INTRODUCTION
INTRODUCTION

Statement of Problem

The concept of ‘Sustainable Development’ is the foundation of international environmental jurisprudence. The concept is of pivotal importance; international environmental law itself has been developed on its basis. The term ‘sustainable development’ was brought into common use by the Brundtland Commission in its 1987 report *Our Common Future*. The report has given the definition of sustainable development as follows:

*Sustainable development is the development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs*.\(^1\)

Sustainable development does not imply absolute limits to growth and it is not a new name of environmental protection. It is a new concept of economic growth. It is a process of change, in which economic and fiscal policies, trade and foreign policies, energy, agricultural and industrial policies, all aim to induce development paths that are economically, socially, and ecologically sustainable.

Sustainable development requires that the rate of depletion of natural resources should take into account the criticality of the resource, the availability of technologies for minimizing depletion and the likelihood of substitutes being available. The adverse impacts on the quality of air, water and other natural elements are minimized so as to

sustain the ecosystem’s overall integrity. In essence, sustainable
development is a process of change in which the exploitation of
resources, the direction of investments, the orientation of technologies
and institutional change are all in harmony and enhance both current and
future potential to meet human needs and aspirations.\(^2\)

The fundamental legal principles upon which the current liberal
trade regime rests are to be found in the text of GATT 1994 as well as it
predecessor, GATT 1947. The first requirement is the ‘most favoured
nation’ requirement in Art I, which stipulates that all parties are to be
treated alike. The second is to be found in Article III, which prohibits
discrimination as between similar imported and domestic products thus
laying down the ‘national treatment’ requirement. A third rule is
articulated in Art XI, prohibiting quantitative restrictions on imports and
exports, except in certain limited cases.

These rules, upon which more detailed rules in the successive
GATT rounds were built, aim at the removal of barriers to trade. But
seeking to remove the bases for differential treatment as between parties
and products can run against certain other international objectives that
can be met only by making such distinctions. In the case of
environmental goals, it is sometimes necessary to treat countries
differently, for example on the basis of how responsible their actions are
in relation to the environment. Likewise, sometimes products deserve
differential treatment on the basis of whether the products themselves,
or their production and processing methods, are sustainable.

\(^2\) Anupam Goyal ; the WTO and International Environmental Law:- Towards
Conciliation : Oxford University Press, 2006 P.44
GATT 1947 made no express mention of the word 'environment.' The reason not to mention the word environment was that environmentalism was not a global issue. By most standards, the Uruguay Round’s most significant achievement was the formation of the WTO. Initially, environmental organizations were concerned about the WTO. Since the GATT was to be reconstituted into a functioning institutional structure, environmentalists wanted to make sure that the environment was included in the WTO working committees. The WTO Agreement consciously makes some references to the concerns of environment.

In the preamble to the Marrakesh Agreement establishing the World Trade Organization (WTO), a reference was made to the importance of working towards sustainable development. WTO members recognize:

*That their relations in the field of trade and economic endeavor 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*.\(^3\)

The WTO takes into account environmental concerns and no longer allows the full use of the world’s resources. The objective of ‘full use of the resources of the world’s set forth in the preamble of the GATT 1947 was no longer appropriate to the world trading system of the 1990s in the face of increasing environmental problems.

\(^3\)Agreement establishing the WTO
Introduction

A product of the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO), was established in 1995 to create a stronger set of institutions to administer the various trade agreements negotiated under the GATT framework. Since its inception, the WTO has been dogged by controversy. With a wider mandate and greater enforcement powers than its predecessor GATT institutions, the WTO is widely perceived to pose a greater threat to national sovereignty. While corporations and traditionalists oppose extending the organization's reach beyond trade, consumer groups and environmental organizations complain that the WTO favours trade at the expense of environmental and health objectives. They fear that new provisions negotiated during the Uruguay Round (1986-1994) threaten industrialized nations' high environmental and health standards by promoting the adoption of international standards and requiring governments that choose higher standards to provide scientific justification. On the other hand, critics in the developing world charge that the provisions allow wealthy nations to impose their standards on their trade partners and to engage in a new form of protection in which measures that favor domestic producers act as environmental or health regulations.

Since 1995, the WTO has made rulings in various disputes involving environmental and public health measures affecting gasoline, shrimp-turtles, hormones, asbestos, salmon, apples, other agricultural products, generic drugs and genetically modified organisms (GMOs). These disputes, collectively address nearly all of the environmental and health controversies surrounding the WTO.
Introduction

Although the rulings in these disputes affirm national sovereignty over environment and health policy, they have not been seen as doing so because most have gone against the governments imposing the regulations in dispute owing to discriminatory implementation or lack of scientific support. Embedded in trade terminology, the rulings tend to be dense and lengthy. Drafted by trade experts, they often dwell on quite subtle and narrow sets of issues. They are not easily understandable, especially for those untrained in trade law. Many of the environment and health provisions are new, virtually all are complex. In some cases, the rulings explore multiple provisions containing different requirements. In other instances, the provisions are defined in broad terms and, arguably, are open to varying interpretations. Because governments tend to present self-serving arguments to defend their regulations and to challenge those of their trade partners, their arguments tend to cloud rather than clarify the issues in dispute. Finally, as the controversies suggest, the pursuit of trade, the environment and public health is inherently divisive. Most nations will pursue goals in all three areas. However, they are likely to do so in ways that differ from other nations in view of varying preferences, resources and other factors. Hence, disputes are likely to arise between nations pursuing different strategies. The outcomes of these disputes are likely to leave some constituencies confused and unhappy especially in the early going when new rules and procedure are being developed and implemented.

The considerable controversy that marked the creation of the WTO has not abated in the ensuing years. Instead, the organization has become the embodiment of globalization in a period when globalization has come under fire from all directions. Anti-globalization forces
Introduction

include such diverse groups as environmentalist, consumer advocates, union members, protectionists, anarchists, academics, policy makers and other both in developing and developed nations. While these groups oppose globalization and the WTO, they do so for different reasons. These differences are quite striking in the debate over the WTO’s impact on the environment and public health. This debate frequently confronts policymakers and activists in developed and developing nations against one another. While groups in both regions oppose many of the environmental and health provisions negotiated during the Uruguay Round, they cite different and, at times, conflicting grounds.⁴

On the one hand, activists and some policymakers in developed nations fear that the WTO poses several threats to the environment and public health. They claim that harmonization provisions affecting food and product safety will encourage nations to adopt international standards that will level down the generally higher ones in their nations. They also argue that the scientific justification requirements affecting food safety standards might stop nations from taking preventative measures against health risks in the absence of scientific certainty. They favor the precautionary principle, which holds that governments may take action against potential as well as proven health threats.

On a more fundamental level, environmentalists, consumer advocates and others in the developed world object to the WTO’s priorities. These critics hold that the organization advances trade at the expense of the environment, public health and other social objectives. Some object to requirements that nations pursue environmental and

⁴ Trish Kelly: The Environment, public Health and Sovereignty: Edward Elgar Publishing Inc. Massachusetts USA P.2
health goals in ways that are least disruptive to trade. They fear that these requirements jeopardize multilateral environmental agreements (MEAs) that use trade restrictions to conserve wildlife, prevent climate change and pursue other environmental goals. Others question whether it is legitimate for the WTO to address non-trade goals. With a relatively low budget and small staff of primarily trade experts, some wonder whether the organization has the resources, expertise or will to grapple with environments, health and other non-trade issues.

On the other hand, critics in developing nations believe that linking trade to the environment, labor and other social issues jeopardizes economic growth in the South. They assert that non-trade issues are beyond the purview of the WTO and should be addressed by other institutions. These critics charge that expanding the WTO’s mandate beyond trade will allow wealthy nations to impose their environmental and health agendas on their partners. As a result, developing nations will be forced to adopt higher and more costly standards. Meeting these standards will strain already thin technical and financial resources and become especially burdensome if countries choose different standards. Consequently, officials in some developing nations favor strengthening the WTO’s harmonization provisions in order to improve access to markets in developed nations.

Environmental and consumer advocates in developed and developing nations find common ground on some issues. Both groups have grave concerns about the commitments made with respect to intellectual property. These commitments are seen as promoting biotechnology despite uncertainty about its short and long run impact on the environment and public health. In addition, environmentalists object
that biotechnology might pose a risk to biodiversity through various mechanisms including cross-pollination between genetically modified organisms (GMOs) and traditional plant life.

Environmentalists also emphasize that new intellectual property rules favor corporations at the expense of indigenous communities because the new rules facilitate the former's ability to secure property rights over the latter's traditional knowledge. For some, these changes amount to legalizing biopiracy and creating a new form of colonialism. These critics view traditional knowledge as cultural heritage that is nurtured and managed by the community rather than property that is sold to the highest bidder.⁵

Others emphasize the need to prevent the misappropriation of genetic resources and to promote an equitable distribution of their benefits along the lines laid out in the Convention on Biological Diversity. Those who share this perspective believe that it is essential to clarify the relationship between the WTO and multilateral environmental agreements (MEAs) like the Convention on Biological Diversity (CBD) and to do so in ways that do not advance trade at the expense of the environment. Further, assuring that nations can impose environmental measures that restrict trade is likely to require strengthening the governance and enforcement mechanisms of the CBD and other MEAs in order to counterbalance those of the more powerful WTO.

Similarly, organizations in the developing and developed worlds dispute the requirement that governments in developing nation's honour

⁵ Ibid
Introduction

patents on medicine. Non-governmental organization protest that the requirement threatens developing nation’s access to the low-cost, generic drugs used to combat AIDS, tuberculosis, malaria and other life-threatening diseases. The same concern led developing nations to launch a campaign within the WTO to waive certain requirements affecting access to generic drugs.

There is near universal agreement amongst activists that the WTO and especially the revamped dispute resolution process pose a threat to national sovereignty. As under the GATT, the WTO’s dispute resolution process begins with mandatory consultations between the disputants. And when consultations are not able to resolve the matter, a panel is formed to investigate the dispute. But to address concerns that the GATT process was lengthy and ineffective, several changes were instituted. First, timetables apply to each phase of the process. Second, the appellate Body was created to hear appeals of panel rulings. And third, dispute rulings are now binding as they go into effect unless there is a consensus against adoption. This ‘reverse consensus’ approach ensures that the adoption of dispute resolution rulings is virtually automatic because ‘winners’ are unlikely to oppose decisions that favor them. By contrast, the GATT process required a consensus supporting adoption. Consequently, ‘losers’ were able to block the adoption of panel reports. WTO panel and appellate reports urge governments to remove offending regulations but do not mandate specific implementation steps. However, the dispute resolution rules oblige governments to comply within a reasonable period of time (no more than 15 months); those that do not comply must pay compensation to or face trade penalties from the other parties to the dispute.
An economic view of trade policy states generally that government intervention in trade is justified only in those cases of market failure, in which the price mechanism does not fully reflect the costs and benefits experienced by consumers and producers. Most environmental issues involve a case of domestic market failure, in which the best policy would be a tax that discourages “bad” behavior or a subsidy that encourages “good” behavior. By this standard, restrictions on imports for environmental reasons would be justified economically only if imports themselves were causing pollution, in which case a nondiscriminatory tariff would be the best policy. When the foreign activity creates transborder pollution, a different economic problem arises; who pays for the damage when an internationally shared public good (clean air or water) is depleted? The Organization for Economic Cooperation and Development (1976) has established the “polluter pays” principle as the means of resolving such issues, but this approach leaves open difficult issues of measurement, responsibility, and burden sharing. If the pollution is limited geographically, a resolution is usually possible through bilateral or regional negotiations. If the scope of the problem extends to the global commons, the issues of responsibility, burden sharing, economic impacts on countries, and enforcement compliance in the face of free riding become much more difficult. Free riding in this context refers to countries that contribute to the global pollution problem but refuse to carry any of the burden of fixing it voluntarily. Trade restrictions usually enter the picture as a means of enforcement rather than as a way of correcting the market failure itself.\footnote{Kent A. Jones; Who is afraid of the WTO : Oxford University Press 2004, P.114}
In contrast to the market-failure approach, a number of proposals for an environmentally sensitive trade regime require countries to harmonize their environmental regulations. In particular, environmental regulations that affect manufacturing costs would extend to the high level of countries with stricter standards. Proposals for environmental anti dumping duties, based on the calculated differences in unit production costs due to “lax” environmental protection, would, it is argued, prevent countries from gaining unfair competitive advantage. In this manner, a global environmental regime would avoid a race to the bottom by countries seeking to outdo each other in exporting pollution-intensive products.

Economic considerations suggest that harmonization at times does not seem to be a workable idea, however, for several reasons. First, the impositions of an environmental tariff would merely tend to encourage pollution-intensive production at home, while not necessarily reducing pollution in the foreign country. In addition, the economic costs of pollution abatement differ from country to country, and national preferences for environmental quality are a matter for domestic policy and not international coercion. The argument for harmonization comes close in this sense to the discredited reasoning of the “scientific tariff” applied in U.S. trade policy in the past. The argument behind the scientific tariff was that it was unfair for a country to have lower labor costs; therefore an offsetting tariff to equalize costs was justified. The harmonization proposal suggests that it is equally unfair for countries to have lower environmental costs, and countervailing duties should close the resulting cost gap.”
A broad perspective shows that environmental and liberal trade policy goals are not necessarily in conflict. Reductions in agricultural subsidies and trade restrictions in foodstuffs would, for example, in many cases improve both environmental quality and economic welfare. In many less developed countries, trade liberalization in pollution-intensive industries would shift production towards areas where cleaner technologies prevail, improving global environmental quality. Recent studies indicate that trade that aids development also tends to increase preference for environmental quality. Furthermore, increasing income in less developed countries would tend to increase the alternatives for household fuel and thereby decrease an important cause of deforestation. Trade liberalization and environmental protection are therefore not at odds in all cases and arguably have an overlapping agenda of mutually beneficial goals.

However in view of the prevailing dichotomy among the developing and developed nations in general and particularly in the areas of economy and development, still a word of caution would be necessary to protect the interest of developing countries from being jeopardized due to their inherently inferior position in the arena of international policy making and negotiations.

The US in its communication presented to the WTO General Council on August 6, 1999 referred explicitly to the fact that we must pursue trade liberalization in a way that is supportive of high public health and environmental standards. But the question as to what should take precedence health and environmental considerations on trade and

7 Ibid: P. 115
fierce transnational competitions, still needs to be addressed at the appropriate international forum.

In order to examine the issue of green consumerism and new environmental conscientiousness, the study has touched the subjects like TRIPS and privatization of collective knowledge particularly in the area of pharmaceuticals and public health, Non party state provisions and free trade obligations, synergy between the WTO and other bodies like UNEP and WHO, besides the Dispute settlement mechanism under WTO which is gradually gaining momentum through the rulings.

Objective of the Study

The objective of this research captioned “Environmental Protection and Public Health: A Study of WTO Regime” is the resultant of researcher’s keen interest in the subject. There needs to be a scientific study of the subject in order to understand the complex relation of World Trade and Environment, harmony and conflict in various instruments of International Law in respect of environment and trade measures. Here the word ‘scientific’ connotes the systematic observation, classification and interpretation of the available data and the existing knowledge.

The issue of accommodation of environmental concerns in the international trade policy has multiple dimensions. This study makes an attempt to examine and evaluate these dimensions particularly in the areas of multilateral environmental agreements, specific trade obligations vis-a-vis environmental protection, impact of TRIPS Agreement on the public health measures in developing countries. The
study also makes an endeavor to understand the newly developed mechanism for the settlement of international trade disputes and its efficacy.

In order evaluate the complex relationship between trade and environment, the study seeks to examine the trade obligations pursuant to WTO agreements and other multilateral environmental agreements outside the purview of WTO. Further the study attempts to evaluate the TRIPS Agreement on the public health concerns of developing countries through a discussion on specific health issues and diseases prevalent in these countries.

Mechanism for the settlement trade disputes is another important area of WTO functioning. This aspect is also covered in this study by having a discussion on the rulings made by WTO Dispute Settlement Body (DSB), Appellate Body reports and on the process of dispute settlement.

Since the primary endeavor of scientific method is to find out the causal relationship and to make the generalization. The study formulates a hypothesis and attempts to verify the hypothesis by a first hand study of authoritative sources by applying the doctrinal research method.

**Review of Literature**

A report by the United Nations Environment Programme (UNEP) and World Trade Organizations captioned 'Trade and Climate Change' published by WTO Secretariat in 2009 observed that a continuing debate with in political discussions and among academia has been whether the protection of intellectual property rights- such as copyrights, patents or
trade secrets- impedes or facilitates the transfer of technologies to developing countries. One key rationale for the protection of intellectual property rights, and in particular patents, is to encourage innovation: patent protection ensures that innovation can reap the benefits and recoup the costs of their research and development (R&D) investments. On the other hand, it has also been argued that, in some cases stronger protection of intellectual property rights act as an impediment to the acquisition of new technologies and innovations in developing countries. While strong patent laws provide the legal security for technology related transactions to occur, firms in developing countries may not have the necessary financial means to purchase expensive patented technologies.

The importance of intellectual property rights needs to be set in a relevant context. In fact, many of the technologies which are relevant to addressing climate change, such as better energy management or building insulation may not be protected by patents or other intellectual property rights. Moreover, even where technologies and products benefit from intellectual property protection, the likelihood of competing technologies and substitute products being available is thought to be high. Further studies in this area would be useful.

A Joint Study Report of the WHO and the WTO Secretariat captioned ‘WTO Agreements and Public Health’ published in 2002 observed that the TRIPS Agreement attempts to strike a balance between the longer term objective of providing incentives for future inventions and creations, and the shorter term objective of allowing people to use existing inventions and creations. The Agreement covers a
Introduction

wide range of subjects, from copyrights, patents and trademarks to integrated circuit designs and trade secrets.

In the article entitled 'A Critique of the WTO Jurisprudence on Necessity' published in the journal of British Institute of International and Comparative Law, Vol. 59 Part I, January, 2010, it was observed that The preliminary question that needs to be answered is what balance is struck between competing interests under the WTO agreements. The WTO system was, of course, intended to develop 'an integrated, more viable and durable multilateral trading system', serving the GATT embodied goal of the substantial reduction of tariffs and other barriers to trade. However, while the system clearly promotes trade liberalization, it can be said that the WTO's core principle is non-discrimination. This distinction goes to the very heart of the debate as the interpretation of 'necessity' is informed by the object and purpose of the treaties.

In stark contrast to the harmonization/positive integration goals of other regimes such as the European Union (EU) and the United States (US) federal system, which seek to create uniformity amongst their members in accordance with supra-nationally imposed standards, the WTO regime imposes no such requirements. Instead, the WTO permits Members to implement regulatory and legislative regimes freely to promote whatever public policy objectives they deem to be in their national interests, with only one restriction: these measures cannot discriminate between imported and domestically produced goods of the same kind, or between trading partners. Non-discrimination has been hailed for its facilitation of regulatory heterogeneity by identifying measures without excessive review of domestic policy choices. However, in order to ensure sufficient protection for domestic measures
designed to achieve non-trade goals, the Members included safeguards in the form of the article XX general exceptions. Under article XX, domestic policy choices aimed at protecting certain non-trade values are afforded such high importance that Members are permitted to escape their GATT obligations. Even measures that involve discrimination are acceptable but only if such discrimination is not arbitrary or unjustified. This limitation on absolute freedom to regulate illustrates the dual objectives of article XX and embodies the broader challenge facing the WTO system as a result of its negative integration character. Importantly, it also demonstrates that the resolution of competing interests in the WTO is the product of political negotiation.

K.R. Gupta in his book entitled 'A Study World Trade Organization', Atlantic Publishers and Distributors-New Delhi (2000) observed that the environmental lobby from the west has been raising its voice against the damage to the environment by poor countries in their efforts to increase their exports. They point out that the increase in exports has been at the cost of environmental degradation.

Developing countries like India have strongly opposed the inclusion of environmental standards in the agenda of WTO because it is viewed as a tool by the rich countries to create non-tariff barriers to trade.

The rich countries remain the world's biggest polluters in terms of the chemicals and gases they release into the atmosphere and the garbage they throw out every day.
Introduction

The rich countries have enforced strict environmental protection standards on their own industries as a result of which many multinational corporations have had to shift their production bases to poorer countries which do not have such high environmental standards. Many industries like leather tanning have been banned in the rich countries because of their polluting effect on the environment through the discharge of effluents. NGOs from developing countries have been protesting against this aspect of globalization in which the rich countries are transferring their polluting industries to the poor.

M.B. Rao and Manjula Guru in their book entitled 'WTO Disputes Settlement and Developing Countries', Lexis Nexis Butterworth (2004) observed that the main gains from the WTO systems are said to be MFA elimination, removal of VERs, bindings on agriculture, market access and from the developing countries' point of view, provision of special and differential treatment with the aims of greater FDI, flow of technology etc, the elimination of unilateral actions outside the system (like resort to section 301), less regional arrangements (trade flaws) vis-a-vis free flow of trade. Indeed the preamble to the Agreement establishing WTO explicitly recognizes that 'with a view to raising standards of living, ensuring full employment, expanding production and trade in. goods and services, optimal use of world resources with the objective of sustainable development' is called for. The systems overriding purpose is to help trade flow freely and for that purpose, to remove restrictions and barriers. Knowledge circles are of the view that none of the above stated gains have materialized - the poor have become poorer and the rich, richer. To establish a fairer and freer trade regime, countries need to adhere to certain basic principles.
Evidence shows that things are not moving as per the premises on which the multilateral trading system is written into the WTO Code.

ELS Reynaes in the book ‘Beyond the Transition Phase of WTO’ (2005), observed that ‘tension between two equally legitimate goals of liberalized trade and environmental protection has existed for at least a century. For instance, the first recorded use of international trade restrictions to protect human health can be traced back to 1906, when an international conference convened by Switzerland adopted a treaty to end the production and importation of white phosphorus matches, believed to cause a “loathsome occupational disease”. Since then, environmental concerns have expanded from occupational health and public safety concerns to a board range of ecological and global concerns. And as of today around 250 multilateral environmental agreements (MEAs) have been adopted.’

According to Kent A. Jones in his book ‘Who’s Afraid of the WTO’, Oxford University Press (2004), ‘the environmentalists’ concerns were not lost on governments in the industrialized countries, particularly in the United States and Europe, which gave rise in 1995 to the CTE in the newly founded WTO. Yet it was immediately clear that whatever reports came out of the committee would not be able to endorse any substantive WTO reforms, since trade-and–environment policy issues go beyond the limits of an identifiable WTO consensus.

Shaw and Schwartz (2002) argue that “the relationship between trade and environment in the WTO is, in effect, being created through disputes.” Aside from lofty and hopeful expectations and anodyne generalities that state the merits of both trade and environmental goals.
What concrete environmental guidelines acceptable to all WTO members are possible?

**Anupam Goyal**, in the book *The WTO and International Environmental Law: Towards Conciliation's*, Oxford University Press (2006), observed that since 1995, the WTO has made rulings in nine disputes involving environmental and public health measures affecting gasoline, shrimp-turtles, hormones, asbestos, salmon, apples, agricultural products, generic drugs and genetically modified organisms (GMOs). These nine disputes address nearly all of the environmental and health controversies surrounding the WTO, yet they have done little to defuse these controversies because all but the asbestos and generic drugs rulings went against the government imposing the regulations in dispute.

**Steve Charnovitz** in his article entitled *Trade and the Environment in the WTO* published in the Journal of International Economic Law (Vol. 10, September 2007) has depicted that during the past decade, as the WTO system has matured, some of the environmental omissions in WTO law have become more evident. For example, the GATS, unlike the GATT does not contain a policy exception for conservation measures. The TBT Agreement lacks an environmental exception to its requirement that measures accord national treatment, accord most favored-nations treatment (MFN), and ‘not be more trade restrictive than necessary to fulfils a legitimate objective’. Another example is the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) which requires that panel adjudicating GATS disputes regarding ‘prudential issues and other financial matters’ have the necessary expertise to the specific
financial service under dispute. Yet the DSU lacks an analogous requirement for expertise in environmental disputes.

Besides above a review of important multilateral agreements i.e. (i) CITES (ii) Basel Convention (iii) Montreal Protocol (iv) Cartagena Protocol (v) Rotterdam Convention (vi) Stockholm Convention, in the context of WTO regime suggests that they contain important trade applications.

On this point, Aparna Sawhney in the article entitled “WTO-Related matters in Trade and Environment; Relationship between WTO Rules and MEAs”, published by Indian Council for Research on International Economic Relations in May 2004 observed that Multilateral environmental agreements (MEAs) have evolved over the years as a cooperative means of protecting and conserving environmental resources or controlling for pollution that are transboundary or global in nature. The Agenda 21, adopted in 1992, noted that since MEAs are based on international consensus, they provide the best way of coordinating policy action to tackle global and transboundary environmental problems cooperatively.

Trade measures have been incorporated in MEAs where uncontrolled trade can potentially lead to environmental damage (say, loss of biological diversity for species threatened with extinction as in the Convention on International Trade in Endangered Species), or even as a means of enforcing the agreement and prevent free-riding by banning trade with non-parties (as in the Montreal Protocol). The trade measures in MEAs include a wide range of measures including monitoring of export-import permits and consents; identification label requirements; and export-import bans in specific products and states.
While some of the trade measures are outlined within the agreements as specific obligations, other trade measures may be neither specific nor mandatory. It is pertinent to note that, in 1992 the GATT Secretariat had observed “as long as participation in a MEA is not universal, trade provisions will be, like negative trade incentive, discriminatory”.

Thus, the available literature on the subject suggests that environment is a horizontal issues cutting across sectors and disciplines within the multilateral trading system of the WTO. Accordingly, the issues pertaining to the subjects like trade-environment relationships, compatibility and conflicts between important instruments of International law, impact of TRIPS Agreement on Public health sectors in developing countries and the mechanism developed for the settlement of international trade disputes need to be studied and concluded in a systematic manner.

Hypothesis

Hypothesis is a proposition, condition or principle which is assumed perhaps without belief, in order to draw out its logical consequences by this method to test its accord with facts which are known or may be defined in a research. The main important thing is the hypothesis should be capable of being verified. It is further said that hypothesis should be such as can be put to empirical text. For the purpose of this study, following hypothesis has been designed in the form of assumptions.

- There is direct or indirect relationship between trade and environment which needs to be examined in order to protect the environment.
Introduction

- There is either harmony or conflict between the different instruments of international law i.e. WTO Rules and MEAs.
- Non-tariff barriers have been effective measures of environmental protection.
- The new patent regime pursuant to the TRIPS has not provided any encouragement for better Research and Development (R&D) in the developing countries particularly in the pharmaceutical and health sectors.
- The new system of patent protection under the TRIPS Agreement has given rise to biopiracy and monopolization of traditional knowledge.
- The new system under WTO for the settlement of disputes is efficient and capable of protecting the interest of developing countries.

Chapterization

Besides introduction, the study has been conducted under the six different chapters.

Chapter I named ‘Environmental Degradation and International Measures to Save Environment’ deals with the present state of environment, various hazards posing threats to the environment and measures undertaken by the international community to save the environment. The chapter further deals with multilateral work done in the area of trade and climate change.

Chapter II entitled 'Relationships between International Trade and Environment' deals with pro-trade views and environmentalists views, trade environment debate and developing nations, historical background of trade environment linkages, important multilateral
environmental agreements, trade obligations in environmental agreements and compatible WTO provisions.

Chapter III entitled 'Environment: A WTO Concern' deals with relevant WTO rules, specific trade obligations, committee on trade and environment, the agreements on technical barriers to trade, sanitary and phytosanitary measures, harmonization of International standards, process and production methods, concepts of like product and newly emerging non-tariff barriers to developing countries trade.


Chapter V entitled 'Biopiracy and Specific Health Issues' presents a discussion on the concept of biopiracy and monopolistic rights over traditional knowledge and also the specific issues relating to trade and public health like food safety, infectious disease control and tobacco control etc.

Chapter VI entitled 'Dispute Settlement Mechanism under WTO' deals with the WTO bodies involved in the disputes settlement process, procedure of dispute settlement, international law and the WTO dispute settlement system, dispute settlement under GATT 1947/WTO and developing countries access to WTO litigation services.

In the end of the study a conclusion has been drawn wherein the opinion without prejudice has been expressed with regard to various issues discussed in the preceding chapters.