Food and Agriculture Organisation (FAO) made conservation part of postwar economic policy planning.¹⁴ In 1947, UNESCO also recognized the enjoyment of nature as part of culture and preservation of biodiversity as scientific duty.¹⁵ In the early 1960s the World Wildlife Fund (WWF) was set up for the purpose of raising funds to finance the budget of various environment and resource conservation bodies, like the International Union For Protection of Nature (IUPN) as well as various national wildlife projects.¹⁶

These international bodies developed a broader and more universally useful definition of the concept of conservation. It resulted in a new, independent and much more activist movement concerned with much broader environmental issues. In the late 1950s and the 1960s, circumstances gave rise to a new protest movement based on attitudes to the earth.¹⁷ Nature and natural resources were

14. UN, "Interrelations: Resources, Environment, Population and Development", Proceeding of a UN symposium held at Stockholm, Aug 6-10, 1978, (New York, 1988), p.2.

15. *ibid*, p.11.

16. S.S Kim, n.4, p.274.

17. UN., *Interrelations*, n.14, p.12.

now--no longer the sole concern. The new movement addressed everything from over-population and pollution to the costs of technology and economic growth.

Many of the older preservation groups pursued essentially charitable aims, while basing their arguments on economics. The new environmentalists, by contrast, sought a more direct political impact. Their message was that environmental catastrophe could be avoided only by fundamental changes in the values and institutions of industrial societies.¹⁸

The new environmental consciousness was not an organized and homogeneous phenomena but an accumulation of organisations and individuals with varied motives and understanding of the problem. Some factors can be specifically pointed out as having effected the new movement¹⁹:-

- i) **the effects of affluence:-** Which included the problems of over-consumption, ruthless and excessive exploitation of natural resources, apprehensions about sustained

18. William Ophuls, n.6, p.24.

19. S.S.Kim, n.4, p.275.

economic expansion, inherent inequality of the capitalist system, etc.

- ii) **The advent of the atomic age:-** the danger of the fallout from atmospheric nuclear testing and ecological disasters.
- iii) **Appearance of powerful literature:-** like Rachel Carson's "Silent Spring" (1962) and Murray Bookchin's "Our synthetic Environment" (1961), heightened public awareness of the implications of human activity on the environment and of the cost, in turn, to human society.
- iv) **Environmental disasters and public alarm:-** between 1966-72 there was a series of environmental disasters, including oil spills (Torrey Canyon, Santa Barbara, etc.) and pollutions of various kinds (Minamata Bay, Acid rains, etc.).
- v) **Advances in scientific knowledge:-** The International Biological Programme (IBP) was launched in 1964 in association with the International Council of Scientific Union (ICSU), International Union of Biological Sciences (IUBS) and International Union for Conservation of nature and Natural Resources (IUCN). Reliable research methods had a catalytic effect on new environmental research programmes and a notable impact

on sensitizing the world to the threats to the global biosphere. It was also an important input to the Stockholm Conference.

vi) **The influence of other social movements:-** A number of social and political issues-like racism, poverty, war, etc., galvanized masses into protest in various parts of the world, creating a new climate of heightened public activism from which environmentalism benefitted.

International Response

The question was brought to international attention for the first time in April 1967 by Czechoslovakia and Poland, in the context of the work of the United Nations Economic Commission for Europe.²⁰ Being affected by the acid-rain and industrial pollution, generated mainly by the Federal Republic of Germany, these countries proposed the convening in 1969 of meeting of European governmental experts to study the problems relating to the environment and their influence on the society.

20. W.H. McNeill, "The Human Condition: An Ecological and Historical View," (New Jersey, 1980), p.7.

The proposal was adopted after serious doubts and questioning by the Western European Countries.²¹ Two years later, on 30 July 1968, the Economic and Social Council of the United Nations, on the basis of a proposal from Argentina, Kuwait, Mexico, Morocco, Sweden, Turkey and the United States, recommended to the General Assembly to convene in 1972 a United Nations conference on problems of the human environment.²²

The first United Nations Conference on the Human Environment, held in Stockholm in 1972, laid down the following principles:

"Economic and social development was essential for ensuring a favourable living and working environment for man and for creating conditions on earth that were necessary for the improvement of the quality of life.

Environmental deficiencies generated by the conditions of underdevelopment and natural disasters posed grave problems and could best be remedied by accelerated development, through the transfer of substantial quantities

21. UN, Development and Environment: Report submitted by a panel of experts of the UN conference of the Human Environment; (Stockholm, 1971), p.5.

22. *ibid*, p.15.

of financial and technological assistance, as a supplement to the domestic efforts of developing countries and such timely assistance as might be required.

For the developing countries, stability of prices and adequate earnings for primary commodities and raw material were essential to environmental management, since economic factors as well as ecological processes had to be taken into account.²³

In practice, unfortunately, not only were these principles overlooked, but the development problems of developing countries were only incidentally linked to environmental issues.²⁴

Stockholm established a path-breaking precedent for the global politics of consciousness-raising and norm-making through conference diplomacy in the 1970s and beyond.²⁵ It succeeded in producing a global compromise on the 26-principle declaration and the 109-point action plan, as well

23. UN, Report of the US on the Human Environment, (Stockholm, June 5-15, 1972), p.10.

24. S.S.Kim, n.4, p.274.

25. *ibid*, p.274.

as on a new global regime of co-ordination on environmental affairs.²⁶

To a significant extent, the success of the Stockholm Conference can be attributed to Maurice Strong's extraordinary leadership with his singleminded tenacity and talent for compromise.²⁷ He realized that a global consensus depended upon winning the support of the developing countries where the issue only evoked skepticism. To overcome their misconceptions, he travelled extensively in developing countries. Conferences and seminars were held to seek a closer interface between environment and development. The Founex Report and others contributed to broadening the agenda and concept for the Stockholm Conference by redefining economic well-being and ecological balance in mutually complementary terms.²⁸

There were some twenty-two environment related conferences and meetings within the United Nations System

26. *ibid*, p.275.

27. L.R.Brown, "World without Borders," (New York, 1973), p.47.

28. UN, Development and Environment, n.21, p.5.

between 1971-1982.²⁹ A few notable ones were -

- The Founex Panel of Experts on Development and Environment - Founex (1971)
- The United Nations Conference on Human Environment - Stockholm (1972)
- The third UN Conference on the Law of the Sea - Caracas, Geneva, New York (1973-82)
- The World Population Conference - Bucharest (1974)
- The UN Symposium on the Interrelations Between Resources, Environment, Population and Development - Stockholm (1979)
- The Third General Conference of UNIDO - New Delhi (1980)
- Session of a Special character of the Governing Council of the UNEP - Nairobi (1982)

Although the UN charter did not provide for any specific principles or provisions on the human environment, the mandates of such specialized agencies as WHO, WMO, UNESCO, FAO, IMCO and ILO included a number of separate

29. UN, Report of the US on the Human Environment, n.23, p.11.

sectors of environmental concern.³⁰ UNESCO's programme on Man and the Biosphere (MAB) and WMO's Global Atmospheric Research Programme (GARP) were two notable examples of growing collaboration between specialized agencies and scientific NGOs on environmental or environment-related issues.

The most tangible outcome of Stockholm was the creation of the United Nations Environment Programme (UNEP). It was a cross-cutting programme of policy coordination created as recognition that environmental problems of broad international significance fell within the province of the UN network.³¹ The blueprint for UNEP was the Stockholm Action Plan. It was to be implemented through three functional components: environmental assessment, environmental management, and supporting measures.³²

The global environment assessment programme, 'Earthwatch', one of the Functional components of the Stockholm action plan was conceived and designed as an internationally financed and co-ordinated knowledge system

30. Seymore J Rubin, n.12, p.6.

31. UN, The State of the World Environment, n.2, p.6.

32. *ibid*, p.8.

that could evaluate the changing interaction between man and the environment, identify significant environmental trends, monitor early signs of environmental hazards, and assess the condition of selected natural resources.³³

Similarly, the International Referral System for Sources of Environmental Information (INFOTERRA) grew out of the Stockholm Action Plan which is a decentralized global network of environmental information systems. However, it only collects and disseminates sources of information.³⁴

The central theme in the post-Stockholm quest pivoted around the interrelations among people, resources, environment and development.³⁵ This theme received its most comprehensive treatment and formulation at the 1979 UN Symposium on the Interrelations Between Resources, Environment, Population, and Development, held in Stockholm.

There has been a shift from a narrow, one-dimensional concept, focused primarily on sectoral approaches and pollution abatement strategies, to border understanding of

33. *ibid*, p.11.

34. *ibid*, p.15.

35. Seymour J. Rubin, n.12, p.8.

the systematic character of socio-cultural and economic interaction.³⁶ This implies a greater emphasis on a broader systematic approach and a greater recognition of the important interconnections between the components and processes that support the life of the planet in development strategies.

In May 1982, the second UN conference on the global environment-officially called "Session of a Special Character of the Governing Council of the UNEP" - was held in Nairobi, Kenya, to commemorate the tenth anniversary of the first conference and to assess the measures taken to implement the declaration and action plan adopted at Stockholm. The Nairobi Declaration reaffirmed the principles of the Stockholm Declaration as providing "a basic code of environmental conduct for the years to come."³⁷

The spirit at Nairobi was more retrospective. The number of participating countries dropped from 113 at Stockholm to 105. The most conspicuous change reflected at Nairobi was the role reversal between the rich and poor

36. S.S.Kim, n.4, p.277.

37. UN Doc. UNEP/GC (SSC)/4 (June 28, 1982), pp.53-55.

countries.³⁸ While developing countries were becoming environmental enthusiasts, the industrialized countries, burdened by the woes of stagflation, had retreated from their domestic and international environmental programmes.

However, the value-shaping process has its limits. New environmental values, norms, and regulations must coexist and compete with the old established ones guiding the states in a highly competitive world system. The most notable accomplishment of the post-Stockholm developments lies in the universal legitimation of environmental issues.³⁹

On the initiative of Zaire, the General Assembly adopted in 1980 a proposal on a "Draft World Charter for Nature" that affirms the urgency of safeguarding the ecology.⁴⁰ The International Development Decade has also incorporated environmental concerns.⁴¹ The adoption by multilateral development agencies, including the World Bank

38. H.E. Daly and J.B. Cobb (ed.), "For the Common Good: Redirecting the Economy Towards Community, Environment and a Sustainable Future," (Boston, 1989), p.3.

39. *ibid*, p.7.

40. General Assembly Resolution 35/7 of Oct 30, 1980.

41. UN International Development Strategy, pp.23-24.

and UNDP, of principles for incorporating environmental factors in their development projects suggests the penetration of the value-shaping process into world economic and monetary activity.

Environment and development is at present one of those very rare subject on which there is consensus among both industrialized and developing countries regarding global action and co-operation. It was evident by the General Assembly resolution 44/228, which was unanimously adopted on 22 Dec. 1989, and by which was convened the United Nations Conference on Environment and Development.⁴² This could be regarded as a concrete examples of recognition that global security has economic, social and environmental dimensions no less demanding of attention than political and military ones.

The re-emergence of environment and development as a major global challenge for the 1990s, is the result of governmental leadership, of foresight as well as the result of strong lobbying efforts on the part of the NGOs, constituencies of national conservationists, media networks

42. Steve Charnovitz., "Exploring the Environmental Exception in GATT Articles XX", Journal of World Trade: 25(5), (Oct 91), p.38.

DISS
382.92
Si649 Ga



TH5499

and international think-tanks such as the Brundtland Commission.⁴³ These are the movements which revived the environmental concerns of the early 1970s, and influenced governments to embark upon a new joint undertaking. These are the forces which generated the present growing awareness that higher growth and eradication of poverty are equally essential to the preservation of the environment.

Environmental damage can no longer be corrected by the operation of market forces; therefore, the intervention of public action becomes essential.⁴⁴ During the last decade, the growing emphasis on cost reduction in the increasingly harsh competitive international business world also led to the occurrence of a number of major industrial accidents and natural disasters which have seriously affected human life and economic conditions in many countries.⁴⁵ These events brought to the fore the need to take effective and appropriate measures in risk management too, both at national and international levels.

43. H.E. Daly and J.B. Cobb, n.38, p.12.

44. William Ophuls, n.6, p.8.

45. John McCormick, n.7, p.20.



TH-5499

X... -- N... (NA)

Another aspect which demanded urgent attention was the loss of biodiversity which is an irreversible process. Much of this loss has been caused by people by the conversion of tropical forests into agricultural lands, over-fishing, pollution and unsustainable levels of mining and timber production. We are now at a risk of losing not only single species of communities of species, but entire ecosystems. Ironically, we face this risk at a time when we are just starting to harness and realize the immense power of biodiversity.⁴⁶

'Our Common Future', the 1987 report of the UNCED (Brundtland Commission) focussed on the relationship between economic development and environmental impact as well as initiated the concern for loss of biodiversity. It culminated in the 1992 Earth Summit with the completion of Agenda 21 and a major international convention on Biodiversity signed by 165 nations. Many donor governments then moved to incorporate biodiversity conservation into their individual foreign assistance programmes, supporting the Global Environmental Facility (GEF), the multilateral

46. Scott Vaughan, "The Environment and Trade", Our Planet, vol. 5(6) (1993), p.11

fund managed by the UNDP and the WB, with technical support from the UNEP.⁴⁷

The Rio Conference adopted a declaration which extended the idea of rights and responsibilities of countries towards environment.⁴⁸ It reflected the growing deterioration of the environment and the deepening awareness that long-term economic progress and the need for environmental protection must be seen as mutually interdependent.

The Declaration was a compromise between industrialized and developing nations.⁴⁹ Originally, the former favoured a brief statement reaffirming the Stockholm Declaration and emphasizing the need to protect the planet. Developing countries required more detailed references to their specific concerns, especially their sovereign right to development, acknowledgement that industrialized countries were primarily responsible for current environmental problems, and the need for new financing and technology to enable developing countries to avoid taking the same

47. UNCTAD, Trends in the field of trade and environment in the framework of international cooperation, TD/B/40 (1)6, (Aug.1983.), p.11.

48. *ibid*, p.12.

49. S.S.Kim, n.4, p. 287.

polluting routes to development as did the developed countries.

The Rio Declaration is not legally binding. However, it is anticipated, as with the UN's Declaration on Human Rights, that Governments will have a strong moral commitment to adhere to its principles.

The Developing Countries Perspective

Before Stockholm, many Environmentalists had questioned and rejected the growth ethic.⁵⁰ A decade after Stockholm, however, development and environment were no longer seen as incompatible. Now, it was widely agreed that an assimilation of the aims of the two was needed to create a sustainable society. Economic growth was seen as essential, provided that it was sustainable. Where population growth had been regarded in the 1960s as an obstacle to economic and social development, it was now inversely argued that a lack of development could encourage population growth.⁵¹

50. Report of the Governing Council of the UNEP, Fifth Session, 9-25 May 1977 (Nairobi, 1977), p.5.

51. UNEP, Report of the Governing Council at its Session of a Special character, UNEP/GC/(SSC)/4 (June 28, 1982), p.7.

Nevertheless, the concept of sustainable development was not new. It has been espoused by German and Indian foresters, and by Roosevelt and Pinchot.⁵² It can be defined as development that occurs within the carrying capacity of the natural and human environment.⁵³

Environmental problems in the developed countries have been portrayed as a result of overdevelopment - i.e., the reckless and profligate exploitation of natural resources. In the underdeveloped countries, it is the result of unequal access to national wealth, lack of economic opportunity, and the unequal exploitation of natural resources.⁵⁴

The roots of the changed emphasis of the post-Stockholm environmental movement can be sought in certain broader developments⁵⁵:

- i) the changing nature of international economic and political relations.
- ii) the growth of a new global view of the environment,

52. W.H. McNeill, n.20, p.41.

53. Scott Vaughan, n.46, p.12.

54. Jim MacNeill and others, n.5, p.11.

55. *ibid*, p.12.

- ii) the need felt by many northern environmentalists to accommodate the differing priorities of the developing countries, and
- iv) the growing self-confidence and sophistication of environmental NGOs.

Where the environmentalists of the 1960s had espoused their cause as an alternative view for those who rejected conventional economic wisdom, those of the 1970s worked to incorporate new values into the policies of existing institutions, notable industry and government.⁵⁶ Closer and more equitable economic co-operation between countries was regarded as an important prerequisite for more rational resource management of a global scale.

The bilateral and multilateral aid agencies began thinking more carefully about the environmental viability of their programmes. The pre-Stockholm concerns with population, pollution and flawed technology now gave way to the role and effects of poverty.⁵⁷

56. S.S. Kim, n.4, p.285.

57. Seymour J. Rubin, n.12, p.18.

During the 1950s and 1960s, the conventional view was that economic growth was the most effective way of eradicating poverty. The gains of economic growth would 'trickle down' to the poor through market forces creating jobs, raising productivity and wages, and lowering prices. But growth did not always reduce inequality, nor did income automatically trickle down to the poor. Therefore, subsequently, attention was turned to the notion of economic growth with income redistribution, and finally to the idea that the provision of basic needs, such as food health, education, shelter, water, and sanitation-was more important to the poor than the rather nebulous question of equality.⁵⁸ The environment was no longer being seen as an additional subject for consideration, but as a new approach to development which gives greeter weight to the sustainability of results and to the costs of destructive side effects of projects and policies.⁵⁹

Environmental policy making in the Developing World faces a number of problems-frequent political and economic

58. Amadou, Mahtar M_Bow, "Where the Future Begins", UNESCO, (Paris, 1982), p.3.

59. John McCormick, n.7, p.15.

instability, the priority given to economic development at almost any cost and the lack of a substantial middle class, an environmental movement, a firm institutional or legal framework, and a solid data base.⁶⁰

Development of the legal framework (including regulatory agencies and procedures, backed up by trained personnel) for environmental action was uneven, and such legislation as existed was often difficult to enforce or was poorly implemented. Few developing countries had explicit national environmental policies. While industrialized nations had some success in carrying out environmental inventories and implementing development plans, progress in poorer countries was variable.⁶¹ Concepts such as sustainable development were useful guides to development projects, but did not meet the widespread application. They face an increasing, horrifying long-term loss of natural resources for short-term returns.⁶²

Even in India, despite the extensive body of pollution legislation, Indian industry remained either reluctant to

60. S.S.Kim, n.4, p.287.

61. Centre for Science and Environment, "The State of India's Environment 1984-85" (New Delhi, 1985)

62. *ibid*, p.2.

control pollution or beyond the reach of the law. In 1990, the Minister of State for Environment reported that there were more than 4,000 polluting industries in India, of which just 200 had installed affluent treatment plans. The most tragic outcome of which was the escape of methylisocyanate gas from a Union Carbide pesticide plant in Bhopal in Dec. 1984. UNICEF estimated that about 200,000 people in all (of whom 75 per cent were local slum dwellers) were affected.⁶³

In 1980, the World conservation Strategy (WCS) was launched to lay down priorities for conservationists with different interests and attempted to reach an accommodation between conservation and development. It also gave a generalized and simplified view of the problems and issues involved. The WCS outlined the priority areas for international action⁶⁴:

- i) Law and international assistance. Although there were more than 40 multilateral conventions dealing with the management of living resources, few had conservation as their primary purpose.

63. *ibid*, p.3.

64. H.E.Daly and J.B. Cobb, n.38, p.7.

- ii) More effective management of tropical forests and drylands.
- iii) A global programme for protection of genetic resource areas.
- iv) More effective management of the global commons-the open ocean, the atmosphere, and Antarctica and the Southern Ocean.
- v) Regional strategies on international river basins and seas.

However, by 1987, only eight countries (out of more than 160) had taken tangible action in any of these areas. IUCN's own programme of technical assistance was devoted almost entirely to LDCs, where it had only limited success, for these reasons⁶⁵:-

- i) Initial requests for assistance were normally made by natural resources or environment ministries rather than through central development planning authorities. Hence development aid agencies had found it difficult to provide financial support. The planning authorities were more inclined to deal with more conventional projects-such as energy, industry, agriculture, or rural

65. *ibid*, p.11.

development-than to consider the development of a conservation strategy.

- ii) The achievement and maintenance of a long-term view on planning was hindered by frequent changes of government in developing countries.
- iii) The interests supporting rapid economic growth and returns were often powerful, better organized, and more concentrated than those promoting the prevention of environmental degradation.
- iv) The impact of developed countries demands on the global resource base was considerable, so their trade policies had a major influence on the supply and demand of resources in the developing countries.

It is point number four, which is of immediate relevance to this paper. The next chapter in the present study will discuss the issue of the relationship between trade and environmental policy objectives. This complex relationship is rife with conceptions and misconceptions and involves a variety of issue and aspects; along with these, this paper also endeavours to study the effects of environmental protection on trade and the crucial role that trade can play on environmental protection.

Chapter - II

RELATIONSHIP BETWEEN TRADE AND ENVIRONMENT

The rise of national and global environmental concerns has created linkages between environmental issues and other areas in world politics from international security, North-South relations, to world trade.¹ There has been a growing recognition that trade and the environment are inextricably linked, and the trade implications of environmental policies and agreements, as well as the environmental implications of the world trade system are beginning to emerge as important to both the issues.

With the expansion of global markets, nations are more interdependent today than ever before. Since 1950, trade in manufactured goods has increased twenty-fold.² Therefore, the ability of industry to compete successfully in global markets plays a crucial role in determining the overall

-
1. G. Porter & J.W. Brown, Global Environmental Politics - Dilemmas in World Politics Series, (Colorado, 1991), p.7.
 2. EPA, The Greening of World Trade - A Report to EPA from the Trade & Environment Committee of the NACEPT, (Washington, 1993), p.12.

competitiveness of nations and companies, thereby making trade the principal engine of economic development.³ Similarly, it has also become clear that nations are interdependent environmentally. The manner in which global environmental threats are addressed will have decisive effect on long-term environmental and economic security.⁴

The general goals of trade and environment policies can be seen as being complementary as both trade and environmental advocates aim at improving human welfare through a more efficient allocation of natural and man-made resources and both agree on the need to internalize various externalities - from direct to ecological subsidies.⁵ Both argue that the best hope for our future lies in building more open, fair and accessible world markets, so as to enable lower consumption countries to compete fairly.

3. GATT, Trade & Environment: International Trade 1990/91: Advance Copy of Chapter III, (Geneva, Feb.1992), p.2.

4. H.E.Daly & J.B. Cobb, For the Common Good : Redirecting the Economy Towards Community, the Environment & a Sustainable Future, (Boston, 1989), p.11.

5. GATT, International Trade, n.3, p.3.

Early Environmental Efforts

Trade regulations to protect human, animal or plant life began a long time ago, and in the 1970s major commercial disputes broke out over veterinary and quarantine restrictions.⁶ Utilizing trade tools to achieve environmental objectives is not a new idea. From the advent of international environmental co-operation, governments have recognized the efficiency of trade measures in dealing with transnational environmental problems. For example one of the earliest multilateral treaties concerning the environment - the 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa - called for a system of export licenses for certain species "because of their rarity and danger of disappearance."⁷

Some other examples of early environmental measures are:-

1906 - an international conference convened by Switzerland adopted a treaty to stop the production and importation of matches made with white phosphorus.

6. Steve Charnovitz, "Exploring the Environmental Exceptions in GATT Article XX", Journal of World Trade; 25(5), Oct. 1991, p.38.

7. *ibid*, p.38.

- 1911 - Great Britain, Japan, Russia, and the US signed a treaty for the preservation and protection of fur seals and other sea animals.
- 1916 - Great Britain (for Canada) and the US concluded a treaty to protect migratory birds that are either useful to man or are harmless.
- 1921 - Italy and the Kingdom of the Serbs, Croats and Slovenes (the erstwhile Yugoslavia) signed a convention to prohibit trade in fish caught by methods having an injurious effect upon the spawning and preservation of fisheries.

Besides these there were a number of national laws that used trade instruments for environmental purposes as well as laws aimed at safeguarding the public in various countries.

The International Convention of 1927 for the Abolition of Import and Export Prohibitions and Restrictions was the world's first trade round.⁸ It is important for its influence on the GATT and also for the lessons it leaves on the difficulty of achieving a liberal trading system. The

8. Steve Charnovitz, n.6, p.41.

Treaty called for the abolition of all import and export restrictions (excluding tariffs) within six months. The convention was a significant achievement in international law which might have cooled-off the protectionist impulses of the era had the agreement gone into full force.⁹ Although twenty-one nations ratified it, including the US, the refusal of Poland to accede doomed the Treaty because many of the ratifications were contingent on Poland's approval.

Three principles from the 1927 convention are noteworthy.¹⁰ First, a general agreement that legitimate action to protect public health, animals or plants was entirely proper. Second, in a break with the past practices of most trade treaties, the customary exceptions for national laws were no longer qualified. Third, because of their interrelationships, the sanitary, vaterinary, phytopathological and nature preservation objectives were encompassed under the same exemption.

In the years following the International convention, trade measures were regularly employed in pursuit of

9. *ibid*, p.41.

10. *ibid*, p.42.

environmental goals.¹¹ The vast majority of bilateral trade agreements of the period included an exemption for animal or plant laws. There were also wide variation with respect to disciplining national actions. Although some trade treaties after 1927 applied both the non-discrimination and disguised restriction conditions, most agreements applied only non-discrimination and a few applied neither condition.¹²

The Need for Multilateral Cooperation:

Environmental issues can become internationalized due to any one of the following :

- environmental policies on international competitiveness,
- assertion of jurisdiction over other nation's, environmental priorities and practices, and
- transborder spillover of pollution into another country or the global commons.¹³

11. EPA, The Greening of World Trade, n.6, p.43.

12. Steve Charnovitz, n.6, p.43.

13. GATT, International Trade, n.3, p.3.

There is a need for multilateral cooperation, not only to minimize potential trade frictions, but also to identify and implement workable and effective solutions to regional and global environmental problems. An attempt by countries to go it alone on environmental policies would sooner or later lead to frictions with trading partners and also to unilateral trade actions.¹⁴

Ideally, the contribution of multilateral cooperation is to reduce the possibility of solutions being affected by differences in the economic and political strengths of the parties involved. Given the diversity of environmental standards among countries, it is important to minimize the risk of solutions being imposed by the larger or richer countries.¹⁵ If all countries participated in all international environmental agreements, there would be nothing more to add. But since their participation is less than universal, trade policy enters the picture as a negative or positive incentive to encourage participation of the countries.

14. Scott Vaughan, "The Environment and Trade", Our Planet, Vol.5(6) (1993), p.10.

15. GATT, International Trade, n.3, p.3.

Although, cooperative action among countries is superior to unilateral action in the case of a transborder spillover or global commons. This has implications for trade policies because trade and environmental interest groups see a role for trade policy in the promotion and enforcement of international cooperation on environmental issues.¹⁶

Following is the list of multilateral agreements on the environment (excluding cultural and military agreements) from 1933 onwards, which have trade provisions, as of mid 1991 :

1. Convention Relative to the Preservation of Fauna and Flora in their Natural State, 1933 -

Objective:- to preserve the natural fauna and flora of the world, particularly of Africa, by means of national parks and reserves, and by regulating of hunting and collection of species.

Trade Provision: Prohibits the import and export of trophies unless the exporter is given a certificate permitting export. Parties shall take measures to control and regulate in each of its territories the internal import and export of trophies.

16. ibid, p.4.

2. Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, 1940 -
Trade Provision: provides for the regulation of trade in protected species by the issuance of export permits.
3. International Convention for the Protection of Birds, 1950 -
Trade Provision: Prohibits the import, export, transport, offer of sale or sale of any live or dead birds killed or captured during the protected seasons eggs, or their shells or their broods of young birds in the wild state during the breeding season.
4. African Convention on the Conservation of Nature and Nature Resources , 1968 -
Trade Provision: For all species, a party shall regulate trade in and the transport of specimen or trophies, and shall do it in such a manner as to prevent the illegal capture and killing of these. Trade in trophies and transport of specimens of protected species shall be subject to a standard authorization.
5. Benelux Convention on the Hunting and Protection of Birds, 1970 -
Trade Provision: In the case of traffic with third

countries, (i) the export, import and transit of live or dead game shall be governed by the regulations in force in the partner countries in which such operations take place; (ii) the export, import transit of all live or dead birds and of their eggs and young, shall be permitted only with prior authorization from the partner countries in which such operations take place.

6. Convention on International Trade in Endangered species of Wild Fauna and Flora, 1973 -

Trade provision: CITES builds on a long history of controlling trade in endangered species through the issue of export permits. It adds the twist of requiring an import permit for an export permit to be issued, in order to prevent circumvention to non-parties.

7. Agreement on the Conservation of Polar Bears, 1973 -

Trade Provision: prohibits the exportation from or importation and delivery into and traffic within, its territory of polar bears or any part or product thereof taken in violation of the agreement.

8. Convention for the Conservation and Management of the Vicuna, 1980 -

Trade provision: The export of fertile vicuna semen or

other reproductive material is prohibited except to member countries for research and/or repopulation.

9. Convention on Conservation of North Pacific Fur Seals, 1957 -

Trade provision: The importation and delivery into and the traffic within the territory of a party, of skins taken in the area of the North Pacific ocean is prohibited except those taken by the US or the erstwhile USSR on rookeries, those taken for research purposes, or by native populations, confiscated or inadvertently captured.

- 10 Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 -

Trade provision: Trade provisions affect non-parties only. Parties are to ban the importation of controlled substances as of 1 Jan 1991, and ban the export of controlled substances of 1 Jan. 1993. Parties are also to ban the export of the relevant technology to non-parties. The 1990 amendments require parties to ban the importation of CFC-containing products as of 1 Jan 1993.

11. European Convention for the Protection of Animals During International Transport, 1968 -

Trade provision: Each party shall apply the provisions governing the international transport of animals contained in the convention.

12. International Plant Protection Agreement, 1951 -

Trade provision: parties are required to regulate very strictly the import and export of plants and plant products, by means, where necessary, of prohibitions, inspections, and destruction of consignments.

13. Plant Protection Agreement for the South East Asia and Pacific Region, 1956 -

Trade provision: Each party shall use its best endeavours to apply with respect to the importation of any plants from anywhere outside the region such measures of prohibition, certification, inspection, disinfection, disinfestation, quarantine, destruction or other measures as may be recommended by the committee.

14. Phyto-sanitary Convention for Africa, 1967-

Trade provision: Each party shall control the importation of plants, apply measures of prohibition,

quarantine, certification or inspection for any plant, plant material, seed or packing material as the organisation of African unity shall consider necessary.

15. Agreement Concerning the Cooperation in the Quarantine of Plants and Their Protection Against Pests and Diseases, 1959 -

Trade provision: parties undertake to apply uniform phytosanitary regulations for the import, export and transit of consignments of vegetable origin dispatched from one country to another.

16. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989-

Trade provision: categories and characteristics of hazardous wastes are defined. Each Party may prohibit the import of hazardous wastes for disposal and shall inform other Parties. Parties shall not export hazardous wastes to a Party unless the State of import consents in writing, provided the State has not prohibited the import. Trade with non-Parties is prohibited.

17. ASEAN Agreement on the Conservation of Nature and Natural Resources, 1985 -

Trade provision: Parties are to regulate trade and the possession of species recognized as endangered by the parties.

The Role of Trade Policy in Achieving Environmental Goals:

Economic and environmental concerns cannot be treated separately. To achieve the objectives of environmental protection attention must be paid to development needs. At the same time, development will not be sustainable if attention is not paid to the environment. To satisfy these two objectives, economic and environmental considerations must be integrated.¹⁷

Economists opine that environmental problems derive from particular models of development and patterns of economic activity, and not from discrete actions taken by individuals, corporations, governments or multilateral development agencies.¹⁸ Trade is an increasingly important

17. John A. Dixon, Louise A. Fallen, The Concept of Sustainability: Origins, Tensions and Usefulness for Policy, Society and Natural Resources, Vol.2, p.7.

18. Seymour J. Rubin and T.R. Graham (ed), Environment and Trade: the Relation of International Trade and Environmental Policy, (New Jersey, 1982), p.25.

factor in national economies and plays a central role in determining the patterns of economic behaviour between nations. The expanded definition of trade, which now includes issues such as investment and intellectual property, has helped shape the nature of development within and between nations.¹⁹ International trade plays a significant role in determining the manner in which the natural resources of our planet are utilized. However, trade patterns are not the sole determinant of resource use, since most of the economic activity taking place is domestic and not international.²⁰ Nevertheless, as more nations engage in steadily liberalized world trade, the role of trade in determining resource use will expand. Therefore, trade policy which does not consider environmental impacts can undermine the natural resource base on which continued future development depends. Similarly, the environmental policy framed without regard to development needs can be equally short sighted.

Within the context of sustainable development, trade and environmental policy become means by which to achieve a

19. EPA, n.2, p.16.

20. Seymour J. Rubin and T. R. Graham, n.18, p.54.

higher goal. As the OECD's "Joint Report on Trade and Environment" concludes²¹:

"It is therefore, important that trade policies are sensitive to environmental concerns and that environmental policies take account of effects on trade... unlike sustainable development, free trade is not an end in itself..."

It should be borne in mind that the environmental perspective is not anti-trade, since trade can be an important instrument by which to achieve development that is economically and environmentally sustainable. At the same time, it is not an attempt to extort from trade practices the means to cure all of the world's environmental ills.²² Therefore, the intersection of trade and environmental concerns is critical.

The pattern of international economic activity is increasingly and universally shifting towards free trade. While it can lead to economic growth, it is not a panacea

21. OECD, Joint Report on Trade and Environment, (Paris, April 1991), p.3.

22. UNCTAD, Trends in the field of trade and environment in the framework of international cooperation - TD/B/40(1)/6, (August 1993), p.4.

for resolving environmental problems as it entails environmental costs too. Some possible negative aspects of free trade can be higher energy costs associated with an increased production and transportation of tradeable goods, as also the increasing possibility of environmental accidents.²³

At the same time, protectionism is an even worse means for achieving sustainable development, as it can have an even greater negative impact on the environment.²⁴ It rewards an inefficient use of resources and its most direct impact is felt in developing countries posing continued obstacle to their own development. However, protectionism is justified for some industries, at certain stages in a nation's development, but not as the most effective policy.

Although this is both a policy-relevant and sensitive topic, very little empirical knowledge and very little theory exists as yet about the relationship between international trade and environment.²⁵ Recent theoretical

23. Herman E. Daly and J.B. Cobb, n.4, p.13.

24. EPA, n.2, p.34.

25. Peter D.G. Van Bergeijk, "International Trade and Environmental Challenge", Journal of World Trade, 25(6) (Geneva, November 1991), p.105.

innovations mainly deal with optimal control of finite natural resources, the effects of environmental programmes upon the competitive position in international trade and the analysis of cross-border pollution.²⁶ Our empirical knowledge moreover is based on a limited number of case studies while experiences often appear contradictory. Consequently, economists are unable to answer the central policy question about the effectiveness of trade policy measures for achieving environmental goals²⁷ Perhaps the answer to this question depends on individual sets of circumstances.

Environmentalists have expressed concern that the effect of trade liberalization would be to increase demand which could exert exploitative pressures on natural resources and the environment in general. The Brundtland Report explicitly links Third World Environmental degradation to forced development due to the production of agricultural and mining products that are exported to the OECD countries.²⁸

26. *ibid*, p.105.

27. GATT, International Trade, n.3, p.4.

28. E. Dohlman, "The Trade Effects of Environmental Regulations" *OECD Observer*, No. 162, (Feb-March, 1980), p.29.

However, another argument holds that international trade stimulates competition, improves on the efficient allocation of factors of production and due to economies of scale, reduces waste in general.²⁹ Economic growth is often paid for by environmental degradation. Tariffs and non-tariff barriers are second-best solutions only to tackle environmental problems. A solution on the basis of trade impediments will waste the potential contribution that international specialization can make to global environmental efficiency.³⁰

The true conflict between trade and environment is that the policy instruments that are currently being proposed for environmental policymaking (border-taxes, trade bans, countervailing duties, etc.), are the same instruments that are to be eliminated in the framework of international trade negotiations.³¹

29. H. Verbruggen, "International Trade & Environment" Development Economics Seminar paper no. 90-3/10; (The Hague), (12th Oct. 1990).

30. Seymour J. Rubin & T.R. Graham, n.18, p.79.

31. Peter A.G. Van Bergeijk, n.25, p.105.

Cartelization and trade impediments do have a short-run impact only on conservation of replenishable natural resources. Possibilities also exist for an environmentally more efficient free play of price-making forces in the domestic markets of many countries. However, the constraints of the developing economies also have to be taken into consideration in this regard.

The market might even be a mechanism that provides an efficient allocation of resources as well as a warning against the potentially negative environmental effects of protectionism.³² Trade per se is not the ultimate cause for environmental degradation. International trade may actually prove to be a strong support for conservation, if properly controlled, as it can provide the economic incentive to manage the environment on a sustainable basis.³³

The environmental problem cannot be considered in isolation from other countries because pollution often has transborder ramifications. Moreover, many environmental problems require international cooperation in order to reach a cost-efficient solution. Hence, there is need to combine

32. E. Dohlman, n.28, p.29.

33. Peter A.G. Van Bergeijk, n.25, p.106.

free trade and environmental policy in order to make international trade a vehicle for co-operation in global environmental policy-making.³⁴

While trade liberalization is likely to reduce some protectionist barriers which are encouraging environmentally harmful activities, it is also possible that trade liberalization could worsen particular environmental problems in the absence of appropriate domestic environmental policies.³⁵ An expansion of trade could produce negative environmental effects so large that they outweigh the conventional benefits from open markets-like increased specialization, more competition and so forth - resulting in an overall decline in national welfare. However, this happens only if a country lacks a domestic environmental policy that reflects its environmental values and priorities. Therefore, the most effective action is to concentrate on introducing appropriate environmental policies. A lack of such policies creates problems not just in the trade sector, but throughout every facet of a

34. GATT, International Trade, n.3, p.16.

35. UNCTAD, n.22, p.73-76.

country's economic life.³⁶ If the policies necessary for sustainable development are in place, trade promotes development that is sustainable. Alternatively, if such policies are lacking, the country's international trade, as well as other economic activities, may contribute to environmental damage.³⁷

Although a great deal more empirical analysis is needed to fully understand the environmental effects of free trade, what is now needed is a careful delineation of specific areas where policy comparability exists. High unemployment and economic stagnation is an increasing reality for many countries. For many analysts, this suggests not so much a stubborn recessionary cycle as a fundamental structural shift in the global economy.³⁸ The Trade-off we make in the years ahead, in building policies that work towards environmental protection and sustainable development, are of the utmost importance.

36. Seymour J. Rubin and T. R. Graham, n.18, p.84.

37. Scott Vaughan, n.14, p.10

38. *ibid*, p.12.

POLICY INSTRUMENTS INTEGRATING TRADE AND ENVIRONMENTAL CONCERNS:

There has been an increasing resort to the use of environmental policy measures by governments by adopting either regulatory or economic instruments.³⁹ The main examples of regulatory measures are :

- Product standards, which lay down characteristics to which the product sold in the market must conform;
- regulations laying down process and pollution standards and the production methods which the producer must meet;
- import and export bans on products that are harmful or hazardous to health;
- export restrictions imposed for conservation and sustainable development of natural resources;
- packaging and labelling requirements.⁴⁰

Indirect controls which work through the market mechanism are known as economic instruments.⁴¹ These

39. Vinod Rege, "GATT Law and Environment Related Issues Affecting the Trade of Developing Countries", Journal of World Trade, (Geneva), (June 1994), p.95.

40. *ibid*, p.40.

41. UNCTAD, n.22, p.9.

measures include taxes on products that are hazardous or harmful to health, emission charges and other price-based measures, and environmental subsidies.⁴²

The economic instruments offer the advantages of greater cost-effectiveness, permanent incentives to reduce pollution and revenue sources for governments.⁴³ On the other hand, direct regulation and control is considered by governments in certain situations to be more appropriate and effective for economic and administrative reasons.⁴⁴ The choice of the instrument depends on the state of social organization, i.e. the strengths and weaknesses of the political and administrative structures, and on a case-by case basis.⁴⁵

Governmental measures regarding environmental policy can affect trade in a number of ways. Firstly, it can give rise to apprehensions that environmental standards may change conditions of competition. Secondly, the developing

42. Vinod Rege, n.39, p.95.

43. *ibid*, p.96.

44. UNCTAD, n.22, p.9.

45. *ibid.*, p.10.

and transitional economies are afraid of a unilateral assertion of jurisdiction over other nations' environmental practices and priorities by the developed economies. Thirdly, the growing public concern has raised an important question as to whether international environmental agreements should contain provisions that require members to restrict trade with non-parties, with a view to forcing them to join such agreements.⁴⁶

a) Regulatory Instruments

Although in the past, direct controls have predominated but in most cases indirect controls are more effective at achieving environmental goals.⁴⁷ They offer greater flexibility and thus enable the reduction of waster or industrial pollution at a lower cost. They also offer permanent incentives to reduce pollution and can provide a source of revenue, if pollution charges are implemented.⁴⁸

Environmental policy measures based on standards can be classified into:

46. Vinod Rege, n.38, p.96.

47. UNCTAD, n.22, p.11.

48. *ibid*, p.12.

- Ambient standards which determine the permitted concentration of pollutants in a given medium;
- Emission standards which set maximum levels of pollution releases, by plant industry or region;
- Technology standards which determine the technology to be used in the production process;
- Performance standards which specify pollution releases per unit of output from a given plant;
- Product standards which specify the physical or chemical properties of a product.⁴⁹

As Ambient standards can be implemented rarely, they need to be translated into emission or performance standards.⁵⁰ The emissions, technology and performance standards can be classified together as process standards, also referred to as Process and Production Methods (PPM).⁵¹

Product Standards and Regulations: refers to technical specifications such as performance, quality, safety or

49. *ibid*, p.9.

50. Seymour J. Rubin, T.R. Graham, n.18, p.77.

51. UNCTAD, n.22, p.9.

dimensions. The use of the term 'regulation' suggests mandatory compliance and 'standards' suggest voluntary compliance. Product regulations are intended to control the environmental impact of products during use or after disposal.⁵² They address the environmental impact of products at different stages of its life cycle.

However, domestic producers can more easily influence the development and implementation of product standards and regulations.⁵³ Moreover, standards which lack transparency or which are not based on reasonable scientific evidence may constitute obstacles to trade. The developing countries are concerned that stricter product standards in the developed countries may act as obstacles to trade or even intentionally be used to provide protection to domestic industry.⁵⁴ In certain cases economic interest groups may sometimes try to capture the legitimate concerns of environmental groups for protectionist purposes.⁵⁵

52. Vinod Rege - op. cit.

53. GATT, International Trade, n.3, p.5.

54. Vinod Rege, n.38, p.97.

55. Patrick Low (ed.), International Trade and the Environment: W.B. Discussion Papers: 158; (Washington, 1992).

Process and Production Methods: PPMs lay down standards or norms relating to how the goods should be produced. These standards apply to the production stage, i.e. before a product is placed on the market for sale.⁵⁶ They imply that countries have a sovereign right to require that imported products should meet the product standards which they apply to products produced by domestic industries. However, they have to ensure that they are not applied in a way as to create unnecessary obstacles to the trade of other countries.

Process standards can vary between direct and indirect control instruments. They may adversely affect the competitiveness of domestic industry because of their impact on production costs; at the same time, they may encourage innovation and improve competitiveness.⁵⁷ Both government and industry are interested in shaping environmental policies in a way that removes strong negative impacts on competitiveness.⁵⁸ Gradual introduction, exceptions, rebates

56. UNCTAD - op. cit.

57. *ibid*, p.12.

58. Seymour J. Rubin and T.R. Graham, n.18, p.74.

and compensatory subsidy schemes are used to mitigate the effects on international competitiveness and trade.⁵⁹

Pollution standards can vary from country to country due to differences in their assimilative capacities, the stage of development, the state of the available technological infrastructure and the paucity of resources.⁶⁰ Developing countries require help in the form of transfer of environmentally friendly technology, official development assistance or foreign direct investment, for upgrading their pollution and other related standards. This is said to be a better alternative to the harmonization of pollution standards as it may not always be desirable.⁶¹

Packaging and Environmental Labelling: Packaging is the material or item that is used to protect, contain or transport a commodity or a product.⁶² The environmental regulations aim at encouraging manufacturers to reduce the packaging waste by reuse or recycling. It also discourages

59. H. Verbruggen, n.29, p.4.

60. Vinod Rege, n.39, p.110.

61. *ibid*, p.112.

62. UNCTAD, n.22, p.12.

the use of materials requiring high energy, water or air-intensive processes, or to control the risks associated with certain types of packages.⁶³

The government may adopt regulatory measures banning hazardous and un-recyclable waste or mandatory recycling or recovery laws. In practice, packaging policies have focussed primarily on recycling.⁶⁴ Even though packaging regulations do not explicitly discriminate against foreign suppliers, in practice they sometimes act as an obstacle to trade when certain specific packaging materials are used.⁶⁵ Certain kinds of packaging material from developing countries, such as jute or cloth, may be affected by newly-enacted packaging laws because the importing countries may not have the facilities to recycle them.⁶⁶ The requirements that packaging be taken back for reuse or recycling may raise administrative and procedural problems for foreign manufacturers and increase their costs.

63. Vinod Rege, n.39, p.129.

64. EPA, n.2, p.90.

65. H. Verbuggen, n.29, p.4.

66. Vinod Rege, n.39, p.129.

Eco-labelling is the voluntary granting of labels by a government or private agency in order to inform consumers that a labelled product is determined to be environmentally more friendly relative to other products in the same category.⁶⁷ It is being increasingly used as a market-oriented instrument for environmental policy. It is sometimes referred to as a 'soft' instrument, since the label is a positive identification adopted on a voluntary basis and establishes no generally binding requirements or bans.⁶⁸ The award criteria for such labels are determined on the basis of "life-cycle analysis" or the "cradle to grave approach". The stages include pre-production, production, distribution, consumption and disposal after use of a product.⁶⁹

With increasing environmental consciousness, the use of an eco-label serves as a promotional instrument. At the same time, it may adversely affect the competitiveness of unlabeled products in the same category. Thus despite being

67. UNCTAD, n.22, p.14.

68. Vinod Rege, n.39, p.133.

69. *ibid*, p.135.

voluntary, they may also have an impact on international trade.⁷⁰

b) Economic Instruments:

Economic instruments or indirect control work through the market mechanism. However, a clear distinction between 'economic' and 'regulatory' instruments is not always possible.⁷¹ Economic instruments include charges, subsidies, deposit-return-systems, market creation and financial enforcement incentives.⁷²

Consumption and other taxes: Internal taxes and charges - such as consumption taxes, product charges, emission charges and administrative charges - are being increasingly used for the attainment of environmental objectives.⁷³

Product charges are applied to products that are polluting or create disposal problems (ex. toxic chemicals,

70. Vinod Rege, n.38, p.135.

71. OECD, "Economic Instruments for Environmental Protection", (Paris, 1989), p.2.

72. UNCTAD, n.22, p.8.

73. *ibid.*, p.8.

non-returnable packaging, etc.) emission charges are applied on the discharge of pollutants in the air, water or soil, or on the generation of noise. They may be levied at the point of consumption in which case they are similar to product charges and would have similar trade effects, or they may take the form of user charges to cover the cost of public treatment of effluents and waste.⁷⁴ Administrative charges are applied generally in conjunction with regulatory instruments to cover the costs of government services, and can take the form of license, registration, testing and control fees.

Experts have been questioning the implications of the incorporation of a number of principles (which have been developed by the OECD and are being applied, with varying degree of effectiveness, by developed countries) for the trade of developing countries.

The Polluter-Pays-Principle (PPP) lays down that the polluter should be made to bear the expenses incurred by the public authorities for the abatement of pollution and its prevention.⁷⁵ It complements the User-Pays-Principle (UPP)

74. Vinod Rege, n.39, p.137.

75. UNCTAD, n.22, p.24.

which was developed by the OECD subsequently.⁷⁶ While the PPP is concerned with pollution, the UPP deals with the pricing of exhaustible natural resources. It states that the price of a natural resource should reflect the full range of costs involved in using it, including the costs of the external effects associated with exploiting, transforming and using the resource, together with the costs of future uses forgone.⁷⁷

The economic basis of these two principles is that when the environmental costs are fully internalized and are thus reflected in prices, the market mechanism can be expected to help the adoption of techniques for pollution abatement and for the conservation of exhaustible resources and to avoid distortions in investment allocation and trade patterns.⁷⁸ Thus, they can facilitate sustainable development of the world's resources.

The internalization of costs in accordance with these two principles could be achieved through command and control

76. EPA, n.2, p.97.

77. OECD, n.71, p.4.

78. Vinod Rege, n.38, p.150.

measures (ranging from process and product standards, individual regulations and prohibitions) and also through economic instruments (providing for the levy of various kinds of pollution charges).⁷⁹

Although these principles have been applied by the OECD countries for over twenty years, it is only now that thought is being given to their implications for the economies and the trade of developing countries.⁸⁰ Some analysts consider that the application of these principles may pose great practical difficulties in developing countries because of :

- lack of capital needed to replace the polluting technology (including poorly maintained vehicles and machinery)
- heavy dependence on dirty fuels (like wood, dung cakes, etc.)
- over-exploitation of common property resources (like fisheries, forests, grazing lands, etc. due to the pressure of population); and

79. H. Verbruggen, n.39, p.151.

80. Vinod Rege, n.39, p.151.

- problems of cost allocation as it is difficult for public authorities to determine the level of pollution charges.⁸¹

Such costs are difficult to estimate even in developed countries due to the complexity of relations between levels of production and output of pollutants.⁸²

However, these principles could provide useful policy guidelines to these countries, as policies for sustainable development can only succeed if measures are taken to assign values or prices to environmental resources.⁸³ But there is need to modify these principles to make them suitable for adoption by all developing countries in their various stages of development. Moreover, these countries will have to take appropriate supplementary measures, such as easier access to credit, crop insurance schemes and compensatory transfer to the port, to facilitate the effective implementation of these principles.⁸⁴ The acceptance of these principles, may

81. UNCTAD - op. cit.

82. Vinod Rege, n.39, p.149-150.

83. ibid, p.148.

84. EPA, n.2, p.102.

further call for changes in the rules governing the use of subsidies and border tax adjustment rules.

Subsidies: The OECD recognizes that it may be necessary to deviate from the PPP and UPP rules for the full internalization of the environmental costs by permitting the use of subsidies in exceptional circumstances where not granting them would jeopardize the social and economic policy objective of the country or region.⁸⁵ As there is a close relationship between a country's environmental policy and its overall socio-economic policy, the use of government aid may be justified.

However, it should be selective and restricted, limited to well-defined transitional periods and it should not create significant distortions in international trade and investment.⁸⁶ Nevertheless, it is a very complex issue and has different implications for developing and developed countries. A common definition of subsidy is needed, as are the principles by which to identify those subsidies which should be reformed or eliminated.⁸⁷

85. OECE - op. cit.

86. H. Verbruggen, n.29, p.7.

87. EPA, n.2, p.38.

Environmental Countervailing and Anti-Dumping Duties:

The existing international rules relating to subsidies would not permit countries to treat the cost advantages resulting from the differences in mandatory environmental standards as subsidies.⁸⁸ In order to constitute a subsidy there should be a positive action by the government which directly or indirectly results in a financial contribution or benefits. This definition does not cover situations where it is alleged that the government has, in the view of its trading partner, failed to take action by adopting appropriate environmental standards.⁸⁹

Border Tax Adjustment Rules:

It refers to the adjustments that could be made in relation to consumption taxes on products exported or imported.⁹⁰ The economic rationale for the rule is the assumption that the burden of indirect taxes is generally shifted forward by the producers to the consumers and is

88. Vinod Rege, n.39, p.157.

89. UNCTAD, n.22, p.30.

90. *ibid*, p.31.

reflected in the price, while direct taxes are absorbed by the taxpayer producer.⁹¹ The existence of these rules, which permit adjustment at the border of indirect taxes, provides an incentive to governments to try to control production processes with product taxes, even in cases where more efficient results could be obtained by using regulatory measures.⁹²

Some Other Issues of Importance:

Besides the issues and measures discussed above, there are a number of other areas where trade and environmental concerns interact and which play an important role in the synthesis of the two objectives. Some of these areas are discussed below:

Transparency and Public Participation: It has different applications for environmental protection and free trade—Greater transparency for the international trade is usually a demand for greater openness in the development and implementation of environmental policies, laws and

91. Vinod Rege, n.39, p.156.

92. *ibid*, p.158.

regulations which can affect trade. To the environmental community, it is a demand for increased openness and accountability in the formation, negotiation and implementation of trade policies and accords.⁹³ A closely related need is to increase public participation in these activities. Increased transparency and public participation means increased access to trade documents and increased openness of the decision-making process within institutions like the GATT. However, this new openness should be accomplished without undermining the negotiating positions of individual governments.⁹⁴

Dispute Resolution: It is closely related to the issue of standards and the one discussed earlier. An effective dispute resolution mechanism must incorporate the concerns of transparency and standards, as well as the issues that may overlap with a discussion of international environmental treaties and the trade treaties.⁹⁵

93. EPA, n.2, p.36.

94. *ibid*, p.37.

95. Patrick Low, n.55, p.7.

Other concerns relate to the perceived lack of expertise of trade panels in dealing with environmental issues.⁹⁶ Principles should be developed which can help identify disputes that are not appropriate for resolution by trade panels.

Current policy seems to place the burden of proof on the governmental entity but the environmental community feels that it should be placed on those challenging environmental measures to prove that those measures are not legitimate.⁹⁷

Institutional Reform: Obvious target of reform is the GATT, and even its own panel ruling on the Tuna-Dolphin dispute seems to suggest the need for reforms to better address trade and environmental concerns.⁹⁸ At the same time, the question of the need to integrate other UN-family agencies, such as the UN Environment Programme and UN Conference of Trade and Development has also been raised. Institutional reform of these agencies and a revaluation of the

96. GATT, n.3, p.9.

97. EPA, n.2, p.38.

98. GATT, n.3, p.11.

relationship between them is necessary to adequately address trade and environment concern within individual governments too, trade and environment agencies will have to find ways to work more closely together.

International Environmental Agreements: With increasing liberalization of trade and the increasing international environmental agreements, disputes arise as to which one should have precedence. The GATT ruling on the Tuna-Dolphin Dispute suggests that multilateral environmental agreements are the preferred course of action.⁹⁹ Complexities arise in situations where countries are GATT signatories, but not signatories to a given international environmental agreement. The environmentalists feel that GATT lacks the capacity to effectively resolve these disputes, though there is little consensus on what other UN agencies should be involved.¹⁰⁰

There is an urgent need to focus on how trade measures can most appropriately be used to further environmental

99. EPA, n.2, p.38.

100. Vinod Rege, n.39, p.165.

goals, and how conflicts between protection of the global commons, and international trade agreements, can be minimized. Clarification of the relationship between international trade and international environmental agreements should be part of this effort.¹⁰¹

North-South Issues: It is the most difficult subject within this debate. There are several instances where common positions of countries of the North and South are possible. However, North-South issues cut across all elements of the trade and environment debate, and this subject should be treated along with the other aspects of the debate.¹⁰²

The developed or developing stage of an economy decides the perspective of a country towards the problems of trade and environment. Trade brings about pressure on these countries to raise their environmental standards. While failure of political will in the developing countries, the lack of financial and technical resources play a more prominent role.¹⁰³

101. UNCTAD, n.22, p.33.

102. GATT, n.2, p.33.

103. *ibid*, p.33.

Developing countries require special attention in addressing trade and environmental concerns. The flow of environmentally-beneficial technology should be facilitated and a more direct compensation to protect the environment should be given to them. Better economic incentives through reform of world trade should be given for developing countries to manage their resources sustainably.¹⁰⁴

Therefore, we see that environmental regulations can be used as a cover for protectionism and at the same time, free trade can undermine environmental policy measures and cause natural resource degradation. Nevertheless, for a more complete analysis, greater attention must be devoted to areas where these dual concerns are not at odds, and address the question of why trade and environmental policy are not being integrated in the pursuit of sustainable development. Political economists need to identify the obstacles preventing the integration of these concerns, and examine the reasons why governments and international trade organizations seem reluctant to embrace the concept of sustainable development in practice as well as in theory.¹⁰⁵

104. UNCTAD, n.22, p.30.

105. EPA, n.3, p.40.

The full impact of environmental policies on trade is difficult to determine at present. There are a number of reasons, some of them outlined above, which could explain why environmental policies have an impact on trade, particularly on trade with developing countries. However, there is little empirical basis for systematically analysis the linkages between environmental policies and trade. In recognition of this gap, UNCTAD, jointly with UNDP, has initiated a project which, among other things, will collect information on some developing countries regarding the possible trade impact of environmental regulations in the major OECD markets.¹⁰⁶ The principal objective of the project is to contribute to an empirical basis for the analysis of the complex linkages between trade, environment and development, covering a variety of countries.

In the long run, environmental protection will not be successful if it ignores the development needs of the world's population. Conversely, the benefits of a more liberalized trading system cannot be sustained over the long-term if environmental and natural resource

¹⁰⁶. UNCTAD, n.22, p.34.

considerations are not taken into account. It is true that conflicts between some of the core values of liberalized trade and environmental protection do exist. Nevertheless, an awareness of the mutual benefits of an approach to trade and environmental concerns, based on sustainable development, can help overcome the anxiety that is generated in both the trade and environmental communities.¹⁰⁷

To be able to reverse the negative environmental trends, we must move towards an economically and environmentally sustainable development. The most concrete steps towards this direction would be the identification and creation of elements of a world trading system that reflects the above desire.

Hence, in this chapter we have seen some examples of the effects of trade policies and environmental objectives on each other. The ever increasing intersection of the two objectives is redefining trade practices and affecting environmental goals and measures, the world over. In the next chapter, we will discuss the role of the GATT, as a multilateral trade treaty, in the field of environmental

¹⁰⁷. Seymour J Rubin and T.R. Graham, n.18, pp.84-85.

concerns and objectives. We will study the evolution of the concepts and concerns of environment in the GATT, by studying how these have effected the rule formulation and working of the GATT. The articles of GATT with implications for environment will be discussed in detail, as also the efforts initiated to bring about a synthesis between trade and environmental objectives.

Chapter - III

GATT AND THE ENVIRONMENT

The General Agreement for Tariff and Trade (GATT) came into existence when environmental issues were not dominating the world. Although issues of environment were beginning to be discussed from 1910 onwards, incorporating trade and environmental concerns was far from being recognized. This multilateral trade agreement was instituted in 1947 as a substitution to the International Trade Organization (ITO) and was not expected to tackle any of the trade and environment related problems. Coexisting with the GATT are a number of regional trade groupings and bilateral trade agreements. The goal of the GATT and the other agreements is to provide a secure and predictable international trading environment while at the same time fostering greater economic efficiency and growth through trade liberalization. Free trade proponents argue that utilizing the comparative advantage of individual countries leads to maximum welfare

for all.¹ It is however evident that the economic activity affected by trade has significant positive and negative consequences for the environment when viewed in the context of sustainable development.

This Chapter studies the endeavors to bring trade and environmental issues to GATT by stretching some of the articles which could be interpreted to embrace trade and environmental issues; as also the activities undertaken within the GATT in order to bring about a rapprochement between the seemingly conflicting interests of trade and environmental issues.

Relevant GATT Rules

The GATT's Preamble begins with the recognition *"that... trade and economic endeavor should be conducted with a view to raising standards of living,... developing the full use of the resources of the world and expanding the production and exchange of goods"*.² Although it does not

-
1. EPA, *The Greening of World Trade: A Report to the Environment Protection Agency from the Trade & Environment Committee of the National Advisory Council for Environmental Policy and Technology*. (Washington D.C., 1993), p.13.
 2. *ibid*, p.45.

provide any specific right or obligation, the Preamble is important in providing guidance to countries regarding policy decisions not explicitly or clearly covered by GATT rules. However, today emphasis is not required on "full use of the resources of the world" but on environmental protection, the conservation of exhaustible resources and sustainable development.³

The GATT consists of three major parts: Part I (Article I to III) which contains the most favoured nation (MFN) and tariff concession obligations, Part II (Article III to XXIII) which contains the majority of GATT's substantive provisions and the exception to its obligations, and Part III (Article XXIX to XXXVIII) which contains the procedural mechanism for implementing the other obligations and provisions contained within the GATT.⁴

-
3. Eliza Patterson, "GATT and the Environment: Rules changes to Minimize Adverse Trade & Environmental Effects" Journal of World Trade, Vol.1, 26(3), Geneva, 1982), p.99.
 4. Vinod Rege, "GATT law and Environment - Related Issues Affecting the Trade of Developing Countries", Journal of World Trade, (Geneva, June 1984), p.99.

Article I:

It establishes the most-favored nation principle (MFN) to ensure that the contracting parties do not discriminate among imported products on the basis of their national origin. The MFN obligation requires all like product from contracting parties to be treated equally and thereby poses an obstacle to a contracting party wishing to use trade restrictions to punish or otherwise attempt to influence a particular exporting country's domestic environmental policies. The MFN obligation has been found to apply to labelling schemes that are not marks of origin including 'Eco-labelling' regimes. Therefore, government labelling requirements relating to production process methods (PPMs) that grant market access or have the effect of providing market advantages may also conflict with this GATT provision.⁵

In order to limit potential conflicts between environmental policies and trade policies experts argue that it should be clarified to what extent the environmental impact of a product and its production method are relevant

5. Stuart Harris, "International Trade, Ecologically Sustainable Development and GATT" Australian Journal of International Affairs, Vol. 45(2), (Nov.91), p., 186.

factors in defining likeness. Although difficult, a balance must be struck. However, a broadly stated right to discriminate on the basis of environmental impact is likely to be abused.⁶

Article II:

Under Article II, countries agree to limit their tariff rates on designated items to negotiated levels and are prohibited from imposing import surcharges. The Article contains an important exception allowing charges on imports if they are equivalent to domestic taxes imposed on either the 'like' domestic products or materials used in the manufacture of the imported product.⁷ This exception would cover the legitimate imposition of fees on imports which posed an environmental hazard. The national treatment requirement will limit abuse of the exception for pure protectionism. It is unclear whether fees on imports produced by an environmentally unfriendly process would be permitted. To ensure that this is the case, it can be

6. George Foy, "Toward Extension of GATT Standards Code to Production Processes," Journal of World Trade, p.121.

7. EPA, n.1, p. 47.

clarified that the processing and productions method and its environmental impact are relevant factors in determining 'likeness' of products for the purposes of Article II.⁸

Article III:

Its national treatment principle requires that a contracting party treat like foreign and domestic products equally once tariffs and other import requirements have been met. This requirement has been read narrowly by GATT dispute settlement panels to permit parties to subject import to only those domestic regulations that apply directly to, or affect the physical and/or chemical composition of the product in question.⁹ Thus, as the Tuna-Dolphin Panel Report demonstrated, a contracting party that distinguishes among imported products based on the environmental soundness of the exporting party's PPMs is vulnerable to attack under Article III.¹⁰ However, the differential impact of otherwise

8. Eliza Patterson, n.3, p.100.

9. Peter A.G. Van Bergeijk, "International Trade & the Environmental Challenge," Journal of World Trade, Vol.25(6), (Geneva, Nov.81), p.106.

10. GATT, Trade & the Environment: Factual Notes by the GATT Secretariat, (Geneva, 1982), p.8.

similar products on the environment and the right of countries to protect the environment should not be ignored. At the same time, to avoid the abuse of the right to discriminate on the basis of environmental impact, an agreed clarification can be reached that demonstrable differences in environmental impact of two products or their production processes is a factor that may be taken into account in defining 'likeness'.¹¹

Article VI:

It condemns the practice of dumping (the introduction of products by one contracting party into the markets of another contracting party at less than the normal value of the products) if it causes or threatens material harm to a domestic industry or retards the establishment of a domestic industry.¹² Article VI also sets the ground rules for contracting parties to impose antidumping duties on imported products to combat dumping and to apply countervailing duties to offset bounties or subsidies relating to imported

11. Eliza Patterson, n.3, p.101.

12. EPA, n.1, p. 47.

products. The scope and details of Article VI were significantly elaborated upon by the Subsidies Code negotiated in the Tokyo Round of Multilateral Trade Negotiations.¹³ In addition to effectively precluding contracting parties from subsidizing their industries for the costs of complying with higher environmental standards (at least where the industries are export oriented), the Subsidies Code also makes it difficult for a contracting party to institute countervailing measures, under Article VI, to combat the environmental standards subsidies provided by lower environmental standards.¹⁴

Article VIII:

Under this, charges equal to the cost of services rendered are also permissible, provided they are not for general fiscal purposes and do not represent indirect protection.¹⁵ This right specifically covers fees and requirements related to quarantine, sanitation and

13. UNCTAD, trends in the field of trade & environment in the framework of international co-operation, Report by the UNCTAD Secretariat, (Aug. 1993), p.31.

14. Eliza Patte son, n.3, p.101.

15. *ibid*, p.102

fumigation. It is unclear whether fees and requirements for other, non-specified, purposes are permissible. Environmentalists suggest the development of an agreed list of acceptable environmental requirements in order to avoid conflicts.¹⁶

Article X:

It requires transparency in the publication and administration of all regulation effecting trade. It does not provide, in reciprocal fashion, affected citizens or consumers access to information or recourse to review procedures when imports or exports allegedly cause them environmental harms.¹⁷ Moreover, the transparency requirements in Article X do not apply to the GATT's own information and review processes. These transparency requirements can be expanded to include environmental regulations and the scientific information which led to the regulation.¹⁸ The greater the information countries have

16. Ibid, p. 101.

17. GATT, Trade & Environment, n.10, p.17.

18. EPA, n.1, p.47.

about each others environmental concerns and regulations, the more likely adopt similar positions, thereby reducing the potential for conflict. Support for such a sharing of information led to the establishment of the International Register of Potentially Toxic Chemicals (IRPTC) in Geneva, a central information clearing house on hazardous substances. Countries agreed to notify their domestic regulatory action, the reasons for the actions and the likelihood that exports of the hazardous substances will occur.¹⁹

Article XI:

It prohibits quantitative restrictions such as quotas, bans and licensing schemes on imported or exported products. Article XI contains several exceptions that allow departure such as the application of standards to internationally sold commodities and agricultural products. Even when the exceptions permit a quantitative restriction, the contesting parties must still observe the MFN and national treatment obligations in implementing it. By broadly prohibiting quantitative restriction, Article XI arguably

19. Stuart Harris, n.5, p.197.

conflicts with such environmental measures as conservation bans or limits imposed on exports of resources, unless they can be justified under one of the general exceptions to the GATT contained in Article XX.²⁰ Examples of environmental measures that may run afoul of Article XI include-the US law banning the exportation of old growth timber harvested from federal lands and the proposed EC and Dutch bans on unsustainably harvested timber.²¹

While the language of Article XI allows an interpretation permitting numerous trade restricting measure designed for environmental protection, potential trade disputes would be avoided if these exemption are made explicit by expanding the list to include import bans on environmentally harmful products and those resulting from polluting processing or production methods, import bans to enforce international agreements and export restriction of hazardous substances.²²

20. GATT, Trade & Environment, n.10, p.39.

21. EPA, n.1, p.46.

22. Eliza Patterson, n.3, p.102.

Article XVIII:

This allows developing countries to grant tariff protection and other assistance to promote the establishment of industries, provided it is consistent with "policies of economic development designed to raise the general standard of living of their people".²³ The broad language of this article could cover a wide range of environmental measure. In today's climate of environmental awareness, it could mean that policies designed to ensure environmental protection and sustainable development would be permitted, while development policies harmful to the environment would not. This would permit developing nations to adopt otherwise outlawed programmes to assist industries in becoming environmentally friendly. It would also forbid the use of trade restriction for environmentally harmful industrial development.

Article XIX:

Also called the "escape clause", permits countries to take otherwise GATT-illegal actions under certain

23. *ibid*, p. 103.

conditions and was designed to address the concern that the GATT would otherwise so restrict countries that they would be unable to deal with situations of an emergency character.²⁴

However, the procedural and political burdens of invoking Article XIX significantly diminish its value as a bridge between trade and environmental concerns.

Article XX:

The GATT provisions most frequently cited by trade experts as applicable to environmental issues are in Article XX. It is based on Article 43 of the Draft Charter for the International Trade organization (ITO) approved at the second session of the preparatory committee of the UN Conference on Trade and Employment.²⁵ Article XX provides for exception that permit GATT violations. To qualify for any of these measures national measures must not involve "arbitrary or unjustifiable discrimination between countries

24. UN Doc. EPCT/C/11/PV.7, (1946), p.3.

25. Steve Charnovitz, "Exploring the Environmental Exception in GATT Article XX", Journal of World Trade, vol. 25(5) (Geneva, Oct.91), p.43.

where the same conditions prevail."²⁶ It was intended as a check against attempts to mask protectionist pursuits in sanitary or environmental guise. Article XX provides exception to basic GATT disciplines for "measures...(b) necessary to protect human, animal or plant life or health;...(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restriction on domestic production consumption;...(j) to address local or world-wide short supply."²⁷ The history of Article XX suggests that it was designed to encompass environmental measures. But it has been criticized because of its nebulous language and the resulting confusion over what government actions it sanctions.²⁸ Whether it achieves its intended purpose will depend upon how the contracting parties administer the exception vis-a-vis increasingly vigorous tools of enforcement. Article XX(h) provides an exception for the actions of the contracting parties taken under any international commodity agreement. Certain GATT scholars

26. GATT, n.10, p.39

27. Eliza Patterson, n.3, p.107.

28. Steve Charnovitz, n.25. p.34.

look point as the model for the creation of a similar exception for actions taken for international environmental agreements.²⁹

Article XXII and XXIII:

They provide the basis for the GATT's dispute resolution procedures. Article XXII allows for informal consultations to take place between the parties in dispute without the need to invoke a formal GATT proceeding. Article XXIII provides for two alternative methods for the formal resolution of GATT disagreements: subsection (1) provides for a process of exchanging written representation while subsection (2) provides for a process of submission to the contracting parties for the establishment of a dispute panel. While these dispute resolution mechanisms have been enhanced by the Tokyo Round's Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (will be discussed later) both the formal and informal dispute resolution mechanisms are opaque and do not include the affected population to play a role in the

29. EPA, n.1, p.48.

resolution process.³⁰ This is of considerable concern to environmentalists as they seek to challenge environmentally related government actions in domestic courts and to participate in the shaping of environmental policies.

Article XXIV:

Article XXIV:12 obliges each contracting party to ensure that the obligations provided in the GATT are complied with at sub-national levels, inducing the actions of regional, State and local governments. A great number of environmental laws and regulations, in every country, exist at the sub-national level. These laws that do not comply with the GATT could place a contracting party in violation of its GATT obligations.³¹

So far we have seen the GATT provisions which affect the environmental issues directly or indirectly. Environmentalists are striving to stretch some of these articles in order to incorporate environmental concerns within them, thus bringing about a synthesis between trade

30. Vinod Rege, n.4, p.107.

31. EPA, n.1, p.49.

and environmental issues. Besides these articles, it is equally important to know the work in the GATT by way of actively involving itself in environmental issues.

Tokyo Round and its Impact on Environmental Agreements and Concerns: Reference to problems that may be posed as a result of regulations adopted for achieving environmental objectives were made during the Tokyo Round (1973-79) particularly in the negotiation on Technical Barriers to Trade (TBT).³² The Agreement on TBT, commonly known as the 'Standards Code' is intended to ensure that the testing and adoption of technical regulations or standards relating to health, safety, consumer and environmental protection and other policy measures do not create unnecessary barriers to trade. In accordance with GATT Article X's transparency mandates, the standards code requires contracting parties to notify other parties of such standards and regulations where they differ from international standards, or are adopted in the absence of any international standards and are expected to have an impact on trade. The Standards Code generally follows Article XX but has a broader environmental scope.³³

32. GATT, Trade & Environment, n.10, p.10.

33. George Foy, n.6, p.130.

The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT: This agreement is also known as the "Subsidies Code" and it expands GATT Article XVI's provisions to more forcefully encourage the parties to eliminate subsidies as a form of domestic trade regulation. In addition to effectively precluding contracting parties from subsidizing their industries for the costs of complying with higher environmental standards, the Subsidies Code also makes it difficult for a contracting party to institute countervailing measures, under Article VI, to combat the environmental standards subsidies provided by lower environmental standards.³⁴

The Agreement on Import Licensing Procedures: Its goal is to ensure that import licensing and registration schemes are not used by the contracting parties to erect protectionist barriers to free trade. A number of national and international environmental protections that attach to import licenses are based on stringent importation and

34. EPA, n.1, p.50.

documentation regimes that must be followed to their letter or else substantial penalties follow.

The Understanding Regarding Notification, Consultation Dispute Settlement and Surveillance: It establishes the procedural framework for the handling of disputes between the contracting parties arising under the terms of the GATT. These procedures place a priority on easing the political difficulties that can arise in a multilateral dispute and they include a number of provisions geared towards allowing the parties to negotiate freely. The areas of friction in this process focus on -(1) the closed nature of the GATT dispute resolution process, including the exclusion of interested citizens and non-governmental organizations from presenting information to GATT dispute panels;(2) the embargo of papers submitted by the parties to GATT panels, and (3) the embargo of panel decisions for a period of time to allow for negotiations to take place.³⁵ Moreover, the decisions that result from the dispute resolution processes are based solely on the terms of the

35. GATT, Trade and Environment, n.10, p.13.

GATT. Therefore, the dispute resolution process, and decisions that ensue suffer from the environmental limitations embodied within the GATT as a whole.³⁶

The Tokyo Round Agreement explicitly stated that environmental protection could be considered a valid justification to deviate from international standards. Any such derogation would be subject to the basic obligation of the Agreement to ensure that technical regulation are not applied or adopted to have the effect of creating unnecessary obstacles to international trade. Furthermore, any such deviations are subject to the provisions described above relating to transparency and dispute settlement.

Group on Environmental Measures and International Trade

During the preparatory work for the Conference on the Human Environment (1972 Stockholm Conference), the GATT secretariat was requested to make a contribution.³⁷ At the Nov. 1971 GATT Council meeting the Council agreed to the establishment of a Group on Environmental Measures and

36. Eliza Patterson, n.3, p.108.

37. GATT, Trade and Environment, n.10, p.5.

International Trade in view of the GATT's responsibility in dealing with the implications of industrial pollution control on international trade.

Its main function was "to examine upon request any specific matters relevant to the trade policy aspects of measures to control pollution and protect the human environment especially with regard to the application of the provisions of the General Agreement taking into account the particular problems of developing countries."³⁸

It was set up as a standby machinery. But in the ensuing twenty years, the group remained dormant. At the Ministerial meeting in Brussels in Dec.1990 a request was made for the activation of the group in order to provide a forum in which to "tackle the issue that have arisen and will arise in the context of environmental policies, so that the GATT can be maintained as a relevant body of rules in all respects."³⁹

Consequently, the group was activated in 1991 with a three - part working agenda, namely

38. GATT, Trade and Environment, TEOO 1, (1 April 1993), p.1.

39. *ibid*, p.3.

- trade provision of existing multilateral environmental agreements (such as the Montreal Protocol on depletion of the ozone Layer, the Basel Convention on trade in hazardous wastes and the CITES convention on trade in endangered species) vis-a-vis GATT principles and provisions;
- the transparency of trade -related environmental measures and
- the possible trade effects of packaging and labelling requirements.⁴⁰

The Group along with the Committee on Trade and Development and the GATT Council was also given a remit by the Contracting Parties to follow up trade-oriented elements of "Agenda 21" which emerged in June 1992 from the UNCED in Rio de Janeiro.

To avoid conflict between the trade and environment policy areas, adequate and timely notification of all measures likely to have a trade effect is crucial. Various notification procedures exist already, including a general requirement for the publication of trade provisions

40. *ibid*, p.3.

contained in GATT's Articles, the Technical Barriers to Trade Agreement and so on. There has been some concern that there is a lack of clarity and specificity in these transparency rules which makes them too general to be effective but several of the Uruguay Round agreements are expected to have taken one more step towards clearing up many of the problems in this area.

The Group also identified a variety of measures in the environment field that can have significant trade effects and which warrant a further look in terms of their transparency for trading partners. These are handling and packaging requirements; labelling and voluntary eco-labelling schemes; environmental measures taken at the sub-federal level of government; deposit-refund-schemes; measures under GATT Article XX; measures based on international environmental standards; and environmental taxes and subsidies. The Group aims at understanding the potential trade effects of the various measures. With such an approach, appropriate solutions could be devised which secure environmental objectives while not distorting trade at the same time.⁴¹

41. *ibid*, p.5.

The Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances: In 1982, the contracting parties agreed that it was appropriate for the contracting parties to examine measures to control the export of products which are prohibited from sale in domestic markets, yet are allowed to continue as exports. This agreement evolved into the creation by the GATT Council in 1989 of the Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances.⁴² This Working Group examines the trade related aspects of ongoing international work to regulate the flow of such goods and substances among the contracting parties. This was followed, at a later meeting, by two additional proposals from interested parties (DPG/W/8 and DPG/W/9) Based on these two proposals and the comments received, the Chairman of the Group presented a text of a draft Decision on Products Banned or Severely Restricted in the Domestic Market.⁴³ The Decision would cover all products (including hazardous wastes) which are determined by a contracting Party to

42. GATT, Trade & Environment, n.10, p.8.

43. *ibid*, p.8.

present a serious and direct danger to human, animal or plant life or health or the environment in its territory, and which for that reason are banned or severely restricted in the domestic market of that country. The decision aims to increase transparency by creating a notification system through which contracting parties will notify to the GATT secretariat all products that are banned or severely restricted for domestic sale but for which no equivalent action has been taken on the export side. The GATT secretariat shall immediately forward such notification to all enquiry points of contracting parties which are to be established according to the Decision.

To avoid duplication of other international instruments, these provision do not apply if the product is covered by another international instrument and the contracting party is signatory or a participant of this instrument.⁴⁴ The Decision calls on contracting parties to participate effectively in information exchange systems as well as the procedures to regulate trade in such products developed under these instruments. Other provisions in the

44. EPA, n.1, p.56.

Decision relate to "Transparency and Publication Requirements", "Establishment of a Committee on Products Banned or Severely Restricted in the Domestic Market" and "Technical Assistance".⁴⁵ Contracting Parties are urged to consult and may have access to Articles XXII and XXIII of the General Agreement on matters arising out of the operation of this Decision.

The original terms of reference gave the Group a mandate to complete its work by 30 Sept. 1990. By subsequent decisions and in the light of the positive progress it was making, the Council has further extended the mandate of the Group.⁴⁶ As it was recognized that some time was necessary for reflection and consultations among delegations.

Structured Debate on Trade and Environment:

A Council debate was held in May 1991 which discussed the issues involving trade and environment. Most delegations considered that multilateral agreements provided an appropriate means to address global environmental concerns.

45. Peter A.G. Van Bergeijk, n.9, p.108.

46. GATT, Trade and Environment, n.10, p.9.

The objectives, guidelines, environmental standards and procedures for their implementation would, however, have to be discussed and negotiated in the appropriate form having technical competence and not in GATT.⁴⁷

Some delegations stated that an increasing numbers of international environmental agreements contained trade provisions. It was therefore necessary to examine their relationship with Article XX, particularly whether they imposed conflicting obligation under GATT and international environmental agreements. It was also felt that trade measures should not be incorporated in international environmental agreements, to encourage participation by non-signatories, simply because there was a failure to achieve international consensus on rules and disciplines. It may be desirable to consider in such cases whether GATT consistent possibilities could be used to influence the actions of countries which are reluctant to participate.⁴⁸ However, when trade measures were included in such agreements, and conflicts with GATT rules arose, these should be examined on

47. *ibid*, p.36.

48. EPA, n.1, p.57.

a case-by-case basis, or a decision could be taken under Article XX.

Multilateral Environmental Agreements (MEAs):

Along with the debates and measures discussed above it is also important to study the relationship between GATT and the MEAs with trade provisions, due to their growing number and importance. There are, at present, over one hundred and forty international agreements and instruments in the environmental field. Those agreements which contain trade provisions can be grouped into three categories.⁴⁹

- to control transborder pollution or to protect the global commons. Example-Vienna Convention for the Protection of the ozone layer and its Montreal Protocol, and Agreement on Climate Change.
- to protect endangered species, migratory birds and animals, fish and sea animals. Example-Convention on International Trade in Endangered Species of wild Fauna and Flora (CITES) and the International Convention for the regulation of Whaling

49. Vinod Rege, n.4, p.119.

- to control production and trade in hazardous products and substances. Example-Basal Convention on the Transborder Movement of Hazardous wastes and their Disposal and the London Guidelines for the Exchange of information on Chemicals in International Trade.

These agreements affect international trade by allowing participating countries to import or export on the basis of licenses and to obtain the prior informed consent of the importing country before exporting; and by the prohibition of imports and exports.⁵⁰ Maintenance of systems for the issue of export or import licenses are permissible under the GATT, if they are applied consistently with its provisions. They are justified under Article XX, which permits countries to take measures which are not permitted under the GATT, if they are related to the conservation of exhaustible natural resources or human, animal or plant life.

The imposition of restriction on trade with other participating countries may not present any problem from the point of view of the GATT, but prohibition on trade with

50. Peter A.G. Van Bergeijk, n.9, p.107.

countries which are not parties to such agreements raises the question of consistency with the obligations of the GATT law. It also questions the necessity and desirability of this restriction from the economic point of view.⁵¹

Provisions requiring countries to control their trade with non-parties are included in the MEAs to ensure that the obligations are not circumvented by the members through trade with non parties. It may also aim to force countries to sign an agreement or to punish "free riders".

However, it is argued that it may be possible to avoid the use of trade-restrictive measures against non-parties by adopting other measures which are economically more efficient and also consistent with the GATT rules.⁵² Because the countries, especially the developing ones, may be reluctant to join the agreements due to the scientific uncertainty surrounding the objectives of the MEAs.

The most widely supported view justifies the inclusion of trade-restrictive measures in the MEAs, under the provisions of Article XX of the GATT itself, provided that the agreement is really multilateral in character and the

51. EPA, n.1, p.59.

52. Vinod Rege, n.9, p.120.

trade restrictions against the non-parties are considered necessary by the parties to the MEA to prevent circumvention of the obligations which it imposes.

Recognition by governments of the importance of the relationship between the functioning of the multilateral trading system and better environmental protection and the promotion of sustainable development has developed quickly over the past three years. When the matter was first raised at the Uruguay round Ministerial meeting in Brussels in December 1990, there was considerable hesitancy on the part of many GATT members both over extending the work of GATT in this direction, given that it is an organisation which has focused almost exclusively on technical trade matters, and over the risk they perceived of environmental concerns being used to disguise underlying protectionist motives and measures.⁵³ Many developing countries in particular feared their trade interests might be placed in serious jeopardy by efforts of the industrialized countries to raise and enforce worldwide environmental standards which they could not afford.

53. "The WTO is Born", Focus: GATT Newsletter, No.107, (May 1994), p.15.

Following the Brussels meeting, consultations continued in Geneva throughout 1991 on finding an acceptable basis upon which to convince the long dormant GATT Group on Environmental Measures and International Trade. Those consultations were influenced by several factors.⁵⁴ One was the recognition that governments were including trade provisions in international environmental agreements (e.g. CITES, the Montreal Protocol, the Basel Convention). Another was the increased use in industrialized countries of environmental measures, such as eco-packaging and eco-labelling requirements, whose trade effects were becoming of increasing significance to many exporters. Also at this time a GATT dispute panel reported its findings on an embargo imposed by the United States for environmental reasons against imports of tunafish from Mexico, raising to prominence a debate both within and outside GATT over the use of trade measures by one country, to try to change environmental policies in another.

The consultations on trade and environment in GATT were concluded towards the end of 1991 with the convening of the

54. *ibid*, p.16.

Group on Environmental Measures and International trade and with a long awaited contribution from GATT to the preparatory work for the UNCED. The UNCED in Rio de Janeiro in 1992 captured well the view of GATT members that liberal trading conditions, along with financial and technological resource transfers, held the key to accelerating sustainable development and the conclusion of the Round was the most important contribution governments could make in implementing UNCED result.⁵⁵

Therefore, we see that GATT has a number of provisions with major implications for environment. The contents, as well as the manner of the execution of these articles by the contracting parties decides whether their action will have a positive or a negative impact on environmental policies. Experts point at the limitations and the lack of safeguards against the abuse of these provisions.⁵⁶ However, as environmental concerns assume greater importance globally, they are manifested in the future development of international trading practices, as well as the increasing

55. *ibid*, p.16.

56. Eliza Patterson, n.3, p.109.

activity of the GATT/WTO in this field by taking steps towards finding a common ground. With the evolution of the GATT into the World Trading Organization (WTO), these issues will be addressed more directly and significantly. How will this be accomplished and what changes could be expected in this debate between trade and environment is the matter to be dealt with in the next chapter.

Chapter - IV

WORLD TRADE ORGANIZATION AND THE ENVIRONMENT

Inspite of the alarming nature of environmental problems, we have seen in the preceding chapter, that the GATT rules do not specifically address environmental issues. The reason being that when the GATT treaty was first negotiated environmental problems were not trade issues.¹ The establishment of the World Trade Organization (WTO) can be seen as the start of a new phase in the GATT in this context; specially the work on the linkages between trade, environment and sustainable development following the Decision on Trade and Environment taken by Ministers in Marrakesh in April which concluded the Uruguay Round negotiations.²

The GATT is an international arrangement based on an unratified executive agreement between governments.³ This

-
1. "The WTO is Born", Focus: GATT Newsletter; No.107 (May 1994), p.1.
 2. GATT, Trade and the Environment: News and Views from the GATT; TE 009, (28 July 1994), p.8.
 3. EPA, The Geening of World Trade, A Report to EPA, (Washington, 1993), p.45.

somewhat tenuous legal status reflects the origins of the GATT, as stated in the previous Chapter. The General Agreement incorporated the fundamental principles of trade liberalization underlying the proposed ITO without creating a formal international organization.⁴ It lacks in particular, provisions to confront social policy issues related to trade. However, the ambiguous legal character of the GATT has not hindered it from being an effective instrument for the reduction of tariffs and the negotiation of agreements to limit other restrictions on trade.

Environmental issues are finding a legitimate and long-term status within the WTO at a crucial time as the importance of redirecting international trade and its rules towards sustainable development has never been more urgent.⁵ More often than not, international trade rules continue to weigh down environmental initiatives in many countries. The most recent example is the Tuna-Dolphin dispute which was brought and won by the European Union and the Netherlands against dolphin protection laws in the United States of America. It demonstrates that the GATT's articles are

4. *ibid*, p.113.

5. *The WTO is Born*, n.1, p.15.

obsolete instruments for dealing with real-world conservation needs in an increasingly global economy.⁶

Changes to the international trade system have occurred since the creation of the GATT in 1947. Now that reform must continue, through the WTO committee and related international agencies, this time for the purpose of bringing environment and trade policies into greater congruence.

The Uruguay Round and Environment

The Uruguay Round, which modified the GATT and decided to establish the WTO, was launched before environmental concerns took on the prominence, which they now have, on the policy agenda of many of the participating countries.⁷ Thus, the relationship between trade measures and environmental measures was not included as a separate subject for negotiation. However, environmental concerns are addressed, with or without an explicit environmental label in a number

6. GATT, TE009, n.2, p.13.

7. GATT, Trade and Environment - News and Views, TE005, (17 Feb. 1994), p.3.

of final Uruguay Round agreements. Such agreements are discussed below:

a) The Agreement on Technical Barriers to Trade (TBT):

It aims to ensure "...that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade."⁸ The TBT agreement encourages countries to use international standards where these are available, but it does not require them to harmonize their domestic regulations and standards upwards or downwards as a result of international standardization activities.⁹ However, it is felt that this rule would limit the ability of states and municipal governments to regulate local environmental concerns.¹⁰ The Agreement requires governments to apply the regulations in a

8. GATT, Uruguay Round : Final Act, p.117.

9. GATT, TE005, n.7, p.4.

10. EPA, n.3, p.53.

non-discriminatory way (meeting the disciplines of MFN and National Treatment), and to ensure that the regulations are drafted in such a way "that they are no more trade restrictive than necessary to meet the objective".¹¹ However, it would also mean that technical barriers will be subject to full GATT enforcement mechanisms, including countervailing duties and dispute resolution procedures; thereby diminishing the ability of the parties to maintain environmentally motivated non-tariff barriers.¹² Nevertheless, the most valuable feature of this agreement is that it provides for a very high degree of transparency of policy-making in this area, which can help prevent trade disputes.¹³ In the event of a dispute arising between two members under the Agreement, the provisions relating to the establishment of technical expert groups have been carried over from the existing TBT Agreement.

11. GATT, Uruguay Round, n.8, p.124.

12. Vinod Rege, "GATT Law and Environment - Related Issues Affecting the Trade of Developing Countries", Journal of World Trade, (Geneva, June 1994), p.103.

13. GATT, TE005, n.7, p.5.

b) **The Agreement on Sanitary & Phytosanitary Measures (SPS):**

The SPS Agreement is environmentally very important. It is premised on three principles: 1) Parties must adopt strict principles of national treatment in standard setting and enforcement, 2) parties' decisions to permit or restrict the availability of a new product or technology may only be based on sound scientific evidence; and 3) international agencies such as Codex Alimentarius, the International Office of Epizootics, etc. are the only legitimate sources of scientific information.¹⁴

It desires "to further the use of harmonized sanitary and phytosanitary measures between Members on the basis of international standards, guidelines and recommendations."¹⁵ By providing unified standards, harmonization can diminish the burdens imposed on internationally-traded products by the plethora of widely divergent national standards which now apply to these products.¹⁶ Developing nations, however, fear that ratcheting up standards to the level of the

14. GATT, Uruguay Round: Final Act, n.8, p.68.

15. *ibid.*, p.75.

16. Vinod Rege, n.12, p.105.

developed world would be an impediment to increased market access for their products and would deprive them of the ability to choose increased levels of development, as opposed to higher levels of environmental quality.¹⁷

The SPS Agreement has transparency and notification requirements similar to those of the new TBT Agreement, including the establishment of enquiry points to answer questions about trade-related requirements. The new dispute settlement procedures would apply in the case of a dispute between two Members under the SPS Agreement.¹⁸

c) The Agreement on Agriculture:

The SPS Agreement is part of the comprehensive Agreement on Agriculture which provides a framework for the long-term reform of agricultural trade and domestic policies. A potential environmental benefit of the reforms package will be reduced incentives for intensive farming in areas ill-suited to that activity.¹⁹ In developed countries

17. EPA, n.3, p.54.

18. GATT, TE005, n.7, p.6.

19. *ibid.*, p.6.

specific area agricultural subsidies have been a major factor in the specialization of agricultural activities causing distortions in the natural development of agricultural markets with preferences going to development within these subsidized sectors.²⁰ The trade distortions from agricultural subsidies include increasing loss of biodiversity and heightened demands being placed on already diminishing available water resources. Thus, the elimination of agricultural subsidies in developed nations should have a positive environmental effect.²¹

In developing nations, the effects of agricultural subsidies cuts are more uncertain and will vary to a large extent from country to country, depending on the manner in which each nation removes such subsidies.²² However, environmentalists have expressed fears that the elimination of agricultural subsidies will cause increased demand for these agricultural products, increasing the pressure to

20. EPA, n.3, p.55.

21. Peter A.G. Van Bergeijk, "International Trade and Environmental Challenge", Journal of World Trade; 25(6), (Nov. '91), p.112.

22. EPA, n.3, p.55.

clear and put to tillage greater amounts of marginal lands.²³

d) The Agreement on Subsidies and Countervailing Duties:

The Subsidies Agreement is central to the rules restricting member governments from engaging in unfair trading practices and competing through the wealth of their national treasuries rather than on the basis of their comparative advantage.²⁴ In an effort to provide greater clarity and reduce international trade conflicts, the Agreement classifies a range of subsidies into three general categories²⁵: 1) permissive subsidies; 2) "proceed at the risk of domestic countervailing duty proceedings"²⁶ subsidies; and 3) prohibited subsidies.

Article 8 of the revised Subsidies Agreement identifies non-actionable subsidies on which countervailing duties cannot be applied. It covers, among others, assistance to

23. Scott Vaughan, "The Environment and Trade", Our Planet; Vol. 5(6) (1993), p.11.

24. GATT, TE005, n.7, p.6.

25. EPA, n.3, p.54.

26. GATT, Uruguay Round: Final Act, n.8, p.230.

adopt existing facilities to new environmental laws and requirements that result in greater constraints and financial burdens on firms.²⁷ Subject to certain condition, up to twenty percent of the cost of adaptation would be considered a non-actionable subsidy.²⁸

e) **The Agreement on Trade-Related Intellectual Property Rights (TRIPS):**

The TRIPs Agreement provides more enforceable protection for trade-related intellectual property rights. As such, it is expected to encourage more research and innovation and better access to new technology, including environmental technology, for all countries.²⁹ However, certain environmentalists fear that stronger intellectual property protections will hamper the transfer of environmentally sound technologies to developing countries, especially in the light of the transfer goals of the Montreal Protocol and the global warming agreement.³⁰

27. GATT, TE005, n.7, p.5.

28. GATT, Uruguay Round: Final Act, n.8, p.234.

29. GATT, TE005, n.8, p.6.

30. EPA, n.3, p.53.

Similarly, there is the provision that Members must provide for the protection of plant varieties by patents or by an effective sui generis system, or a combination of the two.³¹ However, some scholars feel that the contributions of indigenous discoverers, preservers and users, and national governments that preserve these ecosystems, should have been given some form of intellectual property recognition to give due economic value to their efforts and encourage the preservation of environment.³²

f) **General Agreement on Trade in Services (GATS):**

Article XIV of GATS contains the General Exceptions to the Agreement. It is modelled on Article XX of the GATT, and the sub-paragraph (b) is identical to Article XX (b) of the GATT.³³ The Agreement contains a Decision which is to be adopted at the first meeting of the council for Trade in Services. The Decision states that it is not clear whether

31. GATT, TE005, n.8, p.6.

32. U. Kettlewell, "GATT: Will liberalized Trade Aid Global Environmental Protection", Denver Journal of International Law and Policy: 21(1), (Fall '92), p.72.

33. GATT, Uruguay Round: Final Act, n.8, p.301.

there is a need to provide for anything more by way of exceptions for measures necessary to protect the environment than is contained in Article XIV(b), but in order to clarify that matter, a Working Party shall be established and shall examine and report, with recommendations, if any, on the relationship between services, trade and the environment, including the issue of sustainable development.³⁴ The Working Party is also to examine the relevance of inter-governmental agreements on the environment and their relationship to the GATS. It will report on the result of its work within three years of the entry into force of the WTO.

g) Fuller transparency and expert review groups in dispute settlement:

The Understanding on Rules and Procedures Governing the Settlement of Disputes provides for each panel to have the opportunity to seek information and technical advice from any individual or body which it deems appropriate.³⁵ Panels may seek information from any relevant source and may

34. *ibid.*, p.305.

35. *ibid.*, p.353.

consult experts to obtain their opinion on certain aspects of the matter under dispute. This would apply to experts in the field of the environment in the event of a dispute involving trade related environmental measures.³⁶

The Understanding also states, with respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, that a panel may request an advisory report, in writing, from an expert review group. Rules for the establishment of such a group and procedures for its work are provided in an Annex to the Understanding.³⁷ This formula has been borrowed from the 1979 TBT Agreement which provides for technical expert groups to advise panels.³⁸

Appendix 3 of the Understanding also contains new working procedures for panels. They allow a party to a dispute to disclose statements of its own position to the public and, at the request of the WTO, parties to the dispute shall provide a non-confidential summary of the

36. GATT, TE005, n.7., p.7.

37. GATT, Uruguay Round, n.8, p.362.

38. EPA, n.3, p.55.

information contained in their own submissions to the panel that could be disclosed to the public.³⁹

h) Market Access:

Increased market access for trade in goods and services resulting from the Uruguay Round results is expected to help global economic prospects. This in turn should lead to more public resources that would multiply public options available to governments for pursuing better environmental protection and sustainable development. In the developing countries, trade liberalization on a global scale, coupled with financial and technological transfers, is essential for promoting sustainable development.⁴⁰ The reduction of tariff escalation and removal of non-tariff barriers in their main trading partners, if carried out sincerely, can make a real contribution to reducing the dependence of so many developing countries on natural resource exploitation for want of other export opportunities, thereby helping to preserve the ecosystem.⁴¹

39. GATT, Uruguay Round, n.8, p.365.

40. Bibek Debroy, "Uruguay Round: Status paper on Issues Relevant to Developing Countries", Foreign Trade Review: 26(3); (Oct-Dec '91), p.126.

41. U. Kettlewell, n.32, p.72.

GATT secretariat estimates, prepared on the basis of partial data in Nov. '93, suggested that the overall trade impact of the Round could amount to world merchandise trade reaching a level in the year 2005 about 12 percent higher than would otherwise be if trade grew annually over that period at its average for the period 1980-91.⁴² The largest increases in trade were projected to be in the areas of textiles and clothing, agricultural, forestry and fishery products, and processed food and beverages. However, the fear of increased market access being a disincentive to the sustainable management of the natural resources is also very much present.

With the successful conclusion of the Uruguay Round negotiations, GATT member countries are one step nearer to the demand made by the 1992 Earth Summit for international co-operation to promote sustainable development through trade.⁴³ The Trade Negotiations Committee took the decision to draw up a comprehensive work programme on trade, environment and sustainable development and making this a

42. GATT, TE005, n.8, p.7.

43. EPA, n.3, p.56.

priority for further work in the post-Uruguay Round period.⁴⁴

Besides the meetings of the GATT Group on Environmental Measures and International Trade to resume work on the issue, trade and environment also figured prominently at the Forty-ninth session of the GATT Contracting Parties.

At the meeting held to adopt the Final Act of the Uruguay Round negotiations on 15 Dec. 1993, the Trade Negotiations Committee (TNC) adopted a Decision on Trade and Environment. Given below is the text of the Decision⁴⁵:-

"The Trade Negotiations Committee,

Noting:

- (a) *the Rio Declaration on Environment and Development, Agenda 21, and its follow-up in GATT, as reflected in the statement of the Chairman of the Council of Representatives to the CONTRACTING PARTIES at their 48th Session in December 1992, as well as the work of the Group on Environmental Measures and International Trade, and of the Committee on Trade and Development;*
- (b) *the work programme envisaged in the Decision concerning Article XIV:B of the Services Agreement; and*
- (c) *the relevant provisions of the TRIPs Agreement;*

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an

44. GATT, TE009, n.2, p.11.

45. GATT, TE005, n.8, p.9.

open, non-discriminatory and equitable Multilateral Trading System on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other; Desiring to coordinate the policies in the field of Trade and Environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environment policies which may result in significant trade effects for its members;

Decides to draw up a programme of work:

- (a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;*
- (b) to make appropriate recommendation on whether any modifications of the provisions of the Multilateral Trading System are required, compatible with the open, equitable and non-discriminatory nature of the system, as regard, in particular:*
 - the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and*
 - the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure the responsiveness of the Multilateral Trading System to environmental objectives, including Principle 12 of the Rio Declaration; and*
 - surveillance of trade measures used for environmental purposes, of trade related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;*

Agrees to present the programme of work, and recommendation of an institutional structure for its execution, for adoption as soon as possible and no later than at the Ministerial Conference of April 1994."

Consultations will now take place to elaborate the work programme which will be built on the work that has already taken place in the GATT over the past two years in this field, particularly in the Group on Environmental Measures and International Trade.⁴⁶ This work will extend into new areas of trade that will be covered by the rules of the WTO, notably trade in services and trade-related aspects of intellectual property rights (TRIPs). These consultations will also address the question of what institutional structure should be put in place to undertake the work programme.

The Role of The World Trade Organization (WTO):

The WTO envisages a single institutional framework for the multilateral trading system encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices, and the complete

46. Ibid., p.8.

results of the Uruguay Round negotiations. The Preamble of the WTO includes direct references to the objective of sustainable development and environment. It states that members' "relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development".⁴⁷

The Trade and Environment Decision of 14 April 1994 decided to direct the first meeting of the General Council of the WTO to establish a Committee on Trade and Environment open to all members of the WTO to report to the first biennial meeting of the Ministerial Conference after the entry into force of the WTO when the work and terms of

47. GATT, Uruguay Round: Final Act, n.8, p.9.

reference of the Committee will be reviewed, in the light of recommendations of the Preparatory Committee.

In order to ensure a smooth transition to the implementation of the WTO, a WTO Preparatory Committee was established by the Ministers in Marrakesh.⁴⁸ It was expected to cease to exist once the WTO agreement entered into force. It will be assisted by a sub-committee on services, responsible for initiating the programme of work decided upon in connection with the negotiations in specific service sectors, and a sub-committee on budget, finance and administration. A sub-committee on Trade and Environment had been established under this Preparatory Committee. It is chaired by a senior GATT Ambassador, Luiz-Felipe Lampreia of Brazil and had its first meeting in May 1994.⁴⁹

The Marrakesh Ministerial Decision on Trade and Environment ensures that the linkages between trade policies, environmental policies and sustainable development will be taken up as a priority in the WTO. At its first meeting, the WTO General Council will establish a new Committee on Trade and Environment, with terms of reference

48. The WTO is born, n.1, p.12.

49. GATT, Uruguay Round: Final Act, n.8, p.409.

and an extensive work programme that have been agreed on already in the Decision. Pending its establishment work will get underway at once in the Preparatory committee of the WTO.

In the course of negotiating the WTO Agreement, a proposal to establish a permanent WTO Committee on Trade and Environment was discussed. It did not gain sufficient support, among other things because it is not common practice in GATT to set up permanent institutional arrangements in a particular area of work before matters of a more substantive nature have been settled.⁵⁰ Also, some Members felt that this might delay further work on trade and environment until ratification of the WTO allowed a committee to be established. Therefore, the Trade Negotiations Committee (TNC) adopted a Decision on Trade and Environment as the solution.

The task of establishing a Committee on Trade and Environment was complicated largely by two concerns⁵¹ - some delegations wanted to avoid giving environment a permanent

50. GATT, TE005, n.7, p.8.

51. GATT, TE009, n.2, p.11.

place within the WTO, feeling that environmental issues were not of a permanent nature and hence only a limited number of issues should be discussed with no long-term commitment by the WTO on the matter. On the other hand, another group of members felt a strong need for a standing committee on Trade and Environment of the WTO, but with a mandate flexible enough to encourage introduction of trade related environmental issues as they would arise in the future.

Finally, the Declaration on Trade and Environment that emerged from the Uruguay Round incorporated some of the major issues raised by non-governmental groups too; some examples are - transparency of functioning, a mandate that would allow for a subsequent definition of a specific set of topics and a specific timeline for the issues to be considered.⁵²

The committee's terms of reference provide it with a broad-based remit covering all areas of the multilateral trading system-goods, services and intellectual property. It is given both analytical and prescriptive functions; to identify the relationship between trade measures and

52. *ibid*, p.12

environmental measures in order to promote sustainable development, and to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required.⁵³ The important parameters guiding its work are - firstly, the WTO competence for policy coordination in this area is limited to trade. Secondly, if problems of policy coordination to protect the environment and promote sustainable development are identified through the committee, they are to be resolved in a way that upholds and safeguards the principles of the multilateral trading system.

The committee's initial programme is set out in seven areas of work, within which any relevant issue may be raised.⁵⁴ These have been drawn up on the basis of GATT's work over the past three years on trade and environment and matters raised by individual governments, as being of particular concern to them in this area. However, any recommendation deriving from the committee's work will need to command the broad support of members. The committee is also charged to provide input to the WTO of making

53. Bibek Debroy, n.40, p.137.

54. *ibid*, p.138.

appropriate arrangements for relations with inter-governmental and non-governmental organisations.

Experts suggest that the process at the WTO committee on Trade and Environment should be broadened by relying on outside sources like-UNEP, UNCTAD, etc., to provide specific information and recommendations where the GATT/WTO bodies lack expertise.⁵⁵ They also insist on introducing a more specific work agenda for the Committee to ensure against a bias against environmental concerns.

With all its drawbacks and limitations, the establishment of a "Committee" is of significance due to the structure of the WTO and the importance committees hold within that structure. Considering that the GATT, now the WTO, is an institution where new ideas have taken hold very slowly, there is significance in the fact that environmental issues, largely through public pressure and the leadership of some governments, have managed to find a home within the WTO. Therefore, the establishment of a Committee on Trade and Environment represents significant progress.

55. GATT,TE 009,n.2,p.11

As the GATT Director-General Peter Sutherland remarked, the Marrakesh Decision on Trade and Environment was a bonus to add to the Uruguay Round results.⁵⁶ He mentioned four factors which had helped bring the subject to the point of maturity before it was endorsed by consensus by ministers in Marrakesh as a topic to add to the WTO's responsibilities

- Firstly, the elaboration and acceptance of the approach, by the Brundtland Commission and the UN Conference on Trade and Environment (UNCED), of the need for economic growth to go hand in hand with better environmental protection and the promotion of sustainable development.
- Secondly, the acceptance that trade and environment linkages could not be defined uniquely in terms of trade restriction.
- Thirdly, the recognition that trade policies alone could not be asked to resolve all environmental problems and that finance and technology transfer were equally vital.

56. GATT, Reports on the GATT symposium on Trade Environment and Sustainable Development, TE008, (28 July 1994), p.1.

- Fourthly, demands for a cleaner environment and for environmentally-friendly goods and services had been increasing worldwide and the speed and direction of events made the need for multilateral policy cooperation urgent for the sake of both the environment and the trading system.

Many new policy initiatives in the area of the environment either involved trade policies directly or could have significant trade effects. This has played an important role in persuading many countries who were hesitant to accept the subject of trade and environment into the GATT to welcome it being brought now into the WTO where their trade concerns could be properly addressed.⁵⁷ However, many countries still held concerns that the subject could generate elements of trade protectionism. One of the keys to success in the WTO Committee on Trade and Environment would be laying those concerns to rest and securing results that could attract the wholehearted support of the collective membership of the WTO.

57. EPA, n.3, p.60.

WTO and the Developing Countries :

From the viewpoint of trade policy, the demands for the unrestricted right to use environmental standards which are higher or stricter than international standards could lead to serious trade problems and frictions. It is often difficult to say whether these standards reflect the health and environmental concerns or are the result of the wish on the part of the industry in the importing country to keep the competitive imports out.

The implications of higher standards for the trade of developing countries are more crucial. As these could lead to the sudden disruption of trade of developing countries, if they are adopted and applied without providing a sufficiently long time to the exporters in outside countries to adapt their products to the new requirements. This has made developing countries suggest that the international community should establish an "early warning system" which would inform them of the standards or regulations that are planned to be adopted by the importing countries for products in which they have significant trade.

The notification systems which have been established under the existing Technical Barriers to Trade (TBT) and

Sanitary and Phyto-Sanitary (SPS) Agreements could provide a basis for the development of such an early warning system. One of the limitations of the present system, however, is that such notifications would have to be made only after the draft standard is ready for publication. If such a notification system is to serve as an early warning system, the notifications would have to be made immediately after the work on the preparation of such regulation has commenced. This would enable the industries in the exporting countries to modify their product standards to bring them into conformity with the proposed regulations.

Moreover, often the international standard making process fails to adequately take into account the characteristics of the products exported by the developing countries or the technology and the production methods used in these countries.⁵⁸ This may be due to the inability of both their industries and their governments to participate effectively in international standardization activities. Apart from financial difficulties, representatives from developing countries are often handicapped as their

58. Vinod Rege, n.12, p. 108.

participation is often not supported by research and technical work.

The provisions in the TBT Agreement for special and differential (S&D) treatment to developing countries recognize that developing countries are not able to participate effectively in international standardization activities. To help them in improving their participation, the Agreement calls on countries "to ensure that the activities of international standardization bodies are recognized and operated in a way which would facilitate their participation" and to extend to developing countries, making a request, technical assistance for improving their participation.

The effective participation of the developing countries will lead to the harmonization of international product standards which, in turn, would facilitate their trade. Therefore, it is desirable to review the present situation in co-operation with the International organization for Standardization (ISO), the International Electrotechnic Commission (IEC), Codex Alimentarius and other international standardization organizations and examine, in the light of the review and the specific

provisions for the extension of S&D treatment included in the Agreements on TBT and SPS, the steps that could be taken in this direction.

Despite such limitations, the basic rule of the TBT Agreement that countries should base their regulations laying down product standards on international standards and the principle it lays down that the deviation from international standards would be possible primarily for climatic, geographical or technological reasons would be in the long-term trade interest of developing countries.

While rigid insistence on the harmonization of environmental standards may not be justifiable on either economic or environmental grounds, it would be, at least in principle, desirable for countries to upgrade them by adopting, wherever possible, higher and less polluting and more environmentally friendly technologies. Any new rules that may be developed to deal with trade-related issues that arise as a result of differences in environmental standards should contain provisions for providing technical and financial assistance, both on a bilateral or on a multilateral basis.

At present, the transfer of environmentally friendly technology from developed countries to other countries occurs in the context of official development assistance or through foreign direct investment.⁵⁹ However, the bulk of the environmental technology is obtained by firms in developing countries on a purely commercial basis. The exporting firms maybe able to obtain, for such commercial sales, financial supports from the government-sponsored export credit agencies, in the form of direct credits, refinancing and interest rate subsidies.

To enable developing countries to adopt environmentally friendly technologies and thus facilitate adoption of higher and more effective environmental standards, the new rules should provide that:⁶⁰

- Developed countries should ensure that their export credit programmes give priority to supporting exports of goods and services that have beneficial effects on the environment or mitigate potential adverse environmental effects;

59. *ibid*, p. 114

60. *ibid*, p. 114-5.

- financial assistance and mixed credits (in which governments combine export credits with development assistance funding) should be increasingly used to support projects aimed at supplying environmental technologies to industries that are responsible for causing pollution in developing countries, and
- in the case of foreign investment, host countries should require that new projects established with such investment should adopt the environmental standards that are in force in the home countries, if they are higher than their own standards.

The future WTO work programme in the area of trade and environment would be confined to trade and trade-related aspects of the subject.⁶¹ Some members suggested a separate and complementary institutional framework to work alongside the WTO on these issues and provide the necessary expertise. Much of the discussion, to date, has focussed on possible legal refinements to the GATT to build environmental sensitivity into the international trading system. But

61. GATT, TE008, n.56, p.3.

creating a new parallel international regime designed to defend the environment as a necessary element of a prosperous global economy and to coordinate policies with the GATT would offer the prospect of a broader peace between the trade and environmental communities. It can provide a bulwark against domestic political pressures that undermine long-term thinking and serve as an honest broker in transnational disputes. Therefore, it asks for not just 'greening' the GATT, but 'GATting' the greens.⁶²

The linkages between trade, environment and sustainable development are so complex that no existing institution appears to have the competence or a mandate that covers all of the policies which are required to be addressed.⁶³ Therefore, there is an urgent need for an interactive process among all institutions. This process should be multilateral, pluralistic and democratic, involving all governments and NGOs. Only through this kind of participatory process would it be possible to direct trade towards fully sustainable development and build up the

62. Daniel C Esty "GATting the Greens", Foreign Affairs; vol.72(5), (Nov./Dec. 1993), p.32.

63. Peter A. G. Van Bergeijk, n.21, p.112.

capacity of the WTO to contribute in this field. As now all decisions on trade and environment would be taken in the WTO, the real issue is now to bring in environmental expertise.⁶⁴ Leaving other agencies such as UNEP, UNDP or UNCSD to take up environmental issues separately was not a practical solution, as the political power rested with finance, trade and development ministries. It is also suggested that the UNCSD could be able to coordinate and oversee relevant expertise and political direction to be fed into the WTO. The logic being that GATT legal system was subject to the UN legal order and, it followed, subject ultimately to the UNCSD.⁶⁵

While the WTO is the place for rule-making on trade and environment issues, analysis and elucidation was also needed to prepare issues to come to the WTO. It would, however, not be involved in setting environmental standards as there is a danger of placing downward pressure on standards that are higher than international norms.⁶⁶

64. U.Kettlewell, n.32, p.68.

65. GATT, TE008, n.56, p.4.

66. *ibid.* p.4.

The WTO could not be expected to solve all problems in the area of trade and environment, but it could set sensible rules that ensured that trade did not stand in the way of environmental protection.

CONCLUSION

Environmental policies are not new to the multilateral trading system. There has always been a close linkage between the two, and only more recently have efforts been made to integrate these dual concerns. However, as we have seen in the preceding chapters, these first efforts have been dominated by a system biased towards trade-liberalization with little public involvement. There has been a growing awareness among the environmentalists that as currently structured, international trade and its rules and procedures fall short of contributing to sustainable development.

As noted in Chapter 1, the major reason for the continuing deterioration of the world ecology and environment is the unsustainable patterns of production and consumption (particularly in the industrialized countries) and the persistence of poverty and restricted economic opportunities in the developing countries. The debate of environmentalism, in the Postwar period, developed into a broader and more universally useful definition of the concept of conservation. This was due to a number of factors like the advent of the atomic age, environmental disasters,

effects of affluence and so on. It evoked the response of the international community to the environmental issues in various ways. Starting with the UN conference on the Human Environment, held in Stockholm in 1972, to the 1992 Earth Summit, there are a large number of conferences and meetings related to the issues of environment. These did not only further the cause of environment but were also instrumental in moulding the perspective of the developing countries towards environment and development. The roots of the changed emphasis of the post-Stockholm environmental movement can be sought in certain broader developments - notably, the changing nature of international economic and political relations where mutual interdependence has increased many folds. Moreover, since the impact of the developed countries' demands on the global resource base is considerable, their trade policies have a major influence on the supply and demand of resources in the developing countries. Thus the rise of national and global environmental concerns has created linkages between environmental issues and other areas in world politics, including international trade.

Chapter II is based on the assumption that trade and environment are inextricably linked. Since the beginning of the twentieth century, trade tools have been utilized to achieve environmental objectives. From the advent of international environmental co-operation, governments have recognized the efficiency of trade measures in dealing with transnational environmental problems. It was increasingly realized that there is a need for multilateral cooperation to minimize potential trade frictions and also to identify and implement solutions to environmental problems. Economic and environmental concerns cannot be treated separately. To achieve the objectives of environmental protection attention must be paid to development needs. At the same time, development will not be sustainable if attention is not paid to the environment. Therefore, trade policy which does not consider environmental impacts can undermine the natural resource base on which continued future development depends. Moreover, economic growth is often paid for by environmental degradation. However, tariffs and non-tariff barriers are only second-best solutions to tackle environmental problems. Hence, there is need to combine free trade and environmental policy in order to make international trade a vehicle for co-operation in global environmental policy-making.

The policy instruments that are currently being proposed to achieve environmental goals (border-taxes, trade bans, countervailing duties, etc.) are the same instruments that are to be eliminated in the framework of international trade negotiations. These instruments and a number of other areas where trade and environmental concerns interact can play an important role in the synthesis of the two objectives. An awareness of the mutual benefits of an approach to trade and environmental concerns, based on sustainable development, can help overcome the conflict areas. One of the most concrete steps towards this direction would be identification and creation of elements of a world trading system that reflects the above desire.

The GATT came into existence when environmental issues were not dominating the world, and incorporating trade and environmental concerns was far from being recognized. However, as stated in Chapter III, many of the GATT articles can be interpreted to embrace trade and environmental issues. Some examples being - Article I, which can prevent trade restrictions from influencing a particular exporting country's domestic environmental policies; Article II, which covers the legitimate imposition of fees on imports which

pose an environmental hazard; Article XX, which provides exceptions to GATT rules and was intended as a check against attempts to mask protectionist pursuits either in sanitary or in environmental guise. Besides, a number of other articles can be thus interpreted which have been identified such as Articles III, VI, VIII, X, XI, XVIII, XIX, XXII, XXIII and XXIV.

Besides these articles, environmental consciousness has been growing within the GATT since the Tokyo Round of Multilateral Trade Negotiations when a number of regulations were introduced, particularly in the negotiation on Technical Barriers to Trade, with reference to environmental objectives. Some of these regulations were - the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT, which established the 'Subsidies Code'; the Agreement on Import Licensing Procedures; and the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance. At the same time, a Group on Environmental Measures and International Trade was established to study the relationship between trade and environment. It was set up as a standby machinery. But in the ensuing twenty years, the group remained dormant and did not function at all. It was activated in 1991 as a result of

the demand by the European Free Trade Association (EFTA) to the GATT. It was to tackle the issues that have arisen and will arise in the context of environmental policies, so that the GATT can be maintained as a relevant body of rules in all respects. The Group aims at understanding the potential trade effects of the various environmental measures.

It may be noted that in 1982 the Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances was established by the GATT Council. This Working Group examines the trade related aspects of ongoing international work to regulate the flow of such goods and substances among the contracting parties.

The growing number and importance of the Multilateral Environmental Agreements (MEAs) with trade provisions makes their relationship with the GATT very significant. These agreements affect international trade by allowing participating countries to import or export on the basis of licenses and to obtain the prior informed consent of the importing country before exporting; and by the prohibition of imports and exports. Article XX of the GATT justifies the issuing of export or import licenses, if they are related to the conservation of exhanstible natural resources or human,

animal or plant life. But prohibition on trade with countries which are not parties to such agreements raises the question of consistency with the obligations of the GATT rules. It is argued that it may be possible to avoid the use of trade-restrictive measures against non-parties by adopting other measures which are economically more efficient and also consistent with the GATT rules. However, the most widely supported view ^ujustifies the inclusion of trade-restrictive measures in the MEAs, under the provisions of Article XX of the GATT itself, provided that the agreement is really multilateral in character and the trade restrictions against the non-parties are considered necessary by the parties to the MEA to prevent circumvention of the obligations which it imposes.

Recognition by governments of the importance of the relationship between the functioning of the multilateral trading system and better environmental protection and the promotion of sustainable development has developed quickly over the past three years. This was reflected in the Uruguay Round of Negotiations of the GATT. Therefore, as seen in Chapter IV, the Uruguay round which modified the GATT and decided to establish the WTO, addresses environmental concerns with or without an explicit environmental label in

a number of final agreements. Even though the interface between trade and environment was not specifically included in the agenda for the Uruguay Round of negotiations, a number of modifications have been made in the associated agreements to meet some of the concerns expressed by environmental groups. The notable examples being - The Agreement on Technical Barriers to Trade, which aims to strike a balance between trade and environmental policies; the Agreement on Sanitary and Phytosanitary Measures, which desires to harmonize sanitary and phytosanitary measures between Members on the basis of international standards, guidelines and recommendations; and so on.

The Preamble of the WTO also includes direct references to the objective of sustainable development and environment. Moreover, the Marakesh Ministerial Decision on Trade and Environment ensures that the linkages between trade policies, environmental policies and sustainable development will be taken up as a priority in the WTO.

Many new policy initiatives in the area of the environment either involved trade policies directly or could have significant trade effects. This has played an important role in persuading many countries who were hesitant to

accept the subject of trade and environment into the GATT to welcome it being brought now into the WTO where their trade concerns could be properly addressed.

The future WTO work programme in the area of trade and environment would be confined to trade and trade-related aspects of the subject. The linkages between trade, environment and sustainable development are so complex that no existing institution appears to have the competence or the mandate that covers all the policies that are required to be addressed. Therefore, there is an urgent need for an interactive process among all institutions. This process could be multilateral, pluralistic and democratic to be able to direct trade towards fully sustainable development and build up the capacity of the WTO to contribute in this field.

It is clear from this study that GATT rules do not contain any restraints on the rights of countries to take measures for the protection or improvement of the environment and for the development of sustainable development. Its legal framework, however, emphasizes that trade measures are not the best solution for environmental problem and when such measures are used, the conditions governing their use should be strictly adhered to.

However, it would be necessary to clarify and modify some of the rules to ensure that the trade and environmental policy measures are mutually supportive and to avoid the possibility of environment-related trade measures being taken by countries for protectionist purposes or, on unilateral basis, to deal with environmental problems outside their territories and jurisdictions.

As the WTO's competence is limited to trade policy aspects, in relation to environmental policy measures, its rules can deal only with the trade-related aspects of such policies where they result in significant trade effects for its members. The modifications made would also have to take into account the special problems and needs of developing countries.

The WTO could not be expected to solve all problems in the area of trade and environment, but it could set sensible rules that ensured that trade did not stand in the way of environmental protection and under the guise of environmental protection neo-protectionist tendencies do not dominate the world trade.

ANNEX I

AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay round of Multilateral Trade Negotiations.

Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

Article I

Establishment of the Organization

The World Trade Organization (hereinafter referred to as "the WTO") is hereby established.

Article II

Scope of the WTO

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.

2. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members.

3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.

4. The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as "GATT 1994") is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as "GATT 1947").

Article III

Functions of the WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral trade Agreements.
2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial conference.
3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreements.
4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.
5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

Article IV

Structure of the WTO

1. There shall be a Ministerial conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial conference shall

have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Members, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the committees provided for in paragraph 7.

3. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

4. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

5. There shall be Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS"). These Councils shall carry out the functions assigned to them by their respective agreements

and by the General Council. Membership in these Council shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions.

6. The Council for Trade in Goods, the council for Trade in Services and the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish, their respective rules of procedure subject to the approval of their respective Councils.

7. The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance-of-Payments Restriction and a Committee on Budget, Finance and Administration, which shall carry out the function assigned to them by this Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council, and may establish such additional committees with such functions as it may deem appropriate. As part of its functions, the committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the least-developed country Members and report to the General Council for appropriate action. Membership in these committees shall be open to representatives of all Members.

8. The bodies provided for under the Plurilateral Trade shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Article V

Relations with Other Organizations

1. The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.

2. The General Council may make appropriate arrangements for consultation and cooperation with non-governmental

organizations concerned with matters related to those of the WTO.

Article VI

The Secretariat

1. There shall be a Secretariat of the WTO (hereinafter referred to as "the Secretariat") headed by a Director-General.
2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General.
3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.
4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of the duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

Article VII

Budget and Contributions

1. The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee on Budget, Finance and Administration shall review the

annual budget estimate and the financial statement presented by the Director-General and make recommendations thereon to the General Council. The annual budget estimate shall be subject to approval by the General Council.

2. The Committee on Budget, Finance and Administration shall propose to the General Council financial regulations which shall include provisions setting out:

- (a) the scale of contributions apportioning the expenses of the WTO among its Members; and
- (b) the measures to be taken in respect of Members in arrears.

The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947.

3. The General Council shall adopt the financial regulations and the annual budget estimate by a two-thirds majority comprising more than half of the Members of the WTO.

4. Each Member shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulation adopted by the General Council.

Article VIII

Status of the WTO

1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.

2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its function.

3. The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

4. The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

5. The WTO may conclude a headquarters agreement.

Articles IX

Decision-Making

1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.¹ Except as otherwise provided, where a decision cannot be arrived at by consensus, the council, each Members of the WTO shall have one vote, Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States² which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreements or in the relevant Multilateral Trade Agreement.³

2. The Ministerial conference and the General Council shall have the exclusive authority to adopt interpretations

1. The body concerned shall be deemed to have decided by consenxsus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.

2. The number of votes of the European Communities and their member States shall in no case exceed the number of the member States of the European Communities.

3. Decisions by the General Council when convened as the Dispute Settlement Body shall be taken only in accordance with the provisions of paragraph 4 of Article of the Dispute Settlement Understanding.

of this Agreement and of the Multilateral Trade Agreements . In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths⁴ of the Members unless otherwise provided for in this paragraph.

(a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths⁴ of the Members.

(b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time-period, the relevant Council shall submit a report to the Ministerial Conference.

4. A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting Member has not performed by the end of the Relevant period shall be taken only by consensus.

4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Article X

Amendments

1. Any Member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. The Councils listed in paragraph 5 of Article IV may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in Annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the Ministerial Conference any decision by the Ministerial Conference to submit the proposed amendment to the Members for acceptance shall be taken by consensus is not reached at meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and 6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial conference decides by a three-fourths majority of the Members that the provisions of paragraph 4 shall apply.

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members:

Article IX of this Agreement;
Article I and II of GATT 1994;
Article II : 1 of GATS;
Article 4 of the Agreement on TRIPS.

3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority to the Members which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Members with the consent of the Ministerial conference.

4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligation of the Members, shall take effect for all Members upon acceptance by two thirds of Members.

5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Members upon acceptance by it. The Ministerial conference may decide by a three-fourths majority of the Members that any amendment made effective under the preceding provision is of such a nature what any Member which has not accepted it within a period specified by the Ministerial conference in each case shall be free to withdraw from the WTO or to remain a Members with the consent of the Ministerial conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all Members upon acceptance by two thirds of the Members.

6. Notwithstanding the other provisions of this Article, amendments to the Agreement of TRIPS meeting the requirements of paragraph 2 of Article 71 thereof may be adopted by Ministerial Conference without further formal acceptance process.

7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex I shall deposit an instrument of acceptance with the Director -General of the WTO within the period of acceptance specified by the Ministerial Conference.

8. Any Members of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in Annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The decision to approve amendments to the Multilateral Trade Agreement in Annex 2 shall be made by consensus and these amendments shall take effect for all Members upon approval by the Ministerial conference. Decision to approve amendments to the Multilateral Trade Agreement in Annex 3 shall take effect for all Members upon approval by the Ministerial conference.

9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XI

Original Membership

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for

which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.

2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institution capabilities.

Article XII

Accession

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this agreement and the Multilateral trade agreement may accede to this Agreement on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-third majority of the Members of the WTO.

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XIII

Non-Application of Multilateral Trade Agreements between Particular Members

1. This Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application.

2. Paragraph 1 may be invoked between original Members of the WTO which were contracting parties to GATT 1947 only

where Article XXXV of that Agreement had been invoked earlier and was effective as between those contacting parties at the time of entry into force for them of this Agreement

3. Paragraph I shall apply between a Member and another Member which has acceded under Article XII only if the Member not consenting to the application has so notified the Ministerial Conference before the approval of the agreement on the terms of accession by the Ministerial Conference.

4. The Ministerial Conference may review the operation of this Article in particular cases at the request of any Member and make appropriate recommendations.

5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

Article XIV

Acceptance, Entry into Force and Deposit

1. This Agreement shall be open for acceptance, by signature or otherwise by contracting parties to GATT 1947, and the European Communities, which are eligible to become original Members of the WTO in accordance with Article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the final Act embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance following the entry into force of this Agreement shall enter into force on the 30th day following the date of such acceptance.

2. A Member which accepts this Agreements after its entry into force shall implement those concessions and obligation in the Multilateral Trade Agreements that are to be

implemented over a period of time starting with the entry into force of this Agreements as if it had accepted this Agreement on the date of its entry into force.

3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and notification of each acceptance thereof, to each government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.

4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

Article XV

Withdrawal

1. Any Member may withdraw from this Agreement. Such withdrawal shall apply both to this Agreement and the Multilateral Trade Agreement and shall take effect upon the expiration of six months from the date on which notice of withdrawal is received by the Director-General of the WTO.

2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XVI

Miscellaneous Provisions

1. Except as otherwise provided under this Agreement of the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947.

2. To the extent practicable, the Secretariat of GATT 1947 shall become the Secretariat of the WTO, and the Director-General to the CONTRACTING PARTIES to GATT 1947, until such time as the Ministerial conference has appointed a Director-General in accordance with paragraph 2 of Article VI of this Agreement, shall serve as Director-General of the WTO.

3. In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict.

4. Each Member shall ensure the conformity of its law, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

5. No reservations may be made in respect of any provision of this Agreement. Reservation in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservation in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of the Agreement.

6. This Agreement shall be registered in accordance with the provision of Article 102 of the charter of the United Nations.

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX II

LIST OF INTERNATIONAL TREATIES AND OTHER AGREEMENTS IN THE FIELD OF THE ENVIRONMENT

1. Convention Concerning the Use of White Lead in Painting. Geneva. 1921.
2. Convention Relative to the Preservation of Fauna and Flora in Their Natural State, London, 1933
3. Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Washington, 1940
4. International Convention for the Regulation of Whaling (as amended), Washington, 1946
5. Convention for the Establishment of an Inter-American Tropical Tuna commission, Washington. 1946
6. Agreement for the Establishment of a General Fisheries council for the Mediterranean (as amended), Rome, 1949
7. International Convention for the Protection of Birds, Paris, 1950
8. Convention for the Establishments of the European and Mediterranean Plant Protection Organization (as amended), Paris, 1951
9. International Plant Protection Convention , Rome, 1951
10. Agreement Convention Measures for Protection of the Stocks of Deep-sea Prawns (Pandalus borealis, European Lobsters (Homarus vulgaris), Norway Lobsters (Nephrops norvegicus) and Crabs (cancer pagurus) (as amended), Oslo, 1952
11. International Convention for the High Seas fisheries of the North Pacific Ocean (as amended), Tokyo, 1952

12. International Convention for the Prevention of Pollution of the Sea by Oil, London, 1954 (as amended on 11 April 1962 and 21 October 1969)
13. Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, Concerning Tank Arrangements and Limitation of Tank Size, London, 1971
14. Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 Concerning the Protection of the Great Barrier Reef, London, 1971
15. Plant Protection Agreements for the South-East Asia and Pacific Region (as amended), Rome, 1956
16. Interim Convention on Conservation of North Pacific Fur Seals (as amended), Washington, 1957
17. Convention Concerning fishing in the Waters of the Danube, Bucharest, 1958
18. Convention on the Continental Shelf, Geneva, 1958
19. Convention on Fishing and Conservation of Living Resources on the High Seas, Geneva, 1958
20. Convention on the High Sea, Geneva, 1958
21. North-East Atlantic Fisheries Convention, London, 1959
22. Convention Concerning Fishing in the Black Sea (as amended), Varna, 1959
23. The Antarctic Treaty, Washington, 1959
24. Agreements Concerning Co-operation in the Quarantine of Plants and Their Protection Against Pests and Diseases, Sofia, 1959
25. Convention Concerning the Protection of Workers Against Ionizing Radiations, Geneva, 1960

26. Convention on Third Party Liability in the Field of Nuclear Energy (as amended), Paris, 1960
27. Convention Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (as amended), Brussels, 1963
28. Protocol Concerning the Constitution of an International Commission for the Protection of the Mosel Against Pollution, Paris, 1961
29. International Convention on the Protection of New Varieties of Plants, Paris, 1961
30. Convention on the African Migratory Locust, Kano, 1962
31. Agreement Concerning Co-operation in Marine Fishing, Warsaw, 1962
32. Agreements Concerning the International Commission for the Protection of the Rhine Against Pollution (as amended), Berne, 1963
33. Vienna Convention on Civil Liability for Nuclear Damage, Vienna, 1963
34. Optional Protocol Concerning the Compulsory Settlement of Disputes. Vienna, 1963
35. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, Moscow, 1963
36. Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South-West Asia (as amended), Rome, 1963
37. Convention and Statute relating to the Development of the Chad Basin (as amended), Fort-Lamy (N'Djamena), 1964
38. Convention for the International Council for the Exploration of the Sea (as amended), Copenhagen, 1964

39. Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Near East (as amended), Rome, 1965
40. International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 1968
41. Treaty on Principles Governing the Activities of States in the Exploration and Use of outer Space Including the Moon and Other Celestial Bodies, London, Moscow, Washington, 1967
42. Phyto-Sanitary Convention for Africa, Kinshasa, 1967
43. African Convention on the Conservation of Nature and Natural Resources, Algiers, 1968
44. European Agreement on the Restriction of the Use of Certain Detergents in Washing and Cleaning Products, Strasbourg, 1968
45. European Convention for the Protection of Animals During International Transport, Paris, 1968
46. European Convention on the Protection of the Archeological Heritage, London, 1969
47. Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil, Bonn, 1969
48. Convention on the Conservation of the living Resources of the South-East Atlantic, Rome, 1969
49. International Convention on Civil Liability for Oil Pollution Damage, (as amended), Brussels, 1969
50. International Convention Relating to Intervention on the High Seas in Cases on Oil Pollution Casualties, Brussels, 1969
51. Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil, London, 1973

52. Benelux Convention on the Hunting and Protection of Birds (as amended), Brussels, 1970
53. Agreement for the Establishment of a Commission for Controlling the Desert Locust in North-West Africa, (as amended), Rome, 1970
54. Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 1971
55. Protocol to Amend the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Paris, 1982
56. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean floor and in the Subsoil thereof, London, Moscow, Washington, 1971
57. Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Brussels, 1971
58. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, (as amended), Brussels, 1971
59. Convention Concerning Protection Against Hazards of Poisoning Arising from Benzene, Geneva, 1971
60. Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, (as amended), 1972
61. Convention Concerning the Status of the Senegal River, and Convention Establishing the Senegal River Development Organization, (as amended), Nouakchott, 1972
62. Convention for the Conservation of Antarctic Seals, London, 1972
63. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on Their Destruction, London, Moscow, Washington, 1972

64. Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 1972
65. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (as amended) London, Mexico City, Moscow, (Washington) 1972
66. Convention on International Trade in Endangered Species of Wild Fauna and flora, Washington, 1973
67. Convention Establishing a Permanent Inter-State Drought Control Committee for the Sahel, Ouagadougou, 1973
68. Convention on Fishing and Conservation on the Living Resources in the Baltic Sea and Belts, Gdansk, 1973
69. International Convention for the Prevention of Pollution from Ships, London, 1973
70. Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, London, 1973
71. Agreement on Convention of Polar Bears, Oslo, 197
72. Convention on the Protection of the Environment Between Denmark, Finland, Norway and Sweden, Stockholm, 1974
73. Convention on the Protection of the Marine Environment of the Baltic Sea Area, Helsinki, 1974
74. Convention on the Prevention of Marine Pollution from Land-based Sources, Paris, 1974
75. Convention Concerning Prevention and Control of Occupational Hazards Caused by Carcinogenic Substances and Agents, Geneva, 1974
76. Agreement on an International Energy Programme, Paris, 1974
77. Convention for the Protection of the Mediterranean Sea Against Pollution, Barcelona, 1976

78. Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, Barcelona, 1976
79. Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency, Barcelona, 1976
80. Protocol for the Protection of the Mediterranean Sea Against Pollution from Lead-based Sources, Athens, 1980
81. Protocol Concerning Mediterranean Specially Protected Areas, Geneva, 1982
82. European Convention for the Protection of Animals Kept for Farming purposes, Strasbourg, 1976
83. Agreement Concerning the Protection of the Waters of the Mediterranean Shores, Monaco, 1976
84. Convention on Conservation of Nature in the South Pacific, Asia, 1976
85. Convention on the Protection of the Archeological, Historical, and Artistic Heritage of the American Nations (Convention of San Salvador), Santiago, 1976
86. Convention on the Protection of the Rhine Against Chemical Pollution, Bonn, 1976
87. Convention Concerning the Protection of the Rhine Against Pollution by Chlorides, Bonn, 1976
88. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, New York, 1976
89. Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources, London, 1977
90. Convention Concerning the Protection of Workers Against Occupational Hazards in the Working Environments Due to Air Pollution, Noise and Vibration, Geneva, 1977

91. Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, Kuwait, 1978
92. Protocol Concerning Regional Co-operation in Combating Pollution by Oil and their Harmful Substances in Cases of Emergency, Kuwait, 1978
93. Treaty for Amazonian Co-operation, Brasilia, 1978
94. Convention on Future Multilateral Co-operation in the North-West Atlantic Fisheries, Ottawa, 1978
95. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979
96. European Convention for the Protection of Animals for Slaughter, Strasbourg, 1979
97. Convention on the Conservation of European Wildlife and Natural Habitats, Berne, 1979
98. Convention on the Physical Protection of Nuclear Material, Vienna, 1979
99. Convention on Long-range Transboundary Air Pollution, Geneva, 1979
100. Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term financing of the Co-operative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), Geneva, 1984
101. Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on the Reduction of Sulphur Emissions of Their Transboundary Fluxes by at least 30 per cent, Helsinki, 1985
102. Protocol to the 1979 Convention on Long-range Transboundary Air Pollution Concerning the Control of Emission of Nitrogen or Their Transboundary Fluxes, Sofia, 1988

103. Convention on the Conservation and Management of the Vicuna, Lima, 1979
104. Convention on the conservation of Antarctic marine Living resources, Canberra, 1980
105. European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities, Madrid, 1980
106. Convention on Future Multilateral Co-operation in North-East Atlantic Fisheries, London, 1980
107. Convention Creating the Niger Basin Authority and Protocol Relating to the Development Fund of the Niger Basin, Faramah, 1980
108. Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, Abidjan, 1981
109. Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency, Abidjan, 1981
110. Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific, Lima, 1981
111. Agreement on Regional Co-operation in Combating Pollution of the South-East Pacific by Oil and Other Harmful Substances in Cases of Emergency, Lima, 1981
112. Supplementary Protocol to the Agreement on Regional Co-operation in Combating Pollution of the South-East Pacific by Oil and Other Harmful Substances in Cases of Emergency, Quito, 1983
113. Protocol for the Protection of the South-East Pacific Against Pollution from Land-based Sources, Quito, 1983
114. Protocol for the conservation and Management of the Protected Marine and Coastal Areas of the South-East Pacific, Paipa, 1989

115. Protocol for the Protection of the South -East Pacific Against Radioactive Contamination, Paipa, 1989
116. Convention Concerning Occupation Safety and health and the Working Environment, Geneva, 1981
117. Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, Jiddah, 1982
118. Protocol Concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases on Emergency, Jiddah, 1982
119. Convention for the Conservation of Salmon in the North Atlantic Ocean, Reykjavik, 1982
120. Benelux Convention on Nature Conservation and Landscape Protection, Brussels, 1982
121. United Nations Convention on the Law of the Sea, Montego Bay, 1982
122. Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Cartagena, 1983
123. Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region, Cartagena, 1983
124. Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Kingston, 1990
125. Agreements for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances, Bonn, 1983
126. International Tropical Timber Agreement, Geneva, 1983
127. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985

128. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987
129. Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, London, 1990
130. Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern Africa Region, Nairobi, 1985
131. Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, Nairobi, 1985
132. Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region, Nairobi, 1985
133. Convention Concerning Occupational Health Services, Geneva, 1965
134. South Pacific Nuclear Free Zone Treaty, Rarotonga, 1985
135. ASEAN Agreement on the Conservation of Nature and Natural Resources, Kuala Lumpur, 1985
136. Convention Concerning Safety in the Use of Asbestos, Geneva, 1986
137. Convention on Early Notification of a Nuclear Accident, Vienna, 1986
138. Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Vienna, 1986
139. Convention on Conditions for the Registration of Ships, Geneva, 1986
140. Agreement Concerning the Preservation of Confidentiality of Data Concerning Deep Sea-bed Areas, Moscow, 1986
141. Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, Noumea, 1986

142. Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, Noumea, 1986
143. Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region, Noumea, 1986.
144. Protocol Convention for the Protection of Vertebrate Animals Used for Experimental and other Scientific Purposes, Strasbourg, 1986
145. Agreement of the Action Plan for the Environmentally Sound Managements of the Common Zambezi River System, Harare, 1987
146. European Convention for the Protection of Pet Animals, Strasbourg, 1987
147. Convention on the Regulation of Antarctic Mineral Resource Activities, Wellington, 1988
148. Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, Vienna, 1988
149. Agreement on the Network of Aquaculture Centres in Asia and the Pacific, Bangkok, 1988
150. Basel Convention on the control of Transboundary Movements of Hazardous Wastes and Their Disposal, Basel, 1989
151. Convention on the Prohibition of Fishing with Long-Drift Nets in the South Pacific, Wellington, 1988
152. International Convention on Salvage, London, 1989⁵

5. UNEP, GC.16/Inf.4, (Nairobi, 1991).

Bibliography

Primary Sources

General Agreement on Tariff and Trade (GATT) Publication/ Documents:

GATT, Trade and The Environment: Factual Notes by the GATT Secretariat, (Geneva, Feb. 1992)

_____, Trade and The Environment: International Trade 1990/91: Advance Copy of Chapter III (Geneva, Feb. 1992)

_____, Focus-Newsletter, No. 107 (Special Issue), (Geneva, May 1994)

_____, Analytical Index- Notes to Article XX

_____, Trade and The Environment: News and Views From the GATT, TE 001, TE 005, TE 008, and TE 009, dated 1 April 1993, 17 Feb. 1994 and 28 July 1994 respectively.

Organisation for Economic Co-operation and Development (OECD) Publications:

OECD, Joint Report on Trade and the Environment (Paris, 1991)

_____, Environmental Policy: How to Apply Economic Instruments (Paris, 1991)

_____, The State of the Environment, 1979, 1985 and 1991, dated 1979, 1985 and 1991 respectively.

_____, Economic and Ecological Interdependence (Paris, 1982)

Dohman, E., The Trade Effects of Environmental Regulation, OECD observer, No. 162, (Mar. 1990)

United Nations (UN) Publications:

U.N., Interrelations: Resources, Environment, Population and Development: Proceedings of a UN Symposium Held at Stockholm Aug. 6-10, 1979 (New York, 1980)

_____, Report of the US on the Human Environment, Stockholm June 5-15 1972, (New York, 1973)

_____, Development and Environment, Report by a Panel of Experts of the UN Conference on the Human Environment (Stockholm, 1971)

United Nations Environment Programme (UNEP) Publications:

UNEP, The State of the World Environment 1972-82, GC. 10/3 (Nairobi, 29 Jan. 1982)

_____, Report of the Governing Council at its Session of a Special Character, GC (SSC) /4 (Nairobi, 28 June 1982).

_____, Register of International Conventions and Protocols in the Field of Environment, GC/Information/5/Supplement 5 (26 Nov. 1981)

_____, Report of the Governing Council of the UNEP Forth and Fifth Session, dated 1976 and 1977.

_____, Review of the Areas of Environment and Development and Environmental Management, Report No.3 (Nairobi, 1978)

_____, and UNCTAD, Report of the Export Group on the Impact of Resource Management Problems and Policies in Developed Countries on International Trade and Development Strategies (Nairobi, 1984)

United Nations Conference on Trade and Development (UNCTAD)
Publication:

UNCTAD, Trends in the Field of Trade and Environment in the Framework of International Cooperation TD/B/40(1)/6, (Geneva, Aug. 1993)

_____, Uruguay Round: Papers on Selected Issues (Geneva, 1989)

Jha, Veena and others (ed.), Eco-Labeling and International Trade. Preliminary Information from Seven countries, UNCTAD Discussion Paper No. 72, OSG/DP/70, (Geneva, 1993)

World Bank (WB) Publications:

Low, Patrick (ed.), International Trade and the Environment, World Bank Discussion Papers (Washington D.C, 1992)

Dasgupta, P.S, and K.G. Maler, The Environment and Emerging Development Issues, WB Annual Conference on Development Economics (Washington D.C, 1990)

Fingre, J. Michael and Andrezej Olechowski (ed.) The Uruguay Round: A Handbook for the Multilateral Trade Negotiations (Washington D.C, 1987)

Robertson, David, Trade and the Environment: Harmonization and Technical Standards in International Trade and the Environment, Discussion Paper No. 159 (Washington D.C., 1992)

Verbruggen H., International Trade and the Environment, Development Economics Seminar Paper, No. 90-3/10. (Hague, Oct. 1990)

World Commission on Environment and Development (WCED)
Publication:

Brundtland, Gro Harlem and others (ed.) Our Common Future
(Oxford, 1987)

World Wildlife Fund (WWF) for Nature Publications:

WWF, The Uruguay Round's Technical Barriers to Trade Agreement, WWF Research Report (Geneva, 1993)

_____, Sustainable Use of Natural Resources: Concepts, Issues and Criteria, WWF International Position Paper (Geneva, 1993)

Arden-Clarke, C., Conservation and sustainable Management of Tropical Forests: The Role of the ITO and the GATT, WWF Discussion Paper (Geneva, 1990)

Government Documents and Publications:

United States, The Greening of World Trade, A Report to the Environment Protection Agency (EPA) from the Trade and Environment Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT) (Washington D.C., 1993)

Grimet, Jean J., Environmental Regulation and the GATT, US Congressional Research Services (Washington D.C., 1991)

Government of India, Centre for Science and Environment, The State of India's Environment 1984-85 (New Delhi, 1985)

Uruguay Round Final Act (Marrakesh, 15 April 1995)

Secondary Sources

Books

- Anderson, Kym and Richard Blackhurst (ed.), The Greening of World Trade Issues (London: Harvester Wheatsheaf, 1992)
- Bhagwati, Jagdish, The World Trading System at Risk (New Jersey: Princeton University Press, 1991)
- _____, Trade and the Environment: The False Conflict? A Reader on Environmental Issues (Washington D.C., Centre for International Environmental Law, 1993)
- Brown, L.R., World Without Borders (New York: Vintage Books, 1973)
- _____, Building a Sustainable Society (New York: W.W. Norton & Co., 1981)
- _____, (ed.), State of the World 1984 (New York: W.W. Norton, 1984)
- _____, C. Flavin and Hal Kane, Vital Signs 1992: The Trends That are Shaping Our Future (New York, W.W. Norton, 1992)
- Burhenne, Wolfgang (ed.) International Environmental Law: Multilateral Treaties (Berlin: Erich Schmidt Verlag, 1985)
- Caldwell, L.K., In Defense of Earth: International Protection of the Biosphere (Bloomington, Indiana University Press, 1972)
- Carson, Rachel, Silent Spring (Boston: Houghton Mifflin, 1962)
- Chenery, Hollis and Others (ed.) Redistribution With Growth (Oxford: Oxford University Press, 1974)

- Clarke, Robin and Lloyd Timberlake, Stockholm Plus Ten (London, Earthscan, 1982)
- Commoner, Barry, The Closing Circle: Nature, Man and Technology (New York: Affred A. Knopf, 1971)
- Cordon, W.M., Trade Policy and Economic Welfare (Oxford, Clarendon Press, 1974)
- Daly, H.E., and J.B. Cobb, For the Common Good: Redirecting the Economy Towards Community, the Environment and a Sustainable Future (Boston: Beacon Press, 1989)
- Falk, R.A., This Endangered Planet: Prospects and Proposals for Human Survival (New York: Vintage Book, 1972)
- Graham, Frank, Since Silent Spring (Boston, Houghton Mifflin, 1970)
- Greenaway, David, Economic Development and International Trade (New York: St. Martin's Press, 1988)
- Heilbroner, R.L., An Inquiry Into The Human Prospect (New York: W.W.Norton, 1974)
- Hufbauer, G.C., and Schott, J.J., Trading For Growth: The Next Round of Trade Negotiations (Washington D.C., Institute for International Economics, 1985)
- Jackson, J.H., The World Trading System: Law and Policy of International Economic Relations (Cambridge, MIT Press, 1989)
- Kim, S.S., The Quest For a Just World Order (Colorado: Westview Press, 1984)
- Kothari, Rajni, Environment and Alternative Development (New York: Institute for World Order, 1981)
- MacNeill, Jim, P. Winsenius and Taizo Yakushiji, Beyond Interdependence: The Meshing of the World's Economy and the Earth's Ecology (New York, Oxford University Press, 1991)

- Mathews, J.T. (ed.), Preserving the Global Environment (New York and London, W.W. Norton, 1991)
- McCormick, John, Reclaiming Paradise: The Global Environmental Movement (Bloomington, Indiana University Press, 1991)
- McNeill, W.H., The Human Condition: An Ecological and Historical View (New Jersey: Princeton University Press, 1980)
- Nixon, E.B. (ed.), Franklin D. Roosevelt and Conservation 1911-45 (New York: Franklin D. Library, 1957)
- Ophuls, William, Ecology and the Politics of Scarcity (San Francisco: W.H. Freeman and Co., 1977)
- Orr, David W. and Marvin S. Soroos (ed.), The Global Predicament: The Ecological Perspectives on World Order (Carolina Chapel Hill, 1979)
- Pearce, D.W. (ed.), Blueprint 2: Greening The World Economy (London, Earthscan Publications Ltd, 1991)
- _____, E.B. Barbies and A. Markanday, Sustainable Development: Environment and Economies in the Third World (London, Edward Elgar, 1989)
- Porter, G and J.W. Brown, Global Environmental Politics (Colorado, Westview Press, 1991)
- Rosenbaum, W.A., Environmental Politics and Policy (Gainsville, University of Florida, 1991)
- Rubin, S.J and T.R. Graham (ed.), Environment and Trade: The Relation of International Trade and Environmental Policy (London, Frances Pinter, 1982)
- Wathen, T.A., A Guide to Trade and the Environment (New York, Environmental Grantmakers Association, 1992)
- Whalley, John, The Interface Between Environmental and Trade Policies (Canberra, Australian National University, 1990)

Articles in Periodicals

- Acharya, Rohini, "Patenting of Biotechnology: GATT and the Erosion of the World's Biodiversity", Journal of World Trade (Geneva), Vol. 25 (6), Nov. 1991, pp.71-87
- Asthana, V. and A.C. Shukla, "Towards Global Security: Economic to Environmental Order:", UP Journal of Political Science, Vol.2(2) July-Dec.1990, pp.183-86
- Baker, B., "MEA and GATT", Vanderbilt Journal of Transnational Law (Tennessee) Vol. 26(3), Oct, 1993, pp. 427-68
- Bergeijk, P.A.V., "International Trade and the Environmental Challenge," Journal of World Trade (Geneva), Vol. 25(6), Nov. 1991, pp.105-15
- Berlin, Kenneth and J.M. Long, "Trade and The Environment", The Washington Quarterly (Washington), Aug. 1993.
- Cable, V., "GATT and After" World Today, Vol.50(2) Feb. 1994. pp.26-8
- Charnovitz, Steve, "GATT and the Environment", International Economic Affairs, Vol.4(3), Summer, 1991.
- _____, "Environmentalism confronts GATT Rules: Recent Developments and New Opportunities", Journal of World Trade (Geneva), Vol. 27(2), April: 1993, pp.37-54
- _____, "Exploring the Environmental Exceptions in GATT Articles XX", Journal of World Trade (Geneva), Vol.25(5), Oct. 1991, pp.37-55
- _____, "The WTO and Social Issues", Journal of World Trade (Geneva), Oct. 1994, pp.17-33
- Daly, G and T. Mayor, "Equity, Efficiency and Environmental Quality", Public Choice, Vol.51(2), 1986

- Debroy, Bibek, "Uruguay Round: Status Paper on Issues Relevant to Developing countries," Foreign Trade Review, Vol.26(3), Oct-Dec. 1991. pp.125-56
- Doud, A.L., "International Environmental Development: Perceptions of Developing and Developed Countries", Natural Resources Journal, Vol.12, Oct. 1992
- Ehrlich, P.R. and J.P. Holdren, "The Closing Circle", Environment, Vol.14(3), April 1992
- Esty, D.C., "GATting the Greens: Not Just Greening The GATT," Foreign Affairs, Vol. 72(5), Nov/Dec.1993. pp. 32-6
- Gaines, S.E., "The Polluter Pays Principle: From Economic Equity to Environmental Ethos." Texas International Law Journal (Texas), Vol. 26(3), Summer 1991, pp. 463-96
- Hahn, R.W. and K.R. Richards, "The Internationalisation of Environmental Regulation," Harvard International Law Journal, Vol. 30(2), Spring, 1989.
- Harris, S., "International Trade, Ecologically Sustainable Development and the GATT," Australian Journal of International Affairs, Vol. 45(2), Nov. 1991. pp.196-212.
- Kettellwell, U., "GATT: Will Liberalized Trade Aid Global Environmental Protection", Denver Journal of International Law and Policy, Vol. 21(1), Fall, 1992, pp.55-76.
- Lall, S., "The Patent System and the Transfer of Technology to less Developed Countries," Journal of World Trade, Vol. 10, Jan/Feb. 1976.
- Patterson, Eliza, "GATT and the Environment: Rules Changes to Minimize Adverse Trade and Environmental Effects," Journal of World Trade, Vol. 26(3), June 1992, pp.99-109

- Petersmann, E-U, "Trade Policy, Environmental Policy and GATT: Why Trade Rules and Environmental Rules Should be Mutually Consistent," Aussenwirtschaft, Vol. X Vi, 1991
- _____, "International Trade Law and International Environmental Law," Journal of World Trade, Vol.27(1), Feb. 1993. pp.43-82.
- Ralph, D. Arge and Allen Kneese, "Environmental Quality and International Trade," International Organisation, Vol.2(2), 1972
- Rege, Vinod, "GATT Law and Environmental - Related Issues Affecting the Trade of Developing Countries," Journal of World Trade (Geneva), June 1994, pp.95-169
- Ruffolo, G., "Environment : A Challenge For Economic Theory and Policy," Atlantic Economic Journal of International Law, Oct. 1992
- Sen, S.R., "From GATT to WTO," EPW, Vol. 29(43), 22 Oct. 1994. pp.2802-08
- Shankey, John, "Domestically Prohibited Good and Hazardous Substances: A New GATT Working Group is Established," Journal of World Trade, Vol.23(6), 1989, pp.94-108.
- Shrybman, Steven, "International Trade and the Environment: An Environmental Assessment of the GATT", The Ecologist, Col 20(1), Jan/Feb. 1990
- Siebert, H., "Environmental Quality and the Gains from Trade," Kyklos, Vol.30(4), 1977
- Sorsa, Piritta. "GATT and Environment," World Economy, Vol.15(1), 1992
- Strong, M.F., "The International Community and the Environment," Environmental Conservation, Vol.4 (3), Autumn 1977.

Swaminathan, N., "Going Forward or Moving Backward? India and the Uruguay Round," Southern Economist, Vol.30(18) 15 Jan. 1982. pp.13-15.

Tobey, J.D., "The Effects of Domestic Environmental Policies on the Patterns of World Trade: An Empirical Test," Kyklos, Vol.XLII, 1990.

Vaughan, S., "The Environment and Trade" Our Planet, Vol.5(6), 1993, pp.10-13.