CHAPTER-II

RELATIONSHIP BETWEEN INTERNATIONAL TRADE & ENVIRONMENT

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RELATIONSHIP BETWEEN INTERNATIONAL TRADE & ENVIRONMENT

In the present context, one of the most debatable topics at the international level is the relationship of economic and environmental issues inter se. The controversy has gained momentum in view of the envisaged globalize economy under the World Trade Organization (WTO) agreements, the rapid deterioration of ecosystem of the earth and the grave environmental concerns apparent in the various international conventions concluded in the recent past. The controversy over the relationship between free trade and environment protection has been mainly focused on the possible hazards for trade policy emanating from increasing environment protection measures. Environmental measures are seen as a strain on international competitiveness and as an obstacle to international trade in general. It has also been observed the GATT/WTO rules can cause environmental problems or conflict with environmental goals. ¹

International trade is increasingly making human society economically and socially interdependent. Such interdependence has in turn, led to a stunning growth in international trade. The externalities of global trade expansion include the impact of trade on the environment. Increasing trade activities between nations and at the same time, fast deteriorating global environment resulting in part, from unregulated economic activities, has caused concern for environmental protection. The environmental imperatives of restoration of the ozone layer, depleted because of the use of chlorofluorocarbons (CFCs) and other

ozone-depleting substances in refrigeration and air conditioning machinery, check on global warming, prevention of international traffic in endangered species and conservation of the biological diversity, cannot be achieved without the participation of a large number of countries. The present economic pattern supporting free trade and multilateralism needs to be viewed in the broader context of trade, economic growth, environment protection, and sustainable development. Subject to certain conditions, trade expansion tends to enhance the technical and financial resource potential to address environmental problems attributable to both trade and non-trade effects. The important issue is whether such potential will, in fact, be properly tapped to mitigate the emergence of adverse environmental conditions.

Protecting the environment was not a major concern when the General Agreement on Tariffs and Trade was drafted in 1947. That is the reason why the GATT 1947 does not expressly mention the word ‘environment’. Serious environmental thinking with enormous economic implications began to take hold in the early 1960s. Rachel Carson, a marine biologist and an important visionary wrote, Silent Spring in 1962, a book about the widespread destruction caused by insecticides like DDT. In a broader sense, the book described how the entire world environment, and not just the nature preserve, areas of interest for preservationists and conservationists, was at risk because of pollution spawned by modern manufacturing and agricultural practices.

In recent years the issue of environment has become an issue of great importance to many countries. The result has been widespread tension between trade treaty negotiators and environmentalists of each country, each of whom sees the other as threatening, the principles they
hold dear. The conflict between trade and environment came to the forefront in 1991 with the GATT panel decision in Tuna/Dolphin I case, which ruled that a US embargo on tuna from countries that did not follow US rules on protecting dolphins during tuna fishing violated GATT rules and could not be justified under Article XX(b) and (g), namely, ‘necessary to protect human, animal or plant life or health’ and ‘relating to the conservation of exhaustible natural resources....’. But the ruling given in the Tuna/Dolphin I case, underwent modification following the decision given in the Shrimp/Turtle case in 1998. In this case the WTO Appellate Body held that the US regulations requiring shrimp-exporting states to adopt turtle-friendly methods during harvestation of shrimps were justified under GATT Article XX(g), irrespective of their extraterritorial application. In view of the WTO Appellate Body decision in Shrimp/Turtle case in 1998, the panel’s reasoning in Tuna/Dolphin I case is now only of historical interest. Nonetheless, it continues to receive much attention of environmentalists.  

The controversy over the relationship between free trade and environment protection has focused mainly on the possible restraints on trade policy arising from increasing environment protection measures. Environmental measures are seen as an impediment to international competitiveness and as an obstacle to international trade in general. On the other hand GATT/WTO rules can cause environmental problems or conflict with environmental goals. These conflicts occur in five areas. Firstly many potential tools for environmental protection, such as

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2 Ibid, P.5.
subsides to assist environmental cleanup, can run afoul of basic General Agreement on Tariffs and Trade (GATT) principle. Secondly any measure that targets uncooperative countries that do not participate in environmental treaties can easily violate GATT’s unconditional most favoured nation (MFN) principle. Thirdly inconsistencies in environmental regulation can raise the problem of trade fairness. Fourthly GATT and related trade agreements may lead to deterioration in the harmonization of health and safety standards. This can occur when countries enjoying relatively high standards have the burden of demonstrating that those standards are not unnecessary trade barriers. Fifthly the GATT imposes a discipline on the use of export controls to conserve resources. While there may be a few serious environmental problems amenable to purely domestic world community, especially where environmental problems are global in character.

In December 1993, the parties to GATT concluded the Uruguay Round of trade negotiations. The new multilateral trade accord, which was signed on 15 April 1994 at the Ministerial Meeting in Marrakesh, aimed to lower trade barriers around the world, and thereby boost the national incomes of participating countries. The agreement also transformed the institutionally nebulous GATT into the WTO, which enjoys increased powers and a broader mandate. The aim of the WTO is to ‘develop an integrated, more viable and durable multilateral trading system encompassing the GATT as modified, all Agreements and Arrangements concluded under its auspices and the complete results of the Uruguay round multilateral trade negotiations.'
Pro-Trade and Environmentalist Views

It is important to understand the various opinions on trade and to view them in the right perspective. Free traders feel that if a country’s environmental resources are correctly priced, liberal trade improves the country’s overall welfare and leads to a more efficient use of natural resources. Therefore, increased economic growth stimulates the demand for environmental protection, generates additional income to pay for it which in turn leads to improved environmental standards. The advocates of the free trade principle expect potentially positive environmental effects from increasing growth rates especially in the developing countries and argue that an increase in economic growth will increase their scope for environment protection. The exchange of goods makes possible, a more rapid spread of innovative technologies which reduce emissions and save raw materials. Finally, the transfer of knowledge associated with the goods and factor exchange also means that a higher environment consciousness will take hold. In their extremist way they think that any sort of trade related environmental measures are unwarranted and protectionist in character. The basic premise is that no matter what environmental problem confronts the earth, free trade will take care of it.

However, trade extremism results in too many resources being invested in economic activity because of a high demand for goods, thus ignoring the increasing environmental degradation resulting thereby. For example, a demand from the world market may magnify the tendency of over-fishing. If anyone, without restriction, can harvest the riches of the seas, extract the resources of forest, graze animals or collect firewood on common land, or tap water freely from municipal wells, the result would
be overexploitation, a phenomenon known as the ‘tragedy of commons’. The sad truth is that economic growth driven by trade concerns may speed up the process of environmental degradation unless sufficiently environmental safeguards are put in place.

Environmentalists argue that the environment represents a higher order concern than trade. Trade liberalization creates new market opportunities and enhances economic activity. Trade also generates wealth, which allows consumers to acquire the benefit of a higher economic output. If this activity is not properly priced, free trade and economic growth will lead to increased pollution and threaten the environment. Thus trade penalties to enforce environmental standards, whether embodied in multilateral agreements or unilaterally imposed are justified, without regard to the disruption of trade or any cost/benefit analysis. Accordingly, the protection of the environment should have priority over free trade issues. The environmental community is fearful that international trade will magnify the effects of poor environmental policies in the world. For example, high demands from the world market may encourage unsustainable logging, when no proper management scheme is in place. A study indicates that increased economic activity in the manufacturing sector is likely to lead to increase environmental degradation, if it is no accompanied by strong environmental regulations inducing innovation and the adoption of cleaner technology.

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Trade, Environment Debate and Developing Nations

The issues between international trade and environment have profound concerns for developing countries. For such countries, economic growth is the prominent aim. The reason for the priority of the developing nations on economic growth, sometimes at the expense of environment can be traced to the long period of colonialism and economic backwardness. During the era of colonialism, the natural resources of the developing states were exploited to a great extent so as to be utilized as raw material for the manufacture of imperial goods. There was little or no contribution to promote economic development in the colonies. Having attained independence, these new states realized that economic prosperity was the tool to overcome their weaker bargaining power in the areas of international diplomacy and economic relations\(^6\).

Developing countries objected to the unrestricted use of trade instruments for environmental purposes on the grounds that their access to industrial country markets would be hindered and that such measures could be used as disguised protectionist barriers, offsetting the bases of their comparative advantages. They also also objected to allowing for these measures on the grounds that they may be used to unilaterally impose industrial country environmental priorities on industrial country environmental priorities on them. However such an environmental resistant-economic growth oriented development, is fraught with the dangers of global deterioration which might be irreversible in character.

Further, developing countries argue that it is the developed countries that have depleted resources and indulged in deforestation to gain unprecedented standards of living. If they are now asked to restrain themselves, prevent deforestation and retard their growth on account of the environmental concerns of developed states, they should be adequately compensated rather than be faced with trade threats. The developed and developing countries have common but differentiated responsibilities are differentiated due to the difference in the economics. The responsibilities of the states to protect the environment are proportionate to their respective economies. Consequently, developing countries claim that in any process of sustainable development, the present disparities between nations, as well as the needs of present and future generations, should be taken into account. Hence, they seek open trade and compensation for adopting environmentally restraining policies.

At the insistence of developing countries led by India, for the transfer of clean technologies and financial assistance from developed countries, an international fund was created to assist developing countries in fulfilling their obligation under the Montreal Protocol on Substances that Deplete Ozone Layer, in 1990 a London. The multilateral fund established under the Montreal Protocol is designed to assist developing countries in meeting any additional costs incurred by eliminating the use of substances damaging the ozone layer.

In 1990 itself, the UN Global Environment Facility on the GEF, was created through which the World Bank, UN Environment Programme, UNEP, and the UN Development Program, UNDP jointly

\[\text{Ibid.}\]
provide funds to countries in Asia, Africa, and Latin America to ensure that ‘their development programmes are undertaken in a manner which protects the global environment. Four areas have been selected for the operation of the GEF. These are (i) global warming (ii) pollution of international waters, (iii) depletion of ozone layer, and (iv) destruction of natural habitats that affect biological diversity.

Another important area of concern for developing countries is the conservation of biological diversity which is primarily located in these countries itself. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) of the WTO puts excessive thrust on the patent protection build up upon raw germplasm taken freely or at a meager cost from the biodiversity reserves of developing countries. But the TRIPs Agreement is noticeably silent on the issue of returns to developing nations and that of sharing by the developed countries of biotechnological benefits, on confessional terms, with them. In contrast, the objectives concessional of the Convention of Biological Diversity (CBD) is the protection of species and ecosystem around the world, the sustainable utilization of products derived from the ecosystem, an equitable sharing of the benefit from, and technologies for the exploitation of genetic resources. The calls of exploiting biological resources, indeed led to the reluctance of the developed countries especially the US, to become a party to the CBD.

India took the lead, on behalf of the developing countries in pressing for changes in the TRIPs Agreement to limit patent rights, create farmer rights and to promote sustainable development. Developing nations knew that by these changes, economic benefits of its farmers could be realized in face of the European Union and US biotech
based agricultural and pharmaceutical concerns. Enforcing intellectual property rights over life-forms, as in the case of genetically modified plant varieties could result in monopolization of seeds available in the market, the growth of mono-crops, the loss of traditional and indigenous diversity resulting from availability of fewer plant varieties and unrestricted take-up of genetic resources. India, supported by other developing countries, argued that the TRIPs Agreement was in conflict with CBD.\(^8\) The issues are important with regard to the question, as to how the goals of the CBD could be achieved as against the goals of the TRIPs Agreement.

It is important, therefore to pensively analyze the different aspects between international trade and the concerns of global environmental protection, so as to understand if any commonality can be established between the laws of the two disciplines.

One essential condition for making sure that trade and environment are mutually supportive is to ensure that the trade liberalization process is paralleled with the development and strengthening of effective and non-protectionist environmental legislation, at national, regional and international levels. Environmental policies could, in turn, provide an incentive for technological innovations, promote economic efficiency and, consequently, improve productivity. Having recognized the need for such policies, one should also ensure that trade rules do not unnecessarily constrain but rather support and promote the ability of countries to develop and implement adequate and

\(^8\) CTE, Report of the meeting held on 11-13 September, 1996, WT/CTE/M/12; P.35, 37, 38.
non-protectionist environmental measures, at both national and international levels.

Trade policy as such has also a role to play in actively supporting sustainable trade flows and, in particular, environmental friendly trade. Trade policy and trade related instruments should be further encouraged to act as a sustainable driver by providing incentives for more sustainable trade flows. This is valid at the multilateral level but even more so at the regional and bilateral levels where the identification of positive synergies among trading partners as well as convergence and/or co-operation should be easier than is the case at the international level. Trade tools could, for instance, be instrumental in making tangible progress towards more sustainable consumption and production pattern. Economic instruments also need to be more actively developed, notable with a view to allow for the necessary internalization of external environmental costs. In addition, positive synergies between trade, environment and development should be further considered, particularly regarding the elimination of environmentally damaging subsidies and the promotion of environmental friendly goods and services, with a special focus on those originating in Developing Countries.

The relationship between trade and the environment is increasingly important in international relations. There are three main aspects to the relationship.9

- The environmental impact of trade and trade policies.

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9 Commissioner communication on Trade and environment of 28.02.96 European environment.
The only reference to environmental conservation in GATT 1947 was in paragraphs (b) and (g) of Article XX (General Exceptions), where departure from free trade could be made by a country provided the trade restriction was applied in an nondiscriminatory manner against a product harmful to health (human, animal or plant) more exhaustible natural resources. The issue of the environment began to be discussed systematically in multilateral trading system much later in 1971. It was initiated in the run up the 1972 United Nations Conference on the Human Environment in Stockholm when the GATT Secretariat was asked to make a contribution. Consequently, the Secretariat prepared a study entitled “Industrial Pollution Control and International Trade”, which examined the implications of environmental protection policies on international trade. The study indicated how environmental policies could become obstacles to trade as well as constitute a new form of protectionism namely, green protectionism. During the decades of seventies and eighties, the international focus remained on economic growth, social development and environment, being largely influenced by the 1972 Stockholm Conference.\footnote{Aparna Sawhney : WTO Related Matters in Trade and Environment, Relationship between WTO Rules and MEAs, ICRIER working paper no. 133, May 2004.}
Chapter - II

A Group on Environment Measures and International Trade (EMIT) was established in November 1971, based on suggestions by some of the GATT parties. The participation in EMIT was open to all GATT members, and the group was to convene at the request of GATT Members. Yet no such meeting was called until twenty years later in 1991 in order to contribute to another international environmental conference scheduled in 1992, the United Nations Conference on Environment and Development (UNCED).

While the EMIT may have been defunct, the environment did feature in the trade negotiations during the Tokyo Round (1973-1979), when participants took up the question of the degree to which environmental measures (in the form of technical regulations and standards) could form obstacles to trade. The Standard Code or Tokyo Round Agreement on Technical Barriers to Trade was negotiated to ensure non-discrimination in the preparation, adoption and application of technical regulations and standards, and transparency of such technical barriers.

The Standard Code, adopted in 1979, sought to encourage the development of international standards and eliminate the trade barrier effects of technical regulations and standards (including packaging, marking and labeling requirements), in order to improve efficiency in the trade of industrial and agricultural products. The agreement recognized that “no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment or for the prevention of deception practices” provided these were not applied in an arbitrary or unjustifiably discriminatory manner. While the GATT did
not contain any reference to the environment explicitly (except for natural resources, human, animal and plant health in Article XX b and g), the Standard Code (a plurilateral agreement) clearly allowed a window for environmental protection through product specifications in case the traded product posed a threat to the environment. The WTO Agreement on Technical Barriers to Trade (a multilateral agreement) that came into effect in 1995 largely drew from the Standards Code, and further clarified the provision for environmental justification.

While the Standard Code encouraged harmonization of technical specification to international standards, it allowed parties to adopt their own technical regulations and standard/certification systems, subject to a transparent notification procedure, whenever a relevant international standard did not exist. However, parties could skip these procedural details in adopting their own regulations/standards (Articles 2.6) and certification systems (Articles 7.4) in case of “urgent problem of safety, health environmental protection or national security”.

It should be observed here that the Standard Code covered technical regulations and standards pertaining to the product and not processes or production methods. Parties were encouraged to specify regulations and standards in terms of “performance rather than design or descriptive characteristics of a product such as levels of quality, performance, safety or dimensions.”

In 1982, GATT ministerial meeting, the Members took up the issue of export of domestically prohibited products, following the...
concern of several developing countries that products prohibited in
developed countries on the grounds of environmental hazards, health or
safety reasons continued to be exported to them. Subsequently, a
Working Group on the Export of Domestically Prohibited Goods and
other Hazardous Substances was established in 1989. Meanwhile, in
1987 a report from the World Commission on Environment and
Development our common Future introduced the term “sustainable
development”, and recognized that international trade could help in the
process of development to alleviate poverty and environmental
degradation. This concept over time gained significance as a founding
principle of the WTO.

While the Uruguay Round (1986-94) was still in progress, a major
environmental conference took place: the 1992 UNCED at Rio de
Janeriro. In the 1990 Ministerial meeting at Brussels, the countries from
the European Free Trade Area proposed that a formal statement on trade
and environment be made by the Ministers, with priority attention to
interlinkages between environmental policy and multilateral trading
system. This was followed by a request from the EFTA countries (with
support from other delegations) to re-convene the EMIT Group, and to
prepare a GATT contribution for the forthcoming UNCED. The
contracting parties agreed that the EMIT would be convened and
examine three issues (i) trade provisions contained in existing
multilateral environmental agreements vis a vis the GATT principles
and provisions; (ii) multilateral transparency of national environment
likely to have trade effect; and (iii) trade effects of new packaging and
labeling requirements to protect the environment. The Group on EMIT
The debate on trade and environment initiated by the EMIT was taken up more formally in 1994 by the Sub-Committee on Trade and Environment of the WTO Preparatory Committee. The GATT study on Trade and Environment of the WTO Preparatory Committee. The GATT study on Trade and Environment (GATT 1992) identified another such MEA in force by 1994 (WTO 1994). In particular, the issues of trade measures applied unilaterally by a WTO Member to address environmental problems lying outside its national jurisdiction, and trade measures pursuant to MEAs became items in the work agenda of the CTE. One of the important questions to be resolved was how trade measures pursuant to MEAs could affect WTO Member’s rights and obligations.

It is submitted that in preparing for the Rio summit, the participating countries; in particular developing countries recognized that international trade could help alleviate poverty, which in turn would help improve the environment. At the UNCED, nations adopted Agenda 21; the action programme to promote sustainable development. The concept of sustainable development established a link between environmental protection and economic development at large. Thus environment issues were linked to trade in the new constitution of the multilateral trading system signed in 1994, and the term sustainable development was explicitly incorporated in the preamble establishing the new World Trade Organization.
Important Multilateral Environmental Agreements (MEAs)

Today, there are more than three hundred MEAs existing, of these about thirty contain trade measures. Recently in 2003, the WTO Secretariat released a matrix on trade measures pursuant to fourteen selected MEAs. Some MEAs, however, like the Convention of the Conservation of Antarctic Marine Living resources, the Convention on Biological Diversity, and United Nations Framework Convention on Climatic Changes do not contain any trade-related measures. Other treaties contain obligations for trade measures like export or import certifications (for example the International Plant Protected Convention). A few agreements like the International Tropical Timber Agreement and the International Convention for the Conservation of Atlantic Tuna, have provisions for developing trade measures. Thus analysis by the WTO Members in the CTE has in particular focused on six of these MEAs, which contain explicit trade obligations.\(^\text{12}\)

For the purpose of this study the above six MEAs are very important of which four are already in force. The four MEAs already enforced (also been ratified by India) include: (i) the Convention on International Trade in Endangered Species or CITES (1973); (ii) the Montreal Protocol on Substances that Deplete the Ozone Layer (1987); (iii) the Basel Convention of the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989); and (iv) the Cartagena Protocol on Biosafety (2000). The two other MEAs yet to come into force include the Rotterdam Convention on the Prior Informed Consent Procedure for Certain hazardous Chemicals and Pesticides in

\(^{12}\) The six MEAs identified by the United States I October 2002 meeting of the CTE in special session as containing specific trade obligation.

This section analyzes the trade measures contained in the six MEAs, and their relationship with the environmental and health provisions under the GATT/WTO rules. While clarification of the relationship between trade measures in MEA and WTO rules has been sought in the WTO in the 1990s, the issue had been raised earlier too. For example, during the original negotiations of the Montreal Protocol in 1985-87, the parties sought to clarify the relationship of the Protocol with respect to the GATT. More recent MEAs like the Cartagena protocol state that the treaty is mutually supportive of the GATT/WTO system:” trade and environment agreements should be mutually supportive with a view to achieving sustainable development”. The Cartagena Protocol also clarified in its Preamble that the “Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements” and that “the above recital is not intended to subordinate this Protocol to other international agreements”, even though it contains provisions that are not consistent with some of the rules within the multilateral trading system as discussed below.

The trade provisions in some of the MEAs are required to reduce environmental harm : either because environmental degradation is directly related (say, negative product effect) or indirectly related to trade. For instance, the Basel Convention, the Cartagena Protocol, the Rotterdam Conventions and the Stockholm Convention are associated with the adverse product effects of trade, since the products crossing
border is hazardous or threatens to degrade the ecosystem of the
destination countries.

The trade measure outlines in the CITES, on the other hand, can
be associated with adverse scale effect of trade (exploitation for exports
driving extinction of species). Yet another reason for the use of trade
measures in MEA is to enforce the environmental objective of the
agreement. For example, in the Montreal Protocol, trade is prevented
between parties and non-parties so that the effectiveness of the
agreement is not undermined (i.e. while domestic production of ozone
depleting substances is controlled among parties, the production is not
shifted to non-parties through increased imports). Table at the end
provides a summary of the objectives and trade provisions of the six
MEAs.

*Convention on International Trade in Endangered Species of Wild
Flora and Fauna (1973) (CITES)*

The CITES was adopted in 1973 and came into force in 1975. The
CITES seeks international cooperation for the protection of certain
species of wild fauna and flora against over-exploitation thought
international trade. The trade measures incorporated in the Convention
are meant to prevent harmful practices like improper transport of these
species. In order to promote conservation of prioritized endangered
species, trade measures include outright prohibition in commercial trade
or restricted traffic in these species. The Convention distinguishes
between three lists of species based on the threat of extinction:
Appendix I includes species threatened with extinction; Appendix II
include species that could be threatened with extinction unless trade is
regulated; and Appendix III include all species which any Party identifies as being subject to regulation within its jurisdiction, and requests cooperation of other Parties in the control of trade to prevent unsustainable or illegal exploitation. One or more Scientific Authorities of the State have to monitor the trade of specimens of species threatened with extinction; and Management Authorities are in charge of trade permits and certificates.

The trade measures for the three types of species of the Convention are contained in three articles (III, IV and V). Article III provides that Trade in species of Appendix I is allowed only on condition that a scientific assessment ascertains such export and import are not detrimental to the survival of that species and that the specimen has not been obtained in violation of the state’s law to protect such species. According to Article V, Trade in specimen of species from Appendix II is allowed through permits provided trade is not detrimental to the survival of the species with permits or certificates. Article VI provides, an import permit corresponding to an export permit among Parties ensures the prevention of circumvention to non-Parties. Article X allows trade with non-Parties on condition that the latter largely conforms to requirements of the Convention and the trade is conducted with comparable documents. Article XIV.1 also allows a Party to adopt domestic measures restricting trade or prohibiting trade in species (a) included in the three appendices; and (b) not included in Appendix I, II or III.

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13 See Appendices I, II, III of CITES.
Montreal Protocol on Substances that Deplete the Ozone Layer (1987)

The Montreal Protocol was adopted in 1987 and came into force in 1989. The Protocol aims to reduce and finally eliminate the emissions of ozone depleting substances from anthropogenic sources. Under the Protocol’s obligations, parties are required to control production as well as consumption of ozone depleting substances (ODS). Consumption is defined as the sum of domestic production and the net imports, thus the Protocol requires the parties to control trade as well to comply with the phase-out of ODS. After the phase-out date, the parties are to cease production of the controlled substance for domestic consumption, other than for the use agreed by the parties to be essential.

The trade control with parties is contained in Article 4A of the Protocol, and states that in case after the phase-out date applicable to the ODS, a Party is unable to comply with its production obligations, then it shall ban the export of used, recycled and reclaimed quantities of the substances, other than for the purpose of destruction. Each Party is obligated to implement a system for licensing import and export of ODS in Annexes A, B, C and E (Article 4B).

Articles 4 prohibits trade in ODS with non-parties: As of 1990 each Party should have banned the import of the controlled substances in Annex A (CFCs) from any State not Party to the Protocol. Moreover, as of 1993, each Party should have banned the export of any controlled substances in Annex A to any State not Party to the Protocol. Similarly trade in Annex B substances (other CFCs) is banned with non-parties to the London Amendment (effective August 1993); and trade in Annex C
substances (HCFCs, HBFCs) are banned since June 1995 for non-parties (Copenhagen Amendment 1992).


The Basel Convention was adopted in 1989 and came into force in 1992. The Convention controls the Transboundary movement of hazardous waste, to encourage the treatment and disposal of hazardous wastes near the region of waste generation. Under the Convention, parties are obliged to “ensure that Transboundary movement of hazardous wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes” (Articles 4.2). The hazardous wastes covered included those listed in the Convention and as well as those defined as hazardous by domestic legislation of parties. An amendment to the Basel Convention, called the Ban Amendment, which is yet to come into force, added a preambular paragraph 7 that recognized the high risk especially to developing countries, which lack an environmentally sound management of hazardous wastes as required by the Convention.

The trade measures pursuant to the Convention are contained in Article 4. Under the obligation, export of hazardous wastes is not permitted to parties that have prohibited such import (Art 4.1b), and only allowed when the State of import consents in writing (Art 4.1c). Transboundary movement of hazardous wastes to Parties, especially developing countries, is not allowed if there is reason to believe that the wastes in question will not be managed in an environmentally sound manner (Art 4.2e). Trade in hazardous wastes, or other wastes, is banned.
between a Party and non-Party (Art 4.5). Article VI provides that the trade among Parties can be conducted only through written consent to import after an export notification.

Article 11.1 of the Convention allows for trade with non-Party, and a Party may enter into bilateral, multilateral or regional agreements/arrangements on Transboundary movement of hazardous wastes with non-Parties, provided such agreements do not derogate from the environmentally sound management of wastes as required under the treaty; and should notify the Secretariat of such agreements. The largest exporter of wastes in the World, the US, is not a Party to the Basel Convention and it organizes trade with Parties under this provision. For instance Canada and Mexico (both parties to the Convention) have bilateral agreements with the US.


The Cartagena Protocol was adopted in 2000, and came into force in September 2003. The Protocol is a supplementary agreement to the Convention on Biological Diversity, is the only international agreement today dealing exclusively with living modified organisms (LMOs). The objective is to contribute to the safe transfer, handling and use of LMOs that may have adverse effects on biological diversity and pose a risk to human health. While the Protocol covers the Transboundary movement of LMOs, it does not include non-living products derived from LMOs, such as cooking oil from genetically modified (GM) corn or ketchup from GM tomatoes.

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14 Any living organism having a novel combination of genetic material obtained through the use of modern biotechnology.
The trade measures pursuant to the Protocol include prior notification and informed consent essential for trade in LMOs: Before the first shipment of LMOs, an exporting Party needs to follow the advance informed agreement (AIA) procedure, and provide sufficient information for the importing parties to make an informed decision. An export notification under Article 8 has to be followed by an acknowledgement of receipt of notification under Article 9. Parties are required to use the Biosafety Clearing-House to fulfill a number of obligations, including specific information on national biosafety laws; risk assessment summaries; and final decisions by importing Parties with supporting reasons.

The Protocol contains a provision that allows a Party to ban import of LOMs for food or feed or processing that is inconsistent with the SPS Agreement, even though the preamble of the Protocol states that it is mutually supportive with the WTO agreements. According to the Protocol the "(L)ack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the party of import, taking into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of that living modified organism intended for direct use as food or feed, or for processing, in order to avoid or minimize such potential adverse effects." (Article 11.8). The risk assessment, of course, has to be scientifically sound and the guidelines are provided in Annex III (Article 11.6). Thus the Protocol has a wider scope for import restriction compared to the SPS Agreement, under which food imports may be
provisionally restricted on the principle of precaution in the face of scientific uncertainty.

Article 14 of the Protocol allows bilateral, regional, multilateral trading agreements and Transboundary movement of LMOs, provided such agreement does not result in a lower level of protection than that provided for by the Protocol. Thus the Protocol supports regionalism with more stringent standards on biosafety.


The Rotterdam Convention on PIC, convened jointly by the UNEP and FAO, was adopted in 1998, and entered into force in February 2004. The Convention promotes the safe use of hazardous chemicals (through labeling standards, technical assistance), and ensures that exporters comply with the requirements. The Convention supports the Agenda 21 principle on environmentally sound management of toxic chemicals, and the hazardous substances covered by the Convention include banned or severely restricted chemicals and hazardous pesticides, but not other chemicals like narcotic drugs, radioactive materials, wastes, foods, chemical food additives, chemical weapons, pharmaceuticals, and chemicals imported in reasonable amounts for research analysis/personal use (Article 3).

The trade measures pursuant to the Convention include export ban on extremely hazardous chemicals, and export notification for domestically restricted chemicals. A Party cannot export the chemicals
listed in Annex III from its territory (Article II). An export notification has to be issued to the importing Party in case the chemical is banned or restricted in the exporting Party’s own territory (Article 12). Exporters need to obtain prior informed consent from the state of import before proceeding with trade. Obligations for imports include issuance of consent for import, or refusal or even interim import consent based on appropriate legislative and administrative measures (Article 10).

*Stockholm Convention on Persistent Organic Pollutants (2001)*

The Stockholm Convention was adopted in May 2001, and will come into force only after the 50th Party ratified the agreement. Based on the precautionary approach (Principle 15, Rio Declaration), the Convention aims to protect human health and the environment from persistent organic pollutants (POPs) by reducing/eliminating their release. The Stockholm Convention contains production and consumption restrictions on the pollutants listed in its annexes: Parties are required to prohibit or take measures to eliminate the production and use of chemicals listed in Annex A (e.g. aldrin, chlordane, dieldrin, mirex), and restrict the production/use of chemicals in Annex B (e.g. DDT). Annex C lists chemicals unintentionally produced from anthropogenic sources, say during the manufacture of paper and pulp, or incineration of wastes, particularly medical waste.

Trade obligations pursuant to the Convention requires each Party to prohibit and/or take legal and administrative measures necessary to eliminate import and export of chemicals listed in Annex A (Article 3.1a). The import and export of chemicals in Annex A or B is allowed only for the purpose of environmental sound disposal or for the designated
use permitted in these annexes (Article 3.2a, b I, ii). A chemical listed in Annex A, for which production and use specific exemptions are no longer in effect for a Party, cannot be exported except for environmentally sound disposal (Article 3.2c). The Protocol allows a Party to export Annex A or B chemicals to a non-Party on condition that the latter conform to some of the Protocol’s provisions.

The potential conflict between the multilateral trading rules and trade measures pursuant to MEAs triggered speculation that countries may choose not to participate in environmental treaties in future (also called the chill effect). While Western European nations are well-known to be proponents of environmental initiatives, most developing countries (as well as least developed countries) have also been Parties to the major MEAs existing today. However, not all major WTO Members are Party to all the major MEAs. Table 2 provides the ratification of selected WTO Members, including Australia, China, EC, India, Japan, Malaysia, Norway, Switzerland, and US.

The WTO Members list in Table 2, represents some of the countries whose proposals on paragraph 31(i) of the DMD are discussed in section 4 later. In particular, Norway and Switzerland have accepted or ratified all the six MEAs (including the amendments), followed closely by the EC. Japan has accepted four of the MEAs (though not all amendments) but not the Cartegena Protocol and the Rotterdam Convention. Australia has ratified three of these treaties, including CITES, Montreal and the Basel. The US, has so far ratified only two of

the six MEAs, namely the CITES and Montreal Protocol. China has ratified three of the MEAs, including the CITES, Montreal and the Basel (as well as the Ban Amendment). In comparison, India has accepted all but two of these MEAs, namely the Rotterdam Convention and the Stockholm Convention. India, however, has not ratified the Ban Amendment under the Basel Convention). Malaysia has accepted five of these MEAs (including the Ban Amendment under the Basel Convention, but not the amendments under CITES), but not the Stockholm Convention on POPs.

### Table: Important Multilateral Environmental Agreements: Objectives, Membership and Trade Measures

<table>
<thead>
<tr>
<th>Particulars of the Multilateral Environmental Agreement</th>
<th>Trade Obligation</th>
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<tbody>
<tr>
<td><strong>i) Convention on International Trade Endangered Species (1973)</strong></td>
<td>Article III: (2) export (3) import and (4) re-export in any specimen of species listed in Appendix I (threatened with extinction, is allowed through prior grant and presentation of a permit only after scientifically assessed that such trade would be non-detrimental to the species.</td>
</tr>
<tr>
<td></td>
<td>Article IV: (2) Export and (5) re-export of specimens in Appendix II species (that may become endangered unless controlled) regulated through export permits and after scientific assessment. (3) Scientific Authority of State to monitor actual exports and export permits. (4) Imports require supporting export permits.</td>
</tr>
<tr>
<td></td>
<td>Article V: (2) Export, (3) import and (4) re-export in species listed in Appendix III (identified by a Party for regulation within its own jurisdiction) through permits.</td>
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<td></td>
<td>Article VI: Guidelines for permits and certificates for trade.</td>
</tr>
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</table>
### ii) Montreal Protocol on Substances that Deplete the Ozone Layer 1987

Objective to reduce and eliminate anthropogenic emissions of ozone depleting substances, and develop a regime to limit the release of ozone depleting substances into the atmosphere.

**Entry into force:** 1989  
**Membership:** 1987 protocol with 186 parties;  
1990 London Amendment with 171 parties;  
1992 Copenhagen Amendment with 159 parties;  
1997 Montreal Amendment with 113 parties  

**Article 4:** Parties to ban  
1. **(1)** import (as of January 1990) and **(2)** export (as of 1993) of controlled substances in Annex A with non-parties.

Trade ban with non parties of substances in:  
- Annex B from August 1993 (London Amendment);  
- Annex C Group II from June 1995 (Copenhagen Amendment);  

- Trade ban in HCFs with countries which have not ratified Copenhagen Amendment (Beijing Amendment).

- **Article 4A:**  
  1. Parties unable to cease production of controlled substance in the applicable time, despite all steps, shall ban export of new/used/recycled/reclaimed quantities of the substance except for destruction.

- **Article 4B:**  
  1. Parties shall implement licensing system for import and export of new, used, recycled, reclaimed controlled substances in Annexes A, B, C, & E.


Objective to promote environmentally sound management of hazardous wastes, and reduce Transboundary movements of hazardous wastes to protect human health and the environment from adverse effects from handling, transport and disposal of hazardous wastes. Also minimize the generation in terms of quantity and hazardousness of wastes.

**Entry in force:** May 1992.

**Membership:**  
- Convention with 159 parties  
- 1995 Ban Amendment with 42 parties, not yet in force.

- 1999 Basel Protocol on Liability and Compensation for Damage has only 14 signatories, not in force.

**Article 4.1:**  
(a) Inform other parties of the decision to prohibit import of hazardous wastes for disposal. (b) Prohibit the export of hazardous wastes to Parties that have notified import prohibition of those substances, or (d) not consented in writing to the specific import Article 4.2: (d) ensure Transboundary movement of hazardous wastes is minimized consistent with environmentally sound and efficient management of wastes; (e) Ban export of hazardous wastes to parties, especially developing countries, if wastes in question will not be managed in an environmentally sound manner, or if import is prohibited by domestic legislation; (g) prevent import of hazardous wastes in case wastes will not be managed in an environmentally sustainable manner.

**Article 4.5:** Party shall ban trade of hazardous wastes with a non-Party.

**Article 4.7:** Party shall (a) prohibit all persons in its national jurisdiction from wastes is (b) packaged, labeled; (c)
### Chapter - II

| Article 4.8: | Exporting Party shall require that wastes are managed in environmentally sound manner in state of import. |
| Article 6: | (1,2,3,4) Prior information consent procedure for trade between parties, (9,10,11) procedure on receipt of wastes, covered by insurance. |
| Article 8: | Duty to re-import by State of export if the wastes cannot be disposed in an environmentally sound disposal. |
| Article 9: | (2,3,4) In case of illegal traffic of hazardous wastes, responsible Party (exporting or importing) or concerned Parties will dispose of wastes. |


| Objective: | Adequate level of protection in the field of safe transfer, handling and use if LMOs that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health. |
| Entry into force: | September, 2003 |
| Membership: | 84 parties |
| (Party to the Protocol has to be a Party to the Convention on Biodiversity) |

Article 7: | (1) Advanced Informed Agreement (AIA) to apply to first intentional movement of LMOs (other than food or feed) |
| Article 8: | Export notification in writing for LMOs other than food or feed. |
| Article 9: | Acknowledgment of export receipt in writing. |
| Article 10: | (1-4) Import decision procedure for LMOO (not food or feed) |
| Article 11: | (1,2,5) Import decision procedure for LMO (food/Feed) |
| Article 14.2: | Parties shall inform others of bilateral/regional/multilateral trade arrangements they have entered into before or after this Protocol. |
| Article 18.2: | (a,b,c) Party to ensure documentation accompanies LMOs. |


| Objective: | Promote shared responsibility and cooperative effort in the international trade of certain hazardous chemicals to protect human health and the environment from potential human harm and encourage environmentally sound use, by facilitating information exchange about their characteristics, by proving for a national decision-making process on their import and export and by disseminating these decisions to Parties. |
| Entry into force: | to enter into force from 24 February 2004. |
| Membership: | 59 parties |

Article 5: | (1,2) Parties shall notify the Secretariat in writing of regulatory action and information on chemicals (banned or severely restricted or hazardous) that are to be subject to the prior informed consent procedure. |
| Article 10: | Parties shall (2,4,7) notify Secretariat a response on future import of the chemicals listed in Annex III; and (9) decide on the import of the chemical from any source. |
| Article 11.2: | Party shall ensure that a chemical listed in Annex III is not exported from its territory to an importing Party even... |
### Trade Obligations in MEAs and compatible WTO provisions

Although trade restrictions are used as instruments in MEAs to help achieve environmental conservation, it is widely recognized that trade measures are neither the most efficient nor the most effective means of achieving an environmental goal since international trade may not be the cause driving the environmental degradation. Not surprisingly, the environmental worth of trade measures in MEAs has typically been low on evaluation of their effectiveness. This was evident from the evaluation of trade obligations under the CITES to preserve endangered species of flora and fauna (UNCTAD 2000). The threat to endangered

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**Chapter - II**

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<th>Article 12: (1-4) Party shall provide export notification for chemicals banned or severally restricted in its own territory, providing information set out in annex V. Obligation ceased when chemical is listed in Annex III.</th>
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<tr>
<td>Article 13.2: Each Party shall require that chemicals (in Annex III or those domestically banned or severally restricted) are labeled according to international standards.</td>
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<tr>
<th>vi) <strong>Stockholm Convention on Persistent Organic Pollutants (2001)</strong></th>
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<tr>
<td><strong>Objective:</strong> Reduction or elimination of releases of persistent organic pollutants into the environment.</td>
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<tr>
<td><strong>Entry into force:</strong> not yet in force.</td>
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<tr>
<td><strong>Membership:</strong> 48 parties.</td>
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<td>Article 3.1 : (a) (ii) Each Party shall prohibit and/or take legal and administrative measures necessary to eliminate import and export of chemicals listed in Annex A.</td>
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<tr>
<td>Article 3.2: (a,b) Each Party to ensure that import or export of chemical listed in Annex A or B occurs only for purpose of environmentally sound disposal of for use permitted for the Party under Annex A or B; (c) For a Annex A chemical, for which production or use exemption is no longer in effect, is not exported except for the purpose of environmentally sound disposal.</td>
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*Source: Compiled from Information in the websites of the respective MEAs (as of January, 2004) and WTO (2003), cited in supra note 15.*
species is driven by not just the destruction of the species directly but also indirectly through the destruction of habitat of the species. Sometimes, conditional trade restrictions have also induced exploitation and illegal trade. For instance, while the CITES prohibits trade in wild orchids, it allows trade in cultivated flowers, which has led to illegal trade in some rare species.

Similarly, the Basel Convention, intended to eliminate the problem of dumping of hazardous wastes from industrialized countries to developing countries, ignored the fact that a number of developing countries are increasingly becoming generators of hazardous waste. Rapid industrialization in developing countries has been accompanied by an increasing demand for secondary retrievable material from certain wastes (especially lead and zinc wastes) and the ban on export of hazardous wastes from OECD countries under the Basel Convention has enhanced the existing trade of hazardous wastes among developing countries (UNCTAD 2000;10). It is noteworthy that since the largest exporter of waste worldwide, the US, is not a Party to the Basel Convention, it undermines the essential goal of the Convention. More importantly, the Basel Convention has failed to promote environmentally sound hazardous waste management in developing countries, even though it may have reduced the flow of wastes from European developed nations to the developing countries.

The Basel Convention has created much discontent among industrializing countries about the wastes listed as “hazardous” in the Convention. Some of the wastes, listed as hazardous in the Convention, contain recyclable materials like lead acid and zinc ash. The ban being wide, it precludes extraction of recyclable materials in the
industrializing countries through waste import. Question have been raised whether such a ban would be able to promote environmentally sound hazardous waste management in developing countries which is one of the goals of the Convention, since the demand for cheaper recycled metals in industry as opposed to virgin mined metal still remain.

Trade measures, however, continue to play an important role in these MEAs, and the concern within the WTO is that the trade measures can affect WTO Members’ rights and obligations.

Indeed, the MEAs negotiated in the post WTO era, especially the Cartagena Protocol on Biosafety (2000), the Rotterdam Convention on Prior Informed Consent (1998), and the Stockholm Convention on Persistent Organic Pollutants (2001), contain statements in their respective Preambles that reinforce the mutual supportiveness of trade and environment, and that the MEA does not change the rights and obligations of the parties under existing international agreement.\[16\]

Most of the trade obligations applied amongst parties in the six multilateral environmental agreements discussed above are compatible with the provisions in the GATT/WTO. The quantitative trade restrictions in the MEAs are justified under the GATT Article XX exceptions to protect exhaustible or depletable natural resources, and the labeling requirements fall under the category of technical regulations in the TBT Agreement. Moreover, since the GATT/WTO provides its Members the autonomy to adopt environmental policies in support of sustainable development, any domestic environmental legislation requiring a ban on trade of hazardous substance, say under Basel or

\[16\] Ibid- P. 51, 52.
Rotterdam Convention, would be consistent with the multilateral trading rules.

Four of the MEAs discussed here require prior informed consent to international trade, namely, the Basel Convention, the Cartagena Protocol, the Rotterdam Convention, and the Stockholm Convention. The prior consent requirements are conditions to the entry into a country’s market, and can be viewed as conditional market access requirements or binding technical requirements on trade. As conditional market access requirements they are covered by the prohibition under Article XI of GATT 1994, but are justifiable under GATT Article XX. As binding technical requirements they are covered by the TBT Agreement. The prior informed consent notification requires detailed product characteristics/information, which clearly come under the definition of technical regulations.17

There are, however, some inconsistencies, for example the differential treatment among Parties in the Basel Convention, or the precautionary basis of impact refusal in the Cartagena Protocol. Another aspect inconsistent with the GATT/WTO trade rules results from the discrimination between Parties and non-Parties obligatory in the Basel Convention and the Montreal Protocol. Since all of the members of GATT/WTO are not parties to such an MEA the Party vs non-Party issue violates the GATT Article I which relates to the MFN clause.

The consistency of trade measures under MEAs with GATT/WTO rules is important especially where the Parties to an MEA

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17 If a measure is consistent with the TBT agreement (one of the Agreements in Annex 1A), it will prevail even if there is an apparent inconsistency with another provision of the GATT.
constitute only a subset of the WTO Members. It may be noted that Article 41 of the Vienna Convention allows “two or more of the parties to a multilateral treaty” to conclude an agreement “to modify the treaty as between themselves” as long as such a modification is either provided by the original treaty (Article 41.1a) or not prohibited in the treaty (Article 41.1b). The condition of the current WTO negotiations fall under Article 41.1b of the Vienna Convention, which requires that the new treaty among the subset of parties “(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;” and “(ii) does not related to a provisions, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.”

The GATT/WTO rules compatible with the trade measures pursuant to each of the six MEAs among Parties are briefly discussed below.

**Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973 (CITES):** The commercial trade prohibition of species listed in Appendix I (threatened with extinction) and the regulated trade of species in Appendices II (endangered unless regulated) are consistent with GATT Article XX(g) to conserve the exhaustible natural resources in conjunction with domestic regulations. The regulation of trade in Appendix III species (identified by Party within its own jurisdiction) is consistent with GATT Article XX(d). The specifications on export and import permits are technical regulations falling under the TBT Agreement.
**Montreal Protocol:** The trade ban of ozone depleting substances between parties and non-parties may be justifiable under GATT Article XX(b) and (g), given the domestic control of production and consumption of ODS in the economy of the Party (and considering the broad interpretation of the exceptions in the Gasoline dispute). Under the Montreal Protocol, the domestic producers of the parties are subject to restrictions on ODS production, and National Treatment may allow discrimination with non-parties of the Protocol.

**Basel Convention:** The ban on export of hazardous and other wastes to countries which have prohibited the import of such wastes (Article 4.1), and the obligation to re-import in case the state of import cannot dispose of the wastes in a sustainable manner (Article 8) seems consistent under GATT Article XX (b). The ban on export from developed to developing countries or parties where environmentally sound management of waste is not followed (Article 4.1e), would be consistent with GATT Article XX (b), but based on an extra-jurisdictional argument of minimizing the risk to human health in the developing countries.

The Convention requires that the state of export notify "competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other waste" and the notification should "contain the declarations and information specified in Annex V A" (Article 6.1). Among other information, the notification should provide information on the “designation and physical description of the waste, its composition and information on any special handling requirements including emergency provisions in case of accidents” (Annex VA.13). The notification requirement is mandatory and would seem to fall under the TBT Agreement. The notification requirement
does not infringe any GATT rule as long as it does not have a restrictive effect.

**Cartagena Protocol:** The Advance Informed Agreement of the Protocol requires that "The Party of export shall notify, or require the exporter to ensure notification to, in writing, the competent national authority of the Party of import prior to the intentional transboundary movement of a living modified organism .... The notification shall contain, at a minimum, the information specified in Annex I (Article 8.1). The information requirements specified in Annexure I include product characteristics like the "identity of the living modified organism", "description of the nuclear acid or the modification introduced, the technique used, and the resulting characteristics of the living modified organism", as well as "suggested methods for the safe handling, storage, transport and use, including packaging, labeling, documentation, disposal and contingency procedures, where appropriate". The Advanced Informed Agreement of the Protocol would seem to fall under the exception in Article XX(b). The accompanying documentation on product characteristics during trade of LMOs, are technical regulations consistent with the TBT Agreement.

On the other hand, the decision to import LMOs for food/feed would correspond to Article 2 of the SPS Agreement and Article XX (b). However, the provision for the precautionary principle outlined in the Protocol for food/feed LMOs in Article 11.8, which allows decision based on insufficient scientific evidence (reflects Principle 15 of the Rio Declaration), is different from to the precautionary principle contained in the SPS. The SPS Article 5.7 does allow for the use of precaution
when scientific evidence is insufficient to establish safety, but such measures can be adopted only on a provisional basis.\(^\text{18}\)

**Rotterdam Convention**: As noted earlier, prior informed consent requirement is not consistent with Article XI.1 of GATT 1994, but can be justified under Article XX(b) and (d) to protect health and to secure compliance with domestic regulations. The Convention also requires that the export of chemicals be accompanied with documented information: “without prejudice to any requirements of the importing Party, each Party shall require that both chemicals listed in Annex III and chemicals banned or severely restricted in its territory are, when exported, subject to labeling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.” (article 13.2) the product labeling of the consignment is consistent with the TBT Agreement.

The provision on declaration of domestically prohibited/restricted hazardous chemicals (Article 12) relates to the issue of domestically prohibited goods (DPGs) in the GATT/WTO. The concern for export in DPGs was first taken up in the GATT in 1982, and although a notification system was set up, the system failed to work effectively. The issue of DPGs is one of the items in the work agenda of the CTE and is yet to be resolved.

**Stockholm Convention**: - The export and import prohibition (to support the MEA objective of elimination/limiting identified pollutant, just as in

\(^{18}\) Miami Group (Argentina, US, Australia etc. opposed the ratification of Cartagena Protocol on the apprehension that it would limit trade.
the Montreal Protocol) would be justifiable under Article XX(b) exceptions. The Convention allows for limited trade (for permitted use and/or final disposal) in “a chemical listed in Annex A for which any production or use specific exemption is in effect or a chemical listed in Annex B for which any production or use specific exemption or acceptable purpose is in effect, taking into account any relevant provisions in existing international prior informed consent instruments” (Article 3.2b). The information requirement and screening criteria (Annex D) for a Party to list a chemical as POP in Annex Z/B include detailed product characteristics. Thus for a Party exporting a chemical which it has listed in Annex A/B, the applicable WTO provision is the TBT Agreement.

Table: Trade Obligations in MEAs and Compatible GATT/WTO provisions

<table>
<thead>
<tr>
<th>Multilateral Environment Agreement</th>
<th>Compatible provisions under WTO</th>
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<tbody>
<tr>
<td>1. CITIES</td>
<td>Article XX(d), (g)</td>
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<tr>
<td>2. Montreal Protocol</td>
<td>Article XX (b), (g)</td>
</tr>
<tr>
<td>3. Basel Convention</td>
<td>Article XX (b), (d), TBT</td>
</tr>
<tr>
<td>4. Cartagena Protocol</td>
<td>Article XX (b), TBT and SPS*</td>
</tr>
<tr>
<td>5. Rotterdam Convention (PIC)</td>
<td>Article XX (b), (d), TBT</td>
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<tr>
<td>6. Stockholm Convention (POPs)</td>
<td>Article XX (b) and TBT</td>
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</table>

This is how the relationship between trade and environment is very complex, addressing the relationship is fundamental in order to achieve the goal of sustainable development.

It is widely recognized that trade and environment can be mutually supportive, but differences remain on effective implementation.
The issue of relationship between trade measures pursuant to MEAs and WTO rules was first taken up within the GATT in 1991 and in Doha ministerial conference, 2001; the issue was finally put on the negotiating agenda of the WTO. The members continue their efforts to resolve the relationship between obligatory trade measures pursuant to MEAs, and WTO rules.

In view of the rise in environmental consciousness and concerted efforts across the globe to deal with the serious environmental hazardous through MEAs, the trade obligations having an impact on the environment can not be disregarded.

Trade and Environment regimes have very different objectives all together. But this does not mean that at times there may not be overlaps or cross-references. Some of these overlaps may be deliberate and yet other are not. Pursuing environmental objects set-out in MEAs vis-a-vis trade measures are not adopted to infringe WTO rules. But sometimes the effect may be so, due to domestic application.

WTO rules and MEAs are both the equal instruments of international law and they are never meant to result in any material conflict. A harmonious application of these can be ensured by an efficacious coordination of WTO and other bodies in the arena like international law commission. Application of these instruments so far suggests that general rules of public international law must necessarily be taken into account.