NEGOTIATING TRADE AND ENVIRONMENTAL ISSUES IN THE WORLD TRADE ORGANIZATION

NEGOTIATING TRADE AND ENVIRONMENTAL ISSUES IN THE WORLD TRADE ORGANIZATION

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CERTIFICATE

Certified that the dissertation entitled **NEGOTIATING TRADE AND ENVIRONMENTAL ISSUES IN THE WORLD TRADE ORGANIZATION** by **Ms. M.N. LAKSHMI RAO**, in fulfilment of the requirements for the award of the Degree of **MASTER OF PHILOSOPHY** by the Centre for Studies in Diplomacy, International Law and Economics, has not been previously submitted for any other degree of this or any other centre/university. This is her original work.

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

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(Supervisor)

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(Chairperson)

To Daddy, Mummy And Padma

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M. N. Lakshmi Rao

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ABBREVIATIONS

CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species.
CTE	Committee on Trade and Environment
CTD	Committee on Trade and Development
DPGs	Domestically Prohibited Goods
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EMIT	Group on Environmental Measures and International Trade
ESTs	Environmentally Sound Technologies
EU	European Union
GATT	General Agreement on Tariffs and Trade
IEA	International Environmental Agreement
IGOs	Inter-Governmental Organizations
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
ITO	International Trade Organization
MEAs	Multilateral Environmental Agreements
NAFTA	North American Free Trade Agreement
NGOs	Non-Governmental Organizations
OECD	Organization for Economic Co- operation and Development
PPM'S	Process and Production Methods
PPP	Polluter Pays Principles.
TRIPS	Trade Related Aspects of Intellectual Property Rights
TNC	Trade Negotiating Committee
UNCHE	United Nations Conference on Human Environment
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Program.
WECD	World Commission on Environment and Development.
WIPO	World Intellectual Property Organization.
WTO	World Trade Organization

CHAPTER I

TRADE AND ENVIRONMENT: AN INTRODUCTION

TRADE AND ENVIRONMENT: AN INTRODUCTION

During the last two decades the nexus between trade and environment has increasingly become an important issue in international relations. Theoretically, the objectives of trade liberalization and environmental protection are compatible.[1] Both aim at optimizing the efficient use of resources, whether from the perspective of maximizing gains due to the comparative advantages enjoyed by nations through trade or to ensure that economic development becomes environmentally sustainable.

However, these twin goals are considered by some scholars to be antithetical, because while trade policies are geared to remove obstacles to trade (deregulation), environmental policies are often dependent on the control of international markets (regulation).[2] Due to the differences in their assumptions, modes of operation and lack of greater understanding and appreciation of each other's position, numerous conflicts have arisen while striving for the common goal of sustainable economic development

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1 Duncan Brack, "Balancing Trade and the Environment", in *Royal Institute of International Affairs*, vol.71, no.3 (London), July 1995, p.497.

2 Scholars like Herman E. Daly, a senior economist in the Environment department of the World Bank are foremost exponents of this school of thought.

between those promoting trade liberalization and those wanting sound environmental protection.

Efforts have been made to ensure that both trade and environment are "mutually supportive", but till recently, the regimes designed to integrate the two policy domains have operated independently of each other.[3]

It is now generally recognised that trade policy must necessarily integrate environmental factors and that environmental policies must be sensitive to the needs of multilateral trading systems.[4] Consequently, reconciling a liberal trade system with strong environmental protection is one of the greatest challenges facing policy makers today.

To appreciate why, where and when environment interfaces with trade issues, it is important to understand the interaction between international trade and environment. Be it trade in primary products or in manufactured goods, trade spurs more economic activity. From an environmental stand point, it can be both positive or negative, depending on the policies in place. Whatever be the outcome, international trade is

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3 A "Regime" can be defined as international negotiations to establish rules and regulations, thereby shaping international trade and international environmental system.

4 "Trade policy" provides an economic framework in which the exchange of goods and the movement of resources can flourish, so as to increase the wealth of nations,

"Environmental policy" has as its main aim the protection of the natural living space of mankind and the integration of environmental scarcity into economic decisions.

constantly shaping global environmental trends, and in turn, the global environmental negotiations are shaping international trade, particularly in the post-Rio years.

Before examining the various trade issues that have figured prominently in the political controversies between developed and developing countries, as well as different ideological camps, an effort will be made to focus on certain basic characteristics of the global trade order as it has evolved since the seventeenth and eighteenth centuries.

In the seventeenth and eighteenth century trading systems, investment and property rights had evolved from European practices and treaties, which were also accepted by the United States of America (USA) after its independence.[5] These norms were imposed hegemonically on the colonies without their consent.

These principles remained unchallenged till the first world war. After World War I, these international norms and their enforcement steadily eroded due to the efforts of the League of Nations which tried to obtain legitimacy for the earlier regimes.

The decade of the thirties was marked by intensive economic nationalism. All weapons of commercial warfare were deployed, currencies

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5 Chakravarti Raghvan, *Recolonization: GATT, the Uruguay Round & the Third World*, (Malaysia, 1990), pp-42/43

were depreciated, exports subsidized, tariffs were raised, exchanges were controlled, quotas imposed and imports were curtailed.[6]

During the inter-war period and World War II, the international trading system was characterized by trade disputes due to various kinds of discriminations and restrictions being practiced. Countries sought to gain advantage economically, through trade disruptive measures.

As part of the immediate post war efforts to restore order in international trade, an attempt was made to reconstruct the international trading system. Britain and the USA, in particular, began to focus on creating new international institutions to help manage global economic relations.

At the Bretton Woods Conference in 1944, the Allied leaders agreed to set up an International Bank for Reconstruction and Development (later called the World Bank) and the International Monetary Fund (IMF). The objectives of the World Bank (WB) was to finance post war development and reconstruction and the IMF was established to help stabilize exchange rates and official balance of payments. The leaders also agreed on the need for a new institutional mechanism to give an early boost to trade liberalization and to rectify inherent protectionist measures. To this end,

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[6] David H. Blake & Robert S. Walters, *The Politics of Global Economic Relations*, (New Jersey, 1987), p-12.

the US drafted a proposal for an International Trade Organization (ITO) in December 1945.

In 1946, 23 out of the 50 participants decided to negotiate, reduce and bind customs tariffs. Consequently, this first ever round of negotiations resulted in 45,000 tariff concessions, affecting roughly 10 billion dollars worth of trade, nearly 1/5th of the world total.[7] These countries also agreed that they should accept some of the trade rules of the draft ITO charter.

In March 1948, the United Nations Conference on Trade and Employment was organized in Havana, Cuba and 23 countries agreed on a charter for an International Trade Organisation, as a specialised agency. Since legislative ratification as a treaty was not possible, ITO proved abortive.

The General Agreement on Tariffs and Trade (GATT), which had been concluded during the course of negotiations on the Havana Charter and had been envisaged as a part of the ITO, came into effect on 1st January, 1948. The GATT, although being provisional, remained the only multilateral instrument governing international trade from 1948 to 1995, when the World Trade Organization came into force.

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[7] WTO, Focus, (Geneva, May 1998), no.30, p-2.

ORIGIN AND EVOLUTION OF THE TRADE AND ENVIRONMENT DEBATE

The connection between trade and environment was obvious even in the nineteenth century, but has only been highlighted recently. Specialization and comparative advantage were the fundamental principles of the classical trade theory.[8]

British economist David Ricardo suggested that comparative advantages resulted from countries using different technologies, whereas for Heckscher-Ohlin, it was the interplay between different factors of production, which determine comparative advantages. According to them if the nations specialize in products in which they have a comparative advantage and trade freely to obtain others, everyone would benefit.

The classical models were complemented and revised by newer theories, to include the issue of "maintenance of a sustainable scale of resource base." The "steady-state economic paradigm" suggests that economy is one open sub-system in a finite, non-growing and materially closed ecosystem.[9]

Although there had been a great deal of activity in both the spheres over the last twenty years, especially since the 1972 Stockholm Conference

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8 Thomas Anderson, Carl Folke & Stefan Nystrom, *Trading with the Environment : Ecology, Economics, Institutions and Policy*, (London 1995), p.47.

9 Herman Daly, "The Perils of Free Trade"; in *Scientific American*, vol.269, no.3, (November 1993), p-56

and while both have acknowledged each other, it is only recently that policy makers have begun to see them as critically interrelated issues having implications in the economic decision making.

The nexus between trade and environment first surfaced during the United Nations Conference on Human Environment (UNCHE) in 1972. The Stockholm Conference was proposed in the General Assembly by the Organization for Economic Cooperation and Development (OECD) countries, led by Sweden. Initially the developing countries were reluctant to participate in the negotiations. They feared that environmental concerns in the North,would slow down their developmental initiatives by imposing newer preconditions for various developmental projects. They also felt that environmental problems, as defined by the developed countries, were largely the by- products of industrialization, hence irrelevant to their primary interests of pursuing economic growth and development.

At that time, the main issue in the trade and environment debate was the impact of environmental standards on domestic products, i.e., whether differences in environmental standards gave certain countries a comparative edge?

Even prior to the Stockholm Conference, in a seminar held at Founex, Switzerland in June 1971, it was pointed out that environment and

development could be mutually reinforcing and not opposing concepts.[10] "Ecodevelopment", a word which described the process of ecologically sound development, emerged as a central theme at Stockholm. The Founex meeting, thus began to bridge the gap between environment and development.

The linkages between trade and environment were also being debated within the OECD Environment Committee. The discussion focussed on whether cost incurred by a industry in abating pollution would alter the pattern of international trade and investment. It also examined the trade impacts of environment –related product standards.

To help mitigate any potential trade distorting effects and to promote efficiency in the implementation of national environmental policies, the OECD Council on 26th May, 1972 adopted "The Guiding Principles Concerning the International Economic Aspects of Environmental Policies".[11] Amongst the Guiding Principles, the cost allocation principle known as the polluter pay principle (PPP) has been the most important.

The trade and environment debate re-emerged on a number of occasions in the years after Stockholm. A striking example is of the

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[10] *The State of the Environment 1972-82*, (Nairobi, 1982), p.6.

[11] OECD, "Guiding Principles Concerning the International Economic Aspects of Environmental Policies", (May 26, 1972), in 11. *ILM*. 1172 (1972).

Convention on International Trade in Endangered Species (CITES), signed in 1973. Other multilateral environmental agreements with trade provisions included Conservation of Nature and Natural Resources (1985), the International Code of Conduct on the Distribution and Use of Pesticides (UN Food and Agricultural Organization) 1985, the Montreal Protocol on substances that Deplete the Ozone Layer (1987) and the Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and their Disposal (1989).

Much later, in 1987, the World Commission on Environment and Development (WCED) or the Brundtland Commission issued a report, "Our Common Future", suggesting that the maintenance and improvement of environmental quality need not hinder economic growth. Embarking on the path of 'sustainable development" was considered a feasible solution. Numerous definitions have since been offered for the term "sustainable development". However, the most comprehensive and all-encompassing explanation is, "to meet the needs and aspirations of the present without compromising the ability to meet those of the future".[12] The debate by now had broadened to include trade's impact on the environment.

Trade and environment was not a major issue until the Stockholm Conference and the debate on issues of competitiveness and environmental

[12] *Our Common Future: World Commission on Environment and Development*, (Delhi 1987), p.8.

protection remained somewhat theoretical till the 1990's. However, the US ban on import of mexican tuna persuaded both UNCTAD and GATT to take it up.

An early development in legal institutional terms was the setting up of the Group on Environmental Measures and International Trade (EMIT) by the GATT in 1971. But it did not receive much attention and it was only in 1991, that this group was reactivated.

The "critical point" in the evolving discussion on trade and environment was the United Nations Conference on Environment and Development (UNCED) which was held in Rio de Janeiro in 1992. It highlighted the need to consider environmental protection in the context of development and the importance of concerted international cooperation to attain these objectives. The Rio Declaration on Environment and Development, Agenda 21 and the Forest Principle, as well as, the two agreements negotiated independently of UNCED but signed during the Earth Summit- the United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Conference on Biological Diversity (CBD), clearly reflect the emerging tension between the two policy objectives.

The Rio Declaration comprising of twenty- seven principles, states that sustainable development is integrally linked to environmental

protection. These principles deal primarily with: the necessity for international cooperation to alleviate poverty; sovereign right over resource exploitation; the common but differentiated responsibility of developed and developing countries; the need for environmental standards to reflect the level of economic development and the role of the trading system and its trade policies in fostering sustainable development.[13]

Agenda 21,is a comprehensive global plan of action to address the sustainable and efficient use of natural resources, and the achievement of a basic standard of living for all humanity. Agenda 21, made it clear that commercial activity must be undertaken with respect for the fragility of the environment. In addition, a range of measures were agreed upon, for the transfer of technology and financial assistance to the developing countries for the implementation of the programme.[14]

FACTORS PROPELLING THE TRADE AND ENVIRONMENT DEBATE

No single factor has impelled the current trade-environment debate. A number of key developments have moved this issue to the centre stage of international politics. These include the global integration of world economy, the increasingly global nature of environmental problems and the

[13] UNCED, "Rio Declaration on Environment and Development, 31, *ILM*, 874 (1992).

[14] *Earth Summit, Agenda 21, The United Nations Programme of Action from Rio*, the Final Text of Agreement negotiated by Governments at the UNCED 3-14 June 1992, Rio de Janeiro, Brazil (February 1997).

growing awareness regarding the relevance of these issues among governments, as well as the civil society.

Globalization of environmental concerns has been one of the most important factors that have shaped the trade and environment debate. Till about two decades ago, environmental issues were largely considered to occur within localized areas, their effects operating within national borders or across pairs or groups of countries, for e.g. acid rain between USA and Canada. The fact that environment does not recognize political boundaries and that the source of pollution can be far away from the affected areas, became obvious with the emergence of issues like global warming, depletion of the ozone layer, biological diversity loss and deforestation. It is no longer possible for a country to create an appropriate environmental policy entirely on its own. All current environmental issues both domestic and transnational, share a common need for multilateral co-operation in order to identify the conflicts and implement effective and workable solutions to regional and global environmental problems.

The growing economic interdependence among the world's economies, has been another trend driving the trade and environment debate today. Advances in communications and information technologies, reduced trade barriers and more accessible markets for both goods and

investment have resulted in the integration of the world economy and increased economic activity.

These factors have reduced the transaction costs of international commerce substantially, and by allowing countries to specialize in different sectors, have stimulated trade directly.

This completely integrated global economy based on free trade would involve a high degree of specialization, since it allows for the maximum exploitation of the earth's existing resources.

However, "allocative efficiency" as economists call them, would not always translate directly into increased human well being. It has to be accompanied by well defined property rights over natural resources and internalization of costs.

The "Limits to Growth" or the "Club of Rome" theories predicted that the key natural resources, especially the non renewable resources, such as fossil fuels, would become increasingly scarce over time and eventually would be exhausted if economic growth as we know it, were to continue.[15] This report also warned that unless human activity is regulated, the

[15] Daniel C. Esty, *Greening the GATT: Trade, Environment and the Future*, (Washington D.C., July 1994), p.11.

environment's carrying capacity would become overstrained by different pollutants, risking a possible collapse.[16]

It was with the dispute between Mexico and US over US import restrictions on mexican tuna fish (within GATT), that the trade and environment issue acquired large scale prominence.[17]

The major concern raised in this case was; to what extent can multilateral trade measures such as the GATT Article XX on "general exceptions" for the protection of human, animal and plant health and the conservation of natural resources be used to enforce a national environmental law over other countries, in this case, the US Marine Mammal Protection Act of 1972. A related issue was, whether the US could legitimately require foreign producers to meet national standards that set requirements for the process used to produce the product, other than for the end-product itself. Although the GATT never formally adopted the dispute panel's recommendation, this "Tuna-dolphin" decision angered the environmentalists, in whose opinion trade obligations were put above environmental protection by the GATT.

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[16] "Carrying capacity" is defined as the maximum biomass which an area can support for an indefinite period.

[17] US-Restrictions on Imports of Tuna, 30. *ILM*, 1594 (1991) (Tuna-Dolphin I Case).

DIMENSIONS OF TRADE AND ENVIRONMENT INTERFACE

The trade and environment debate has two dimensions to it - the free traders versus the environmentalists and the north versus south.

The term "*environmentalists*" and "*free-traders*" form two camps in the trade and environment debate, however they are not water tight compartments having diametrically opposite and rigid view points.

The term free-trade means "increased liberalization of international trade, the removal of trade barriers which impede the flow of goods between countries, hinder an efficient utilization of resources and thereby, impair the general welfare".[18]

The goal of free-trade negotiators is to lower trade barriers and increase economic welfare. They consider environmentalists to be preoccupied with "negative reinforcement" approach like taxes, charges etc., to deal with environmental problems rather than positive incentives like technology transfer and financial assistance.

Free traders worry that excessive deference to environmental regulations or standards will result in barriers to trade, not justified by real environmental results. They argue, that trade measures are never the first-

[18] Thomas Anderson, n.8, p-81

best policy for addressing environmental problems for two reasons: first, because they are not the source of the problem, and second, because they generally create undesirable distortions in other areas of the economy.[19] However, at times they are an useful mechanism for encouraging participation in and enforcement of multilateral environmental regulations.

According to "liberal free traders", trade and environment are not always at loggerheads, because trade generates wealth, which enhances a society's ability to protect and upgrade its environment. Trade can also protect the environment in the context of trade liberalization if market forces are properly channeled.[20]

Rather, "trade is seen as a magnifier. 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 may contribute to a skewing of the country's development in an environmentally damaging direction".[21] Infact, at times, trade liberalization is likely to reduce some protectionist barriers which are

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19 e.g. in case of tropical deforestation, trade barriers on forest products may increase deforestation, by forcing people to convert land into alternative sources of employment such as agriculture or ranching.

20 G.M. Grossman & Alan B. Krueger of Princeton University found that in cities around the world sulphur dioxide pollution fell as per capita income rose. Cited in: *State of the World 1993*, Hillary French, "Reconciling Trade and the Environment, (New York, London, 1993), p.170.

21 *GATT, International Trade*, (Geneva 1992), 1990-91, vol-I, p-20.

encouraging environmentally harmful activities, e.g. removal of agricultural subsides.

From the environmental viewpoint, there are some environmentalists, who see economic growth as positive if it is achieved in ways that are sensitive to the environment. They accept "sustainable development" as a goal and seek to ensure that some of the gains from trade are devoted towards environmental protection.

On the other hand, adherents of "deep ecology" believe in the "limits to growth" philosophy. They are opposed to economic development and consequently to almost all trade. Such environmentalist,have little interest in building environmental safeguards into the trading system. For them no trade is good trade.

There are several reasons, as to why environmentalists challenge free trade. First, free trade tends to increase economic activity which leads to more materials and energy being extracted from the ecosystem to meet the growing demand. This is likely to result in increased pollution and unsustainable consumption of natural resources. The underlying issue here is not trade but economic activity per se.

Second, the problem arises because economies fail to incorporate environmental externalities into economic pricing and decision-making. Ideally, cost internalization can rectify this problem i.e. the price of goods

would include the environmental costs involved in their production and consumption.

Third, the proponents of environmental protection also worry about the loss of sovereignty. They feel that free trade regimes will deny the national governments the right to manage their environment, since free trade usually requires a harmonized international system.

Fourth, they also fear that lowering of trade barriers is an attempt to lower environmental standards. A related question then arises, *how to differentiate between legitimate environmental concerns as against illegitimate trade barriers for environmental protection?* In other words, a fine line needs to be drawn between environmental protection and environmental protectionism.

Fifth, advocates of environmental protection feel that trade restrictions should be allowed as a leverage to promote environmental protection at the global level because a liberal trading system may result in environmental degradation,by refusing to allow environmentally motivated trade restrictions.

Sixth, the environmentalists are concerned that the forces of free market and the urgency for economic development have proven to be more powerful than the movement towards sustainable development. Further, they are convinced that the only solution to the global environmental

degradation is in a slowdown of economic growth, as well as, appropriate domestic policies.

Another central issue is the role of the *North-South debate* within the trade and environment context. Many of the potential conflicts between the North and the South arise due to wide developmental gaps between industrialized and developing economies. Tensions have become more acute, mainly because of differences in the scope, stringency and ability to afford environmental protection regulations.

The developing countries have objected to,the unrestrained use of trade instruments for environmental purposes on the grounds that their access to industrialized markets would be hindered and that such measures could be used as disguised protectionist barriers, offsetting the bases of their comparative advantage.[22]

They also oppose the unilateral imposition of environment related trade provisions. They believe that,this is yet another attempt by the more powerful industrialized countries to unilaterally define rules and policies with regard to environmental matters.

[22] "Protectionism" is defined as erecting trade barriers that shelter an economic interest from a competitor who does not seek to gain a commercial advantage at the expense of a larger, defined societal interest.

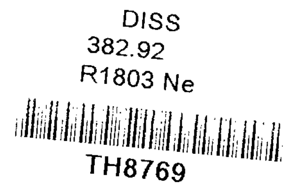
Another issue on which the north and the south differ is, *how to pay for the conservation of global commons?* Developing countries call for the use of "carrots" rather than "sticks" policy. In other words, technology transfer and financial assistance has been demanded. However, empirical studies show that the industrialized countries have not been very forth-coming and the overall record on this aspect is very discouraging.

Developing countries have labelled the use of trade restrictions to address environmental degradation as "eco-imperialism" and an infringement on their sovereignty. To them, it is the developed countries who have industrialized following the unsustainable path of development, and who are responsible for present day environmental problems.

Infact, they perceive that the consumption patterns of the rich have placed heavy demands on the ecosystem. The industrial nations with just 25% of world population, consume 70% of its energy, 75% of its metals, 85% of its wood and 60% of its food.[23]

Moreover, the developing countries are not yet in a position to divert resources to solve long-term environmental problems. They feel that they need to address more urgent demands of development, like poverty

[23] UNDP, *Human Development Report*, (OUP, 1992),p-204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alleviation and local environmental problems like sewage, disposal of municipal wastes, sanitation and drinking water.

They feel that they should not be expected to bear environmental abatement costs disproportionate to their historical contributions and that industrialized countries should shoulder the entire burden.

Despite innumerable problems faced by non-industrialized countries, they have played an important role in many trade and environmental negotiations. The "special and differential treatment" provisions coupled with "common but differentiated responsibility", in combating environmental pollution, reflect the interests of the developing countries. The 1972, UNCHE and 1992, UNCED, and other agreements reflect the need to address social and development issues, and to follow the path of sustainable development.

Library

As far as the developed countries are concerned, the over-arching agenda has been driven largely by the concerns of the USA and European Union (EU).

The North argues that unilateral measures are sometimes necessary, when no better alternative exists to protect the environment. Unilateral measures are useful at times because multilateral environmental agreements take time to be negotiated, they might have ineffective implementation mechanism or because of non-compliance by parties.

They agree that the development model followed by them has resulted in environmental degradation, but are of the opinion that contribution of developing countries to present and future environmental pollution is enormous. It is argued that the tremendous increase in population particularly in developing countries has led to severe strains on the planet's resources.

Since co-operation is required at the global level to combat pollution, they feel bearing the burden single handedly will neutralize any benefits derived,as it will be offset by increasing pollution elsewhere.

EFFECTS OF TRADE POLICY ON THE ENVIRONMENT

It has become customary to categorize the various effects of trade liberalization into composition effect, scale effect and technique effect.

The *composition effect* arises from trade-induced specialization in the world. That is, lowering trade barriers changes the relative prices between goods produced in different sectors of the economy. Countries tend to specialize production in sectors in which they have a comparative advantage. If the difference between abatement costs and the price of resource extraction are sufficiently large, environmental regulations become more important in the determination of comparative advantage. In this case, countries with lax regulation are likely to shift away from relatively clean sectors to specialize in more polluting or resource –

depleting sectors, thus damaging the environment. Whereas, the net result on the environment will be positive if the opposite relation holds.

On the other hand, if the base for international comparative advantage is differences in the supply of labour and capital or in the efficiency of technologies, then the impact of changing sector composition on environmental quality and resource extraction will be ambiguous.

Since one country's exports are another country's imports, all countries cannot specialize in the inherently cleaner industries".[24]

Second, is the *Scale effect.* The demand for inputs such as raw materials, transportation services, and energy increases as more open trade leads to greater economic activity. Enhanced economic activity will increase pollution specially if output is produced using obsolete technologies

Third is the *technique effect.* This refers to changes in production methods that follows trade liberalization. Since trade liberalization generates increased income level, the demand for environmental quality is also likely to increase. Pollution per unit of output will fall,provided that this leads to political pressure for more stringent environmental policies and enforcement. Moreover, if investment liberalization also takes place,

[24] P.G. Fredriksson, "Trade, Global Policy and the Environment New Evidence and Issues", in *World Bank Discussion Paper*, (Washington D.C. 1999), no 402, p-2

foreign investment may bring modern and state-of-the-art technologies which are likely to be cleaner than existing ones. A very influential school of thought has contributed to the idea of Environmental Kuznets Curve (EKC).[25] EKC suggests that pollution increases at the early stages of development but decreases after a certain income level has been reached.[26]

Does trade liberalization support the goal of environmentally sound and sustainable economic development?

There is no doubt that international trade has been crucial to economic success. Trade expansion has led to rapid growth in export-oriented industries. The composition of exports has varied across countries and over time, depending on the resource endowment and stage of development. In 1950, the ratio of trade to global GDP was 7% and by 1998 it had increased to 23%. Between 1948 and 1997, merchandise trade increased 14 times, while world production increased 5½ times. Infact $^{1}/_{3}$rd of the 25 largest trading countries are developing countries and their share in world trade has increased from 20 to 25%.[27] However, despite its achievements trade liberalization has been accompanied by growing

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25 Hakan, Nordstrom and Scott Vaughan, Trade and Environment, in *Special Studies 4*, (Geneva, 1999), p.6.

26 EKC hypothesis is named after Simon Kuznets, who received the Nobel Prize for Economics in 1971 for his work on the relationship between the level and inequality of incomes, which tend to follow an inverted U-shaped relationship. That is, income inequality tends to become worse as a country grows out of poverty, stabilizing at a middle-income level, and then gradually becoming more equal.

27 WTO Focus, (Geneva, May 1998), no.30, p.6.

environmental problems.[28] Infact, inequalities and poverty are still persistent on a wide scale.

Trade economists point out that trade restrictions are not the first-best measure with which to address environmental market failure.[29] The best approach is to tackle market failure at its source, through appropriate environmental regulations, policies or infrastructure investments. This is more beneficial, as the costs of preventing environmental pollution are much less than the costs of remediation.

It is however, not correct to say that only trade liberalization leads to increased environmental problems. Even inward looking, trade-restricting policies can produce equally serious environmental problems. Also, these trade barriers exacerbate environmental pressure in developing countries by forcing them to intensify exports of natural-resource based commodities. Obsolete technologies, overemphasis on highly polluting heavy industries, financial constraints, and the lack of effective environmental controls, coupled with wide spread poverty, have contributed to pollution problems in developing countries.[30] This

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28 See Appendix-I for selected environmental trends.

29 "Market failure" refer to situations in which the market forces of supply and demand fail to deliver an optimal outcome for society as a whole. Market failures commonly occur when producers and consumers do not have to bear the full cost of their actions, such as pollution inflicted on third parties (environmental externalities).

30 Robert Repetto, "Trade and Sustainable Development", in *gopher://gopher.undp.org: 70/00/ ungophers/unep/publications/monograph/mon 0./trade 01-06)*.

agreement holds true for developed countries as well. For e.g., agricultural protectionism in Europe has lead to much more intensive farming than is environmentally justified.

EFFECTS OF ENVIRONMENTAL POLICY ON TRADE

The impact of environmental policies on trade can be understood in terms of environmental regulation, product standards and process standards.

In a pioneering study, M. Porter and C. Van der Linde have put forward the "win-win" argument, according to which, environmental regulations lead to positive environmental outcomes. Stricter regulations lead to innovation and adaptation. While this may be costly in the initial stages, these firms are well placed in the global markets, specially as regulations becomes stricter elsewhere and firms are forced to follow suit. In this way, firms may become "first movers" and enjoy comparative advantage at an early stage.[31] Du Pont's strategy to be in the forefront of the development of substitute products for ozone-depleting CFC's is the most cited example in this regard.

The counter–argument is offered by environmental economists like K. Palmer, W. E. Oates and P. R. Portuney who suggest that innovation is

[31] Duncan Brack, ed., *Trade and Environment: Conflict or Compatibility*? (London, April 1997), p.51.

not necessarily an outcome of tighter regulations, since some firms may be unable to compete within the new framework. It is likely that the same firms will innovate in response to regulations and others will lose competitiveness. This is more of a "zero-sum" game within which not all firms can gain, but some will gain at the expense of others.[32]

The impact of environmental regulation on economic competitiveness is much debated.[33] Theoretically, firms in countries with high environmental standard and cost of compliance fear that they will be undercut by competition from companies based in countries with less strict regulation and lower costs. Chances of entire industry relocating or migrating to a country with lower standard or lax standards, the so-called "pollution-havens" is also possible.

Some scholars feel that, in practice the companies will not relocate their operations to "pollution havens", because it involves selling the plant, severing its workforce, acquiring new sites, recruiting and training new workers; all of which cost more than pollution abatement costs which rarely exceed 1.5-2%.

[32] Ibid.

[33] "Competitiveness" is defined as the ability of a firm, on a sustainable basis, to satisfy the needs of its customers more effectively than its competitors, by supplying goods and services more efficiently, in terms of price and non-price factors, than these competitors.

Therefore, there does not appear to be much evidence for industrial migration except for stray cases.[34] At the same time, there is evidence that lax environmental standards can act as a deterrent to foreign direct investment. For instance, western firms do not want to invest in heavily polluted regions of eastern Europe at any price, because the potential ability for clean up costs, outweighs profits.

Seen from the north-south point of view, the developed countries fear that low environmental standards in developing countries derive an advantage in the market from lower compliance cost, while the developing countries fear that if they are forced to meet these standards, then they will be unable to compete in the market because of higher production costs.

Whereas, environmentalists oppose trade liberalization because they fear that with lower trade barriers, the risk of competitive dislocations will force environmental standards in developed countries, down to the least common denominator.

The issue of competitiveness brings us to the question of *whether there exists a "level playing field" in the world economy and whether it is efficient or equitable to have uniform environmental standards?*

[34] According to H. Jeffrey Leonard, petroleum refineries, asbestos and vinyl chloride plants were constructed abroad rather than in USA for environmental reasons in 1970's and 1980's. Cited in ... *State of the World 1993*, Hillary French, "Reconciling Trade and the Environment, (New York, London, 1993), p.167.

The metaphor "level playing field", often used for the term harmonization, is not a new issue in the trade and environment debate, only the focus and purpose of environmental policy harmonization has changed. Now, it is environmental concerns and not just trade considerations which have led to the need for harmonization.

In terms of international trade and environment, "harmonization" involves the attempt to develop and administer compatible standards, rather than achieving identical regulations. Previously, harmonization focussed on product standards, now it includes pre-market harmonization, mutual recognition, equivalency and reference standards.[35]

In terms of "environmental harmonization", the most comprehensive approach is to establish, internationally accepted reference standards for products and processes. For instance, the Agreement on Sanitary and Phytosanitary Measures directs countries to base their sanitary and phytosanitary measures on existing international standard and guidelines.

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[35] "Pre – market" harmonization is related to the coordination of administrative procedures for review, approval or registration of products before they reach the market.

"Mutual recognition" is one, where there is mutual acceptance of each others standard's.

"Equivalency" assumes that if two countries have similar standards products should be allowed to enter their markets. Cited in Candice Stevens, "Harmonization, Trade and the Environment",

Innumerable problems arise, while attempting to harmonize standards, because of the following reasons: most countries possess different pollution assimilation capacities; scientific uncertainty over the amount of environmental damage caused by pollutants; the cost-benefit equation for environmental protection varies from country to country; and income level and people's willingness to pay for alleviating environmental problems. Even if standards are agreed upon, there may be differences as to the best method of achieving these standards.

Therefore, it is debatable whether it is desirable to harmonize standards. A related issue is, *at what level, global, regional or local, should harmonization take place?* While local level standards might be inefficient, the standards set globally might be difficult to adhere to, keeping in mind the differences amongst countries.

In order to analyse the impact of standards on trade, a clear distinction has to be made between product and process standards.

Product standards, refer to technical specification such as performance, quality and safety. They primarily focus on the physical and chemical characteristics of products. Product controls also extend to regulations or voluntary agreements covering the registration, labeling, packaging, storage, and recycling.

Product policies and measures are intended to control the environmental impact of products during use or after disposal. In other words, product standards reflects the "downstream" environmental impact of goods.[36]

Differences in product regulations may affect trade because of their impact on "transaction costs". Producers may have to incur additional costs to obtain information and to adopt their products to the different requirements of each market.

National regulations, implying higher standards may favour domestically produced goods over imported products to the extent that foreign producers have to incur higher costs in order to comply with the same regulations.

The impact of product standards on the competitiveness of a developing country is different from that of a developed country. Many developing countries fear standards adopted by developed countries, as they might be designed as protectionist measures or simply because they are too strict to be attained.

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[36] UNCTAD Secretariat, "Trends in the field of Trade & Environment in the framework of international co-operation", *Foreign Trade Review, July-December 1993*, vol.28, (2-3), p-207

Packaging is another contentious issue. This includes regulations concerning packaging materials; recycled content provisions; product charges; deposit refund system; and "take-back" obligations. Most of the laws till now have focussed almost exclusively on recycling rather than prevention of packaging waste at the source. The German Packaging Ordinance of June 1991 is a striking example.

There also exist legislations where producers, importers and distributors are responsible for taking back and eliminating packaging waste. They can either take back the packaging themselves or delegate this responsibility to third parties.

The packaging material and the product contained in it will be denied entry, if the packaging standards are not complied with. Although packaging standards does not explicitly establish binding requirements regarding the use of specific packaging material, problem arises when the provision requires that packaging must be suitable for re-use or recycling. Cotton and jute used as packaging material by a developing country may not be environmentally unfriendly but the importing country might not have the appropriate technology to recycle it and hence, can refuse entry.

Ecolabelling, which is a positive identification adopted on a voluntary basis and generally with no binding requirements, is often called a "soft" instrument. It can be a powerful tool to strike a balance between

trade and environmental goals as it permits products to be sold, at the same time gives the consumer, information about possible environmental harms related to the product, thereby influencing the consumer purchases.

Rather than imposing duties or banning goods, eco-labelling schemes permit easy differentiation of ecofriendly and non-ecofriendly products, thereby creating an incentive for individual producers to attend to environmental considerations. For example, rather than blocking all tropical timber, an eco-labelling program would allow entry to only those which are from "sustainably managed" forests.

Used as a market oriented instrument for environmental policy, eco-labelling adopts "cradle-to-grave" approach. An overall assessment of the ecological impact of a good during its life cycle, including production, distribution, consumption and disposal is made, in order to grant them labels.

Mutual recognition of eco-labels or acceptance of other country's labels facilitates trade. Consumer preferences for green products serves as a promotional instrument, at the same time it may adversely affect the competitiveness of unlabelled products in the same category. Moreover, the threshold levels set for the criteria which should be met to qualify for an eco-label vary from country to country. In this respect, a developing country may face problems to comply with high threshold levels.

Environmental regulations based on *process and production methods*, as opposed to product standards are more complex in nature. Process standards are of two types — emission and technology standards etc., which are essentially a form of direct control, as they control the production process at the plant level and second, environmental tax, tradable permits, bans etc., which are indirect controls.

Under the world trading rules, identical products cannot be differentiated or discriminated on the basis of how they are made and what it contains. Recent debates over actual or potential trade restrictions against fur caught in leghold traps, genetically engineered maize, shrimps fished by methods which kill sea turtles and animal right activists' protest against the use of battery cages for poultry farming, all focus on production process, not products.

Exclusion of process and production methods has been criticized for failing to consider the environmental, social and developmental aspects.

Process standards have been viewed by developing countries as a protectionist measure. Producing goods with less stringent, or in many cases with just different environmental standards and cost, proves to be disadvantageous.

At the same time, trade barriers may be justified when environmental damage occurs as a result of manufacturing processes.

Therefore, the ability to distinguish between sustainably and unsustainably produced goods in international trade is vital to ensure that trade liberalization does not undermine environmental protection but contributes to sustainable development.

ENVIRONMENTAL ISSUES IN TRADING INSTITUTIONS

Environmental issues have become a major feature of several ongoing trade negotiations. Although bilateral and regional efforts have yielded useful results in resolving conflicts, there are some scholars who believe that this issue can be effectively and better addressed through international cooperation at the multilateral level. The regional agreements of North American Free Trade Agreement (NAFTA) and EU have been accepted as agenda for multilateral negotiations.

Against this backdrop, the key question which arises is as to what is the most appropriate institutional mechanism for developing policies and integrating the various aspects of the global system such as trade liberalization, environmental protection and sustainable development.

At the multilateral level the GATT/WTO, has been entrusted with the task of reconciling these two policy domains, in association with other international institutions like the UNEP, UNCTAD, IMF, World Bank, OECD etc.

In the ensuing chapters, dealing with the debate on trade and environment taking place in an international trading institution, the WTO, I have attempted to examine the following:

- Is the WTO an adequate forum for a continued debate on the interface between trade and environment or is there a need for a new organization specifically dealing with these inter-linkages?
- How effective and necessary are trade measures in solving global environmental problems and what are the problems in implementing them?
- Are the developed country concerns to protect the environment of a protectionist nature?
- What are the fears and constraints espoused by developing countries in this debate?
- How far has the WTO accommodated environmental considerations into the trading system?
- Will the Committee on Trade and Environment help to further the cause of sustainable development or will the discussion in the CTE remain only at procedural level?

- Does the existing provisions of the WTO sufficiently cater to environmental protection or is there a need for change?
- In case of conflict between free trade and environmental protection, which should take precedence?
- The role of non-governmental organizations/ intergovernmental organizations in promoting a constructive dialogue between trade and environment community.

The dissertation is divided into four chapters. The first chapter provides an overview of the issues and stakeholders involved in the trade and environment interface. It traces the trade and environment debate as it evolved from the 1972 UNCHE, to the discussions under the WTO Committee on Trade and Environment in 1995. The chapter examines the free traders versus environmentalists,as well as, the North-South dimension of the trade and environment conflict. It also explores the effects of trade liberalization on the environment and the impact of environmental measures on international trade.

Chapter II, examines how the GATT, although primarily conceived to restore order to the international economic system, after the World War II, made provisions to deal with environmental issues.Core principles of the GATT relevant to discussion on trade and environment interface,

Article I (Most Favoured Nation), Article III (National Treatment), and Article XI (Quantitative Restrictions) have been described in detail. Article XX (b) and (g) and the TBT Agreement has been of special importance in this context. Further, specific Agreements with environmental implications have also been discussed. Special emphasis has been given to the establishment of the Group on Environmental Measures and International Trade (EMIT), deliberations within this group and the contribution of the GATT to the UNCED and post UNCED 1992.

Chapter III, analyses in detail how the WTO is grappling with environmental issues and how its an improvement over the GATT. The first two sections of the chapter discusses the Preamble and specific agreements of the Uruguay Round Negotiations, which deal with sustainable development and the environment respectively. A detailed discussion follows, on the establishment of the Committee on Trade and Environment (CTE), and the negotiations undertaken by it.

The last chapter summarises the various trends in the trade and environment negotiations in the GATT/WTO, especially discussions undertaken by WTO/CTE. Certain conclusions are drawn, highlighting the divergence of perceptions between free traders and environmentalists. Special emphasis has been given to the positions of developed and developing countries.

CHAPTER II
GATT NEGOTIATIONS ON TRADE AND ENVIRONMENT (1948-1994)

GATT NEGOTIATIONS ON TRADE AND ENVIRONMENT (1948-1994)

The General Agreement on Tariffs and Trade (GATT) was negotiated in the aftermath of World War II, specifically to spur global economic activity. The GATT was an institution, not an organization between governments "the contracting parties". The Agreement had a limited legal status and did not constitute a treaty between countries.[1] It was signed by 23 countries on 30th October, 1947 and it entered into force in January, 1948. Since 1 January, 1995, it has been succeeded by the WTO which has 136 member nations, while 29 countries are still negotiating their terms for its membership.

The basic objective of the GATT was to liberalize world trade and to place it on a secure basis, thereby contributing to economic growth and development. The GATT was both a *code of rules*, which governed international trade of its member countries and the conduct of their trade relations, as well as, a *forum* in which member countries negotiated on matters concerning trade regulations. Although, the GATT gave detailed instructions, there seems to have been considerable scope for interpretation.

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1 Charles Arden Clark, "The GATT, Environmental Protection and Sustainable Development", *A WWF International Discussion Paper*, (Switzerland, November, 1991), p.9.

The administrative structure of the GATT comprising a secretariat was located in Geneva, Switzerland. It consisted of about two hundred professional staff and was led by a Director- General and three deputy Director- Generals. The GATT Council, consisting of the contracting parties took care of the day to day operations in accordance with its guidelines. The Trade Negotiating Committee focused on specific trade related issues.

The GATT also served as an arbitrator in trade disputes between and among members. The disputes were usually settled by consultations between conflicting parties and as a last resort by a formal dispute panel established by the GATT Council. If a contracting party failed to abide by the decision of a dispute panel, which was adopted by the GATT council, the contracting party in whose favour the decision had been passed was authorized, to retaliate by withdrawing equivalent concessions.

The GATT Agreement has been progressively amended and strengthened since its inception by a series of protracted negotiations. Eight rounds of negotiations have been completed within its framework.

Till the Kennedy Round (1964-67), reduction of tariff barriers was the principal aim of the GATT. The Tokyo Round (1973-1979), produced agreements covering not only tariffs but also non-tariff measures like

government procurements, import safeguards licensing, subsidies and countervailing measures, anti-dumping agreements etc.

However, the most comprehensive of all rounds of multilateral trade negotiations held within the GATT has been the Uruguay Round which began in 1986 and ended in 1993, with the establishment of the WTO. This round concerned itself with completely new areas of interest to the GATT. It discussed Technical Barriers to Trade, trade in services, Intellectual Property Rights, competition and antitrust policies, labor and environmental standards, and industrial support policies.

GATT LAW AND ENVIRONMENTAL PROVISIONS

Since environmental protection was not an important issue at the time the GATT came into force in 1947,"*environment*" as it means today had not been explicitly mentioned anywhere in its text.[2] Although amended and strengthened, some environmentalists say it was without reference to environmental concerns or for the need to ensure sustainability of economic growth and development facilitated by free trade.[3]

2 The word "environment" to mean nature and the natural world came into current use only in the late 1960s & the early 1970's. The GATT drafted in 1947 uses the older term "Natural Resources", as mentioned in Article XX(g) of the GATT.

3 Environmentalists like Charles – Arden Clark and Steven Shrybman.

However, scholars argue that GATT rules gave relatively broad leeway for countries to pursue environmental goals, as long as they were non-discriminatory and justifiable.[4]

The GATT was set up in 1947 with the objective of promoting economic growth and improving global welfare by liberalizing international trade. Nowhere in the text of the agreement does the word "environment" appear. However, a number of provisions of the GATT allowed restrictions on trade to protect the environment, especially where they concerned product- related measures.

The interaction between the GATT rules and environmental policies has highlighted certain important questions. Firstly, the right of countries to restrict imports on account of differences in environmental policies. Secondly, the use of unilateral trade sanctions to solve problems relating to international sources of pollution. Thirdly, the appropriateness of trade instruments as environmental policies or as tools for their enforcement. Fourthly, the question of extraterritoriality and sovereignty. Fifthly, whether environmental standards are used as forms of disguised protection. These issues have important implications on competitiveness and market access.

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[4] Scholars like Richard Eglin and Steve Charnovitz.

The regulations, as set out in a number of GATT articles, do create conflicts between the policy objectives of establishing freer trade on the one hand, and protecting the environment and achieving sustainable development on the other.

At this stage, it is important to distinguish between purely domestic or local and international environmental problems with cross- border spillovers.

Under the GATT, governments could employ measures to protect and improve the local environment. Nothing in GATT restricted the contracting parties from taxing or regulating domestic producers who engaged in polluting activities. A member country could impose ceilings on air pollution levels, levies on companies that discharged pollutants in lakes and rivers etc. However, production and consumption activities in other countries could be a source of domestic environmental concern. In this context, all domestic policies with trade effects were subject to two basic principles under the GATT: Article I (Most Favoured Nation) and Article III (National Treatment)

The basic premise of "*Most Favoured Nation*" (Article 1) was that, any advantage, favour, privilege or immunity conferred by one country on another should automatically be extended to

all other contracting parties.[5] Thus, imported and domestic toys can be subjected to similar safety requirements, or limits on contents of toxic material.[6]

In line with this principle, was the *National Treatment* (Article III), according to which countries could not discriminate against foreign producers in relation to domestic producers.[7]

If the application of a domestic tax or regulation, intentionally or unintentionally, had the effect of restricting trade, it did not qualify for national treatment. It was considered as a qualitative restriction, which was contrary to basic GATT rules (Article XI). In certain cases, these protective policies could still be justified within the GATT, if they were related to public policy goals and met certain criteria, as under Standards Code and Article XX (b) and (g). In the Imported Gasoline Case (1996), the Panel found that the gasoline rule applied by the US on the importers violated Article III, for it treated imported products less favourably than domestic products.[8]

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5 For the text of the Article I see Appendix II.

6 Cited by Pritta Sorsa, "GATT and Environment : Basic Issues and some developing country concerns", in *World Bank Discussion Paper*, no.159, (World Bank 1992), p.327.

7 For the text of the Article III see Appendix II.

8 Ernst –Ulrich Petersmann, *The GATT/WTO Dispute Settlement System: International Law, International Organisation and Dispute Settlement*, (London, 1996), p.106.

The fundamental objective of the GATT was to prevent discrimination between home products and imports; between imports from different countries, and between goods sold in the domestic markets and those exported. These two principles of non-discrimination were essential for concessions that are binding on members under Article II of GATT.[9] This requirement seeking no discrimination between different sources of imports was intended not only to prevent trade distortions but also to restrain countries from unilateral imposition of domestic standards. In other words, trade measures aimed at changing the behavior of foreign producers and imposed extraterritorially were not permitted under the currently prevailing interpretation of GATT rules.[10]

These basic regulations on *border adjustment* (Article-I and II) were one of the most relevant guidelines for domestic environmental policies.[11] GATT regulations on internal taxes and charges allowed any tax imposed on domestic products to be applied to imports at the same rate. They also permitted taxes imposed on domestic inputs to be imposed similarly on

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9 For the text of the Article II see Appendix II.

10 Extraterritoriality implies the imposition of domestic standards over transactions occurring abroad (e.g. applying US antitrust laws to Japanese corporate activities in Japan) & extrajurisdictionality - are attempts to regulate behavior abroad through controls on transactions at the border (e.g. barring Mexican Tuna from entering the US based on Mexican fishing methods deemed inappropriate by US standards.) Basically harms to the global commons while outside the territory of any nation & therefore extraterritorial, are not beyond the jurisdiction of countries who indivisibly share these resources; thus these actions to protect the global commons are not extrajurisdictional. (e.g. protecting dolphins in high seas would be extraterritorial but not extrajurisdictional).

11 Adjusting the prices of imports or exports at the border to reflect differences in environmental taxes or fees is called border tax adjustment.

imports using such inputs in the production of goods. Conversely, domestic taxes on products and inputs could be rebated or exempted for exported commodities.

As applied to the environmental context, the border tax adjustment rules created a bias in favour of indirect taxes (taxes levied on products) aimed at production externalities. A tax on the polluting process would be more efficient than a tax levied on a product whose production pollutes, because it addresses the source of the problem directly. Another impact of the measure was double taxation of external costs for some imports. An exporting country may be taxed twice on its exports, once at home in the form of the regulation and once abroad, if the importer levies a similar tax.

Besides border tax adjustment regulations, the national treatment obligations gave rise to issues of interpretations. Firstly, the issue of what constituted a *like product*. Like products either mean physical characteristics of products irrespective of the production method or it may mean the process in which similar goods are made. In principle, GATT rules applied to product-related policies within a country's own borders. The way goods are produced was outside its scope. In the Tuna Dolphin Case (1991), the GATT Panel concluded that the US ban on Mexican tuna discriminated against the imported product based on production practices,

and therefore violated GATT Article III's "national treatment" requirements.

The issue of process and production methods raised questions of sovereignty. Any interference in the process of production could interfere with the sovereign right of countries to decide on their domestic policies and choices.

Among the other free trade principles affecting environment was Article XI, which forbids the use of *qualitative restrictions* on imports and exports.[12] However, this Article was subjected to certain exceptions which included restrictions due to balance of payments (Article XII-XV and XVIII b), where domestic industry is unduly harmed, (Article XIX) as a result of unforeseen developments, and due to national security considerations (Article XXI). The Article XI reinforces the " anti-protectionist" effect of Article III, by eliminating the use of quotas, bans or licensing systems.

In the Thai Cigarettes Case (1990), Thailand restricted the import of cigarettes, which the US argued was inconsistent with Article XI of the GATT. The US contended that the restrictions "operated as an import prohibition" and "were not imposed in conjunction with domestic supply restrictions", and that they had a disproportionate effect on imports. The

[12] For the text of the Article XI see Appendix II.

Panel noted that Thailand had not granted licenses for the previous ten years and found that Thailand had acted inconsistently with Article XI:1.[13]

Environmental exceptions comes under Article XX (b) and (g) of the GATT/WTO. Article XX allows the signatories to deviate from their basic obligations but under strict criteria. The trade measure adopted should not constitute a means for arbitrary or unjustifiable discrimination between countries and it should not be a disguised restriction on international trade. Originally drafted for health quarantine and sanitary purposes, it now (under the WTO) includes trade measures necessary for the protection of human, plant or animal life,. as well as, measures relating to conservation of exhaustible resources.

Therefore, the GATT/WTO, especially Article XX(b) and (g) provide considerable scope for countries to pursue their own environmental programme, even those that have trade effects. [14] However, problem arises while interpreting its provisions.

Firstly, the entire catalog of exceptions under Article XX is qualified by the head note or "Chapeau". Under the "Chapeau", Article XX (b) and (g), in contrast to the core principles I and II of GATT, allows discrimination between countries, as long as it is not arbitrary and

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[13] B.S. Chimni, WTO Dispute Settlement System and Sustainable Development, *WWF Discussion Paper*, (May 1999), p.38.

[14] For the text of the Article XX (b) and (g) of the GATT see Appendix II.

unjustified. Its basic objective was to prevent the misuse of the exceptions listed for purposes other than genuine environmental concerns. For e.g. the "Chapeau" was applied in the US Gasoline Standards decision, 1996.[15]

Secondly, the Article XX (b)and (g) has a limited scope, because it covers only health issues and the conservation of exhaustible natural resources. It does not specifically mention the environment, i.e., it does not cover other environmental issues or resources outside the "exhaustible natural resources" category.

Thirdly, the "necessary" requirement in Article XX (b) mandates the countries to,exhaust all less trade-distorting policy options available and those which entail the least degree of inconsistency with other GATT provisions, before resorting to trade measures. However, two important questions remain unanswered. Firstly, are there policy mechanisms available that are less inconsistent with the GATT? Secondly, if so are they as effective? For instance, in the Tuna-Dolphin Case, the US was unable to prove to the Panel that it had exhausted all reasonable options available to protect the dolphins. In this case, the term "necessary" meant that no alternatives existed.

[15] United States - Standards for Reformulated and Conventional Gasoline, Appellate Body Report; 35. *ILM*, 603 (1996).

Fourthly, the issue of whether domestic measures to protect life or health of humans, animals or plants can be implemented beyond the territorial boundaries or jurisdiction of the country. Article XX does not spell out any limitations on the location of resources to be conserved. The 1991 ruling in the Tuna- Dolphin case, that Article XX cannot be invoked in defense of extrajurisdictional actions, made it clear that conservation of resources outside national boundaries is not a legitimate concern of the GATT.

Fifthly, the reference to "exhaustible" resources in Article XX (g) is ambiguous. It is unclear if the GATT considered the distinction between renewable and non-renewable resources. All resources, including renewable ones are exhaustible if they are not managed sustainably. For instance, in the Imported Gasoline Case (1996),the Panel concluded that even clean air is an exhaustible natural resource within the meaning of Article XX (g) of GATT.

Sixthly, is the application of the concept of "relating to" in Article XX (g). Unlike the "necessary" criteria, the term "relating to" is not as complex. The GATT Panels have interpreted this to mean that the measures taken should be primarily aimed "at addressing the goal of conservation". However, the measure can be invoked only in conjunction with restrictions on domestic production or consumption. In the Herring and Salmon case

(1988), the Panel found that the Canadian restriction on unprocessed herring and salmon was not justified under Article XX (g). The reasons being, Canada had limited the purchase of unprocessed fish only by foreign processors and consumers and not by domestic processors and consumers, and hence not for conservation measures per se.

Another issue commonly disputed is the scientific validity of measures taken to conserve and protect human, animal and plant life or health. Thailand, under its Tobacco Act of 1966, restricted the import of cigarettes on the grounds that cigarettes were agricultural products and that import restriction was necessary under Article XI: 2 (c), because they were toxic and hence a risk to public health. However, the Panel found that the Thai import restrictions were unnecessary, and that it could achieve the same objectives by resorting to other policy measures like, imposing ban on tobacco advertising, banning the use of harmful substances and control the quantity of cigarettes sold.

Lastly and perhaps the most important issue from the developing countries' perspective, was the limitation on unilateral actions. The GATT Trade and Environment Report (1992), warned countries from enforcing its own laws on other countries. Though environmentalists prefer unilateral action to forward environmental goals, the traders argue for decisions to be made by international agreements at the multilateral level. For example,

under pressure from animal rights groups, the EU has threatened to take unilateral action against countries that engage in cruel trapping practices.

GATT LAW AND ENVIRONMENTAL PROVISIONS: WITH REFERENCE TO THE LEGAL TEXT

The potential use of "standards" as trade barriers has attracted the attention of trade policy makers. The Standards Code negotiated during the Tokyo Round in 1979 and later revised during the Uruguay Round, deals with the products' technical requirements, which create obstacles to trade. The *Standards Code* was a freestanding agreement applying only to its signatories. It made explicit reference to the environment but did not define the term "environment". The code permitted environmental standards to be established, provided they did not act as trade distortions where same conditions prevail.

Unlike the Standards Codes, the Agreement on Technical Barriers to Trade (TBT) which was agreed upon during the Uruguay Round, consists of all the WTO members. The main objective of TBT was to minimize the extent to which standards and regulations have negative trade effects or act as disguised barriers to trade, while still permitting members to adopt and maintain standards that are necessary for the protection of human, animal

and plant life and health.[16] TBT, like Article XX reinforced the principle of "national treatment".

The level of protection is up to the individual member state, and a high level of environmental protection can be chosen. Further, member states are free to accept or reject standards if backed by scientific evidence. International standards need not be applied, if they are ineffective or inappropriate for the fulfillment of legitimate objective. Thus, a country can employ standards stricter than international technical requirements.

To minimize the use of standards as non-trade barriers, the Standards Code and the TBT recommend the use of internationally accepted standards, i.e., it supports the idea of harmonized standards. Member countries pledge that technical regulations will not be allowed to create "unnecessary" obstacles to international trade and in this context, restrict trade distortions.

The Standards Code discusses only "products", although Article 14.25 mentions process and production methods. Whereas, the TBT Agreement includes for the first time process and production methods. Thus, production methods which have an effect on the product

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[16] Peter Uimonen and John Whalley, *Environmental Issues in the New World Trading System*, (London, 1997), p.90.

characteristics are covered by the Agreement, other process and productions standards are not.

The provisions of this Agreement may be relevant in disputes over environmentally motivated labelling requirements that could be challenged as unnecessary barriers to trade. The TBT Agreement applies not only to technical regulations which are mandatory, but also to standards which are voluntary.

The TBT Agreement contains comprehensive decisions concerning transparency. Information should be available both prior to a measure being taken and afterwards on how the decision was reached.

Rules on *Subsidies* within the GATT was another area which had environmental implications. The GATT Articles VI and XVI of the Tokyo Round subsidies have been formulated by the multilateral trading system to discipline the use of export and production subsidies and set criteria for the application of countervailing duties.[17]

Article VI allows for the use of countervailing duties on subsidized imports when they cause "material injury" to a domestic industry. Article XVI calls for members to eliminate export subsidies on non-primary

[17] "Countervailing duties" is defined as a tariff introduced by an importing country with the objective of raising the prices of the subsidized products.

products while permitting them for primary commodities, as long as they result in a "more than an equitable share" of the world market.

The GATT did not define a "subsidy". It was only with the establishment of the WTO that a clear meaning was given to it. A subsidy came to be defined as a financial contribution by a government involving actual or potential direct transfers, forgone tax revenue, government provisions of goods and services other than infrastructure, and government payments to funding mechanisms.

Trade rules on subsidies have implications on environmental policies as well. *First, when can the importing country impose Countervailing Duties?* If a country fails to internalize its environmental costs due to lack of appropriate regulations or taxes, it may be seen as conferring a subsidy, since producers benefit from not facing the marginal social costs of production. If the Uruguay Round definition of subsidy is applied, then such lack of regulations is not a subsidy and hence will not be countervailable.

However, in most cases, a failure to regulate may be a subsidy and may be countervailable, if it causes material injury. Foregone revenue from environmental taxes or fees would also fall under the category of countervailable subsidy.

Second, to what extent will subsidies for environmental protection be regarded non-countervailable? The Uruguay Round brought about a distinction between specific and non-specific subsidies. Specific subsidies (those available to specific firms, group of firms or specific industries) are either prohibited, actionable or non-actionable.

"Prohibited subsidies" are those subsidies contingent on export performance or the use of domestic over imported goods.

"Actionable subsidies" are those that cause adverse effects to the trade interests of other countries.

The Agreement provides that any "specific subsidy" granted for environmental purposes would be permitted and non-actionable by the importing countries, if the following conditions are met:

- it should be granted to firms for the adaptation of existing facilities to new environmental requirements imposed by law, and which result in greater constraints and financial burden on them;

- it should be one-time, non-recurring subsidy;

- it should be limited to 20 per cent of the cost of adoption;

- it should not cover replacement and operating costs of investment; and

- it should be directly linked to the firm's planned reduction of nuisances and pollution.[18]

Non-specific subsidies are those that are generally made available and are non-actionable, which means that all non-specific environmental subsidies are permitted.

Besides these provisions with environmental implications, the GATT made specific arrangement to handle trade related environmental measures by setting up the Group on Environmental Measures and International Trade.

GROUP ON ENVIRONMENTAL MEASURES AND INTERNATIONAL TRADE (EMIT): ORIGINS AND MANDATE

The GATT contracting parties recognized the need to address environmental issues and their interface with trade within the GATT, in the beginning of 1970's. The Group on EMIT, set up in 1971, was the first institutional framework created to that effect within the GATT.

In October 1971, concern arose over the implications or effects of industrial pollution control on international trade. The Director-General, Mr. Oliver Lang suggested the need for a mechanism, which could be used

[18] Vinod Rege, 'GATT Law and Environment – Related Issues Affecting the Trade of Developing Countries, *Journal of World Trade*, Vol.28, 1994, p.154.

at the request of the contracting parties to ensure that, the efforts of governments to combat pollution did not result in the introduction of new barriers to trade.

Although several representatives expressed their willingness to establish a standing mechanism for the purpose, differences arose on the nature and objectives of this mechanism, as well as, whether it should be set up prior to the Stockholm Conference or after its completion.

At the Council meeting, held in November 1971, the Group was established by decision of the Council and was given the task of examining, upon request, matters relevant to the trade policy aspects of measures to control pollution and to protect the human environment. Special attention was given to the developing countries with regard to the application of the General Agreement.[19] Mr. Kaya of Japan was made the Chairman of the Group.

The GATT Secretariat prepared a study entitled "Industrial Pollution Control and International Trade", to be presented in the 1972 Stockholm Conference.[20] The study focussed on the problems faced by international trade as a result of pollution control measures and evolved guidelines for

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19 *Trade and the Environment: New and Views from the GATT*, (Geneva), TE001, (1 April 1993), p.6.

20 Background Note by the Secretariat, 'Trade and Environment in the GATT/WTO' (prepared for High Level Symposium on Trade and Environment, March 1999), *In* Hakan Nordstrom and Scott Vaughan, *Trade and Environment – Special Studies 4*, (Geneva), 1999, p.67.

solving it. However, after this study, for nearly twenty years no request was made to convene a meeting of the Group.

Although differences existed on the proposal for the convening of the Group, informal consultations were undertaken at the request of the GATT Council by the then Chairman of the Contracting Parties, Ambassador Rubens Ricupero of Brazil.

It was at the initiative of the European Free Trade Association (EFTA), at the Ministerial meeting in Brussels in December 1990, where they circulated a proposal for a statement on trade and environment made by ministers and later at the forty sixth session of the contracting parties, which led to the reactivation of the group.[21]

The consultation process continued through till October 1991, when eventually the contracting parties agreed that the 1971 Group on EMIT be convened, with Ambassador H. Ukawa of Japan as Chairman of the Group.

Among the reasons given for the reactivation was the:

- need to give priority to the inter-linkages in the GATT between trade policy and environmental policy through groups;

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[21] *Trade and the Environment*, n.19, p.6.

EFTA consisted of Austria, Finland, Iceland, Norway, Sweden, Switzerland.

- to ensure that the GATT framework of rules provide clear-cut guidance to both trade and environmental policy makers to avoid trade disputes which arise due to differing geographical settings, economic conditions, stages of development, environmental problems and government priorities towards these problems;
- in order to strike a balance between differing interests, study needed to be taken which was technical in nature;
- they considered the group to be an appropriate forum to tackle issues relating to environmental policies having trade effects and vice-versa.

To facilitate the establishment of a group, the Chairman circulated an outline of points for evolving a structured debate on environmental measures and trade. About 30 delegations participated in the structured debate, which raised a number of issues like:

- the relationship between trade restrictions in international environmental instruments and the GATT rules;
- the application of the GATT rules to trade related environmental issues;
- the distinction to be made between legitimate environmental measures and those that are protectionist in nature;
- the particular concerns of the developing countries; and

- poverty as the main source of environmental degradation in developing countries and economic growth brought by trade as a prerequisite for achieving sustainable development.

The three issues which were addressed within the Group's original mandate were:

(a) *trade provisions contained in existing multilateral environmental agreements (MEAs) vis-a-vis the GATT principles and provisions;*

(b) *conduct a review of the scope and adequacy of the "transparency provisions" of the GATT, in the light of national environmental regulations that are likely to have trade effects; and*

(c) *possible trade effects of new forms of packaging and labelling requirements aimed at protecting the environment.*

The Group has held seven meetings in all. The first, held in November 1991, was largely an organizational meeting. The rest six were substantive sessions.

According to the "Background Note" prepared by the Secretariat for the participants to the High Level Symposium on Trade and Environment held in March 1999, the Group had not been established as a negotiating forum, rather its role was to examine and analyze the issues covered by its agenda.

With respect to Agenda Item 1 *trade provisions of MEAs vis-a-vis GATT principles and provisions*, the first issue that the Group took up, concerned, what principles of international public law would apply while considering the relationship between the provisions of MEAs and the GATT provisions? Usually a general and more specific agreement takes precedence over an earlier agreement, on the condition that the agreements address the same subject matter and have the same membership.

Three questions need to be clarified in this context. First, what should constitute a multilateral agreement and how a regional agreement might be viewed in relation to this. All this depended on the number of countries participating in the negotiations of the agreement; the number of signatories to it how much representation these countries enjoy in terms of their stages of development, their geographical diversity; and whether membership is subsequently open or restricted.[22]

Delegations also focussed on the extra-jurisdictional application of trade measures in the context of global environmental agreement and the treatment of non-parties by trade provisions contained in a MEA.

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[22] *Trade and the Environment*, n.19, p.8.

Another question raised was to what degree an agreement specified that trade measures might be used to promote its objectives. Knowing this beforehand, would prevent the use of unilateral measures.

The settlement of disputes was also discussed. The dispute settlement provisions of the GATT would apply to a conflict, if both the parties are its members and only one of them is a member of the International Environmental Agreement(IEA) . On the other hand, if both were parties to the GATT and to the IEA, then resolving disputes were more complicated.

Austria identified possible solutions like preserving the status quo, using GATT waiver provisions; revising the provisions of Article XX of the GATT to ensure that GATT rules did not impede the implementation of legitimate trade obligations in MEAs.[23]

Sweden, believed that MEAs will be more effective and less disruptive to the multilateral trading system, than resorting to unilateral trade measures to deal with trans-boundary environmental problems.[24]

The ASEAN countries, Japan and New Zealand suggested an ex-post and case by case treatment, to consider in GATT, the treatment of trade

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23 *Trade and the Environment*, n.19, TE004, (26 November 1993), p.3.

24 Ibid.

provisions contained in MEAs. Whereas some delegations prescribed ex-ante approach to deal with trade provisions in MEAs.

The meaning of the term "environment"; what defines a MEA, why a country might abstain from joining a MEA; to what extent a trade measure must be specified in a MEA; the necessity of using trade measures in a MEA and the assurance of safeguards against the protectionism were some of the other issues which were discussed at great length.

Article I (MFN),III (National Treatment), XI (elimination of quantitative restrictions) and XX (General Exceptions)have also been discussed by the Group.

The basic intention of including Item 1 in its mandate has been to gain an understanding of the need for trade measures to be included in the MEAs, and subsequently, to examine the efficiency and effectiveness of using trade measures for solving environmental problems.

Under its second Item, the Group worked on *transparency of trade-related environmental measures*. There was a general acceptance among the delegations that a lack of clarity and specificity in the transparency rules of GATT has been the cause for its ineffectiveness. However, the publication and notification provisions already in existence within the GATT, like Article X and the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance were considered to have

played a crucial role in facilitating the proper functioning of the multilateral trading system. It also helped to build confidence in the security and predictability of market access. It was widely acknowledged that adequate and timely notification of all measures likely to have trade effects, would prevent unnecessary conflicts between trade and environmental policies.

With regard to the environment, the measures for notification were classified into three categories:

(a) "those which would affect market access conditions;

(b) those like labelling and packaging, which could affect marketing opportunities; and

(c) those introduced on a non-discriminatory basis without any intended trade effects".[25]

Among the environmental measures with trade effects that called for increased transparency included voluntary eco-labelling schemes, deposit refund schemes, measures under Article XX, measures based on international environmental standards, and environmental taxes and subsidies.

[25] *Trade and the Environment*, n.19, p.4.

There emerged a general consensus in the Group on the following issues related to transparency:

- the Group made substantial progress in the area of multilateral transparency of environmental regulations,
- transparency requirements in the area of environmental measures should not be more stringent than those in other areas of policy making that affect trade,
- even Article XX (General Exceptions), was not exempted from the GATT obligation to notify. There was favorable response to the proposal that trade- related regulation is notified prior to its adoption *(ex-ante)* as in the case of Technical Barriers to Trade. This could give an opportunity for prior consultations with trading partners likely to be affected by the new regulation; would allow time for procedures to adjust to new market conditions, and were likely to prevent trade disputes, as draft regulation can be modified to take into account the concern for other parties without having to sacrifice one's own objectives.

On the other hand, *ex-post* notification, which was much more common in the GATT, was expected to be successful if properly complied with.

A case was also made to consider establishing enquiry points (as done under the TBT agreement), that would be open to all interested parties, both public and private. These would inform exporters of potential benefits relating to environmental measures like consumption incentives and voluntary environmental standards affecting government procurement preferences. It could also serve to inform developing countries of the availability of technical assistance to help them comply with or take advantage of environmental measures.

The evolution from examining the scope of the existing and future transparency provisions in the GATT to the trade effects of various kinds of trade-related environmental measures, on a case by case basis, as pointed by Sweden, has been the biggest accomplishment of the Group under Agenda Two of its mandate.[26]

Packaging and Labelling requirements had been the third item and the most specific element of the Group's mandate. Discussions in the Group mainly revolved around the environmental purposes that are designed to be served by the introduction of these measures and their potential trade effects.

Packaging was categorized into: sales or primary packaging which ends up with the consumer; grouping or secondary packaging which is

[26] *Trade and the Environment*, n.19, TE004, (26 November 1993), p.7.

removed at the point of sale; and transport or tertiary packaging which facilitates the transport and handling of bulk products.[27]

One of the most important issues raised during the discussion was that of "like products". Poland and Hungary presented papers regarding trade effects of national packaging regulations.[28] However, the question arose, are two products with identical characteristics but enclosed in different packaging material considered to be "like products" or not? Also which criteria should be satisfied for two packaging materials to be considered "like".

Recyclebility, biodegradability, and life cycle performance were a criteria for some, whereas for others economic factors were important.

A variety of packaging requirements and regulations existed as a result of differences in the national factor endowments of materials, disposal facilities to deal with wastes, and different national preferences of industry and consumer.

These differences had an impact on "competitiveness" in a number of ways. First, restrictions could be imposed on the use or sale of packaging from certain materials, which could be the preferred packaging for overseas suppliers. Second, the overseas suppliers would be at a

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27 *Trade and the Environment*, n.19, p.4.

28 *Trade and the Environment*, n.19, TE002, (3 June 1993), p.1.

disadvantage because recovery and re-exporting back to its source is not commercially viable and its re-use locally may not be feasible because of dimensions, design or other factors.

Brazil,was vociferous in raising the problems faced by exporters, especially in the developing countries, by environmental packaging and labelling requirements. It was suggested that technological assistance should be offered to economies in transition, to help them meet environmental friendly packaging guidelines, as in most cases no alternative packaging materials were readily available locally and necessary capital investment to produce them were too costly.[29]

Canada and New Zealand,put forward some of the other important issues which were debated and required further analysis in the Group, under this agenda item, such as the relationship between market-based regulatory approaches to packaging and labelling requirements; the distinction between voluntary and mandatory measures; the scope for harmonization and mutual recognition of different countries' schemes; approaches to the setting of criteria; and threshold levels and certification of eco-labelling schemes.[30]

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[29] *Trade and the Environment*, n.19, TE004, (26 November 1993), p.8.

[30] Ibid.

The examination of trade effects of packaging and labelling requirements gave the group an opportunity to enhance their knowledge regarding this issue. This debate led to substantial exchange of information. The Group pointed out to increased transparency and the harmonization of environmental labelling program as possible solutions to the trade concerns in this area.

GATT AND THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (UNCED), 1992

The GATT Secretariat's contribution to the UNCED was in the form of a "Factual Note on Trade and Environment" and a section on trade and environment in the GATT Annual Report 1990-91.

The two GATT bodies - the Committee on Trade and Development (CTD) and the Group on EMIT adopted work programs to deal with the issues relating to trade and environment to be taken up in UNCED in June 1992.

The CTD was responsible for the review, discussion and the negotiation of issues with trade interest for the developing countries, at the informal meeting held in May and June, 1993 and the formal discussion on the UNCED follow-up on July 26, 1993. It focussed on section I, Chapter 2 of the Agenda 21.[31]

[31] Section I, Chapter 2 of the Agenda 21 was entitled, "International Cooperation to Accelerate Sustainable Development in Developing Countries & Related Domestic Policies".

The CTD took into account the work of organizations like the UNCTAD and International Trade Centre regarding monitoring and data-collection activities with respect to sustainable development and saw to it that there was no duplication of work.

Among the issues on which there were general agreement and which formed an outline for future informal debates included:

- "sustainable development, environment and trade interface,
- improving market access,
- relevance of existing GATT rules relating to developing countries, including Part IV, to the concepts of sustainable development, environment and trade, and
- possible future role of the CTD in dealing with matters relating to sustainable development."[32]

In July 1993, the Group on EMIT discussed in-depth the range of issues raised in the UNCED's "Agenda 21" thereby extending the scope of discussions from its three-point work agenda.

Many delegations welcomed the work assigned to the Group by the contracting Parties at their 48th session in December 1992. India, stressed

[32] *Trade and the Environment*, n.19, TE003, (11 August 1993), p.3.

the importance of countering false propaganda that the GATT was indifferent to environmental concerns. The US suggested that it was no longer realistic for the GATT representatives to leave environmental issues to environmental experts because trade and environment were now often intersecting. Brazil stated that the principles of Agenda 21 should be fully integrated into the GATT, maintaining that poverty is the worst polluter in the developing world.[33]

In 1993 the Group held five formal meetings, interspersed by few informal ones, to facilitate the discussion on trade and environmental matters. However, its intention of carrying out another formal meeting, around October-November, 1993 to review the GATT follow-up on the Earth Summit, got postponed. Some of the reasons for this delay were, the timely conclusion of the Uruguay Round, and to avoid distracting the negotiators from core trade issues.

In January 1994, the Chairman, Ambassador Hidetoshi Ukawa of the Group on EMIT submitted a progress report to the 49th Session of the Contracting Parties.

Although, it is difficult to make a comprehensive assessment of the progress made by the Group on this subject, certain observations can be pointed out.

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[33] Ibid.

First, many Contracting Parties reiterated the importance of GATT's work on the trade and environment issue. The Trade Negotiating Committee's (TNC) "Decision on Trade and Environment", adopted on the 15th December 1993, is a testimony to the fact that GATT was not opposed to environmental protection and that its work on liberalizing world trade could contribute significantly to further environmental protection and sustainable development.[34]

Second, the Group's original three-point agenda covering issues relating to transparency; packaging; and labelling requirements and the relationship between the GATT provisions and MEAs, occupied a significant share in the discussions relating to the Group's contribution to the UNCED follow-up.

Third, the discussions, brought out the need to tackle UNCED elements not covered by its regular agenda and to engage in a focussed analysis of them in its future meetings.

Clarifying the role of GATT in dispute settlement; the trade effects of process and production based environmental measures and exploring their link to the GATT concept of "like product" and examining the

[34] For the text of the "Decision on Trade and Environment", adopted on 15th December, 1993, see Appendix III.

potential trade effects of economic instruments such as environmental taxes and subsidies were some of the issues requiring further attention.

Several delegates stressed on the need to specifically address the problems affecting developing countries, and the general parameters within which trade measures should or should not be used for environmental objectives.

Some in the Group felt that, attention should be given first to ensure that the GATT confirms to basic principles and recommendations contained in Agenda 21, such as, the rejection of extraterritoriality and unilateralism. According to them, this should form the common basis and point of departure for further work in the group.

The Chairman of the Council, Ambassador B.K. Zutshi of India, in his opening remarks to the 48th Session of the Contracting Parties held on 2nd December, 1994 has summed up the GATT's work on trade and environment as follows:

> "it was clear that Contracting Parties warmly welcomed the UNCED Declaration and the progress that had been made by the UNCED in fostering further multilateral co-operation, and were determined that the GATT should play its full part in ensuring that policies in the fields of trade, the environment and sustainable development were compatible and mutually reinforcing. It was clear that the GATT's competence was limited to trade policies and those trade

related aspects of environmental policies which might result in significant trade effects for GATT Contracting Parties. In respect neither of its vocation nor of its competence was the GATT equipped to become involved in the tasks of reviewing national environmental priorities, setting environmental standards or developing global policies on the environment. Nevertheless, the multilateral trading system did have a central role to play in supporting an open international economic system and fostering economic growth and sustainable development, especially in the developing countries, to help address the problems of environmental degradation and the over-exploitation of natural resources.

The importance attached by the UNCED to a successful outcome of the Uruguay Round negotiations had been welcomed, and remained the top priority for the Contracting Parties. It held the key to the liberalization of trade and the maintenance of an open, non-discriminatory MTS, which were main elements of the framework for international cooperation that were being sought to protect the environment and accelerate sustainable development in developing countries. Also, the special concerns that had been raised by the UNCED about the need to improve market access for developing countries exports, particularly by reducing tariff and non-tariff impediments, including tariff escalation, and to improve the functioning of commodity markets were well recognized".[35]

Ambassador B.K. Zutshi highlighted the need for a balanced approach to the new programme on trade and environment that takes full account of the development dimension. He said that "trade liberalization coupled with financial and technological transfers, is essential for promoting sustainable development.

[35] Background Note by the Secretariat, n 20, p.70.

ISSUE OF DOMESTICALLY PROHIBITED GOODS

The issue of "domestically prohibited goods" was first taken up in the GATT's work programme at the 1982 ministerial meeting. The developing countries' concern regarding the export of products whose domestic sale was either prohibited or severely restricted in order to protect human health or safety, or the environment, was the primary reason for the adoption of the Ministerial Declaration at the 38th session of the Contracting Parties.

The Ministerial Declaration, defined domestically prohibited goods, helped identify domestically prohibited goods-related practices in exporting countries and threw light on the practical problems of managing such trade. It also encouraged contracting parties to notify the GATT," to the maximum extent feasible, of any goods produced and exported by them but banned by their national authorities for sale in their domestic markets on the grounds of human health and safety.[36]

Despite developing countries insistence, this subject was neither included in 1986, while launching the Uruguay Round, nor in December 1998 at the Montreal Ministerial meeting.

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[36] Background Note by the Secretariat, n 20, p.71.

Finally, in July 1989, the Council decided to establish the working group on export of domestically prohibited goods, and Ambassador J. Sankey of the UK was nominated as the Chairman.

The working group met between September 1989 and June 1991. At the first meeting, the Group decided on the action plan that was required to coordinate with the work being done in other international organizations like UNEP, FAO, WHO, ILO etc.

Based on the two proposals presented by Cameroon and Nigeria on one hand and by the European Community on the other, a working paper containing "Draft Decision on Trade in Banned or Severely Restricted Products and Other Hazardous Substances", was presented.

Although the Working Group's mandate was extended, the final text could not be agreed upon.

Therefore, the GATT through its provisions and specific agreements related to environment has contributed towards establishing common synergies between trade and environment and sustainable development. Till 1991 the Group on EMIT made no major contribution, however the period between 1991-93 GATT played an important role in identifying

certain basic issues relating to trade and environment interface, which formed the platform for further negotiations.

A widely shared view amongst the delegations of the group was that trade liberalization and the protection of the environment were not mutually conflicting. A greater integration of environmental and trade policies at the national level, as well as parallel efforts to promote international cooperation on the basis of multilateral rules would help achieve the objective of sustainable development.

Thus, the GATT at this stage offered an opportunity to reflect on the system's capacities and limitations regarding global environmental issues.

CHAPTER III
WTO AND ENVIRONMENT: WORK PROGRAMME OF THE COMMITTEE ON TRADE AND ENVIRONMENT (1995-2000)

WTO AND ENVIRONMENT: WORK PROGRAMME OF THE COMMITTEE ON TRADE AN ENVIRONMENT (1995-2000)

The central effort of this chapter is to examine how the World Trade Organization has accommodated environmental concerns, through the Preamble to the Agreement establishing the World Trade Organization's, various trade provisions with environmental implications, specific agreements related to environmental issues and most importantly the establishment of the Committee on Trade and Environment. It is reiterated here that the discussions related to the Committee on Trade and Environment are of an evolving nature and this chapter explores the ongoing negotiations. Also, in the course of the discussion on the CTE, emphasis will be placed on the country positions and negotiating stands.

The Final Act embodying the results of the Uruguay Round, is a single undertaking, wherein, the countries which accept the Final Act Establishing the WTO would automatically become members of the GATT 1994 and of all its associated legal instruments that have been negotiated under the auspices of GATT in Uruguay Round and the earlier rounds.[1]

[1] This rule however does not apply to Plurilateral Agreements which include: Agreement on Trade in Civil Aircraft; Agreement on Government Procurement; International Dairy Arrangement; and International Bovine Meat Agreement.

The basic objective of the WTO is to provide a substantive code of conduct directed at the reduction of tariff and other barriers to trade, as well as, the elimination of discrimination in international trade relations. It is also a forum for dispute settlement in international trade matters and it conducts surveillance of national trade policies and practice.

PREAMBLE TO THE WORLD TRADE ORGANIZATION

In terms of integrating environmental objectives into the multilateral trading system, the *Preamble* to the Agreement establishing the WTO, brings "trade-related aspects of environmental policies" more clearly within the mandate of the organization. Paragraph one of the *Preamble* includes, for the first time, reference to the objective of sustainable development and the need to protect and preserve the environment, in the context of the multilateral trading system. It states:

> "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 of different levels of economic development",[2] .....

[2] For the text of the Marrakesh Agreement Establishing the World Trade Organization see Appendix IV.

Besides the *Preamble*, the Final Act contains a number of agreements with environmental implications. These include, The Agreement on Agriculture, The Agreement on Subsidies and Countervailing Measures,[3] The Agreement on Trade-Related Intellectual Property Rights[4], and the Agreement on Trade in Services.[5] Amongst all the agreements, The Agreement on Technical Barriers to Trade[6] and on Sanitary and Phytosanitary Measures are the most significant. They explicitly take into account the use of measures to protect human, animal and plant life and health, and the environment.

The aforesaid agreements are an indication of how trade and environment issues had increased in importance in policy-making terms. It also reflects the extent to which the trading community in general, and the developing countries in particular, accepted the integration of environmental consideration into WTO rules, without undermining the open, non-discriminatory principles of the trading system.

SPECIFIC AGREEMENTS WITH ENVIRONMENTAL IMPLICATIONS

The Agreement on Agriculture (Annex I A)

The discipline regarding the use of subsidies in the agricultural sector is governed by the provisions of the Uruguay Round Agreement on

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[3] For details see Chapter II, pp54-57. and item 6 of the CTE work programme pp.119-123.

[4] For details see *Item 8* of CTE work programme, pp. 127-134.

[5] For details see *Item 9* of CTE work programme, pp.134-137.

[6] For details see Chapter II, pp.52-54 and *Item 3* of CTE work programme, pp.101-108.

Agriculture. The objective of the Agreement is to bring about reductions in agricultural support and protection, in order to correct the distortions present in world trade in agricultural products.

Protection of the environment is an integral part of the Agreement. Adverse environmental effects associated with production subsidies are as follows: increase in use of fixed factors of production (e.g. land, water); discourage crop rotation and diversification, thereby requiring the use of more fertilizers. It is believed that reducing domestic support and export subsidies would lead to less intensive and more sustainable production.[7]

Annex 2 of the Agreement enumerates certain types of environmental subsidies that are exempted from the reduction commitments, subject to certain criteria being met. These include direct payments granted for research under environmental programmes and for infrastructural services, such as water supply schemes etc. However, the payment made by governments should be based on well-defined environmental programmes and the amount of payment must be limited to the extra costs or loss of income involved in complying with the programmes.

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[7] Gary P. Sampson and W. Bradnee Chamber, *Trade, Environment and the Millennium,* (Tokyo, New York, Paris, 1999), p.333.

This issue of agricultural subsidies has been dealt with extensively under *Item 6* of the CTE.

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) (Annex 1 A)

The SPS Agreement was negotiated during the Uruguay Round. Before the agreement came into being, the sanitary and phytosanitary measures were subject to the GATT rules, such as Articles I, III and XX, as well as, 1979 Standards Code. However, the need for a separate SPS Agreement was felt as these rules proved inadequate.

The SPS Agreement pertains to government regulations and import bans relating to food safety and disease–spreading products, to protect human, animal or plant health or life. Under the GATT, a domestic health standard was justified as long as the import was treated no less favourably than the domestic product. But, the SPS Agreement subjects domestic standards to supervision whenever they directly or indirectly affect trade.

SPS measures are to be "applied only to the extent necessary"; "within the territory of the member; and are to be based on "scientific principles" (Article 2.2). However, Article 5.7 states that, where scientific evidence is insufficient, governments may provisionally adopt sanitary measures based on pertinent information.

Members are encouraged to base their measures on international standards. However, if there is scientific justification and appropriate risk assessment, members can set higher standards (Article 3.1 and 3.3).

Like all agreements of the WTO, the SPS measures should not be abused or result in unnecessary barriers to international trade. It must be applied in a non-discriminatory manner. Furthermore, these measures should not be more trade-restrictive than necessary to achieve the desired level of protection.

In order to increase the transparency of SPS measures, governments are required to notify and set up "enquiry-points".

Article 10 takes into account the specific needs of developing countries, particularly the least-developed countries.

Regarding the settlement of disputes arising from this Agreement, the provisions of Article XXII and XXIII of the GATT (1994) as elaborated by the Dispute Settlement Understanding would apply (Article 11.1).

Three cases relating to the SPS Agreement have been brought before the WTO Dispute Settlement System. These include: The EC Measures Concerning Meat and Meat Products (1998); Australia-Measures Affecting Importation of Salmon (1998); and Japan-Measure Affecting

Agricultural Products (1999). In all three cases, the defendant government employing the health measure lost and the plaintiffs won.

Ruling in favour of the plaintiff has not exactly estranged environmental protection from the multilateral trading system. The willingness to incorporate environmental opinions into the adjudication process is reflected by the fact that the "burden of proof" to make a prima facie case lies on the complaining party. Moreover, the SPS Agreement permits members to adopt SPS measures on a "provisional basis", in cases where scientific uncertainty exists. The special and differential treatment ensures greater involvement of developing countries in protecting the environment.

However the SPS Agreement and the decision taken by the WTO Dispute Settlement System has been criticized for the following reasons: that the WTO claims jurisdiction over health and environmental matters, gives leverage to favour lower international standards over higher domestic standards, and the defendants choosing to pay compensation monetarily or by lowering tariffs in another unrelated commodity sector has destabilized the trading regime e.g. as EC did in the Beef-Hormone Case.

SUB-COMMITTEE ON TRADE AND ENVIRONMENT

Recognizing the complexity of the relationship between trade and environmental policy and the need to continue discussion on their

interlinkages, the Ministers adopted a Decision on Trade and Environment in Marrakesh on 15th April, 1994, which called for the establishment of a WTO Committee on Trade and Environment.

As stipulated in the Decision on Trade and Environment, the Sub-Committee of the Preparatory Committee of the WTO was given the responsibility of carrying on the work on trade related environmental issues till the WTO entered into force on 1st January, 1995.

The Sub-Committee on Trade and Environment (SCTE), held five meetings from May to November 1994 under the Chairmanship of Ambassador L.F. Lampreia (Brazil).[8]

At the first two meeting held on 11th May and 12th July, the SCTE took up organizational matters including requests for observership and issues related to documentation, record keeping etc. No priorities were set, rather it was decided by the delegates that a balanced and integrated approach should be adopted to deal with the items of the work programme.

The third meeting on 15-16th September, 1994 was devoted to examine, the use of environmental taxes, in the context of the GATT

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[8] Note prepared by the GATT Secretariat for the Third Session of the Commission on Sustainable Development; (11-28 April 1995), in *WTO Trade and Environment Bulletin*, No.2, 8th May 1995, pp.1-6.

disciplines on border tax adjustment; and to analyse further environmental regulations and standards, notably those related to eco-labelling.

At its fourth meeting on 26-27th October, 1994, the SCTE focused on the use of trade measures for environmental purposes, particularly those applied in the context of MEAs and to non-parties of MEAs. The pros and cons of *ex ante* and *ex post* approaches were also reviewed.

At its final meeting on 23-24th November, 1994, issues such as the effects of tariff escalation, non-tariff barriers, trade distorting subsidies on the environment were dealt with. Special attention was given to market access opportunities of developing countries.

Although the discussions under the SCTE has been inconclusive, it has also been laudable. At this early stage, it identified the issues of concern to harmoniously balance the interest of trade and environmental community.

WTO COMMITTEE ON TRADE AND ENVIRONMENT: NEGOTIATING AGENDA

The CTE was established by the General Council of the WTO at its first meeting, held on 31st January, 1995. It was open to all members of the WTO.

The CTE's mandate and terms of reference are contained in the Marrakesh Ministerial Decision on Trade and Environment. The task of the

CTE is "to identify the relationship between trade and 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, compatible with the open, equitable and non-discriminatory nature of the system".[9]

The Decision requires the Committee to report to the first biennial meeting of the WTO Ministerial Conference, where its work and terms of reference would be reviewed.

The CTE has structured its work around the ten items listed in the Decision on Trade and Environment. The work programme assigned to the Committee builds on the progress already achieved by Group on EMIT under the GATT and the SCTE.

Until May 1996, a general debate was carried out by the CTE on all items of its agenda, which clarified and promoted understanding of some issues. At the May 1996 stocktaking exercise, it was noted that more analytical work was required if recommendations had to be made. The CTE Report to the Singapore Ministerial Conference was adopted on 8th November, 1996. The analysis and recommendations made by the CTE was guided by the consideration that the competence of the multilateral

[9] For details of the text on the "Decision on Trade and Environment in Marrakesh" on 15th April 1994, see Appendix V.

trading system is limited to trade policies and those trade related aspects of environmental policies which could result in significant trade effects for its members. Intensive work on all items demonstrated that the multilateral trading system had the capacity to further integrate environmental considerations and enhance its contribution to the promotion of sustainable development without undermining its non-discriminatory character. The report highlights the need to provide special attention to the interests of developing countries.

In 1997 and 1998, the CTE continued the work under the Chairmanship of Ambassador B. Ekblom (Finland) and Ambassador C.M. See (Singapore), respectively. From 1997 onwards, the Committee addressed all items in a systematic manner by following a thematic approach. The work programme was based on the "cluster approach" under the themes of market access (*Item* 2,3,4, and 6) and the linkages between the multilateral trade and environmental agendas (*Items* 1,5,7 and 8). With respect to *Item* 9 and 10, they were clubbed separately.

The CTE has adopted a report every year since 1996. The discussion in the CTE has been driven by proposals from individual WTO members on issues of importance to them. While, on most issues developing countries feel the existing provisions of the WTO sufficiently reflect environmental concerns, the developed countries are of the opinion that

environmental consideration should guide future trade liberalization activity.

The following is a detailed review of the items of the CTE's work programme. There has been some overlap between the discussion on a number of *Items*. Some *items* are of more interest to developing countries than others.

Elements of the Work Programme of the WTO Committee on Trade and Environment comprises of ten issues and these will be analysed with reference to issues, proposals and recommendations of CTE.

Item 1: "The Relationship between the Provisions of the Multilateral Trading System and Trade Measures for Environmental Purposes, including those Pursuant to Multilateral Environmental Agreement"

Summary of Issues

This issue has already been dealt with extensively, by the Group on EMIT and SCTE. Chapter 39 of Agenda 21 entitled "International Legal Instruments and Mechanisms" and Principle 12 of the Rio Declaration recognizes that unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global problems should, as far as possible, be based on an international consensus.

Although 20 of the nearly 200 MEAs which exist today incorporate trade measures, there have been no disputes thus far. However, given the

rapid degradation of the environment, increasing interaction between trade liberalization and environmental protection and the absence of any comprehensive framework of global environmental law, the WTO members are of the opinion that the negotiation of MEAs will continue to be an active area of environmental policy making, thereby requiring a detailed study.

The key issues which were examined by the CTE include:

- the inter-relationship between MEAs and Multilateral Trading System;
- trade measures applied unilaterally by a WTO member to address environmental problems that lie outside its national jurisdiction;
- trade provisions of MEAs that apply separately to non-parties. The two questions raised in this context are: (a) who is entitled to judge the merit of a country's decision to not join an MEA, and the reasons why a country would take that decision and (b) whether discriminatory trade measures taken against non-parties is an effective means to achieve environmental objectives?;
- the scope that exist under the WTO to use trade measures pursuant to MEAs: whether they are sufficient or is there any need to enlarge the scope and what means are to be adopted, and finally;

- use of process and production methods that distinguish between "like products".

A related aspect which was partly discussed under this item but analyzed at length under *Item 5* was regarding – the appropriate forum for the settlement of potential disputes that may arise over the use of trade measures pursuant to MEAs.

Survey of Proposals and Recommendations of CTE

Proposals put forward by countries, for reconciling MEAs that incorporate trade related environmental measures, with the obligations of the GATT have broadly been divided into the following categories:

(a) *The status quo approach*: Noting that trade provisions had been included in only a small number of MEAs and that none has even been subjected to a legal challenge under the GATT, developing countries especially India pointed to the broad scope that exists for negotiators of MEAs to achieve their environmental objectives in a manner fully compatible with the multilateral trade rules.[10]

[10] WTO, *Trade and the Environment Bulletin, (TE)*, (Geneva), no. 006, 8th December 1995, p.2/3.

Avoidance of trade measures in MEAs which are inconsistent with WTO obligations, even if taken for enhancing environmental protection was a proposal put forward by India.

Regarding the issue of trade measures applied outside the context of an MEA, Canada and a few other countries stated that the provisions of GATT Article XX do not permit a Member to impose unilateral trade restrictions.[11] Whereas, the US maintains that Article XX does stipulate unilateral action.

Clarification was demanded regarding how the WTO would deal with an MEA that calls for Trade related environmental measures in relation to non-parties to a MEA. For instance, the montreal protocol permits parties to ban imports of CFCs and other controlled substances from non-parties which violates Article I and III of the GATT.

European Community,believed that while at times it was necessary to use trade measures against the non-parties, these were not to be used if they met the level of environmental protection called for by the MEA.[12]

Many felt that merely not being a party to an MEA should not make a country more vulnerable to punitive action. In this context, one

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[11] Ibid.

[12] TE, n.10, No.011, 9th August 1996, p.4.

delegation said it was not the function of the WTO to serve as a mechanism for putting pressure on a country to sign a MEA.

(b) *An ex-ante approach*: (establishing rules and procedures before adoption and implementation of trade related measure, to prevent a dispute from arising) Proposed mainly by environmentalists, this approach attaches importance to international cooperation to tackle transboundary environmental problems and its prevention, i.e., enhancing transparency to provide greater certainty. It is described as creating an "environmental window" in the WTO.

In order to accommodate trade related environmental measures of MEAs by the WTO, a variety of criteria for MEAs incorporating these measures have been proposed. Japan,elaborated on the procedural criteria which included: the geographic scope of an MEA; scientific evidence of the environmental problem; clarification of the environmental objectives of the MEA; whether negotiation of the MEA is open to all countries; assurance that new members were eligible to join an MEA; whether the MEA represented a genuine international consensus; whether countries at different stages of economic development were parties to it and consideration of dispute settlement in the MEAs.[13] According to Canada, the substantive criteria governing the use of trade measures, which MEA

[13] TE, n.10, No.014, 18 November 1996, p.6.

negotiators should consider are: trade measures should be used only when effective and when alternative measures are ineffective in achieving the environmental objective; should not be more trade restrictive than required to achieve the environmental objective; should not constitute arbitrary or unjustifiable discrimination and the trade restriction should be proportional to the environmental objective achieved.[14]

Negotiation of a collective interpretation or an amendment to the general exceptions in Article XX is also included under the *ex-ante* approach to provide clarity, safety and protection for the MEA regime in the trade context. The European Community, suggested amendments to Article XX of the GATT, for instance, making an explicit reference to 'environment' in XX (b) or, alternatively; introducing an additional sub-paragraph which would accommodate concerns of the trade and environmental communities by providing a legal and procedural framework for *de jure* compatibility of MEA-based trade measures.

This *ex-ante* approach has been criticized by many developing countries as they believed that the broadened definition of Article XX exemptions would increase the threat of protectionist abuse.

(c) *An ex post approach*: This approach was suggested mainly by the trading community. Seeking a WTO waiver could provide a solution for

[14] TE, n.10, No.011, 9 August 1996, p.2/3.

MEAs that contained the WTO- inconsistent trade measures. This waiver provision of Article IX of the WTO provides the opportunity for members to seek, in exceptional circumstances, a waiver to a WTO obligation. Singapore, on behalf of ASEAN and Hong Kong proposed a multi-year, case-by-case waiver for trade measures applied pursuant to MEAs, provided they meet specified criteria.[15] A multi-year waiver could be automatically renewed if there has been no change in the original circumstances which had justified the waiver. This would afford security to legitimate actions taken to resolve environmental problems over an extended period of time.

However, some Members, including Switzerland, the United States and Canada, felt that the waiver approach was inappropriate. According to them the criteria suggested was too restrictive; would impose additional constraints to use trade measures for environmental purposes which could be adopted only if approved by three-quarters of the WTO membership. Above all, a trade measure applied pursuant to a waiver could still be challenged in WTO on the grounds of non-violation, nullification and impairment of WTO rights. This right gave an opportunity to the developing country, to challenge measures with protectionist intent, taken by developed countries.

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[15] TE, n.10, No.013, 27 September 1996, p.1/2.

(d) Combined "ex ante" and "ex post" approaches: This approach was a combination of the waiver approach with the environmental window approach. Switzerland supported this two-phase approach for dealing with the issue of trade measures taken pursuant to an MEA: an *ex ante* phase to prevent disputes and an *ex post* phase to settle them, if they arose.

The advantage of this approach was that the MEA parties would retain competence to judge the legitimacy of environmental objectives and to select the proper means for their achievement, at the same time,the WTO would allow trade restriction pursuant to MEAs, while maintaining liberal trading conditions.

Therefore, the CTE tried to strike a balance and concluded that WTO Agreements and MEAs pursue similar goals and hence share a mutually supportive relationship. The CTE was of the opinion that the competence of the WTO is limited to trade measures applied pursuant to MEAs which result in significant trade effects and is not concerned with environmental matters per se. It recommended multilateral solutions and believed that a range of provisions in the WTO accommodates the use of trade related environmental measures.

Item 1 clubbed with *Item* 5, continued to be an important issue in the post Singapore Ministerial Conference, since uncertainties regarding their

relationship still persisted. Moreover, neither the WTO nor MEAs were capable, in isolation, of addressing the interrelationship between trade environment and sustainable development.

Item 2: "The relationship between environmental policies relevant to trade and environmental measures with significant trade effects, and the provisions of the multilateral trading system."

Summary of Issues

Many environmental problems arise, when the market fails to take into account the environmental costs of production and consumption of goods and services. In order to internalize the environmental costs, countries generally adopt either the regulatory approach or economic instruments. While regulation sets limits for pollution emissions or requirements for environmental performance, the market-based instruments for tackling environmental problems are used by governments to discourage producers and consumers from adopting environmentally harmful practices.

Tradable emission permits, fiscal instruments, emission taxes, financial subsidies and deposit refund systems are some of the economic instruments which have significant trade effects in terms of market access and competitiveness.

The issues explored include:

- environmental subsidies and their trade effects;

- environmental reviews of trade agreements; and
- relevance of trade and environmental principles

Survey of Proposals and Recommendations of CTE

Depending on how they are designed and implemented, subsidies can either create incentives for producers to adopt environmentally-sustainable production practices or exert an influence on trade. More analysis on the following have been suggested: relationship of the Subsidies and Countervailing Measures (SCM) Agreement with various forms of environmental incentives, the extent to which WTO provisions encouraged subsidization that could be environmentally harmful, and the use of environmental subsidies in relation to the Agreement on Agriculture.

To help identify the potential environmental impacts of trade agreements, the US and Canada advocated the use of environmental reviews.[16] These reviews were undertaken to identify environmental impact of trade agreements and the potential environmental benefits of removing trade distortions. They were expected to promote informed decision making and public involvement in the policy making process. Although New Zealand, Nigeria and Egypt had no problem with environmental

[16] TE, n.10, No.010, 8 July 1996, p.1.

reviews being undertaken at the national level, they felt that it lay outside the mandate of the WTO.[17]

In order to assess how to use existing WTO provisions flexibly to meet the objectives of sustainable development, developing countries like Egypt, Malaysia and Singapore proposed that the CTE should discuss the relationship of trade and environmental principles. Non-discrimination, transparency, necessity, effectiveness and least trade restrictive were the relevant trade principles which required a detailed examination. The relevant environmental principles included common but differentiated responsibility, sovereignty over environmental resources and special needs of developing countries. Several members felt that the list of principles were too narrow and that precautionary and polluter pays principle should also be analyzed to determine whether they internalize environmental costs.

No conclusions were drawn on either environmental reviews or the compatibility of general trade and environmental principles. The discussions was largely exploratory and further examination of these policies was called for.

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[17] TE, n.10, No.13, 27 September 1996, p.4.

Item 3: "The relationship between the provisions of the multilateral trading system and:

(a) charges and taxes for environmental purposes;

(b) requirements for environmental purposes relating to products, including standards, and technical regulations, packaging, labeling and recycling".

Item 3: (a) the relationship between the multilateral trading system and charges and taxes for environmental purposes

Summary of Issues

Environmental charges and taxes are increasingly being used as a means of internalizing domestic environmental costs. According to GATT rules, taxes levied directly on products are eligible for adjustment at the border, whereas taxes not levied directly on products are ineligible for border tax adjustment.[18]

Taxes and charges are considered to be a more efficient form of policy intervention to tackle environmental externalities as compared to command-and-control measures because they are: consistent with GATT rules, transparent and allow each country to individually estimate and address domestic environmental externalities.[19]

However, they have been criticized since it is difficult to determine the tax rate for environmental risks, like species extinction. Moreover,

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18 Taxes levied directly on products include value added tax, excise duties, sales and cascade tax; taxes not levied directly on products include payroll tax, taxes on capital equipment, services used in transportation.

19 "Command - and - control" measures are expensive to implement, produce environmental progress slowly and discourage process and technological innovations.

environmental costs vary according to specific national conditions and social preferences.

Some of the questions which have been debated by the CTE include:

- application of the GATT rules on border tax adjustment to environmental taxes and charges and their potential trade effects;
- the economic and environmental effectiveness of levying environmental taxes and charges on imports and rebating them on exports;
- the application of border tax adjustment to environmental taxes or charges applied to non-product-related PPMs.

Survey of Proposals and Recommendations of CTE

Developing countries like India, have stressed that the GATT member governments should have the sovereign right to decide the extent to which they would internalize cost, that would take into account the national interests, at the same time and prevent trade distortion.

The European Community, keeping in mind the reference to sustainable development in the Preamble of the WTO, suggested that in future, the GATT rules on border tax adjustment should be examined in the light of the environmental aim of a tax.

According to the CTE, enough scope exists under the WTO to apply environmental taxes and charges. It recommended the members to proceed on a case-study approach.

Only a preliminary examination of this complex and controversial topic was undertaken and further work was required before concrete recommendations could be made.

Item 3: (b) The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labeling and recycling.

Summary of Issues

"Eco-labels" refers to one particular type of environment label only.[20] They are the most popular form of independent environmental labelling which is voluntary in nature and administered either by central governments; local government bodies or non-governmental bodies.

The term "eco-labelling" refers to programmes under which particular products are granted the right to affix a label confirming that they are environment friendly. As long as they are consistent with the MFN Article I and National Treatment Article III, the WTO rules place no constraints on eco-labelling being used as a policy choice to protect the environment.

[20] ISO has identified four types of environmental labels – Eco-labels, Green Claims labelling, Eco-Profile and Single-Issue labelling programmes.

Proponents of eco-labels feel that if consumers are informed, the market and consumer choice can be relied on to stimulate the production and consumption of less environmentally harmful products. However, there are some that question its effectiveness as it has the potential of distorting international trade. Eco-labels can discriminate against products that do not have the label.

The issues analyzed include:

- TBT Agreement and its relationship to environmental regulations and voluntary standards;
- the need for expanding the scope of measures in the WTO;
- implications of the use of Life-Cycle Approaches (LCA) based on evaluations of unincorporated process and production methods;[21]
- the trade effects of eco-labelling particularly on developing countries; and
- environmental effectiveness of eco-labelling and transparency requirements.

The TBT Agreement, which is the reference point for discussion of this *Item*, applies to any technical regulation (mandatory standards) or voluntary standards that deals with a product characteristic. This includes

[21] "Life-Cycle Approach" or cradle to grave approach includes raw materials and other inputs, process and production characteristics, distribution, end-use and final disposal of a product.

"terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production methods".

Survey of Proposals and Recommendations of CTE

Regarding the coverage and applicability, Canada has suggested that; (a) the coverage applies to all eco-labelling programmes, whether voluntary or mandatory, governmental or non-governmental; (b) eco-labelling programmes are established by standardizing bodies, and such bodies should accept the TBT Code of Good Practice; and (c) the scope of the TBT Agreement should be interpreted to cover the use of certain standards based on unincorporated (non-product related) PPMs in voluntary eco-labelling schemes, provided these programmes are developed according to multilaterally-agreed guidelines consistent with the basic obligations of the GATT 1994 and of the TBT Agreement.[22]

Developing countries like India, Nigeria and Egypt opposed Canada's last proposal vehemently because it would encourage extra-jurisdictional action.[23] They stated that only specific stages of the life cycle dealing with product-related characteristics were covered by WTO rules, unincorporated PPMs were not under its purview.[24]

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22 TE, n.10, No.008, 29 April 1996, p.8.

23 TE, n.10, No.008, 29 April 1996, p.10.

24 "Unincorporated process and production methods" include specifications which does not effect the products as such, e.g. transportation of products.

The issue of process and production methods was raised in the Shrimp-Turtle dispute (1998). Though the final ruling went in favour of the trading community (India, Pakistan, Malaysia and Thailand), the Appellate Body Report suggested that it was not the extraterritorial application of US environmental standards that violated WTO rules, but the arbitrary manner in which the US law was applied.[25] This landmark decision increased the suspicion of developing countries as it endorsed unilateral and extra jurisdictional action that allows countries to differentiate on the basis of the process and production methods.

According to Korea and Japan, guidelines should be developed to grant equivalence to each criterion and mutual recognition of eco-labelling programmes, taking into account the experience of other relevant organizations. India, on the other hand rejected the idea of equivalence as being an impediment on country's sovereignty.

With regard to transparency, India and Australia considered the existing requirements of the "TBT Code of Good Practice for the Preparation, Adoption and Application of Standards" to be adequate.[26] But they did emphasized strengthening the provisions for publication and notification of work programmes by standardizing bodies, sixty days

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25 Garry P. Sampson, *Trade, Environment, and the WTO: A Framework for Moving Forward*, in ODC Policy Paper (Washington D.C., February 1999), p.6.

26 TE, n.10, No.008, 29 April 1996, p.9.

comment period on draft standards, and publication of the adopted standards.

The US , stressed on enabling interested parties, including governments, industry, consumers and environmental NGOs, to provide input at each stage of an eco-labelling programme's development. Inputs comprised of elaboration of environmental criteria and the use of LCA, procedures used in the awarding of labels and timely access to information related to the definition of product groups.

The issue of eco-labelling continued to be addressed in CTE even after the Singapore Ministerial Conference, the only difference being that it was clubbed under the "Market Access" theme.

One area which was given importance in the discussion after 1996, was regarding eco-labelling as a technical barrier to the market access of developing countries. Korea, Pakistan and Egypt said that eco-labelling requirements being costly would impede market access. Requirements were about 5-20% of additional cost on exported products, which placed a burden on exporters of developing countries.[27] Suggestions made to improve their market access included: financial and technical assistance and allowing them to participate in standard setting.

27 TE, n.10, No.23, 14 May 1998, p.11.

Item 3(b) has focussed entirely on eco-labelling and only passing references have been made to packaging, waste handling and recycling which constitute other product requirements. Consensus was reached on certain points after a detailed examination of this issue by the Group on EMIT in the GATT. However, the CTE has not made much progress from where the EMIT Group left it.

WTO members believe that Eco-packaging requirements reflect the national priorities of countries imposing them. Further work was warranted to ensure that these measures do not prove to be environmentally ineffective or have an adverse trade impact.

According to the CTE , the TBT Agreement provided enough scope and there was no need for any change in the coverage of the Agreement. Increased transparency and working in coordination with other intergovernmental organisations like OECD, UNEP and UNCTAD, was recommended.

Item 4: "The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects".

Summary of Issues

The transparency of trade policies are of considerable importance to the smooth functioning of the multilateral trading system. Transparency, is not an end in itself, it is a means to build confidence in and provide

security and stability to the multilateral trading system. It helps to avoid unnecessary trade restriction and distortion because the producers and traders are informed about overseas market access opportunities. Trade disputes are also minimized, since transparency helps to adjust to the changing trade policies.

The issues in discussion under this *Item* are:

- whether existing degrees of transparency provided by the WTO are sufficient;
- whether there is a need for establishing special national "enquiry points" to provide information on environment related trade measure;
- what improvements would have to be made to facilitate members access to information;
- form of transparency to be followed; and
- how differences in compliance with the WTO provision affected the issue of transparency.

Survey of Proposals and Recommendations of CTE

The United States, believes that the current GATT provisions, notably Article X; the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance; transparency

provisions of various Tokyo Round Agreements, particularly the Agreement on TBT as well as those supplemented by the Uruguay Round Negotiations like the Agreement on SPS, have been comprehensive in covering the majority of transparency issues related to environmental matters.[28]

However, India and Argentina felt that certain categories of trade related environmental measures are not covered at all or fall outside the scope of WTO transparency provisions. They suggested additional transparency and further analysis, to identify the potential "gaps".[29]

European Community, was of the view that the degree of transparency should be correlated with the potential significance of a measure's trade effect. Interpreting the term "significant" would, according to India and Nigeria be problematic as a significant trade effect to one WTO member might be considered insignificant to another.[30]

A range of possible transparency obligations have been considered to address these "gaps". These include *ex post* notification, such as the GATT Article X and *ex ante* notification, such as that required by the TBT and SPS Agreement.

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28 TE, n.10, No. 007, 25 January 1996, p.1.

29 Identified "gaps" include – eco-labelling; handing requirements; process and production methods, including those emanating from product LCA; packaging; economic instruments; deposit-refund schemes; domestic taxes; and measures taken pursuant to MEAs etc.

30 TE, n.10, No.003, 22 May 1995, p.4.

Regarding the issue of establishing national enquiry points, ASEAN countries, India and Brazil thought this mechanism would be desirable as it would: enable developing country exporters to cope better with not only trade measures included in MEAs, but also with environmental product requirements like packaging, labelling etc.[31]

However, some members were uncertain that additional enquiry points would assist in increasing transparency. The United States pointed to the high costs involved in creating enquiry points.

Switzerland, suggested that CTE should focus on the problem of inadequate compliance, rather than the question of potential deficiencies in the WTO transparency mechanisms.[32] The EC, however said that the issue of compliance or implementation of notification provisions went beyond the CTE's mandate and that it could be better addressed in the WTO Working Party on Notification Procedures.[33]

Several members, including Japan and Peru, supported Hong Kong's proposal of establishing an Environmental Database (EDB) to ensure easy and efficient access to information.[34] The EDB collected from the *Central Registry of Notifications*, would contain information on the

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31 TE, n.10, No.007, 25 January 1996, p.2.

32 TE, n.10, No.003, 22 May 1995, p.8.

33 TE, n.10, No.010, 8 July 1996, p.2/3.

34 TE, n.10, No.013, 27 September 1996, p.5.

nature and objective of a trade related environmental measure; product coverage; relevant WTO or MEA provisions; and comments on its trade effects etc.

As for the use of TPR mechanism, members noted that its purpose was to review trade policies and not environment related issues.

The CTE recognized the importance of transparency not only in its own right, but also as representing a horizontal issue with links to discussions under *Item 1,3,6,7,8 and 9.* Trade related environmental measures should not be required to meet more onerous transparency requirements than other measures that effect trade.

This agenda item evolved from merely discussing the scope of existing transparency provisions in the GATT to examining the potential trade effect of trade related environmental measures on a case-by-case basis in the CTE.

Item 5: "The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements".

Summary of Issues

To provide security and predictability to the multilateral trading system, an efficient and effective regulatory mechanism is essential and in this respect the WTO Agreement established a Dispute Settlement Body.

Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) applies to all the WTO Agreements. However, there are agreements, like the TBT and SPS Agreement and the Agreement on Textiles and Clothing which contain special or additional rules and procedures for settlement of disputes.

The GATT 1947, regulated the settlement of disputes among member countries, principally through its Articles XXII and XXIII.[35] The WTO, like the GATT 1947, encourages parties to find a negotiated solution to their dispute. The aim, therefore, of the WTO dispute settlement mechanisms is to secure a "positive solution" to a dispute.

There are significant differences between the WTO and the GATT 1947 dispute settlement mechanisms first, the WTO dispute settlement mechanism, unlike the GATT 1947, is based on clearly defined rules, with fixed time tables for completing a case. Second, the consensus rule has been reversed in the WTO: rather that affirmative consensus, henceforth negative consensus is required.(DSU, Article 16, Para 4). In other words, under the previous GATT procedure, rulings could only be adopted by consensus. A single objection could block the ruling. Now, rulings are automatically adopted unless there is a consensus to reject a ruling, i.e., any country wanting to block a ruling has to persuade all other the WTO

35 GATT, Basic Instruments and Documents, First Supplement (Geneva, March 1953).

members, including its adversary in the case to share its view. Thirdly, under the WTO, the panels have the right to consult experts for their opinion and to seek information or technical advice from any individual or body. (DSU, Article 13, Para 1 and 2).

The WTO/CTE devoted considerable attention to this work programme, as it was felt by many members that MEAs resorting to trade measures might increase in the coming years, and with them the probability of disputes. This facet of the CTE's agenda has been discussed in conjunction with *Item 1* of the CTE. Several members, however, doubted that the Committee could decide on procedural issues arising under this *Item* of its work programme until substantive conclusions were drawn under *Item 1*.

The issues discussed includes:

- the similarities and dissimilarities between the MEAs and WTO's dispute settlement system;
- forum to be used to settle disputes concerning trade related environmental measures;
- need for enhancing institutional cooperation in this area;
- should new institutional arrangements be set up;

- does existing MEA and the WTO provisions provide sufficient environmental expertise to judge trade and environment disputes?; and
- should general guidelines be developed or should each panel decide on when to seek environmental expertise in the WTO?

Survey of proposals and recommendations of CTE

Emphasis on avoiding disputes, increasing transparency through provisions which include the collection and exchange of information and co-ordination of technical and scientific research, and monitoring of measures taken to implement them, were some of the similarities noted between MEAs and WTO dispute settlement procedures by the delegations. At the same time differences were pointed out in the judicial phase of a dispute settlement procedure, wherein the WTO was more stringent as compared to MEAs.

Four types of disputes involving an environment-related trade measures have been identified and the appropriate forum for resolving each has been suggested:

1) a dispute between MEA parties concerning compliance with MEA requirements and trade measures being adopted against the party in breach of these requirements; here neither parties are the WTO members.

2) a dispute between a MEA party and a MEA non party which is a WTO member;

3) a dispute involving parties who are members to both the WTO and the MEA; and

4) a dispute between parties, where both are members of the WTO but not party to an MEA i.e., WTO member involving a trade related environmental measure unilaterally without the cover of a MEA.

In the first case, Canada suggested that the dispute should first be pursued under the MEA because it would involve the provisions of that agreement.[36] To avert parties from resorting to the WTO, due to lack of well-established, non-binding MEA provisions, many called for a need to strengthen dispute settlement mechanism of MEAs. In this context, some suggested that the WTO could provide advise, to assist MEA dispute settlement.

In the second type of dispute arising between a MEA party and a MEA non-party which is a WTO member, Chile felt that the DSU would ensure greater scope for application than MEA dispute settlement

[36] TE, n.10, No.003, 22 May 1995, p.7.

procedure because the WTO rules established clear standards and included recourse to retaliation in cases of non-compliance.[37]

Hong Kong,proposed that WTO members who were MEA parties can either voluntarily opt, to resolve disputes according to the dispute settlement procedures of the MEA or resort to the DSU. However, the WTO dispute settlement mechanisms was not to be used to circumvent the obligations they had accepted by becoming MEA Parties.[38]

In the last kind of dispute, European Community opined that the issue was not directly linked to the relationship between MEA dispute settlement and the WTO.[39] It concerned environmental expertise in the dispute settlement body. It felt that environmental expertise would be essential for both the "necessity" test of an trade related environmental measure and for assessment of the scientific evidence. In such circumstances WTO would be the only available dispute settlement mechanisms , since non-parties to MEA would have no rights under, nor access to, the MEA dispute settlement mechanisms. However it was suggested that dispute settlement body of the WTO should avoid getting involved in pure environmental conflicts.

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[37] TE, n.10, No.008, 29 April 1996, p.7.

[38] TE, n.10, No.013, 27 September 1996, p.2/3.

[39] TE, n.10, No.003, 22 May 1995, p.8.

The main task under this *Item* was to clarify how the two sets two sets of legal commitments (WTO rules and MEAs) were complementary so that conflicts could be avoided. Relying on evolving jurisprudence (the status quo); or devising changes to accommodate MEA trade measures in the WTO were two policy options which it thought could be pursued to make the two areas mutually supportive. The developing countries, like India approved of the former policy option. Whereas the developed countries upheld the second one.

Regarding environmental expertise, EC, U.S. and other industrialized countries felt that the DSU should be applied to ensure the use of relevant legal and technical environmental expertise in environmental related trade matters, particularly with respect to the interpretation and application of a MEA.[40]

Regarding the mandate, the ASEAN group noted that the Committee did not have a mandate to consider changes to the DSU.[41] While countries like New Zealand and Canada,supported the development of effective compliance regimes in MEAs.[42] There were others like EC and Norway, who said that it was not the Committee's task to address MEA dispute settlement mechanisms and their improvement but nevertheless

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40 TE, n.10, No.008, 29 April, 1996, p.7.

41 Ibid.

42 TE, n.10, No.025, 13 August 1998, p.5.

felt that efficient dispute settlement and enforcement mechanisms, should be developed in MEAs.[43]

The CTE gave combined recommendations for *Item 1 and 5.* According to it the "General Exceptions" Article XX accommodated adequately the use of Trade related environmental measures. It preferred settlement of disputes through consultation or in MEA dispute settlement mechanisms , but did not stop the WTO members from using the WTO dispute settlement mechanisms. The benefit of having relevant expertise available to the WTO panels in cases involving trade related environmental measures has also been acknowledged.

Item 6: "The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions."

Summary of Issues

The underlying theme of *Item* 6 of the CTE's work programme is the relationship between trade liberalisation, the environment and the promotion of sustainable development.

The two interrelated questions examined by the CTE includes:

- can trade liberalisation assist the protection of the environment; and
- will removing trade restriction and distortions benefit the environment?

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[43] TE, n.10, No.008, 29 April 1996, p.7.

Effects of trade liberalisation in stimulating economic growth could be argued to have both positive and negative environmental consequences.

More liberal trading conditions for natural resource based products and reduced tariff escalation for processed products could assist countries to diversify their economics and lessen their dependence on environmentally harmful production.[44]

Trade liberalisation, however does not automatically yield environmental benefits. Resources would be allocated efficiently if the price of the product reflects environmental costs, but if environmental costs are externalised it would lead to over exploitation of resources as environmental resources might be undervalued or not reflected in the market system.

With regard to trade restrictions & distortions, the CTE discussed:

- reduction of tariff escalation;
- the removal of agricultural subsidies;
- other sectors of primary commodity production like energy, fisheries, forestry etc.

Survey of Issues and Recommendations of CTE

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44 "Tarif Escalation" means low duties on raw materials but higher rates on finished goods.

Turning to the issue of, "the effects of environmental measures on market access and trading opportunities of developing countries", some delegations feel that environmental measures could create new market opportunities and favour an expansion of trade in environmental goods and services. Developing countries to the contrary, feel that environmental protection was being used increasingly as a barrier to impede developing countries market and protect commercial interest rather than to achieve environmental goals.[45]

As compared to a detailed examination of the environmental benefits accruing from removal of trade distorting measures, the issue of market access was not dealt with extensively because it had been taken up under other items of the CTE work programme.

To ensure trade liberalisation would bring economic growth and environmental improvement and taking into account the special needs of the developing countries, a range of suggestions were made.

Identifying and eliminating policy distortions which affected international price and then internalizing environmental costs was the best response to ensure that trade liberalisation had an "optimal" beneficial environmental effect, according to most members.

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[45] TE, n.10, No.005, 10 October 1995, p.4.

In India's view, the achievement of sustainable development in developing countries depends on improved access to the necessary information, infrastructure, expertise, technology and resources.[46] Development of an environmental *de minimis* clause or differential time schedules for compliance, was another suggestion to help developing countries.

Korea and Australia, offered a holistic or a "win-win-win" approach that would contribute to development and social equity objectives, as well as trade and environmental improvements.

Subsidies reform particularly in the agricultural sector was considered by many (such as US and Argentina), as an area in which positive synergies, or so-called "win-win" situation, should be pursued. According to Korea, issues related to agriculture were better addressed under the WTO Agreement on Agriculture than the CTE. However, Chili and Morocco, said that the CTE had a role to play in discussing export subsidies and would not be duplicating work in the Agriculture Committee.[47] Canada, proposed the polluter pay principle as a way of ensuring that full costs and benefits of agricultual production were reflected in market prices.

46 Ibid.

47 TE, n.10, No.027, 9 December 1998, p.6.

To prevent unwarranted trade effects of environmental policies, developing countries stressed the need to safeguard existing market access through reduction of tariff peaks and tariff escalation.

The CTE came to the following conclusions:

Trade liberalisation can promote environmental protection. Though it is not the primary cause of environmental degradation, the removal of trade restrictions and distortions, is the first step towards achieving sustainable development. Appropriate environmental policies are needed at the national level and emphasised that trade policies are not a substitute for well-designed, appropriate environmental policies.

It recognised the link between poverty and environmental degradation and emphasised the need for an open, equitable and non-discriminatory multilateral trading system, to generate more economic resources for developing countries to devote towards poverty alleviation. The CTE agrees that it should broaden and deepen its analysis on other sectors besides agriculture and energy sector.

Item 7: "The Issue of exports of domestically prohibited goods"

Summary of Issues

Trade in goods that are domestically prohibited or products that are deemed unfit for consumption in industrialized countries but are exported

to developing countries, has been a controversial issue between the developed and the developing countries.[48]

The issue of domestically prohibited goods (DPGs) is of special concern to developing countries, because they often lack the technical expertise to assess the dangers of such products and therefore have to rely on the work done by experts of developed countries. Even when the risks of importing DPGs are identified, the developing countries for acquiring financial resources often choose to ignore the danger of importing it. Further, once imported, due to lack of appropriate mechanisms they are unable to handle the products.

The CTE, included this issue in its work programme to examine what additional contribution the WTO can make in this area. It took into account both, development within the GATT and those in international environmental Agreements (IEAs) dealing, *inter alia*, with the monitoring and control of trade in certain DPGs. A particular mention has been made in this regard of the decision taken at the second meeting of the Basel Convention's Conference of the Parties to ban exports of Hazardous Wastes from OECD to non-OECD countries; the decision to develop a draft protocol on Liability and Compensation for Damage Resulting from

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[48] The term "domestically prohibited goods" is used to refer to products before they are discarded. DPGs range from unregistered pesticides, expired pharmaceuticals, alcohol, tobacco, dangerous chemicals and adulterated food product.

Transboundary Movement of Hazardous Wastes and their Disposal; the negotiations under the Amended London Guidelines of an internationally legally binding instrument for the application of the Prior Informed Consent (PIC) procedures for certain hazardous chemicals in international trade; and the draft protocol on Bio-Safety.

How to define DPGs? Should a country be allowed to export what is domestically banned? Whose responsibility is it to ensure trade does not take place in DPGs? And what role should the WTO play in this area? These are the questions which the CTE has tried to tackle under this agenda.

Survey of Proposal and Recommendations of CTE

Regarding the mandate of the CTE, European Community and few others feel that the WTO's role should be limited to supplementing the activities of other specialized organizations working on DPG s.[49] It should examine how the WTO rules can accommodate environmental concerns, without undermining or duplicating activities in other international fora.

Identifying and filling the gaps which may exist in the current mechanisms and helping to strengthen the regimes of other international

49 TE, n.10, No.001, 22 March 1995, p3.

organizations, was within the competence of CTE. Therefore, the WTO could play the role of a "safety net" in this area.

Gaps in DPG s product coverage, specially cosmetics, foodstuffs and pharmaceutical products, which were neither satisfactorily treated nor covered by any international agreement, were identified as areas where the WTO could make contributions.

However, for the US, identifying gaps in DPGs coverage lay outside the WTO mandate, because it lacked the technical competence and expertise.[50] Moreover, much of the trade in DPGs was already being covered by existing international instruments.

Ensuring transparency of trade in DPGs is an area where WTO could contribute. Notification and exchange of information procedures accordingly would assist developing countries because it usually lacked information regarding the status of the products in exporting countries; adequate product testing facilities and consumer protection regulation. Japan, on the other hand noted that the WTO had already comprehensive notification mechanisms, in TBT and SPS Agreement and that extending notification obligations would only add to the burden and lead to more confusion. Also, it had to be ensured that one member's notification of a DPG in the WTO would not lead to its exports being treated differently in an importing country from exports of the same product from other countries or from domestically produced products.

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[50] TE, n.10, No.011, 9 August 1996, p.8.

Who is responsible for restricting trade in DPGs - the importing country, the exporting country, or jointly? Nigeria,said that exporters and re-exporters of DPGs should be the one's responsible. But Canada,feels the importing countries should take a decision to restrict trade. For many, the GATT Article XX was appropriate, for restricting imports of DPGs.

Providing technical assistance to developing countries was proposed by Nigeria, to help them increase their capacity to monitor and control their imports of DGPs.

The CTE acknowledged, that the issue of DPGs is of special importance to developing and least developed countries, which are basically concerned with the sovereignty of their nations to decide what to ban and what to allow. It recommended the WTO to: participate in the activities of other organizations and to make contribution without duplicating or undermining the existing agreements, and to provide technical assistance to developing countries.

Item 8: "Trade-related Aspects of Intellectual Property Rights and the Environment"

Summary of Issues

Intellectual Property Rights (IPRs) are private legal rights granted by the state, to an innovator of technology.[51] The holder of an IPR has a monopoly on the use of the intellectual property and the technology

[51] "Technology" includes both soft components such as skills, know-how and design, as well as the hard component such as machinery, equipment and other tangible inputs.

embodying it. It specifies a time period during which others cannot use or copy the innovator's ideas or products without a licensing agreement or payment of fees. Proponents of IPRs believe the stronger the IPR system, the greater the incentive to innovate. Intellectual property includes – copyrights, trademarks, geographical indications, industrial designs, patents, layout-designs of integrated circuits etc. (Article 9-39).

The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights, commonly known as the TRIPS was signed on 15th April 1994. The Agreement was adopted to streamline the form of rules and disciplines, the varying standards in protection and enforcement of intellectual property rights. While industrialized countries had to implement it by 1996, the developing countries have a five year transition period and the least-developed countries an additional five years for implementation of all the provisions of the Agreement (Part II, Article, 65 and 66). However, in respect of pharmaceutical and agricultural products alone, the TRIPS Agreement requires countries to receive and date patent applications from the date of the Agreement itself.

Like the other agreements of the WTO, the "national treatment" and the "most favoured-nation" clause form the core principles of TRIPS, and a

country found violating the TRIPS agreement could be subjected to "cross-retaliation."[52]

At the heart of the debate, are the provisions concerning patents.[53] All the issues raised in the CTE have been discussed in this context.

Some of the key TRIPS related issues analysed by CTE includes: -

- the generation of, access to and transfer of environmentally – sound technologies (ESTs);
- the use of indigenous and traditional knowledge;
- sharing of benefits; and
- the extent to which genetic material and life forms should be patented.

The relationship between the TRIPS agreement and MEAs in particular the United Nations Framework Convention on Biological Diversity (CBD) which contains IPR related provisions, form the backdrop for the discussion of the above mentioned issues.

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[52] "Cross-retaliation" is defined as denial or withdrawal of tariff concessions in one sector (say goods) in retaliation against non-fulfillment of access commitment in another sector (say services).

[53] "Patents" cover any invention, whether product or process, in all fields of technology, provided they are new, involve an inventive step and are capable of industrial application. Granted for twenty years the patent holder has exclusive rights over use or sale of the invention.

The basic question raised by the participants is, whether IPRs as mandated by the TRIPS Agreement impede or foster environmental protection.

Before assessing the links between the TRIPS Agreement and the CBD, it is important to highlight the relevant features that cover aspects of the IPRs and environmental protection in the CBD.

The conservation of biological diversity, the fair and equitable sharing of the benefits arising from the use of genetic resources and the appropriate transfer of technology have been the objectives of CBD (Article 1).

It affirms that the conservation of biodiversity is a "common concern of mankind", and that states have sovereign rights over the biological resources in their territories. (Article 15).

IPRs are explicitly mentioned in Article 16 of CBD, which concerns with the "access to and transfer of technology". The article states that the access to and transfer of technology which makes use of those resources, including technology protected by patents and other IPRs have to be provided to the developing countries on mutually agreed and under fair and favourable terms.

Further Article 15 and 19 concerns itself with sharing benefits in a fair and equitable manner.

Survey of Proposals and Recommendations of CTE

(a) Opinion varies, regarding the role of the TRIPS Agreement in the generation of, access to and the transfer of ESTs. Industrialized countries specially US and European Community, emphasized the positive relationship between the environment and the TRIPS Agreement.[54] According to them, the TRIPS Agreement advanced sustainable development by encouraging innovation and providing incentives for investment. A weak IPR regime in their view would weaken the development of new technologies, as the private sector would be hesitant to invest in research and development of new ESTs. Canada, suggested technical cooperation programmes between the WTO and World Intellectual Property Organization (WIPO), to assist developing countries to institute effective IP regimes.

Further, the developed countries are of the view that Articles 27.2 & 27.3 of the TRIPs Agreement are adequate to address environmental problems and that Article 16 of the CBD had been taken into account.[55]

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[54] TE, n.10, No.019, 14 August 1997, p.4.

[55] The only explicit reference to the environment in the TRIPS Agreement is Article 27.2 and 27.3, where some of the conditions for exclusions from patentability are noted.

India, Malaysia, Egypt and few more developing countries on the other hand, feel the TRIPS Agreement lack specific mechanisms to achieve the objective of sustainable development and environmental protection.[56]

In order to meet their environmental commitments, India suggested that ESTs should be made available to developing countries: on fair, favourable conditions and non-commercial terms, particularly to small and medium enterprises; and in cases where they are mandated by an MEA, for instance technology needed to meet the commitment set out in Article 10A of the Montreal Protocol.

Compulsory licensing, shortening the term of protection or revocation or exclusion from protection, publication of new knowledge and providing Research and Development returns have been some of the other factors proposed to strike a balance between IP protection, environmental protection and sustainable development.

(b) Concerns have also been expressed by some members about the negative effects of some technologies on the environment in particular the effects of bio-technologies which involve genetically modified organisms.

The grant of a patent does not restrict the use of technology on environmental grounds. (Article 8.1 and 27.2). However, India said that exclusion from patentability or a ban on use or commercial exploitation of environmentally unsound technologies was the only solution.

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[56] TE, n.10, No.014, 18 November 1996, p.23.

(c) A related issue requiring clarification is whether the Agreement on TRIPS adequately protects the traditional rights and knowledge of indigenous and local communities. This matter has two dimensions. One is regarding the recognition of the intellectual contributions made by indigenous peoples/local communities and the second, about the sharing of benefits arising from the use of technology based on genetic resources originating in their territories.

With regard to TRIPS, one view is that the traditional knowledge has been the basis for much of the development of modern agriculture and medicine, yet these communities have to pay for patented products derived from their knowledge and innovation. It was suggested that the TRIPS Agreement should exclude the possibility of patenting processes and products derived from naturally occurring biological resources. Instead, the traditional knowledge holders should be awarded recognition. Columbia, suggested that the TRIPS Agreement be amended to require that patent applications indicate the origins of genetic resources and also disclose patententable inventions to show that they had been extracted in accordance with the norms of the country of origin.[57]

Amendment of TRIPS was however, considered inappropriate because traditional knowledge involved subject matter that is widely

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[57] TE, n.10, No.027, 9 December 1998, p10.

known or in public domain. Since it cannot be considered "novel" in terms of the criteria of patentability, the traditional knowledge is not an Intellectual Property. U.S.,recommended that traditional and indigenous knowledge could be recognized through benefit-sharing approaches which entail voluntary and contractual arrangements on mutually agreed terms.

Finally, regarding the extent of patentability, the TRIPS Agreement gives a member the option of excluding patenting of plants and animals, other than micro-organisms.

But the members had to provide for the protection of plant varieties either by patents or an effective *sui genris* system (of its own kind) [Article 27.3 (b)]

On the whole the negotiations under this item, remained inconclusive. It was agreed that further work was required to understand economic, legal and institutional interface between the CBD and the TRIPS Agreement. Positive measures to assist developing countries and exchange of information between the CTE and CBD was recommended.

Item 9: "Decision on Trade in Services and the Environment"

Summary of Issues

The General Agreement on Trade in Services (GATS) is the first set of multilaterally agreed and legally enforceable rules and disciplines ever negotiated over international trade in services. The Agreement provides for

secure and more open market in services in a similar manner as the GATT had done for trade in goods.

The core principles of non-discrimination are set out in Article II (MFN treatment) and Ar XVII (National Treatment) of the GATS. Patterned after Article XX of GATT, GATS provides a general exception from its obligation in Article XIV. This article allows WTO members to take measures necessary to protect human, animal or plant health" but does not make an explicit reference to the "environment" nor for protecting natural resources.

The principal issue regarding the GATS and the environment is, whether its general exceptions take adequate account of environmental concerns.

Besides examining the adequacy of Article XIV, the CTE explored the differences between the GATS and GATT provisions and the relationship of relevant MEAs to the GATS.

Survey of Proposals and Recommendations of CTE

Some have argued that services, being intangible, are not polluting *per se*, and that the need for environmental protection arises only when the delivery of services is associated with trade in goods. In their view, since these considerations are already covered by the WTO provisions relevant

to trade in goods, the GATS need not consider the environment. Noting the adverse affect on the environment of certain services like transportation of environmental guidelines for international lending, Japan feels that environmental regulation of services may directly affect trade.

US & Norway, suggested liberalization of the services sector, because improved market access, competition and technological innovation which accompanied it, would enable the developing countries to obtain ESTs.[58]

Several suggestions were made, to make the GATS accommodate environmental measures better. Argentina feels, given that the GATS Article XIV (b) contains the same language as GATT Article XX (b), the need to modify it should be considered only after progress had been made on Article XX under *Item* 1. Norway, proposed the integration of both Article XIV and other GATS Articles like VI, VII and XIV (c), in order to address environmental concerns, Switzerland, suggested that work on this item should examine specific sectors such as tourism and transport.

Concerning the relationship of relevant MEAs to the GATS, it is proposed that work in other fora, such as Negotiating Group on Maritime Services should be taken into account. Analysis could also focus on the relationship of the GATS provisions, such as Article VI to trade measures

[58] TE, n.10, No.027, 9 December 1998, p.2/3.

applied pursuant to MEAs dealing with services trade, such as the Basel Convention.

The CTE noted that the GATS is a new agreement which is still evolving and includes concepts which are not contained in the GATT. Therefore, a indepth analysis is needed to distinguish environmental measures applied directly to trade in services from those applied to products in order to identify whether the issues raised should be addressed in the context of the GATS or of other WTO provisions. It also made clear that input on environmental services will be primarily provided, to complement current work in Council for Trade in Service and other organizations.

Since not much work was done on this item, the discussion in CTE helped to clarify issues.

Item 10: ***"Appropriate arrangements for relations with non-governmental organizations referred to in Article V of the WTO and transparency of documentation".***

Summary of Issues

Article 71 of the UN Charter established the legitimacy of an non-governmental organization (NGO) presence in international activities. Chapter 27 and 38 of Agenda 21 and Principle 10 of the Rio Declaration invited NGOs and intergovernmental organization (IGOs) to take part in

the formulation of policies. The ECOSOC and OECD granted NGOs consultative status.

The GATT, however, conducted all its official proceedings in secrecy. Unlike other international organizations who recognized the constructive role of NGOs, GATT excluded all, except governments of contracting parties from participating in decision – making. All its documents were restricted and with held from the general public.

However, Article V (2) of the Uruguay Round Final Act is testimony to the fact that WTO started to recognize the useful role of NGOs as providers and disseminators of information and expertise.[59] In addition, there was the WTO General Council's Decision on Guidelines for Relations with NGO's and on Circulation and Derestriction of Documents adopted in 1996, where the WTO members agreed to improve public access to WTO documentation and to develop communication with NGO's.

The pros and cons of increasing consultations with NGOs and the transparency of the WTO, were the issues in discussion under the CTE.

Survey of Proposals and Recommendations of CTE

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[59] Article V (2) stated that the General Council "may make appropriate arrangements for consultation and cooperation with NGOs concerned with matters related to the WTO".

As far as the involvement of NGOs in the work of the CTE are concerned, two views were expressed.

Some WTO members, like the U.S. emphasized the need for the WTO to increase its interaction with NGO's and the international civil society because of the role, it would play in clarifying the trade-environment-sustainable development linkages. Undue limitation on involvement would impede the flow of ideas and information necessary for informed policy making. A suggestion was made by the "EC to include participants from associations representing environment, development, consumer interests and research organization from developing and developed countries alike.[60]

On the other hand, many countries viewed NGO participation in the proceedings of the CTE to be inappropriate. First, because they were too many in number and second that they could further complicate the consultative process. Brazil said that participation of NGO's in the policy making process should remain at the national level.[61]

Turning to the issue of transparency, many agreed with U.S. and Canada for a need to increase public access to information through timely derestriction of the CTE's working documents. Derestriction of Trade and

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60 TE, n.10, No.021, 19 December 1997, p.12.

61 Ibid.

Environment Bulletin after six months of the date of issue was an important achievement in this direction,as it would now be available for public security. Further the CTE also recommended that the remaining documents prepared the during first two years of its operation be de-restricted.

However, ASEAN and Brazil raised objection and said that the documents should be considered for derestriction only after having been discussed in the CTE and in view of the General Council procedures.[62]

The WTO's information dissemination through its website and regional seminars on trade and environment for developing countries further contributed to a clear understanding of how discussions are progressing and provide inputs if possible.

The CTE said that, consultation and cooperation with NGOs are more appropriate at the national level where national governments have a fundamental and primary responsibility for taking into account the different elements of public interest. It agreed,to extend observer status on a permanent basis to those IGOs which had been granted observer status till now on an *ad hoc* basic. It also recommends that the secretariat

62 Ibid.

continue its interaction with NGOs, which is important and conducive to productive deliberations.

Therefore, the role of the WTO in searching for a viable synthesis between trade, environment and development has been an evolutionary process tempered with caution.

The provisions of the WTO with environmental implications and the work programme of the CTE have been remarkably comprehensive. It attempted to address many of the complex issues and have helped in identifying key areas of conflict and compatibility between trade and environment.

It is the opinion of many representatives of the developed countries and environmental organizations that the CTE/WTO work, has fallen short of fulfilling their expectations. They had anticipated new rules and concrete solutions to emerge after five years of protracted and prolonged discussion on this trade – environment interface.

Underlying concern for caution and an incremental growth is evident even in the annual reports of the CTE. The reports and discussions highlight that no real modification to multilateral trading system is required; that some procedural modification should be in order; and that the work of the CTE/WTO in building a constructive policy relationship between trade, environment and sustainable development should continue.

The CTE itself recommends that, while existing provisions are satisfactory, developing countries should be accorded further special consideration.

Also, the discussions and proposals put forward by countries in the CTE as well as the agreements with environmental implications, manifested a distinct North-South divide. Most developed countries are of the opinion that there is a need for a continued work in the CTE, as legitimate connections exist between trade and environment. Further, they suggested an increase in the scope of issues considered in the WTO. The developing countries on the other hand, do not want to give environment a permanent place within the WTO. Although, not hostile to discussing certain environmental issues (like domestically prohibited goods, TRIPs etc.) within the WTO, they nevertheless, object to any long-term commitment being made by the WTO on the inter-linkages between trade and environment.

CHAPTER IV
CONCLUSION

CONCLUSION

After years of intensive discussion, striking a balance between trade liberalization and environmental protection still remains a sensitive and highly controversial issue. Duncan Brack, the Head of the Energy and Environment Programme in Royal Institute of International Affairs has rightly said, "There is no single or final answer to the question, trade and environment: conflict or compatibility?".[1]

The WTO and its predecessor the GATT have been highly successful over the past 50 years in achieving what it has been mandated to do. The WTO continues to grapple with its twin objectives: first, to progressively remove trade restrictions and distortions and second, to maintain the open and liberal multilateral trading system based on non-discriminatory rules as a means to ensure predictability and stability in world trade.

After eight rounds of trade-liberalizing negotiations, tariffs on industrial goods have been reduced from 45% in 1947 to an average of approximately 40% today. International trade increased at a rate faster than economic growth by an average of 20% per annum between 1948 and 1997. The share of developing countries in world trade has increased from

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[1] Duncan Brack (ed.); *Trade and Environment: Conflict or Compatibility*; Proceedings of the RIIA Conference, (London, April 1997), p.viii.

20% to 25% in the last 15 years. Under the WTO, more than six trillion worth of goods and two trillion dollars of world services are traded.

The achievements of the GATT/WTO in expansion of the global economy and in guaranteing stability to the rule-based multilateral trading system have been duly acknowledged. However, the environmentalists have been critical on the grounds that:

- trade liberalization accelerates unsustainable production and consumption patterns that lead to resource depletion;
- the WTO is not able to discriminate between products on the basis of how they are produced;
- the WTO rules prevent the use of unilateral trade measures beyond national borders, and some have even taken the extreme position that the WTO, acts as a tool of globalization.

Environmental groups,want the WTO to intervene more actively in protecting the environment and they cite trade to be the root cause of environmental problems They are supportive of the WTO,since it is the only international trade body whose decisions can be enforced across borders with the use of punitive trade measures. In their view the WTO is the panacea of all global/transboundary environmental hazards.

On the other hand, developing countries have expressed concern

over the increasing attention being paid to the inclusion of environmental issues into the multilateral trading system. According to Dr. Veena Jha and Rene Vossenaar, the developing countries have had legitimate apprehensions about engaging in discussion on trade and environment.[2] The developing countries have strongly resisted incorporation of environmental issues in trade negotiations, on the grounds that:

- developed countries will use environmental concerns as a guise to erect non-tariff barriers,
- the developing countries would find it difficult to comply with new technical regulations, particularly the small firms which are concentrated more in developing countries,
- export orientation of the economies of many developing countries and their concentration in certain sectors could make them more vulnerable to environmental measures in the overseas markets.

Supporters of free trade usually the developed countries, argue, that trade liberalization is not a cause of environmental degradation, rather a source of increased real resources that can be directed towards upgrading the quality of the environment.

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2 Veena Jha & Rene Vossenaar; "Breaking the Deadlock: A Positive Agenda on Trade, Environment, and Development? in Gary P. Sampson and W. Bradnee Chambers, *Trade, Environment and the Millennium*, (Tokyo, New York, Paris, 1999), p.65.

However, developing countries point out to the failure of the industrialized countries to even meet the commitments made at the UNCED in Rio, in terms of technology transfer and financial aid. More significantly, developing countries fear that a precedent might be set if standards relating to environment are accepted, for e.g. labour standards.

Although the stakeholders in the trade and environment debate assign fundamental priority to the protection of the environment, much of the problem arises due to differences which exist among parties over the perceived role of the WTO in achieving these objectives. The complexity of issues involved, lack of knowledge and understanding of each other's viewpoint, and above all the lack of trust, further intensify the problems.

A statement by Murasoli Maram at the 3rd WTO ministerial conference in Seattle on 30th November 1999 has summed up the viewpoint of India, the representative spokesman of developing countries, regarding the assimilation of environmental issues in the WTO. He says: -

> "Much has been said about inclusion of non-trade issues such as environment and labour standards on the WTO agenda. India is second to none in its commitment towards environmental protection and sustainable development. The very ethos of Indian culture and history is not only to respect but also to worship nature. The issue here, however, is different. The multilateral trading system is designed to deal with issues involving trade and trade alone. India in good faith had agreed at Marrakesh to the establishment of a WTO CTE. We would, however, strongly oppose any attempt to either change the Committee's structure or mandate which

> can be used for legitimising unilateral trade restrictive measures. Attempts aimed at inclusion of environmental issues in future negotiations go beyond the competence of the multilateral trading system and have the potential to open the flood gates of protectionism."[3]

So far, we have witnessed the debate being driven largely by the agenda of the developed countries. Though genuine environmental concerns have at times been the motivating factors, it has usually been the commercial interests that prompt them into using trade measures. In other words, one is able to detect that developed countries or the western environmentalists have a double agenda.[4] One group of environmentalists and social activists are worried that the WTO trading rules will lower the environment and public health standards, while the other set of environmentalists have an eco-imperialist interest.

The developing countries, on the other hand, have been late-commers in these intricate multifaceted and complex negotiations. However, country proposals made in the CTE and the stand taken by them, particularly in the Seattle conference, has shown and proved their interest in the protection of the environment. What they have incessantly argued against, is the use of environment as a protectionist shield.

Over the years, the scope of the WTO has broadened enormously.

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3 India and the WTO, in *Newsletter of the Ministry of Commerce and Industry*, Vol.1, No.11/12 (New Delhi), November-December 1999, Pp.4-5.

4 Op.cit., Anil Agarwal - "Road from Seattle", *The Hindustan Times*; p.13.

WTO does not exist to only further trade at any cost. Trade rules are now used to set standards and enforce compliance even in areas not directly related to trade. Although primarily not an environmental agency, the WTO is mandated to consider trade and environment issues.

Historically, the first five rounds (1947 to 1961) covered only tariffs on industrial products, with countries agreeing to lower import duties in their domestic markets in exchange for similar concessions by their trading partners. From the Kennedy Round (1962-1966), for the first time issues other than tariffs were taken up. The scope of negotiations was widened further at the Tokyo Round, which was held during the years 1976-1980. Non-tariff barriers, prescribing standards for goods being traded were discussed. The most wide-ranging talks were conducted during the Uruguay Round (1986-94). Five new subjects were added-agriculture, textile and clothing, investment measures, IPRs and services. On the issue of the environment, the Marrakesh Ministerial Decision on Trade and Environment established the CTE.

GATT Article XX (b) and (g) played a central role in the early stages of the trade and environment debate. Some of the cases under GATT Article XX include Herring and Salmon case (1988), Thai Cigarettes case (1990), Tuna - Dolphin I & II (1991 & 1994 respectively). The thrust was initially on subparagraph (b) and (g). The issue of unilateralism and extra-

territoriality, i.e., the scope of the Article, was of prime importance. Developed countries, especially the US considered that the provisions of GATT Article XX allow member countries to impose trade restrictions outside national borders to penalise environmentally errant nations. According to them, the present provisions give preeminence to trade over environmental goals and therefore called for amending Article XX. The developing countries, on the other hand, are of the opinion that Article XX is flexible enough to accommodate legitimate environmental concerns. Any effort to amend this article would mean imposing environmental conditionality on trade which would be a protectionist non-tariff barrier aimed at exports from developing countries, i.e. adherence to standards of environment, are stipulated as preconditions for developing countries market access to developed countries.

With the recent Appellate Body decisions on the Imported Gasoline Case (1996) and the Shrimp - Turtle Case (1998), stress is now laid on the head note or "chapeau" of Article XX, which requires trade restrictions to be applied "in a manner, which would not constitute a means of arbitrary or unjustifiable discrimination between countries where same conditions prevail or a disguised restriction on international trade." In other words, the "chapeau" allows WTO members to defy its core principles Article I and III as long as they do not undermine the multilateral trading system.

In addition to Article XX (b) and (g), the establishment of the Group

on Environment Measures and International Trade (EMIT) under GATT, acknowledged the significance of trade-environment interface. The discussions carried out by the Group on EMIT although largely exploratory, decided the future course of the debate on certain items.

Besides Article XX and the group on EMIT, the Standards Code of 1979 recognized the links between the two domains.

With the Uruguay Round and the establishment of the WTO, many new agreements came into being which contained trade related environmental provisions.

The optimal use of the world's resources, in accordance with the objective of sustainable development and the need to protect the environment has been referred to in the Preamble of the Marrakesh Agreement establishing the WTO. Although not legally binding, all WTO members were to carry on economically sustainable development.

The Agreement of TBT and SPS are indicative of the fact that each country has the right to set the level of protection it deems appropriate. The Agreement on Agriculture provides for long-term reform of agricultural trade and domestic policies. The exemption provision of this agreement also benefits the developing countries. The Agreement on Subsidies and Countervailing Measures treats non-actionable subsidy, government assistance to industry covering upto 20% of the cost of adapting existing

facilities to new environmental legislation. Both TRIPS and the GATS contain environment-related provisions.

By far, the establishment of CTE indicates that the WTO has and will continue to take a proactive role in exploring synergies between international trade and environmental protection.

Trade and environment received immense attention at the first Ministerial Conference held in Singapore. Paragraph 16 of the Singapore Declaration specifically mentions the contribution made by the CTE towards sustainable development.[5]

In the current age of globalization, the work programme of the CTE presented at the Singapore Ministerial Conference is significant in one manner - trade and environment issues were to be firmly embedded both procedurally and substantively for consideration at the level of the ministers. This was to be a regular and annual feature.

However, the fact that the priority was still given to trade is clear from the parameters guiding its deliberations. First, that the WTO is not an environmental agency and that it should not get involved in reviewing national environmental priorities, setting of environmental standards or

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[5] *WTO, Focus*, (Geneva, January 1997), No.15, p.9.

global policies on the environment; and second, if problems of policy co-ordination to protect the environment are identified through the CTE's work, steps taken to resolve them must uphold and safeguard the principles of the multilateral trading system.

The second Ministerial Conference of the WTO held in Geneva in May 1998, did not sufficiently address these linkages. It however, highlighted the need to improve transparency of WTO operations in order to enhance public understanding of the benefits of the multilateral trading system.

The WTOs "*olive branch report*" released on 14th October 1999, has been a redeeming feature in the evolution of the trade and environment debate. For the first time the WTO admits that trade can harm the environment.

Unlike the trade and the environmental community who consider trade to be either good or bad for the environment, the WTO Report argues that the linkage in reality are a little bit of both, or a shade of grey. "Win-win" outcomes can be assured through well-designed policies in both the trade and environmental fields.[6]

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6 *WTO Press Release*. "Trade Liberalisation reinforces the need for environmental co-operation". Press/140, (Geneva), 8th October 1999, p.1.

According to this report, trade is rarely the root cause of environmental degradation and hence, trade barriers make poor environmental policies. Economic growth, driven by trade, is both a part of the problem, as well as, a part of the solution. Economic growth, coupled with strong political will at the international level, is critical for improving the quality of the environment.

The Report, which states "every WTO member supports open trade because it leads to higher living standards, which in turn leads to a cleaner environment", makes it is clear that the WTO is constantly trying to harmonize trade and environment.

The WTO's third Ministerial conference held in Seattle from 30th November to 3rd December,1999 was to finalise the agenda for negotiations which were to begin in January 2000. Seattle saw remarkable developments made by the developing countries. First, unlike previous rounds, they were far better prepared now and more centrally involved in the preparatory talks. Second, they made it clear that they would not accept blindly, the decisions taken in "Green Room" by a group of select countries. As for the issue of the environment, they vehemently opposed its inclusion in the WTO.

The link between trade and environment, traditionally seen outside the domain of GATT/WTO, specially by the developing countries, but

which some countries particularly the developed see as requiring intervention of the WTO, was one of the most contentious "non-trade" issue at Seattle.

Some of the key issues of special interest to developing countries which need to be addressed in future trade and environment negotiations are:

a) Transparency

A widespread perception held among developing countries is that the WTO is inaccessible, undemocratic, untransparent and unresponsive to civil society. One of the most important reasons for the collapse of the Seattle talks has been the lack of transparency in the deliberations and imposition of the views of the rich on the poor countries. The joint communiqué issued at the conference by the Minister of the Latin America, Caribbean, Asia or OAU and African countries, expressed resentment that they had not been consulted to finalise a draft declaration. However, by not agreeing to any ministerial text the developing countries have demonstrated that powerful countries like U.S. and E.U. will no longer be able to impose their agenda easily, on the rest of the WTO members.

However, in order to enhance transparency and to keep civil society informed, the WTO secretariat has taken the following steps:-

- Organized yearly symposium on trade, environment and sustainable development;

- regular briefing by the Secretariat on WTO activities;

- the creation of a NGO section on the WTO web site;

- circulation of NGOs and country position papers;

- it held six regional seminars on trade and environment for government officials from developing countries and LDC's in 1998 and 1999.

The High Level Symposium on Trade and Environment held on 15-16 March 1999, provided an opportunity to reconcile trade and environment policy goals. However, the developing countries were still sceptical of the trade and environment as essentially a northern agenda, which runs counter to their "trade and development agenda".[7]

b) TRIPs Agreement

Developing countries objected to the TRIPs Agreement because:

- the agreement caters to the protection of the patentee and does not take into account socio-economic and developmental concerns like, the environment, technology transfer etc.

- the burden of adjustment falls virtually on developing countries because

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7 *Bridges Weekly*, year 3, No.2, (Geneva, March 1999), p.1.

the IPR standards chosen are equal to approximately those already achieved by developed countries. According to Michael Finger and Philip Schuler the cost of implementing the Agreement alone will be 150 million dollars per country.[8]

- all countries must provide both product and process protection to all innovation for twenty years. India's low-cost medicine industry would find it difficult to continue as it will be illegal to reverse engineer the patented drugs.[9]

- transnational corporations would have monopoly over production and distribution in areas such as agriculture, nutrition and health care which are vital areas for developing countries.

- another contentious issue is trade in genetically modified organisms. Developing countries are the source of 90% of the world's biological resources, whereas developed countries currently hold 97% of all patents.[10] There are fears that genetically modified foods will adversely affect the environment and human health. The first dispute relating to genetically modified organisms is the EU's ban on US exports of beef from cattle injected with growth hormones. Since the scientific community is divided, the basic issue is whether one can apply the

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8 Arvind Panagriya, "Yes to IPRS, but not under the WTO"; in *The Economic Times*, January 26, p.8 (3-7).

9 Ibid.

10 Magdha Shahin, "Trade and Environment: Seattle and Beyond", *CUTS: Briefing Paper*, No.2; 2000, p.5.

"precautionary principle". While Canada wanted to establish a working group, most developing countries were against it, as they do not have the scientific capability to evaluate the safety of such products. They argued instead for the need to take "precautionary approach" in regulation. They also feel that the genetically modified organisms should be discussed under the CBD and not in the WTO.

The developed countries were also divided amongst themselves, while the EU favoured stringent rules mainly due to consumer opposition to genetically modified foods, the US was in favour of less stringent approach.

Finally, the developing countries objected to patent laws as they do not recognize traditional knowledge and systems. A case in point is the grant of U.S. patent for using 'turmeric' to heal wounds. Developing countries did not object to IPRs but were wary of it being under the WTO.

c) *Dispute Settlement*

Developing countries are making increasing use of the WTO's Dispute Settlement System to air their grievances. 25% of the nearly 200 disputes in the WTO, during its five-year life span, have been brought by the developing countries. Further, Article 27.2 which offers secretariat legal advice and assistance and the Advisory Centre of WTO Law have catered to the developing country needs.[11]

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[11] Beatric Chaytor, "Dispute Settlement under the GATT/WTO: The Experience of Developing Nations"; *CUTS: Briefing Paper*, No.4, 2000, p.5.

Although the opening of dispute settlement panel and Appellate Body sessions to civil society, and the right of NGOs to submit friend-of-the-court briefs (*amicus curae*) to panels, has improved the transparency, the developing countries are worried about the misuse of this privilege and that they lack technical expertise or financial resources required to prepare and make such submissions.

d) Precautionary Principle

Precautionary principle is defined as: "where there are threats of serious or irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.[12] The precautionary principle incorporated in the SPS Agreement, has been an achievement for the environmentalists.

Against this backdrop, it is necessary to consider the future course of action on the issue of trade and environment.

Two options have been suggested. First, is the establishment of a World Environment Organization suggested by WTO Director General Renato Ruggiero.[13] This similar multilateral rules-based system for the environment would be an institutional and legal counterpart to the WTO. In

[12] James Cameron, "The Precautionary Principle", in *Sustainability, Trade and Investment: Which way for the WTO?*, (London, 27-28 March 2000), p.7.

[13] "Special Report: High Level WTO Symposia on Trade, Environment and Development", in *Bridges Weekly*, Year 3, No.2, (Geneva, March 1999), p.7.

this context, UNEPs Executive Director Klaus Topfer proposed enhanced institutional co-operation between the WTO and UNEP.

This option was suggested mainly because there was apprehension that CTE has not gone beyond clarifying issues, and therefore actual negotiations on setting policy goals after five years of prolonged discussion, have not yet begun.

On the other hand the Third World scholars argue, that environmental issues should be addressed in separate international fora.

The second option is to continue work within the CTE. CTE is a living and evolving example of integrating environmental consideration into economic decision-making at the international level.

The WTO has also proven to be, in its short span of existence sensitive and responsive to the criticisms from civil security and sometimes, from major developing countries.

Thus, given the institutional learning of the 1990's, the task before the WTO is to enable all member states, both developed and developing, to manage and master the process of globalisation. In evolving the rules of engagement, to meet the challenge of globalisation and environmental sustainability, the WTO definitely has a task cut out for the twenty-first century.

BIBLIOGRAPHY

BIBLIOGRAPHY

Primary Sources

Earth Summit, Agenda 21, The United Nations Programme of Action from Rio; The Final Text of Agreements Negotiated by Governments at the UNCED, 3-14 June 1992, Rio de Janeiro, Brazil (New York, The UN Department of Public Information, February 1997).

Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Agreement Establishing the World Trade Organization, International Legal Materials, Vol 33, No 5, (September 1994), Pp- 1125, 1144.

GATT Activities, An Annual Review of the Work of the GATT, (Geneva: GATT).

GATT Basic Instruments and Selected Documents , (Geneva, 1969).

GATT Dispute Settlement Panel, United States- Restrictions on Imports of Tuna, International Legal Materials, Vol.30, No.6, (August 16 1991), Pp.1594.

GATT Document, " Papers Presented at the GATT Symposium on Trade, Environment and Sustainable Development" in Trade and the Environment: News and Views from the GATT, No. 009, 28 July 1994, Pp.1-98

GATT Secretariat, International trade 1990-94(Geneva: GATT, 1990-1994)

GATT Secretariat, Trade and Environment Bulletin (Issued by the Information and Media Relations Division of the WTO,Geneva), Press/ T E 001-032, 22 March 1995- 17 March 2000.

GATT Secretariat, Trade and the Environment: News and Views From The General Agreement On Tariffs and Trade (Issued by the Information and Media Relations Division of the GATT, Geneva, 1 April 1993- 6 January 1995).

IIFT, World Trade Centre and Academy of Business Studies, World Trade Scanner, International Fortnightly, (New Delhi, Mercury Printers).

Ministry of Commerce and Industy, India and the WTO, Monthly Newsletter (The Trade Policy Division and the Information Division).

Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987, International Legal Materials, Vol.26, No.6, (November 1987), Pp.1541.

OECD, Guiding Principles Concerning International Economic Aspects of Environmental Policies, 26 May 1972, International Legal Materials, Vol.11, No.5, (September 1972), Pp.1172.

Report o the United Nations Conference on the Human Environment, International Legal Materials, vol.11, 1972, pp.1416.

Rio Declaration on Environment and Development, International Legal Materials, Vol.31, (1992), Pp.874.

Thailand- Restrictions on Importation of and Internal Taxes on Cigarettes, November 7, 1990, International Legal Materials, Vol.30, No.4, (1991), Pp.1122.

The World Bank, Annual Report ,(Washington D.C., World Bank).

The World Bank, World Development Report, (New York, OUP).

Trade and Environment, Ministerial Decision of 14 April 1994, International Legal Materials, Vol.33, No.5, (1994), Pp.1267.

UNDP, Human Development Report, (New York, Oxford, OUP).

United States- Standards for Reformulated and Conventional Gasoline, Appellate Body Report, International Legal Materials, Vol.35, No.3, (1996), Pp.603.

USIS-Official Text, "Environmental Issues Move to Fore of Discussions on Trade", November 1994.

WTO Annual Report, (Geneva, WTO).

WTO, Focus, Newsletter, (Geneva, published by Information and Media Relations Division of the WTO).

Bridges Weekly Trade News Digest, (Geneva, ICTSD and IATP).

Secondary Sources

BOOKS

Aggarwal, Anil, Sunita Naraian, and Anju Sharma, Green Politics: Global Environmental Negotiations 1, (New Delhi, Centre for Science and Environment, 1999).

Anderson, K and R. Blackhurst, ed., The Greening of World Trade Issues, (London, Harvester- Wheatsheaf, 1992).

Anderson, T., Trading with the Environment: Ecology, Economics, Institutions and Policy, (London, Earthscan publication, 1995).

Audley, John J., Green Politics and Global Trade: NAFTA and the Future of Environmental Policies (Georgetown University Press, Washington D.C., 1997).

Baumol, William, and Wallace Oates, The Theory of Environmental Policy, (Englewood Cliffs, New Jersey: Prentice- Hall, 1975).

Bhagwati, Jagdish and Robert E. Hudec ed. Fair Trade and Harmonization: Prerequisites for Free Trade? (Massachusetts, MIT Press, 1996).

Bhagwati, Jagdish, and T.N. Srinivasan, Trade and Environment: Does Environmental Diversity detract from the Case for Free Trade? (Yale University, 1993).

Brack, Duncan, Trade and Environment: Conflict or Compatibility? Proceedings of the Royal Institute of International Affairs conference, Chatham House, London, April 1997, (Great Britain, Earthscan Publications Ltd., 1998).

Cameron, J., Trade and the Environment: Search for Balance, Vol. I and II (London, Cameron May Ltd., 1994).

Dubey, Muchkund, An Unequal Treaty: World Trade Order After GATT, (New Delhi, New Age International Ltd., 1996).

Esty, D.C, Greening the GATT: Trade, Environment and the Future, (Washington DC, Institute of International Economics, 1994).

Hussein, Abaza, Use and Application of Economic Instruments for Environmental Management and Sustainable Development, (Nairobi, UNEP, August 1994).

Jha, Veena, Grant Hewison and Maree Underhill ed., Trade, Environment and Sustainable Development: A South Asian Perspective (New York, St. Martin's Press, 1997).

Krueger, Anne O., ed., The WTO as an International Organization, (Chicago and London, The University of Chicago Press Ltd., 1998).

Meadows, Donela H., The Limits to Growth, (New York, Universe Books, 1972).

Miller, Marian A.L., The Third World in Global Environmental Politics, (Buckingham, Open University Press, 1995).

Moltke, K.V., International Environmental Management, Trade Regimes and Sustainability, (Manitoba, Canada, IISD, 1996).

Nordstrom, Hakan and Scott Vaughan, Trade and Environment: Special Studies 4, (Geneva, WTO, 1999).

OECD, The Environmental Effects of Trade, (Paris, OECD, 1994).

Opschoor, J.B. and H.B. Vos, Economic Instruments for Environmental Protection, (Paris, OECD, 1989).

Pearce, D and, J.J. Warford, World Without End: Economics, Environment, and Sustainable Development, (OUP, 1990).

Pearce, David, Anil Markandya, and Edward B. Barbier, Blueprint for A Green Economy, (London, Earthscan Publications Ltd., 1989).

Petersmann, Ernst-Ulrich, The GATT/WTO Dispute Settlement System: International Law, International Organizations and Dispute Settlement, (London, Kluwer Law International, 1996).

Raghavan, Chakravarti, Recolonization: GATT, the Uruguay Round and the Third World, (Penang, Malaysia, Third World Network, 1990).

Repetto, Robert, Trade and Sustainable Development, UNEP, Environment and Trade Series No.1, (Geneva, Switzerland, UNEP, 1994).

Runge, C. Ford, Francois Ortalo-Magne and Philip Van de Kamp, Freer Trade, Protected Environment: Balancing Trade Liberalization and Environmental Interest, (New York, Council on Foreign Relations Press, 1994).

Runnalls, D., and A. Cosbey, Trade and Sustainable Development: A Survey of the Issues and a New Research Agenda, (Winnipeg: IISD, 1993).

Sampson, Gary P. and W. Bradnee Chambers, Trade, Environment and the Millenium, (Tokyo, New York, Paris: United Nations University Press, 1999).

Sjosdest, Gunnar, ed., International Environmental Negotiations, (London, Sage Publications, 1993).

Srinivasan, T.N., Developing Countries and the Multilateral Trading System: From the GATT to the Uruguay Round and the Future, (Oxford, OUP, 1998).

Susskind, L., Environmental Diplomacy: Negotiating More Effective Global Agreements, New York, OUP, 1994).

Trade and Sustainable Development: Principles, (Manitoba, Canada, IISD, 1994).

Trade and Sustainable Development: Survey of the issues and a New Research Agenda, (Manitoba, Canada, IISD, 1992).

Uimonen, P. and J. Whalley, Environmental Issues in New World Trading System, (London, Macmillan Press Ltd., 1997).

World Commission on Environment and Development, "Our Common Future", (Delhi, Oxford University Press, 1987).

WTO and Sustainable Development: An Independent Assessment, (Manitoba, Canada, IISD, 1996).

Zaelka, D., P. Orbuch, and R. Houseman, ed., Trade and the Environment: Law, Economics and Policy, (Washington DC, Island Press, 1993).

ARTICLES

Arden- Clarke, Charles, "International Trade, GATT and the Environment", A WWF International Position Paper, (Gland, Switzerland, May 1992).

Arden- Clarke, Charles, "South- North Terms of Trade, Environmental Protection and Sustainable Development", WWF International Discussion Paper (Gland, Switzerland, 1992).

Arden- Clarke, Charles, "The GATT Report on Trade and Environment: A Critique", WWF Discussion Paper, (Gland,Switzerland, March 1992).

Arden-Clarke, Charles, "The GATT, Environmental Protection and Sustainable Development", WWF International Briefing Paper, Revised November 1991

Barcelo III, John J., "Product Standards to Protect the Local Environment: The GATT and the Uruguay Round Sanitary and Phytosanitary Agreement", Cornell International Law Journal, Vol.27, Symposium 1994, Pp.755-776.

Bhagwati, Jagdish, " The case for Free Trade", Scientific American, Vol.269, No.3, November 1993, Pp.42-49.

Brack, Duncan, "Balancing Trade and Environment", International Affairs, Vol.71, No.3, July 1995, Pp.497-514.

Brown Weiss, Edith, "Environment and Trade as Partners in Sustainable Development", American Journal of International Law, Vol.86, October 1992, Pp.700-735.

Charnovitz, S., " The WTO and Environmental Supervision", International Environment Reporter, 26 January 1994.

Charnovitz, Steve, "Environmentalism confronts GATT Rules: Recent Developments and New Opportunities", Journal of World Trade, Vol.27, No.2, April 1993, Pp.37-54

Charnovitz, Steve, "Exploring the Environmental Exceptions in GATT Article XX", Journal of World Trade, Vol.25, No.5, October 1991, Pp.37-55.

Charnovitz, Steve, "Free Trade, Fair Trade, Green Trade, Defogging the Debate", Cornell International Law Journal, Vol.27, No.3, Symposium 1994, Pp. 459-525.

Charnovitz, Steve, "GATT and the Environment: Examing the Issue", International Environmental Affairs, Vol.4, No.3, Summer 1992.

Chaytor, Beatrice, "Dispute Settlement under the GATT/WTO- The Experience of Developing Nations", Consumer Unity and Trust Society Briefing Paper, No.4, 2000, Pp.1-6.

Chimni, B.S., " WTO Dispute Settlement System and Sustainable Development", WWF- India Discussion Paper, May 1999, Pp. 1-117

Copeland, Brian R. and Scott M. Taylor, "North South Trade and the Environment", Quarterly Journal of Economics, Vol.109, No.3, August 1994, Pp.755-788.

Daly, Herman E., "The Perils of Free Trade", Scientific American, Vol.269, No.3, November 1993, Pp. 50-57.

Durbin, Andrea C., " The North-South Divide", Environment, Vol.37, No.7, 199 , Pp 16-20 and 37 – 41.

Dwijen, Rangnekar, "TRIPs and Biodiversity", Consumer Unity and Trust Society Briefing Paper, No.4, 1999, Pp.1-6.

Eglin, Richard, "Trade and Environment in the World Trade Organization", World Economy, Vol.18, No.6, November 1995, Pp.769-779.

Esty, D., "Gatting the Greens: Not just Greening the GATT", Foreign Affairs, Vol.72, No.5, November-December 1993, Pp.32-36.

Evans, Phillip, "Greening Consumer Choice? Environmental labeling and the consumer", Consumer Unity and Trust Society Briefing Paper, No.4, September1995,

Fredriksson, P.G., "New Evidence and Issues", in Trade, Global Policy and the Environment, World Bank Discussion Paper, No.402, 1999, Pp.1-12.

French, Hilary F., "Reconciling Trade and the Environment", in Lester R. Brown, State of the World 1993, (New York, London, W.W. Norton and Company, 1993).

Halle, Mark, "Seattle and Sustainable Development", Bridges Weekly Trade News Digest, Published by ICTSD and IATP), Year 4, No.1, January-February 2000, Pp.13-14.

Hudson, Stuart, "Trade, Environment and the Pursuit of Sustainable Development", in Patrick Low, ed., International Trade and

Environment, World Bank Discussion Paper, No.159, (The World Bank, Washington D.C., 1992), Pp.55-66.

Jha, Veena, "Trade and Environment- An Agenda for developing Countries", Consumer Unity and Trust Society Briefing Paper, No.2, 1999, Pp.1-6.

Liebig, Klaus, "The WTO and the Trade Environment Conflict: The (New) Political Economy of the World Trading system", Inter Economics, Vol.34, No.2, March/April 1999, Pp.83-90.

Mabey, Nick and Charles Arden-Clarke, "Is there really a North-South split on Trade and Environment?" WWF International Discussion Paper, November 1999, Pp.1-8.

Palmeter, David, "Environment and Trade: Who will be heard? What law is relevant?" Journal of World Trade, Vol.26, No.2, April 1992, Pp.35-42

Parks, David M., "GATT and the Environment: Reconciling Liberal Trade Policies with Environmental Protection", UCLA Journal of Environmental Law and Policy, Vol.15, No.2, 1996-97, Pp.151-184.

Patterson, Eliza, "GATT and the Environment: Rules Changes to Minimize Adverse Trade And Environmental Effects", Journal of World Trade, Vol.26, No.3, June 1992, Pp.99-110

Pearson, Charles, "Trade and Environment: Theory, Empirical Studies and Their Limitations", Paper presented at the Asia Conference on Trade and Environment in Singapore, 27-28 June 1996.

Rege, Vinod, "GATT Law and Environment-Related Issues Affecting the Trade of Developing Countries", Journal of World Trade Law, Vol.28, 1995, Pp. 96-166

Reiterer, Michael, "GATT, the WTO and the Environment: The Agenda of the CTE, in particular MEAs, Eco-labeling and Trade Liberalization", Paper presented at the Asia Conference on Trade and Environment in Singapore, 27-28 June 1996.

Reiterer, Michael, "Trade and Environment: Refletions on the Impact of the OECD Joint Session", International Environmental Affairs, Vol.9, No.1, winter 1997, Pp.69-81.

Rosenberg, Robin L., "Trade and the Environment: Economic development versus sustainable development", Journal of Interamerican Studies and World Affairs, Vol.36, No.3, fall 1994, Pp.129-156.

Saunders, J. Owen, "Trade and Environment: The Fine Line between Environmental Protection and Environmental Protectionism", International Journal, Vol.47, No.4, autumn 1992, Pp.723-750.

Schoenbaum, T.J., "International Trade and Protection of the Environment: The Continuing Search for Reconciliation", American Journal of International Law, Vol.91, No.2, April 1997, Pp.268-313

Schultz, Jennifer, "The GATT/WTO Committee on Trade and the Environment: Toward environmental reform", American Journal of International Law, Vol.89, No.2, April 1995, Pp.423-439.

Shahin, Magda, "Trade and Environment: Seattle and Beyond", Consumer Unity and Trust Society Briefing Paper, No.2, 2000, Pp.1-6.

Shaw, Nevin and Aaron Cosbey, "GATT, the WTO and Sustainable Development: Positioning the Work Program on Trade and Environment", International Environmental Affairs, Vol.6, No.2, summer 1994, Pp.245-272.

Shrybman, Stevan, "International Trade and the Environment: An Environmental Assessment of the GATT ", The Ecologist, Vol.20, No.1, 1990, Pp.30-34

Snape, William, J. III and Naomi B. Lefkovitz, "Searching for GATT's Environmental Miranda: Are 'Process Standards' Getting 'Due Process'?" Cornell International Law Journal, Vol.27, No.3, Symposium 1994, Pp.777-815

Sorsa, Piritta, " GATT and Environment: Basic Issues and Some Developing Country Concerns" in Patrick Low, ed., International Trade and Environment, World Bank Discussion Paper,No.159, (Washington D.C., The World Bank, 1992), Pp. 325-340.

Steinberg, Richard H., "Trade Environment Negotiations in the EU, NAFTA, and the WTO: Regional Trajectories of Rule Development", American Journal of International Law, Vol.91, No.2, April 1997, Pp.231-267.

UNCTAD- "Trends in the field of trade and environment in the framework of international cooperation", Foreign Trade Review, Vol.28, No.2-3, July- December 1993, Pp.202-235.

Van Bergeijk, A.V., "International Trade and the Environmental Challenge", Journal of World Trade, Vol.25, No.6, December 1991, Pp.105-116

Vaughan, Scott, "Trade and Environment: Some North-South considerations", in Cornell International Law Journal, Vol.27, No.1, winter 1994, Pp. 591-606.

Ward, Halina "Common but Differentiated Debates: Environment, Labour and WTO", International and Comparative Law Quarterly, Vol.45, No.3, July 1996, Pp.592-632.

NEWSPAPERS

- The Hindu
- The Times of India
- The Pioneer
- The Economic Times
- The Indian Express

INTERNET SOURCES

- www.ciesin.org
- www.riia.org
- www.unep.org
- www.iucn.org
- www.panda.org
- www.oecd.org
- www.wri.org

APPENDIX

Box 1. Selected environmental trends

— Global energy use has increased nearly 70 percent since 1971, and is projected to increase at more than 2 per cent annually over the next 15 years. This will raise greenhouse gas emissions by 50 per cent over current levels unless a concerted effort is made to increase energy efficiency and move away from today's heavily reliance on fossil fuel.

— The consumption of ozone-depleting substances have gone down by 70 per cent since the signing of the Montreal protocol in 1987. Yet, it will still take another 50 years before the ozone layer has returned to normal levels provided that all countries live up to their commitments. A significant black market and trade in CFCs and other ozone-depletion substances is endangering some of the progress already made.

— While acid rain is on the decline in many developed countries due to more stringent regulations on sulphur dioxide and nitrogen oxide emissions, the trend is on the rise in many developing countries. In Asia, sulphur dioxide emissions will double by 2020 if current trends continue.

— In the past 50 years, excess nitrogen—principally from fertilizers, human sewage, and the burning of fossil fuel—has begun to overwhelm the global nitrogen cycle, with a variety of ill effects ranging from reduced soil fertility and overfeeding of lakes, rivers and costal waters. At the current trend, the amount of biologically available nitrogen will double in 25 years.

— Deforestation shows no sign of abating. Between 1960 and 1990, some 20 per cent of all tropical forests in the world were cleared. In the Amazons alone, some 20'000 square kilometres are cleared every year. A leading cause of deforestation in developing countries is extension of subsistence farming and government-backed conversion of forests to large scale ranching and plantations. At the same time, the forest cover in developed countries is stable or even increasing slightly. However, natural forests (that have never been logged) still lack adequate protection in many places.

— Bio-diversity is threatened in many places, not just because of a reduction in the habitats as forests are cleared but also because of pollution. Another reason is the competition from non-native plants introduced by humans. Some statistics suggest that 20 per cent of all endangered species are threatened by so-called "exotic invaders".

— The aquatic environment and its productivity are on the decline. Some 58 per cent of the world's coral reefs and 34 per cent of all fish species are currently at risk from human activities. Most oceans are already overfished with declining yields.

— Global water consumption is rising quickly, and the availability of water is likely to become one of the most pressing issues of the 21st century. One third of the world's population lives in countries already experiencing moderate to high water shortages, and that number could (at given population forecasts) rise to two thirds in the next 30 years without serious water conservation measures.

Source: World Resources 1998-99: A Guide to the Global Environment. A collaborative report by the World Resource Institute, the United Nations Environmental Program, the United Nations Development Program, and the World Bank (1998).

APPENDIX I

Article I

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, * any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:

(*a*) Preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;

(*b*) Preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C and D, subject to the conditions set forth therein;

(*c*) Preferences in force exclusively between the United States of America and the Republic of Cuba;

(*d*) Preferences in force exclusively between neighbouring countries listed in Annexes E and F.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, 1923, provided such preferences are approved under paragraph 5 † of Article XXV, which shall be applied in this respect in the light of paragraph 1 of Article XXIX.

† The authentic text erroneously reads "sub-paragraph 5 (*a*)".

4. The margin of preference * on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:

(*a*) in respect of duties or charges on any product described in such Schedule, the difference between the most-favoured-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this paragraph be taken to be that in force on April 10, 1947, and, if no most-favoured-nation rate is provided for, the margin shall not exceed the difference between the most-favoured-nation and preferential rates existing on April 10, 1947;

(*b*) in respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in sub-paragraphs (*a*) and (*b*) of this paragraph shall be replaced by the respective dates set forth in that Annex.

Article II

Schedules of Concessions

1. (*a*) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

(*b*) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

(*c*) The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory,

Article III *

National Treatment on Internal Taxation and Regulation

/1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.*

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.*

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.*

6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947, or March 24, 1948, at the option of that contracting party; *Provided* that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.

7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

8. (*a*) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

(*b*) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV.

Article X

Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

3. (*a*) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(*b*) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; *Provided* that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(*c*) The provisions of sub-paragraph (*b*) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.

Article XI *

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

2. The provisions of paragraph 1 of this Article shall not extend to the following:

(*a*) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;

(*b*) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

(*c*) Import restrictions on any agricultural or fisheries product, imported in any form,* necessary to the enforcement of governmental measures which operate:

(i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

(ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available

to certain groups of domestic consumers free of charge or at prices below the current market level; or

(iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to sub-paragraph (*c*) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors* which may have affected or may be affecting the trade in the product concerned.

Article XII *

Restrictions to Safeguard the Balance of Payments

1. Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.

2. (*a*) Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary:

(i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or

(ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of such contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

(*b*) Contracting parties applying restrictions under sub-paragraph (*a*) of this paragraph shall progressively relax them as such conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that sub-paragraph.

3. (*a*) Contracting parties undertake, in carrying out their domestic policies, to pay due regard to the need for maintaining or restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of avoiding an uneconomic employment of productive resources. They recognize that, in order to achieve these ends, it is desirable so far as possible to adopt measures which expand rather than contract international trade.

(*b*) Contracting parties applying restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential.

(*c*) Contracting parties applying restrictions under this Article undertake:

(i) to avoid unnecessary damage to the commercial or economic interests of any other contracting party;*

(ii) not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and

(iii) not to apply restrictions which would prevent the importation of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures.

(*d*) The contracting parties recognize that, as a result of domestic policies directed towards the achievement and maintenance of full and productive employment or towards the development of economic resources, a contracting party may experience a high level of demand for imports involving a threat to its monetary reserves of the sort referred to in paragraph 2 (*a*) of this Article. Accordingly, a contracting party otherwise complying with the provisions of this Article shall not be required to withdraw or modify restrictions on the ground that a change in those policies would render unnecessary restrictions which it is applying under this Article.

4. (*a*) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Article shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING

and shall, in making their decision, be guided by the considerations set out in paragraph 16. If the CONTRACTING PARTIES concur * in the proposed measure the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the provisions of paragraph 18 shall apply.*

23. Any measure applied under this Section shall comply with the provisions of paragraph 20 of this Article.

Article XIX

Emergency Action on Imports of Particular Products

1. (*a*) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(*b*) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (*a*) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (*a*) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (*b*) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(*b*) Notwithstanding the provisions of sub-paragraph (*a*) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

Article XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(*a*) necessary to protect public morals;

(*b*) necessary to protect human, animal or plant life or health;

(*c*) relating to the importation or exportation of gold or silver;

(*d*) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including

those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

(*e*) relating to the products of prison labour;

(*f*) imposed for the protection of national treasures of artistic, historic or archaeological value;

(*g*) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(*h*) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;*

(*i*) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

(*j*) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

Article XXI

Security Exceptions

Nothing in this Agreement shall be construed

(*a*) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(*b*) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(*c*) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article XXII

Consultation

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

Article XXIII

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of

(*a*) the failure of another contracting party to carry out its obligations under this Agreement, or

(*b*) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or

(*c*) the existence of any other situation,

APPENDIX III

Decision on Trade and Environment

(adopted 15 December 1993)

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 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 recommendations 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 regards, 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 recommendations on an institutional structure for its execution, for adoption as soon as possible and no later than at the Ministerial Conference of April 1994.

APPENDIX IV

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 foı 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 tr ding 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 Agreement.

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 carry out the functions of the WTO and take actions necessary to this effect. 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 Member, 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 a 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. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils 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 Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions 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 Agreements 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 their 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 regulations 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 functions.

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.

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

7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 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 Member 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. Decisions 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 institutional 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 Agreements 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-thirds majority of the Members of the WTO.

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

Article 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 matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member 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 States[2] 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 Agreement or in the relevant Multilateral Trade Agreement.[3]

2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations 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 fourths[4] 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 fourths[4] 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 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.

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[1] The body concerned shall be deemed to have decided by consensus 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 2 of the Dispute Settlement Understanding.

[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.

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. Unless the provisions of paragraphs 2, 5 or 6 apply, that decision shall specify whether the provisions of paragraphs 3 or 4 shall apply. If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members for acceptance. If consensus is not reached at a 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;
Articles 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 of the Members that any amendment made effective under this paragraph is of such a nature that 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 Member 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 obligations of the Members, shall take effect for all Members upon acceptance by two thirds of the 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 Member 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 that 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 Member 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.

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 contracting parties at the time of entry into force for them of this Agreement.

3. Paragraph 1 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 Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement 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 a 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 provisions of that Agreement. Such Agreements shall be deposited with the Director-General to 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 Agreements and shall take effect upon the expiration of six months from the date on which written 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 or 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 laws, 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. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

6. This Agreement shall be registered in accordance with the provisions 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.

Explanatory Notes:

The terms "country" or "countries" as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO.

In the case of a separate customs territory Member of the WTO, where an expression in this Agreement and the Multilateral Trade Agreements is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.

APPENDIX V

MARRAKESH Decision on Trade and Environment (15 APRIL 1994)

Ministers, meeting on the occasion of signing the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations at Marrakesh on 15 April 1994,

Recalling the preamble of the Agreement establishing the World Trade Organization (WTO), which 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,"

Noting:

- 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, the Committee on Trade and Development, and the Council of Representatives;
- the work programme envisaged in the Decision on Trade in Services and the Environment; and
- the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights,

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an 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 environmental policies which may result in significant trade effects for its members,

Decide:

- 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 reference of the Committee will be reviewed, in the light of recommendations of the Committee,
- that the TNC Decision of 15 December 1993 which reads, in part, as follows:

"(a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;

(b) to make appropriate recommendations 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 regards, 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 responsiveness of

the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12; and

- surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade affects, and of effective implementation of the multilateral disciplines governing those measures;*

constitutes, along with the preambular language above, the terms of reference of the Committee on Trade and Environment,

- that, within these terms of reference, and with the aim of making international trade and environmental policies mutually supportive, the Committee will initially address the following matters, in relation to which any relevant issue may be raised:

1. the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;
2. the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;
3. the relationship between the provisions of the multilateral trading system and:
   (a) charges and taxes for environmental purposes
   (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;
4. the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects;
5. the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;
6. the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions;
7. the issue of exports of domestically prohibited goods,

- that the Committee on Trade and Environment will consider the work programme envisaged in the Decision on Trade in Services and the Environment and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights as an integral part of its work, within the above terms of reference,

- that, pending the first meeting of the General Council of the WTO, the work of the Committee on Trade and Environment should be carried out by a Sub-Committee of the Preparatory Committee of the World Trade Organization (PCWTO), open to all members of the PCWTO,

- to invite the Sub-Committee of the Preparatory Committee, and the Committee on Trade and Environment when it is established, to provide input to the relevant bodies in respect of appropriate arrangements for relations with inter-governmental and non-governmental organizations referred to in Article V of the WTO.

APPENDIX VI

CHOROLOGY OF EVENTS IN THE TRADE AND ENVIRONMENT DEBATE

January, 1948	ARTICLE XX(b)and (g) , "Environmental Exceptions", to protect human, animal and plant life or health, and the conservation of exhaustible natural resources.
1971	GATT Secretariat prepared a study entitled "Industrial Pollution Control and International Trade" for the United Nations Conference on Human Environment (1972)
June 1971	Seminar held at Founex, Switzerland.
November ,1971	Establishment of the Group on Environmental Measures and International Trade (EMIT).
1972	United Nations Conference on the Human Environment, Stockholm
May 1972	The Guiding Principle Concerning the International Economic Aspects of Environmental Policies, was adopted by the OECD Council.
1979	Tokyo Round –Standards Code, TBT Agreement.
1982	Issues of DPGs included in the GATT's work-programmme.
1987	World Commission on Environment and Development came out with the Report entitled "Our Common Future".
1988	Canada – Measures Affecting Exports of unprocessed Herring and Salmon.
July 1989	Working Group on the export of DPGs and other Hazardous substances, was established within the GATT.
September, 1989 to June 1991	The Working Group on DPGs held it's meeting.
1990	Thailand-Restriction on Importation of and Internal Taxes on Cigarettes.
December , 1990	The European Free Trade Association (EFTA) Circulated a proposal at the Uruguay Round Ministerial meeting in Brussels for a statement on Trade and Environment to be made by ministers.
February ,1991	EFTA requested the Director General Arthur Dunkel, to convene the Group on EMIT and also asked GATT to make a contribution to the forthcoming UNCED .
1991	US- Restrictions on Importation of Tuna (Tuna-dolphin case I).

April ,1991	Ambassador Ricupero reported that a consensus had emerged to hold a "structured- debate" on the subject of trade and environment
29th -30th May , 1991	The structured debate took place during the council meeting. ASEAN countries requested the GATT secretariat to prepare a factual paper on trade and environment.
18th September ,1991	GATT secretariat circulated a factual note on Trade and Environment.
October ,1991	The 1971 Group on EMIT was convened with Ambassador H.Ukawa as it's Chairman .The Group was asked to examine three items: trade provisions contained in MEAs, multilateral transparency of national environmental regulations with trade effects and trade effects of new packaging and labeling requirements .
November 1991 to January 1994	The EMIT Group examined and analyzed the issues but no prescriptions were given
June, 1992	United Nations Conference on Environmental Development Rio, de Janeiro (Rio Declaration and Agenda 21)
14th July ,1992	At the council meeting the Director General suggested that contracting parties should consider how to proceed a recommendation contained in Agenda 21, specially those relevant to the work of the GATT in the field of trade and environment
1992	GATT Report on Trade and Environment
December ,1992	In the 48th session of the contracting parties, the Chairman of the Council Ambassador B.K. Zutshi (India) asked the CTD and the group on EMIT to focus on the relevant sections of Agenda 21 and to report to the Council
15th December , 1993	Trade Negotiation Committee (TNC) adopted a Decision on Trade and Environment. The TNC agreed to present and a work program at the ministerial conference of 1994.
1994	U.S import restrictions on Tuna (Tuna- Dolphin case II)
February ,1994	49th session of the contracting partners was held where a report was submitted by Ambassador 4 Ukawa (Japan), Chairman of the group on EMIT.
14th April , 1994	Trade Ministers adopted the Decision on Trade and Environment. The Marrakesh decision lists ten items encompassing all areas of the multilateral trade system, including goods, services and intellectual property.

15th April ,1994	Adoption of the Uruguay Round Final Act in Marrakesh. Environment – related provision in WTO Agreements include – Preamble. Agreement on Subsidies and Countervailing Measures, Agreement on Agriculture, Sanitary and Phytosanitary Measures, TRIPS and GATS
1994	Subcommittee on Trade and Environment worked on some of the issues till the Committee on Trade and Environment was established (item 1, 3 and 6) .Chairman was Ambassador L.F Lampreia, Brazil
1994-1999	Every year, the WTO organised a Symposium on Trade, Environment and Sustainable Development.
May –November , 1994	SCTE held five meetings.
31st January ,1995	CTE is established by the General Council of WTO.
16th February ,1995	CTE held it's first meeting and decided, each meeting would focus on a particular issue.
1995	CTE held 6 formal meetings under the Chairmanship J.C. Sanchez Arnau of Argentina.
26 –27th October ,1995	CTE's stocking exercise in which specific issues on the items of the work programs were identified.
1996	CTE held 8 formal meetings.
18th July 1996	Decision on "Guidelines for Arrangements on Relations with NGOs" and Decision on "Procedures for the Circulation and Derestriction of WTO Documents", was adopted by the General Council.
1996	U.S Standards for Reformulated and Conventional Gasoline.
28-29th May ,1996	At the CTE'S stocking exercise, the schedule of meetings till Singapore Conference and the format of the Report to be presented, were identified.
8th November 1996	CTE adopted its first Report to be presented to the WTO Ministerial meeting to be held in Singapore in December.
1997	3 meetings were held in this year under the Chairmanship of Ambassador Bjorn Ekblon (Finland) .
20-21st May , 1997	A symposium with NGO's was organized by the Secretariat under the Chairmanship of Ambassador Chak Mun See of Singapore.
25th November , 1997	CTE adopts its second report.
1998	U.S – Imports Prohibition of certain Shrimp and Shrimp Products.

1998	EC Measures Concerning Meat and Meat Products.
1998	Australia – Measures Affecting Importation of Salmon.
1998	The CTE held 3 meetings. 7 regional seminar on trade and environment for developing countries and economies in transition were organized by the secretariat of the WTO to raise awareness of the linkages between trade, environment and sustainable development.
17-18th March 1998	Symposium on trade, environment and sustainable development with NGOs was organized by the WTO's secretariat. 50 NGOs participated.
27th October ,1998	The WTO/CTE adopted the Report on it's work in 1998 .
1999	Held 3 meetings under the Chairmanship of Ambassador Istvain Mayor of Hungary.
1999	Japan –Measures Affecting Agricultural Products.
15- 16th March , 1999	A high level symposium on trade and environment.
October, 1999	"Olive Branch" Report of the WTO.
4th November ,1999	Adopted its annual report of 1999.
2000	CTE has held two meeting this year.