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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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TRADE AND ENVIRONMENT: SUSTAINABLE DEVELOPMENT AS PRINCIPLE OF INTERNATIONAL LAW

Authored by- Aishwarya Singh

Abstract

The free trade policy is designed to allow markets to utilize resources for their efficient use, while environmental policy seeks to manage and conserve the earth's resources efficiently. Conflicts can also arise when similar resources are subjected to shared marketing efforts as well as natural management and management efforts. Global environmental problems require global solutions on a multi-national basis. Therefore, any national effort to address these issues without a network of international institutional support tools and principles may not work. The UN is the only international organization with a global membership and is global in scope. It can better assist governments in their environmental protection programs due to its multi-sectoral capabilities and comprehensive knowledge that includes all stakeholders in the trade and environmental system. In the context of the WTO, the solution can take the kind of harmonization required by environmental standards in all countries, which can be encouraged or strengthened by allowing high-quality countries to use anti-dumping activities abroad whose lower costs are partly due to the weak environmental protection.

Keywords: Trade, environmental protection, sustainable development, United Nations, Global membership

Introduction

What are the initiatives made by the World Trade Organisation to safeguard the environment? What are its objectives and the role it plays? There are a number of environmental groups and green-learning governments whose aim is to balance the bean of trade and the environment. These groups came to view and coordinate with WTO to achieve the respective required objectives within a rule-based international regime. The proponents of expanded global trade are the policymakers in developing countries, who are doubtful about the expanded role of maintaining environmental standards in WTO.¹ The inter-relationship between trade and the environment can be recognised in the preambular language under the World Trade Organisation Agreement.² It follows:

“[The WTO Members'] relations in the field of trade and economic endeavor should be conducted with a view to ... 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.”

This broad objective provided in the Preamble of the WTO Agreement reflects substantial development that incorporates environmental aspects in the newly institutionalized international economic organization. This could not have been predicted even in the Draft Final Act that embodies the results of the Uruguay Round of Multilateral Trade Negotiations.

Statement Of Problem

The sectoral and fragmented development of institutions to address these global problems could not keep pace with economic and environmental growth. The problems in the trading interface with the environment; impossible and unintended have done extensive research on all relevant issues as part of this interface. There is an inconsistency between the problems that arise from connection the nature of the global ecosystem, and its solutions, which are required by the framework of a geopolitical system based on an independent State.

¹ Chad P. Bown and Rachel McCulloch, Environmental Issues in the World Trade Organization, (2007), (April27, 2022, 11:10 AM), https://people.brandeis.edu/~cbown/papers/bown_mcculloch_kluwer.pdf.

²DukgeunAhn, Environmental Disputes in the GATT/WTO: Before and After US-Shrimp Case, 20 MICH. J. INT'L L. 819 (1999), (April27, 2022, 12:07 PM), <https://repository.law.umich.edu/mjil/vol20/iss4/5>.

Research Questions

1. Whether there is a fundamental conflict between trade liberty and, concern for global environment?
2. What changes in laws and policies, from the GATT to the WTO, regarding trade and the environment?
3. How these changes will affect procedures, laws and decision-making processes within the WTO?
4. What are the factors contributing to these changes - trade, sustainable development, and environmental concerns?

Objectives Of The Research

1. To enhance the capacity and capabilities of the member countries that implement trade policies to promote trade and environmental sustainability along with human well-being
2. To strengthen the sustainability across and cross-border trade. To focus on investment agreements in bilateral and multilateral trade negotiations.
3. To promote trade and environment consistent with the trade and environmental policies with relevant principles and concepts in order to make policies mutually supportive of sustainable development.
4. To assist and direct countries about trade opportunities that arise from the transition to greener economies.
5. To encourage trade practice and maximize national income, with estimating the cost of recovering environmental damage or benefit of environmental cleanup.
6. To make member states realize the shift in trade practices to trend sustainable development patterns.

Scope Of The Research

This research work is a virtual trade-environment interface. covers the broad fabric and covers a multitude of problems. Considering the size of the work being done, it would be good to initially describe the scope of this study. The research focuses on law problems in the trading interface with the environment; impossible and unintended have done extensive research on all relevant issues as part of this visual.

This study analyzes the official international and environmental trade focusing on areas of collaboration, that is, part of the environment international trade regime and trading provisions contained in Multilateral Environmental Conventions (MEAs). Criminal law finds an important place in this study and trade disputes related to the environment are considered in detail. Analysis of development in an environmentally friendly environment at the regional level provides a is the background of comparison.

This research work has tried to appropriate the role of WTO in environment protection at the global level. This work analyses the role that WTO has played vis-à-vis the protection of the environment & to study the disputes WTO has handled between many countries when it comes to the environment. It reflects substantial development that incorporates environmental aspects in the newly institutionalized international economic organization.

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Methodology

The methodology opted for research were-

1. Qualitative
2. Case Study
3. Analytical research
4. Fundamental research

Literature Review

1. **Environmental Issues in the World Trade Organization by Chad P. Bown and Rachel McCulloch, (February 2003)**

This paper sets the linkage between a different trade agreement and the environment. It addresses the environmental impacts of increased trade practices. It focuses on the fair interaction between income levels and endogenous national environmental standards. The crucial issue that has been raised is related to the ability of WTO rules to curtail the ability of signatories to apply the required environmental safeguards at the national level. This paper revolves around trade and environment examining the role of the GATT and WTO with economic analysis and empirical findings on the trade environment nexus.

This paper constructs the single policy objective to maximize national welfare. It also includes the environmental issues relating to the silent political considerations under income distribution seen as tangentially related to trade.

2. **Trade and the Environment: Fundamental Issues in International Law by Ludivine Tamiotti, WTO Law and Legal Theory By Erich Vranes Oxford: Oxford University Press, 2009, 9 World Trade Review 285–288 (2010).**

This paper discusses whether the measure can be adapted under the World Trade Organisation for protecting the environment under trade-related aspects subject to carefully crafted conditions. It also provides briefing over three trade and environment cases brought under WTO dispute settlement mechanism- The US-Gasoline, US-Shrimp, and Brazil-Retreaded Tyres cases. These three cases assured the WTO members' ability to adapt trade-environment measures that address several legal interconnections between trade and the environment. There are several trades and environmental legal issues being clarified in this literature, and specifically dealing with the consequences of the extraterritorial domestic environmental measures. Finally, I will also cover the three-dimensional analytical framework of two major environmental issues- ozone and climate protection.

3. **Environment and Trade as Partners in Sustainable Development: A Commentary by Edith Brown Weiss, 86 American Journal of International Law 728–735 (1992).**

This paper is of the opinion that “*Trade is not an end in itself; rather, it is a means to an end.*” There needs to be an end to environmentally sustainable economic development. There are legitimate restrictions and limitations on trading patterns and practices that ensure “instrument of trade” guides environmental sustainable development. This paper also takes

care of the measures required to protect the environment that shouldn't adversely affect free trading relations.

4. **Trade, Environment, and Sustainable Development: A Primer by Robert Housman & Durwood Zaelke, 15 Hastings INT'L & COMP. L. REV. 535 (1992).**

This paper focuses on free trade policy and environmental policies. Free trade policy is structured to allow the market and its members to allot resources to their most systematic and planned use. Whereas, the environmental policy focuses and aims to maintain and manage the earth's resources efficiently.

This paper critically discusses the conflict that arises where similar resources are a matter of concern for both trades efforts to allocate and environmental efforts to maintain. Therefore, there is a requirement of two separate trade and environment policies to limit the conflict between them. Adding some philosophical and jurisprudential twist, it relates to trade and environment communities with their professional cultures. With economic principles as efficiency and comparative advantages, guide trade environmental experts, who are informed more with biological science and ecological principles.

5. **An Introduction to Sustainable Development by Elliott, J. (4th ed.). Routledge (2012).**

This paper adds emphasis on the global challenges of sustainable development. Sustainable development with the inter-linked crisis in different environmental issues- climate, energy, economy, poverty, and social injustice. This paper helps me to interlink crises with a deep questioning of what sustainable development actually is? What does it actually justify and how sustainable development and policies can be recognized? The paper provides a substantially expanded discussion of how poverty and social lacuna lead to central sustainable development challenges as provided through the Millennium Ecosystem Assessment and Millennium Development Goals.

6. **Environmental Principles and Concepts, Organisation for Economic Co-operation and Development (Paris 1995)**

This paper discusses trade - environmental principles and related concepts. Its main objective of the discussion is to promote the consistency of the trade-environment principles and concepts with the aim to make those policies and principles mutually supportive of sustainable development.

7. **The United Nations' Approach to Trade, the Environment and Sustainable Development by Shawkat Alam, 12 ILSA J. INT'L & COMP. L. 607 (2006).**

This paper discusses the complex and transboundary environmental issues that have turned into global issues. The issues linking ecology, economics, and politics address the sectoral and fragmented development of institutions. The issues arise out of the increasing interdependence of the economy and ecology. Discusses the global environmental issues that require global solutions.

The paper discusses the United Nations and its exceptionally well-positioned address issues. The UN helps the government with its environmental protection initiatives. This paper provides a summary of emerging environmental concerns in the UN, and the manner in which the UN members link their environmental concerns with international trade issues. Further, it outlines the role and function of UN organizations explicitly mentioned with respect to trade and environmental issues known to be the UN Conference on the Human Environment.

General Agreement On Tariffs And Trade

The *Tuna-Dolphin case*³ was between Mexico and the United States. This case began in 1991, when the Mexican fishing fleets were in the process of killing an excessive amount of dolphins. The United States imposed trade restrictions on Mexico over import of tuna. Mexico filed the complaint with the General Agreement on Tariffs and Trade against the restriction imposed from the Marine Mammal Protection Act of 1972. The issue arose because of the unwanted death of dolphins. The school of yellow-fin tuna swims under the school of dolphins, and at the time of fishing many dolphins are caught with purse-seine nets and die unless released.⁴ The GATT panel ruled against the United States with the reasoning that the prohibitions of imports of tuna from Mexico is irrational. Countries cannot ban or restrict importation of products because the process of another country is not compatible with the process preferred by the importing country.

The *U.S. Standards for Gasoline case* come to light when the United States applied stricter rules on gasoline chemical characterised imports than the domestically refined gasoline imports. The Venezuela filed complaint against the United States to the Dispute settlement Body for imposing rules discriminating against gasoline imports. The issue was in context of trade discrimination –

³Tuna/Dolphin I, reprinted in 30 ILM 1594 (1991); Tuna/Dolphin II, reprinted in 33 ILM 839 (1994).

⁴ Jonathan Wert, Tuna Dolphin Case, (April 29, 2022, 09:25 PM), <https://www.bartleby.com/essay/Tuna-Dolphin-Case-PJTADDEGFYBT>.

Whether the US measures adapted against gasoline import is discriminatory and favours domestic refineries. The central question was about discrimination — whether the US measure discriminated against imported gasoline and in favour of domestic refineries. Venezuela argued that the United States imposed unfair trade restriction and it violates the national treatment principle, which is not justified under exceptions to normal WTO rules for health and environmental conservation measures. The dispute panel favored and agreed with Venezuela and Brazil. The panel stated that the WTO rules were discriminatory against gasoline and it violates the trade rules.

The United States appealed. The United States appealed. The appeal was upheld. The panel suggested making certain changes, and the United States agreed with Venezuela that concluded with an amendment in trade rules.⁵

In the *Shrimp-Turtle case*, United States impose an import ban on shrimp harvest. The manner the shrimps were harvested, it could damage sea turtles. The import ban was challenged by India, Malaysia, Philippines, Pakistan, and Thailand before the panel established under World Trade Organisation. The countries argued that the US policy violates the General Agreement on Tariffs and Trade (GATT 1994).



Provisions Within Trade Agreements Relevant To Environmental Agreements And Concerns

The GATT looks after all trade among nations and provides the adequate legal framework. The samples are - the European Free Trade Association - regional, and United States-Canada Free Trade Agreement - bilateral trade agreements that co-exist with the GATT.

The GATT and following trading agreements seeks to provide a secure and predictable international trade environment with higher economic efficiency and efficient trade liberalisation,

The GATT preamble recognizes “*that... trade and economic endeavor should be conducted with a view to raising standards of living,... developing the full use of the resources of the world and expanding the production and exchange of goods*”⁶The trade activities for advancement of economic structure have both positive and negative consequences for the environment when examined and studied in the theme of sustainable development.

⁵Venezuela, Brazil versus US: gasoline, (April 29, 2022, 10:11 PM), https://www.wto.org/english/tratop_e/envir_e/edis07_e.htm#gasolinerule

⁶General Agreement on Tariffs and Trade, opened for signature Oct. 30, 1947, pmb., 61 Stat. at A 11.

Gatt

The GATT consists of three major parts:

- a. Part I: Articles I to III - comprises the most-favored-nation and tariff concession obligations;
- b. Part II: articles III to XXIII - comprises the GATT's substantive provisions and the exceptions to its obligations; and
- c. Part III: articles XXIX to XXXVIII - comprises procedural mechanisms for implementing the other obligations and provisions contained within the GATT.⁷

1. GATT's General Trade Principles And Their Environmental Implications

a. The Most-Favored-Nation-Principle

Article I: under this article, it provides that the most-favoured-nation principle (MFN) guarantees the contracting parties not to discriminate among imported products because of their national origin. The MFN mandates the contracting parties to extend any privilege or advantages immediately irrespective of the “like product” to other GATT contracting parties. This obligation applies to-

1. customs, duties, and charges related to imports and exports;
2. the methods of levying all such duties and charges;
3. rules, regulations, and procedures connected with importation and exportation; and
4. internal taxes, charges, laws, regulations, restrictions, and rules affecting the internal sale or offering for sale, purchase, transportation, warehousing or storage, distribution, or use of a product.⁸

2. The National Treatment Principle

Article III as used appears to prevent the country from using taxes, levies, or other import restrictions to protect the competitiveness of the domestic industry which incurs environmental costs within its product costs. Foreign competitors whose product costs do not reflect the environmental costs associated with the production of their products may receive a competitive

⁷John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* 40 (1989).

⁸GATT, *supra* note 7, art. 1, 61 Stat. at A12; see also Jeanne J. Grimmett, *Environmental Regulation and the GATT*, Aug. 1991, at 3-4 Cong. Res. Service, No. 91-285-A (1991).

advantage over domestic products.

As the GATT Secretariat has noted:

“Production and consumption activities in other countries can also be a source of domestic environmental concern. Pollution may be spilling over borders and harming either the regional environment (acid rain) or the global commons (ozone depletion). Or land development projects may be threatening the extinction of an animal or plant species, and uncontrolled fishing may be depleting fish stock in the high seas. It is not unreasonable that the government of a country concerned by such practices would seek to see them changed-and that it would find it difficult to accept that this would not be possible.... In principle it is not possible under GATT's rules to make access to one's own market dependent on the domestic environmental policies or practices of the exporting country.”⁹

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The Un Conference On The Human Environment

The UN Conference on the Human Environment created held in and it led to the creation of the first subsidiary body of the UN focusing on the protection of the environment.¹⁰ This was the United Nations Environment Program (hereinafter "UNEP").¹¹ Three main topics provided the basis for the Stockholm conference: the planning and management of human settlements; natural resources and aspects of development, which could be seen to include developing countries; and the identification and control of pollutants.¹² The most important instruments that emerged from the UNCHE are the various action plans, and the "Stockholm Declaration."¹³ Trade and environment issues emerged in that UNCHE in the context of competitiveness concerns associated with the trade and environment interactions.¹⁴

A. Right to Development

The Stockholm Declaration recognized that “developing countries should focus their efforts

⁹GATT Secretariat, Trade and the Environment, supra note I, at 8-10 (emphasis in the original).

¹⁰ Patricia Bimie, Environmental Protection and Development, 20 MELB. U. L. REv. 69-70, 81.

¹¹Id. at 70, 81.

¹² Id. at 81.

¹³ United Nations Conference on the Human Environment, Stockholm, Sweden, June 5-16, 1972, U.N. Doc A/CONF.48/14/Rev.I [hereinafter Stockholm Declaration].

¹⁴Charles S. Pearson, The Trade and Environment Nexus: What is New Since '72?, in TRADE AND THE ENVIRONMENT LAW, ECONOMICS, AND POLICY 23, 24 (DurwoodZaelke et al. eds., 1993).

on development that takes into account their priorities and the need to protect and develop the environment.” countries and their own, and the process of industrial development and technological development. In its objective, the Stockholm Declaration warned of the negative impact of any natural action on the development prospects of developing countries. It explicitly stated that “the natural policies of all provinces must develop and not adversely affect current or future development.” It also states that an agreement must be reached “to meet the possible national and international consequences for the implementation of natural measures.”

B. Finance and Technological Assistance

The Stockholm Declaration emphasized the need to provide financial and technical assistance to developing countries to address their own environmental problems. The situation of developing countries in this context was marked by:

“Environmental shortages, caused by underdeveloped conditions and natural disasters, cause serious problems and can best be solved by rapid development through the transfer of large sums of financial and technical assistance as an addition to the domestic effort of developing countries.”

A. Commodity Prices

Developing countries rely heavily on exports for their profits. As a result, further declining commodity prices could seriously undermine developing countries' ability to address sustainable development issues. Principle 10 of the Stockholm Declaration recognizes this issue, and states that commodity price stability “is important for environmental management. This is because, in order to develop sustainable development strategies,” economic factors, and environmental pressures must be taken into account.

B. The Special Situation of Developing Countries

The special situation and needs of developing countries in addition to international technical and financial assistance have been recognized in Principle 12 of the Stockholm Declaration which states that "resources should be made available taking into account any costs which may emanate from their [incorporation of] environmental safeguards into their development planning. However, trade-related environmental measures and environment-related trade measures do not seem to have emerged at that point in time.

C. Assessment of UNCHE

UNCHE was the first comprehensive effort to address environmental issues worldwide. Although this Declaration was not binding on all nations, it was unanimously adopted by

the 113 nations making up the UN General Assembly.¹⁵ In fact, the Stockholm Declaration "received widespread recognition and acceptance in the international community because of the fundamental nature of the stated values."¹⁶

Polluter Pays Principle

In the early 1970s, the polluter pays principle was adopted, when there was a requirement for stricter environmental regulations being introduced in OECD countries. The OECD governments were pushed to help and cover the cost of complying with new regulations for industries and also impose similar costs on imports. This similar cost on imports should be made through compensatory import levies. The government and member states had a widespread concern for both environmental subsidies and environmental tariffs that caused severe issues due to trading systems or patterns.

In 1972, the OECD Recommendation of the Council was released on guiding Principles for International Economic Aspects of Environmental Policies¹⁷ that includes recommendations as -

1. Not to subsidise the environmental costs of industry, excluding exceptional cases,
2. Not to use trade remedies or import duties to compensate for trading costs.

The EC Convention provides that the principle that "pollutants must pay" is one of the cornerstones of public policy on the environment. Also, Rule 16 of the Rio Declaration relating to the inclusion of environmental costs internally refers to the Polluter Payment Policy. The "Pollution Pollution Policy", which is a fundamental principle of economic policy rather than the rule of law, states that a polluter must bear the cost of taking steps to prevent pollution or compensate for the damage caused by pollution. As outlined in the 1972 OECD Guiding Principles on the International Economic Aspects of Environmental Policies, it reads: and the investment is the so-called 'Paymaster'. This policy means that the polluter must bear the costs of implementing the above-mentioned measures by government officials to ensure that the environment is in good condition. In other words, the cost of these measures must be reflected in use. Such measures should not be accompanied by funding that could cause serious disruption to international trade and investment between government and private companies to pay for domestic pollution or to protect their national property.

¹⁵ Principle 21 of the Stockholm Declaration affirmed an existing international legal obligation which reads as follows:

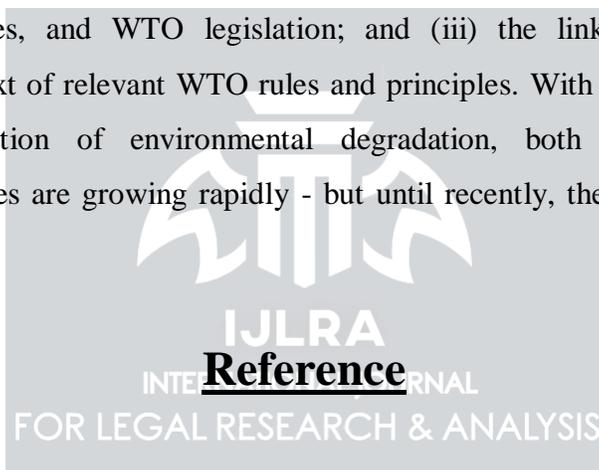
¹⁶ Tony Simpson and Vanessa Jackson, Human Rights and the Environment, ENV'T & PLAN. L.J. 268, 271 (1997).

¹⁷ OECD (1972), Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies [C(72)128].

Conclusion

Trading is not the end in itself; rather, it is a means to an end. The result is environmentally sustainable economic development. So, when considered, there are formal barriers to trading patterns and processes needed to ensure that the “trading tool” leads to the sustainable development of the environment. Measures needed to protect the environment cannot be sworn in because they could disrupt free trade relations.

This publication introduces a unique legal relationship between trade and the environment in terms of three related perspectives: (i) ‘horizontal’ relationships between WTO law and international civil law, including treaty law as contained in international environmental agreements; (ii) ‘direct’ communication between domestic measures that regulate environmental protection, including their effects in other countries, and WTO legislation; and (iii) the link between trade and the environment in the context of relevant WTO rules and principles. With the rapid growth of world trade and the acceleration of environmental degradation, both international trade, and environmental law empires are growing rapidly - but until recently, they have developed equally well tracks.



1. Chad P. Bown and Rachel McCulloch, Environmental Issues in the World Trade Organization, (2007), (April 27, 2022, 11:10 AM), https://people.brandeis.edu/~cbown/papers/bown_mcculloch_kluwer.pdf.
2. DukgeunAhn, Environmental Disputes in the GATT/WTO: Before and After US-Shrimp Case, 20 MICH. J. INT'L L. 819 (1999), (April 27, 2022, 12:07 PM), <https://repository.law.umich.edu/mjil/vol20/iss4/5>.
3. Tuna/Dolphin I, reprinted in 30 ILM 1594 (1991); Tuna/Dolphin II, reprinted in 33 ILM 839 (1994).
4. Jonathan Wert, Tuna Dolphin Case, (April 29, 2022; 09:25 PM), <https://www.bartleby.com/essay/Tuna-Dolphin-Case-PJTADEGFYBT>.
5. Venezuela, Brazil versus US: gasoline, (April 29, 2022, 10:11 PM), https://www.wto.org/english/tratop_e/envir_e/edis07_e.htm#gasolinerule

6. General Agreement on Tariffs and Trade, opened for signature Oct. 30, 1947, pmbl., 61 Stat. at A 11.
7. JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 40 (1989).
8. GATT, supra note 7, art. 1, 61 Stat. at A12; see also Jeanne J. Grimmett, Environmental Regulation and the GA7T, Aug. 1991, at 3-4 Cong. Res. Service, No. 91-285-A (1991).
9. GATT Secretariat, Trade and the Environment, supra note I, at 8-10 (emphasis in the original).
10. Patricia Bimie, Environmental Protection and Development, 20 MELB. U. L. REV. 69-70, 81.
11. Id. at 70, 81.
12. Id. at 81.
13. United Nations Conference on the Human Environment, Stockholm, Sweden, June 5-16, 1972, U.N. Doc A/CONF.48/14/Rev.I [hereinafter Stockholm Declaration].
14. Charles S. Pearson, The Trade and Environment Nexus: What is New Since '72?, in TRADE AND THE ENVIRONMENT LAW, ECONOMICS, AND POLICY 23, 24 (DurwoodZaelke et al. eds., 1993).
15. Principle 21 of the Stockholm Declaration affirmed an existing international legal obligation which reads as follows:
16. Tony Simpson and Vanessa Jackson, Human Rights and the Environment, ENV'T & PLAN. L.J. 268, 271 (1997).
17. OECD (1972), Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies [C(72)128].