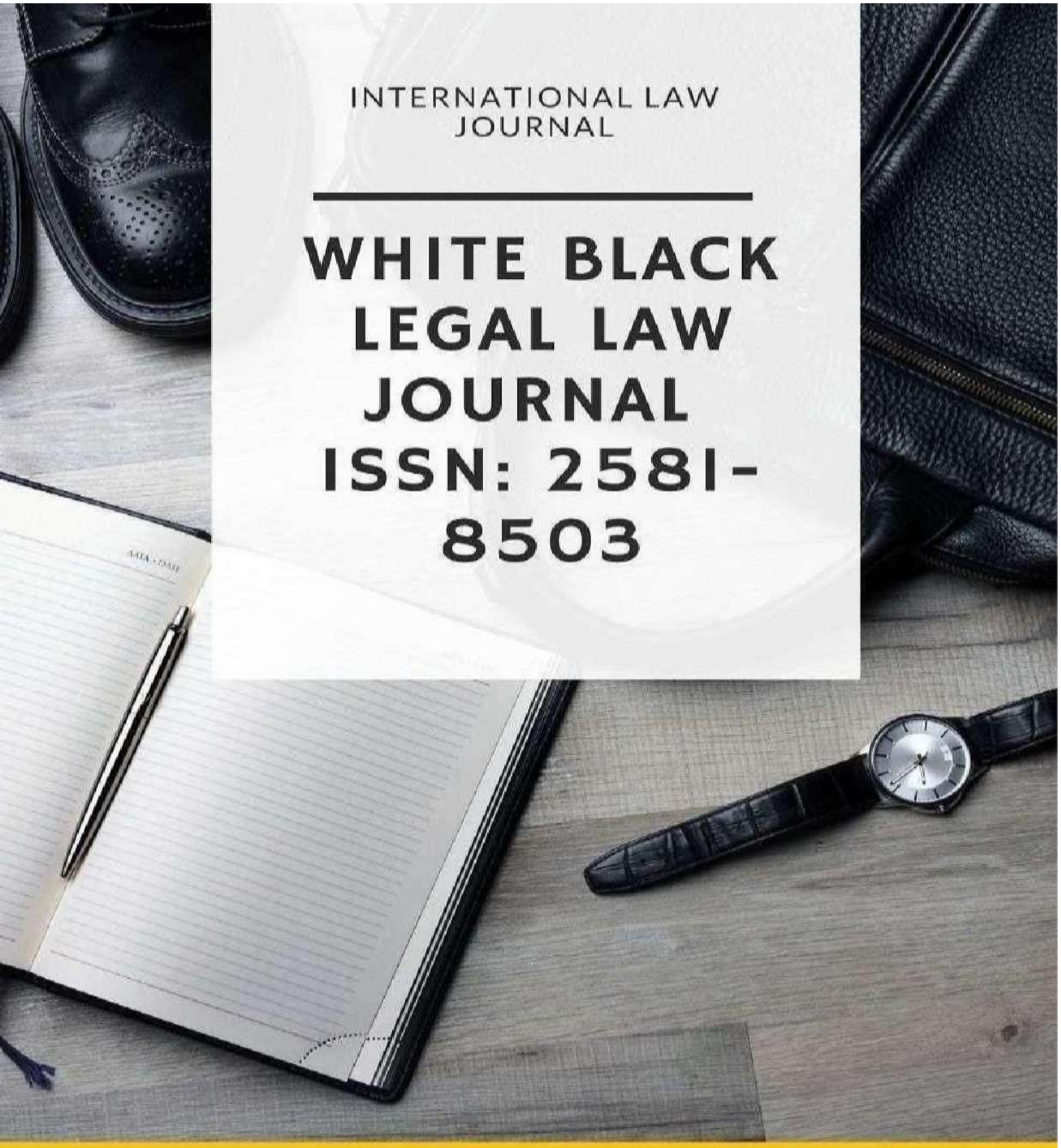

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A STUDY ON THE INTERSECTION OF INTERNATIONAL TRADE AND ENVIRONMENTAL LAW

AUTHORED BY - [1]PROF. (DR.) SEEMA SURENDRAN
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ABSTARCT

The intersection between International Trade Law and Environmental Law has become increasingly vital as global commerce expands and environmental challenges escalate. Historically, international trade agreements like the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) focused primarily on reducing trade barriers and did not specifically address environmental concerns. "However, environmental treaties have increasingly incorporated trade measures to enforce conservation and sustainable use of resources, exemplified by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Basel Convention. This integration has occasionally led to conflicts as seen in disputes such as the WTO Shrimp-Turtle case where trade measures for environmental protection were challenged.

By providing a comprehensive overview of the intersection between International Trade Law and Environmental Law, this paper contributes to the understanding of how trade can be leveraged to support environmental goals, ensuring sustainable development and legal coherence in the global regulatory landscape. The paper also analyses the major treaties, agreements, landmark disputes and recent developments that govern international trade and environmental protection.

Keywords: International Trade Law, Environmental Law, Intersection, Legal Framework, Disputes, Recent development.

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INTRODUCTION

One of the most important and intricate aspects of public international law in the twenty-first century is the interaction between environmental law and international trade law. Conflicts and collaborations between trade and environmental goals have become more likely as the world's trade grows and environmental threats such as pollution, climate change, and biodiversity loss become more severe.[3] Environmental laws frequently necessitate severe regulation, which may involve trade restrictions, to safeguard the world's ecosystems and public health, in contrast to international trade regulations that aim to liberalise markets and remove obstacles, encouraging economic growth.[4]

There was a distinct historical trajectory for environmental law and international trade law. Little consideration was given to environmental concerns when the GATT was signed in 1947 with the goal of promoting free trade and preventing protectionism in the post-war period.[5] On the other hand, contemporary International Environmental Law emerged in the 1970s and 1980s through a series of treaties that dealt with issues like pollution, endangered species protection, and climate change. These treaties frequently permitted nations to limit the trade of hazardous goods like toxic waste or endangered species in order to protect the environment.[6] Disagreements emerged as various regimes interacted; for instance, environmentalists argued that trade restrictions put commercial interests ahead of ecological imperatives, while trade policies enacted for this purpose were questioned as a form of covert protectionism.[7]

International legal discussions around the relationship between commerce and the environment gained prominence in the 1990s. Notable disputes have brought attention to the possible conflict between conservation efforts and free trade obligations. For example, there was the Tuna-Dolphin dispute between Mexico and the US over dolphin safe fishing practices, and there was the WTO Shrimp-Turtle case about U.S. shrimp import restrictions for sea turtle protection.[8] Also, environmental regulations needed to be clarified quickly once the World

[3] Steve Charnovitz, Trade and the Environment in the WTO, 10 J. Int'l Econ. L. 299 (2007)
[4] Sanford Gaines, The WTO's Reading of the GATT Article XX Chapeau: A Disguised Restriction on Environmental Measures, 22 U. Pa. J. Int'l Econ. L. 739, 742 (2001)
[5] General Agreement on Tariffs and Trade, Oct. 30, 1947, [hereinafter GATT 1947]
[6] Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES]; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 28 I.L.M. 657, 1673 U.N.T.S. 57 [hereinafter Basel Convention]
[7] Daniel C. Esty, Greening the GATT: Trade, Environment, and the Future 4–5 (1994)
[8] GATT Panel Report, United States – Restrictions on Imports of Tuna, GATT Doc. DS21/R (Sept. 3, 1991)

Trade Organisation (WTO) was established in 1995 with a binding dispute settlement system, which breathed fresh life into trade laws. There is no intrinsic contradiction between commerce and environmental protection, as the WTO's initial agreements clearly recognised sustainable development and environmental protection as objectives.[9] This paper offers a comprehensive overview of the intersection of International Trade Law and Environmental Law.

International Trade Law Framework for Environmental Measures

Notable tenets of the trading system include openness in trade regulations, prohibition of quantitative limits, and non-discrimination (including most-favored-nation and national treatment). Nevertheless, the trade regime also includes clear legal leeway for countries to safeguard the health of humans, animals, and plants, as well as to preserve natural resources. The well-known Article XX general exceptions clause, which is a part of GATT 1947 and GATT 1994 within the WTO, permits measures to be taken "necessary to protect human, animal or plant life or health" (Article XX(b)) or related to the conservation of "exhaustible natural resources" (Article XX(g)), among other reasons, as long as they are not applied in a way that amounts to hidden trade restrictions or arbitrary or unjustifiable discrimination.[10] The resolution of trade commitments and environmental restrictions has relied heavily on this general exclusions provision. Governments have used Article XX's cover in every big WTO dispute concerning environmental measures, whether it's protecting species or controlling air pollution. Under certain circumstances, such as non-discrimination and good faith effort to negotiate, WTO regulations do not supersede valid environmental laws, as has been confirmed by the judicial development of these exceptions, as shown in the case studies below.

A number of WTO agreements and agencies, not only GATT, have direct bearing on environmental concerns. Sanitary and phytosanitary measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) both aim to prevent trade barriers that are not essential or discriminatory, while also recognising members' rights to pass legislation that safeguard health and the environment. [11]In the EC-Hormones case, for instance, the balance between science-based and non-discriminatory standards for food safety and animal/plant health was tested.

("Tuna-Dolphin I"); WTO Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (Oct. 12, 1998) ("Shrimp-Turtle").

[9] Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994

[10] GATT 1994, art. XX(b), (g), Marrakesh Agreement Establishing the WTO, Annex 1A, 1867 U.N.T.S. 187, 190

[11] Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, 1867 U.N.T.S. 493 [hereinafter SPS Agreement]; Agreement on Technical Barriers to Trade, Apr. 15, 1994, 1868 U.N.T.S. 120 [hereinafter TBT Agreement]

This agreement applies to growth hormones in beef. Measures to accomplish "legitimate objectives" like environmental protection are permitted under the TBT Agreement, which covers technical rules, standards, and labelling (such eco-labels), provided that they do not impose more trade restrictions than necessary to achieve the aim. Furthermore, the Committee on commerce and Environment (CTE) was founded in 1995 as a specialised forum inside the World Trade Organisation (WTO) to investigate the relationship between commerce and the environment. Although the CTE does not have the authority to impose regulations, it has emerged as a significant forum for debates on eco-labeling, sustainable development, the connection between World Trade Organisation regulations and Multilateral Environmental Agreements (MEAs), and so on. When environmental and trade measures are at odds with one another, the aforementioned rules and exceptions are applied by the World Trade Organization's dispute settlement system, which consists of panels and the Appellate Body. Notably, WTO judges have frequently used IEL principles in their decisions, for example, bringing up treaties like the Montreal Protocol or ideas of customary law to guide a balanced interpretation, indicating that they are cognisant of the larger legal framework.[12]

International Environmental Law Framework with Trade-Relevant Provisions

Many of the treaties that make up international environmental law have provisions that have an impact on the environmental goods and services trade. Trade measures are frequently utilised as instruments for the execution of these Multilateral Environmental Agreements (MEAs), which deal with particular environmental concerns on a global or regional scale. An excellent illustration of this is the CITES Convention, which prohibits or severely restricts commerce in some endangered species and their goods and has more than 180 signatory nations.[13] Member states are obligated to prohibit or regulate trade in accordance with the threat level of the species, as determined by the appendices that comprise CITES. For instance, the commercial traffic in ivory from African elephants, which is an appendix I species, is prohibited. Among the most notable MEAs is the Montreal Protocol on Substances that Deplete the Ozone Layer. This agreement is known for its use of trade measures, specifically the

[12] United States – Import Prohibition of Certain Shrimp and Shrimp Products, WTO Appellate Body Report, WT/DS58/AB/R, Para. 129–131 (Oct. 12, 1998); United States – Standards for Reformulated and Conventional Gasoline, WTO Appellate Body Report, WT/DS2/AB/R, 29 Apr. 1996, Para. 15–16

[13] CITES, supra note 4, arts. II–III (obligating Parties to prohibit international commercial trade in species listed in Appendix I and to regulate trade in species listed in Appendix II through permit systems).

prohibition of controlled ozone-depleting substances like CFCs from being traded with non-parties. This provision is widely believed to have encouraged global involvement in this environmental regime.[14] Likewise, the Basel Convention restricts trade in hazardous waste, prohibiting exports of such waste to countries that have banned its import and to non-parties, to prevent "toxic dumping."[15]A prior informed consent method and an outright prohibition on persistent organic pollutants are two ways in which the Rotterdam Convention (1998) and the Stockholm Convention (2001) impose trade-related duties on pesticides and chemicals, respectively. These pacts show that trade limitations can be a valid and essential part of environmental governance on a global scale, with the goal of reducing environmental damage that crosses international borders.

There are many ways in which trade intersects with the overarching aims of biodiversity and natural resource conservation set out by the Convention on Biological Diversity (CBD).[16]Restrictions on imports and exports, such as quarantine procedures under the SPS framework, may be necessary to control invasive species and preserve ecosystems, as advocated for by the CBD. Although it does not mainly address trade, the Convention on the Conservation of Migratory Species (CMS, 1979) is an important agreement because it urges the avoidance of activities, such as trade, that could threaten migratory wildlife. At the same time, regional agreements on fisheries management, such as fish stock agreements under UNCLOS, and the United Nations Convention to Combat Desertification impose responsibilities on resource management, which can impact trade by imposing limits on fishing quotas or timber exports, for example, in order to avoid environmental degradation.

The most notable development today is the climate change treaty cluster; this issue is fundamentally global in nature and has serious consequences for international trade. While neither the 1997 Kyoto Protocol nor the 2015 Paris Agreement, the primary UNFCCC documents, impose any particular trade measures on member states, they do lay out pledges that nations are free to meet through market-based mechanisms or even trade-related policies.[17]

[14] Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 1522 U.N.T.S. 3 [hereinafter Montreal Protocol]
[15] Basel Convention, supra note 4, arts. 4(5), 4(9)-(10) (prohibiting exports of hazardous wastes to Parties that have banned their import or to non-Parties, and generally requiring notice and consent for permissible transboundary movements of wastes).
[16] Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79, ar ts. 1, 15 (entered into force Dec. 29, 1993) [hereinafter CBD]
[17] UNFCCC, May 9, 1992, 1771 U.N.T.S. 107; Kyoto Protocol to the UNFCCC, Dec. 11, 1997, 37 I.L.M. 22 (1998), 2303 U.N.T.S. 162; Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104.

Without dictating precise measures, the Paris Agreement places an emphasis on national commitments to decrease emissions of greenhouse gases (Nationally Determined Contributions). A number of nations have explored or implemented trade-related policies in an effort to fulfil these commitments; for instance, carbon pricing systems may prompt carbon border adjustment procedures for imported goods, and renewable energy subsidies may give rise to concerns over trade subsidy regulations. "The UNFCCC recognises the importance of trade: Reiterating GATT's non-discrimination language and urging that climate actions be crafted in a WTO-consistent manner, Article 3.5 of the UNFCCC states that measures taken to combat climate change, including unilateral ones, should not constitute arbitrary or unjustifiable discrimination or a disguised restriction on international trade.[18] This provision reflects an intent to harmonize climate action with trade obligations or at least to caution against trade conflicts.

Intersection of the Trade Law and Environmental Law

When the regulations of International Trade Law and Environmental Law seem to conflict or overlap, how do these two frameworks interact, given that they are parallel? In terms of law, MEAs and WTO agreements are two distinct documents, each with its own membership and system of enforcement. There is no predetermined order in international law that gives commerce regulations precedence over environmental treaties. As an example, a country that is a signatory to both the WTO and an environmental pact may be required by both to prohibit the trade in endangered species and to refrain from engaging in arbitrary trade discrimination per WTO regulations. An item specifically put on the agenda of the World Trade Organization's Committee on Trade and Environment, the settlement of such possible norm disputes has been the subject of substantial research. Up until now, there hasn't been a single WTO case that has directly pitted a WTO obligation against a specific MEA commitment, a situation sometimes referred to as a real conflict, in which both sides of the dispute are both parties to the MEA.[19] Various legal theories and methods are employed to arbitrate between regimes when overlaps do occur. One method is what is known as "harmonious interpretation," which is finding a way to interpret two or more responsibilities that may otherwise be in conflict in a way that satisfies both parties. As an example of this approach, WTO adjudicators have recognised the validity

[18] UNFCCC, supra note 15, art. 3(5)
[19] John H. Jackson, Remarks on Preventing Environment-Related Trade Disputes, in Trade, Agriculture and the Environment 25, 26–2; WTO Committee on Trade and Environment, Special Session Report, WT/CTE/INF/7 (Apr. 2003)

of MEA aims and read WTO exceptions in light of scientific findings from environmental authorities. By referring to the concept of evolutionary treaty interpretation and referencing measures under conventions like CITES as a framework for comprehending finite natural resources and the need for specific conservation measures, the WTO Appellate Body made a notable statement in the US Shrimp-Turtle case that public international law must be considered when interpreting WTO regulations.[20]The idea of mutual support is another common one; as said before, it is essentially a policy mantra that encourages institutions to look for win-win solutions. As part of the trade and environment mission of the Doha Round, WTO members agreed to limited negotiations in 2001 to clarify the link between WTO rules and MEAs. One option was to guarantee that trade measures implemented under a MEA would not be challenged by the WTO. While no new treaty regulation came out of those talks, it was clear that the WTO and MEA regimes should work together rather than against each other.

There are still unknowns and gaps despite all this work. Worryingly, environmentalists point out that WTO law does not specifically exempt measures mandated by environmental treaties. As a result, a government enforcing, for example, a ban on garbage imports under the Basel Convention could theoretically violate WTO rules if a non-party exporter challenges it. In a number of decisions that confirmed or recognised the legitimacy of national environmental laws, WTO dispute panels and the Appellate Body (when it was operative) have thankfully shown a general sensitivity to environmental concerns.

Case Studies: Trade Disputes at the Trade-Environment Interface

U.S. Shrimp-Turtle Case (WTO)

The United States v. Import Prohibition of Certain Shrimp and Shrimp Products case, sometimes referred to as the Shrimp-Turtle case, was a watershed moment in the history of trade vs. environmental protection. The United States made a change to its Endangered Species Act in the mid-1990s that mandated shrimp trawl nets used to catch shrimp could not inadvertently harm endangered sea turtles. This change applied specifically to the use of Turtle Excluder Devices, or TEDs. This import prohibition was challenged by shrimp exporters from countries lacking similar turtle conservation regulations at the WTO. They said that it unfairly discriminated against their shrimp exports, violating GATT standards. The nations in question

[20] US Shrimp Appellate Body Report, supra note 6, Para. 130–131; Brazil Measures Affecting Imports of Retreaded Tyres, WTO Appellate Body Report, WT/DS332/AB/R, Para. 210–211 (Dec. 3, 2007)

are Thailand, India, Malaysia, and Pakistan. The United States' action was found by a World Trade Organisation tribunal to be unjustified and in violation of GATT Article XI's non-discrimination requirements, as it was a quantitative restriction.[21] The WTO Appellate Body, on the other hand, was more subtle in its approach during the appeal. The goal of safeguarding sea turtles was legitimated under GATT Article XX(g) (protection of exhaustible natural resources) in its 1998 report by the Appellate Body. Seven different kinds of marine turtles were considered valuable but finite resources by the Appellate Body since they were all on the endangered species list established by international treaties like CITES.[22] This was a significant affirmation that living endangered species fall within the scope of Article XX(g).

But in the end, the Appellate Body decided that the United States ban was enforced in an arbitrary and unjustified way, which is a violation of Article XX. The ruling highlighted two main issues: firstly, the United States had not conducted meaningful negotiations with Asian nations to find a cooperative solution; instead, it had negotiated and provided aid to certain Western Hemisphere nations regarding turtle protection, which constituted unfair discrimination. Secondly, the United States' measure was applied rigidly, effectively mandating that other countries adopt the same regulatory programs (TEDs) as the United States without considering different conditions adequately, a rigidity that the World Trade Organisation deemed arbitrary.[23] Environmental causes were heard with compassion by the Appellate Body. also highlighted that, so long as they do it fairly and in good faith, WTO members can implement conservation measures—even unilaterally—to address global environmental concerns. The United States became more accommodating when the Shrimp-Turtle case was remanded for implementation; now, nations can adopt "comparable" turtle preservation strategies instead of identical ones, and negotiations are ongoing. The amended U.S. strategy, which included more leeway and continued consultations, did, in fact, fulfil the Article XX requirements, enabling the import limits to remain in place, according to a 2001 follow-up compliance proceeding before a WTO tribunal.[24]The Shrimp-Turtle case is significant because it established that trade restrictions based on environmental concerns can be approved, but only under certain conditions. One of these conditions is that any

[21] Panel Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/R (May 15, 1998), Para 7.15–7.18, 7.45.
[22] US – Shrimp Appellate Body Report, supra note 6, Para. 128–130
[23] Id. Para. 172–176, 181–184
[24] Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, Recourse to Article 21.5 by Malaysia, WT/DS58/AB/RW (Oct. 22, 2001)

environmental measures that impact trade must be done in a way that is neither discriminatory nor coercively unilateral. In its reasoning, the Appellate Body cited the notion of sustainable development from the WTO preamble and external environmental treaties, confirming that WTO law can support international environmental objectives. The decision had broader implications than that.

EC – Hormones Case (WTO)

The European Communities v. Measures Concerning Meat and Meat Products (Hormones) decision provides more insight into how trade, environmental and health regulations interact. This case centred on concerns about food safety and the precautionary principle. Due to popular opposition and worries about consumer health, the European Community (EC) banned the import and sale of beef that had been treated with specific growth hormones in the late 1980s. Major beef exporters Canada and the US used the World Trade Organization's SPS Agreement to dispute the restriction, claiming it was an unlawful trade barrier as it was not supported by scientific data. Members of the World Trade Organisation (WTO) have the authority to implement health protection measures for humans and animals under the SPS Agreement. However, these measures must be supported by adequate scientific evidence and a risk assessment (Article 5), or they can be adopted temporarily due to scientific uncertainty (Article 5.7, reflecting a precautionary allowance). The EC's hormone ban was deemed inconsistent with the SPS Agreement by the WTO panel and Appellate Body. This was due to the fact that the EC had failed to conduct a sufficient risk assessment showing that the particular hormones presented a measurable health risk when used in good practice, and the ban went beyond levels set by the applicable international standards (Codex Alimentarius) without enough reasoning.[25] In their 1998 report, the Appellate Body confirmed that governments are free to use caution when faced with scientific uncertainty, as stated in WTO legislation. While the SPS Agreement acknowledges the precautionary principle in its preamble and Article 5.7, it ruled that the EC should demonstrate a reasonable, evidence-based risk assessment instead of a zero-risk policy.[26] As a broad legal principle, the precautionary principle was invoked by the EC in their argument that there were differing scientific opinions on the long-term consequences of hormone residues. The Appellate Body did not go so far as to say that the precautionary principle should supersede explicit SPS rules, but it did point out that SPS 5.7 reflects the

[25] Appellate Body Report, EC – Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, WT/DS48/AB/R, Para. 199–208 (Jan. 16, 1998)
[26] Id. Para. 123–125

principle and that WTO members should temporarily err on the side of caution while they seek additional evidence. However, the panel determined that the existing scientific evidence did not support the EC's blanket prohibition on hormones, particularly those hormones that were deemed safe according to Codex recommendations. It followed that the EC had broken its trading commitments. In response to popular outcry, the European Commission decided against lifting the ban and instead sanctioned the suspension of concessions in exchange for retaliatory tariffs from the United States and Canada. Trade law anticipates a level of scientific rigour in health and environmental measures, as established in the Hormones case, while allowing for some (but not limitless) wiggle space for precautionary action when complete confidence is lacking.

U.S. – Tuna-Dolphin Disputes (GATT & WTO)

The U.S. Tuna-Dolphin scandal was a watershed moment in the history of trade and environmental discourse, and it continues to reverberate in the post-WTO world. The United States banned the import of tuna from the Eastern Tropical Pacific that was collected with purse-seine nets in the 1980s unless the fish met their dolphin-safe requirements. The goal of this action was to prevent the mass mortality of dolphins caused by fishing techniques that target schools of tuna. In 1991, Mexico filed a GATT challenge against the United States prohibition. A GATT dispute panel sided with Mexico, ruling that the United States' import ban was unjustified and breached the prohibition on quantitative limits, as stated in GATT Article XX(b) or (g). An attempt by one country to impose its environmental standards on another's industrial processes (particularly to safeguard animal life outside the jurisdiction of the importing country) could not be justified, the panel reasoned, under Article XX.[27] Although the GATT consensus requirement prevented its adoption, this controversial ruling—also known as Tuna-Dolphin I—shocked environmentalists who accused GATT of putting trade ahead of dolphin conservation and trade purists who warned of the potential dangers of trade sanctions for PPMs. In 1994, a second GATT panel, Tuna-Dolphin II, which was brought forward by the European Communities, reached a similar conclusion on the U.S. embargo. This decision further solidified the belief that trade measures, no matter how well-intentioned, might violate GATT rules if they compelled the policies of other countries to change.[28]

[27] GATT Panel Report, United States – Restrictions on Imports of Tuna (Mexico), DS21/R (Sept. 3, 1991), Para. 5.25–5.28

[28] GATT Panel Report, United States – Restrictions on Imports of Tuna (EEC), DS29/R (June 16, 1994), Para 5.8–5.10

The contradiction between trade rules and unilateral environmental measures was framed by these early Tuna-Dolphin instances, but they did not lead to binding GATT regulation. Returning to the World Trade Organisation era, the problem manifested itself in a new way. The "dolphin-safe" tuna label was the U.S.'s replacement for the embargo; it allowed tuna products into the country, but only those that met specific requirements may have it. In US - Tuna II (Mexico), Mexico brought a challenge under the TBT Agreement, claiming that the labelling system was unfair and imposed unnecessary trade restrictions. U.S. labelling regulations were determined to adversely harm Mexican tuna manufacturers in 2012 by a World Trade Organisation panel and the Appellate Body, despite the fact that they sought to protect dolphins and provide consumers with information.[29] The U.S. scheme disqualified all tuna caught in the Eastern Tropical Pacific with purse-seine nets from being labeled dolphin-safe (due to historically high dolphin mortality in that region), yet tuna from other regions faced different standards a calibration issue that led the WTO to deem the measure inconsistent with TBT's non-discrimination obligations. The U.S. revised its regulations to impose stricter tracking and verification requirements across all regions. After multiple compliance proceedings, the Appellate Body in 2018 eventually upheld the revised U.S. dolphin-safe labeling regime as meeting WTO rules, concluding that the U.S. had remedied the discrimination.[30]

Recent Developments and Emerging Trends

Climate Change Initiatives: Carbon Border Adjustments and Climate Related Trade Measures

More and more nations are thinking about trade-related actions to help with climate mitigation and stop carbon leakage since the issue has become a major focus on the world stage. The Carbon Border Adjustment Mechanism (CBAM) that the EU implemented is a prime illustration of this. Starting in 2023 and continuing thereafter, the CBAM will levy a fee on carbon-intensive imports (including cement, aluminium, fertilisers, steel, and energy) that is equivalent to the amount that EU producers presently pay under the Emissions Trading System, the EU's carbon pricing system.[31] To encourage trading partners to green their production and

[29] Appellate Body Report, United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/AB/R, Para 297–298 (May 16, 2012)
[30] Appellate Body Report, United States – Tuna and Tuna Products (Article 21.5 – US Compliance), WT/DS381/AB/RW (Dec. 14, 2018)
[31] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, 2023 O.J. (L 130) 52

level the playing field, we are implementing measures to prevent foreign manufacturers from gaining an advantage due to less stringent carbon limitations in their own countries.

Liberalizing Environmental Goods and Services

Another important project at the junction of commerce and the environment is the reduction of trade barriers on goods and services that are good for the environment. The idea is that trade liberalisation can help achieve environmental goals by making clean technology more widely available and inexpensive. Major economies like as the United States, China, and the European Union were among 46 WTO members that began negotiating an Environmental Goods Agreement (EGA) in 2014. Expanding on a prior list of 54 green items for tariff reduction, the goal was to remove them from a wide range of environmental products, including solar panels, wind turbines, water treatment equipment, and devices to prevent air pollution, among many others.[32] However, the EGA talks stalled in late 2016, reportedly due to disagreements over product coverage and geopolitical tensions.

Trade Agreements Driving Environmental Commitments

Recent trade agreements are increasingly being designed not just to avoid conflict with environmental goals, but actively to promote them. Trade in animals, management of forests, ozone-depleting compounds, maritime protection, and compliance with domestic environmental regulations are only a few of the environmental concerns addressed in the environmental chapters of most contemporary free trade agreements. The trend towards stricter execution of these pledges over the past decade stands out. The CPTPP, which was finalised in 2018, also contained binding environmental regulations, such as the prohibition of specific fishery subsidies and the implementation of CITES.

Conclusion

International trade law and environmental law have often been portrayed as being on a collision course, but as this overview illustrates, they are gradually moving toward a more harmonious coexistence. The evolution of WTO case law from the early shock of Tuna-Dolphin to the more accommodating stance in Shrimp-Turtle and beyond shows that the trade regime can recognize and validate environmental imperatives when they are pursued thoughtfully. Likewise, the

[32] Office of the U.S. Trade Representative, Environmental Goods Agreement (EGA) Fact Sheet (July 2014); S. Houlihan & E. Tuerk, Why the Environmental Goods Agreement Failed and What's Next, 52 J. World Trade 875, 876–77 (2018)

proliferation of environmental provisions in trade agreements and the current initiatives to green trade demonstrate that trade instruments can be harnessed to advance environmental goals. There will always be areas of tension: differences in national regulations, the temptation of green protectionism and the need to ensure developing countries are not unfairly burdened. However, the trajectory is toward integration: trade policy is increasingly seen as a tool for sustainable development, not an end in itself. Achieving this vision requires constant balance ensuring that environmental measures are genuine and not disguised restrictions and conversely, ensuring that trade rules leave ample space for governments to address pressing environmental and health challenges". Recent developments, especially those related to climate change indicate that the coming decade will further blur the line between trade and environmental policy, as countries implement the Paris Agreement and seek to align economic incentives with decarbonization.