

**TRADE MEASURES FOR ENVIRONMENTAL PROTECTION  
IN THE WORLD TRADE ORGANIZATION (WTO): IMPLICATIONS FOR  
DEVELOPING COUNTRIES**

**UZMA HAROON**

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**TRADE MEASURES FOR ENVIRONMENTAL PROTECTION  
IN THE WORLD TRADE ORGANIZATION (WTO): IMPLICATIONS FOR  
DEVELOPING COUNTRIES**

**BY  
UZMA HAROON**

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Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa  
(College of Law, Government and International Studies)  
Universiti Utara Malaysia

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Pemeriksa Dalam : **DR. ZAINAL AMIN AYUB**  
(External Examiner)

Tandatangan  
(Signature)

Tarikh: **26 JUNE 2014**  
(Date)

Nama Pelajar  
*(Name of Student)* : UZMA HAROON

Tajuk Tesis  
*(Title of the Thesis)* : TRADE MEASURES FOR ENVIRONMENTAL PROTECTION IN  
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## ABSTRAK

Kajian ini meneliti sejauh mana peraturan Pertubuhan Perdagangan Dunia (WTO) boleh memenuhi objektif perlindungan persekitaran menerusi penguatkuasaan tindakan perdagangan sehala, khususnya dengan merujuk negara sedang membangun. Potensi konflik antara prinsip substantif WTO dengan tindakan persekitaran yang berkait dengan perdagangan telah mengakibatkan berlakunya perselisihan yang serius antara negara membangun dengan negara sedang membangun semenjak tiga dekad terakhir ini. Meskipun hubungan antara peraturan WTO dengan tindakan persekitaran belum lagi dimantapkan dengan jelas, namun aplikasi Artikel XX(b) dan (g) daripada GATT telah menyediakan perkaitan antara objektif perdagangan dengan objektif persekitaran. Kajian ini mengguna pakai teknik pentafsiran dan analisis untuk menganalisis data. Kajian ini bertujuan menganalisis secara terperinci pendekatan kehakiman dan perundangan berhubung kebolehzinan dan kesahan tindakan perdagangan sehala yang didorong oleh persekitaran. Pendekatan kehakiman WTO meneroka perkembangan jurisprudens persekitaran yang dibentuk berdasarkan keputusan Lembaga Panel dan Rayuan. WTO mengusulkan Perjanjian Persekitaran Berbilang Pihak (MEAs) sebagai jalan penyelesaian yang lebih baik untuk menangani masalah persekitaran rentas sempadan. Kajian ini turut memberi tumpuan terhadap pendekatan perundangan WTO yang merangkumi program kerja Jawatankuasa Perdagangan dan Persekitaran (CTE) berkenaan perhubungan WTO-MEA. Kajian ini mencadangkan tatacara rundingan secara sukarela bagi menjelaskan tindakan perdagangan berhubung MEA dengan menggunakan prinsip asal yang dikemukakan oleh negara New Zealand dalam perundingan di Doha. Kajian ini dirumuskan dengan memberi penekanan terhadap perlunya tindakan positif yang lebih bersepadu dan inovatif untuk negara membangun digiatkan bagi mengimbangi implikasi negatif daripada tindakan perdagangan sehala.

Kata kunci: Pertubuhan Perdagangan Dunia, Langkah Perdagangan, Negara-negara Membangun, Perjanjian alam sekitar pelbagai hala, Pusingan Doha pembangunan.

## ABSTRACT

This study examines the extent to which rules of World Trade Organization (WTO) can serve the objectives of environmental protection through the enforcement of unilateral trade measures particularly with reference to developing countries. The potential conflicts between the substantive principles of WTO and trade-related environmental measures have resulted in serious disagreement between developed and developing countries since last three decades. Although the relationship between WTO rules and environmental measures has not been clearly established, however, the applicability of Article XX (b) and (g) of GATT provides a connection between trade and environmental objectives. This study adopts interpretative and analytical techniques for data analysis. The purpose of this study was to undertake detailed analyses of WTO's judicial and legislative approaches with regard to permissibility and legality of environmentally motivated unilateral trade measures. Judicial approach of WTO explores the development of environmental jurisprudence established by the Panels and Appellate Body decisions. The Multilateral Environmental Agreements (MEAs) have been recommended by the WTO as a better solution to transboundary environmental problems. This study also focuses on the legislative approach of WTO, comprising of work programme of Committee on Trade and Environment (CTE) regarding WTO- MEA relationship. This study proposes a voluntary consultation procedure for clarification of MEA-related trade measures based upon the principles originally presented by New Zealand during Doha negotiations. The study concludes by emphasizing upon the need for more integrated and innovative positive measures for developing countries to offset the negative implications of unilateral trade measures.

Keywords: World Trade Organization, Trade Measures, Developing Countries, Multilateral Environmental Agreements, Doha Development Round.

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## LIST OF ABBREVIATIONS

Art.	Article
AB	Appellate Body
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of Parties
CTE	Committee on Trade and Environment
DSB	Dispute Settlement Body
EFTA	European Free Trade Association
EMIT	Environmental Measures and International Trade
GATT	General Agreement on Tariff and Trade
IISD	International Institute on Sustainable Development
LEDCs	Less Economically Developed Countries
MEAs	Multilateral Environmental Agreements
OECD	Organization for Economic Cooperation and Development
SPS	Sanitary and Phyto-Sanitary Measures
STO	Specific Trade Obligation
TBT	Technical Barriers to Trade
TEDs	Turtle Exclusion Devices
UNEP	United Nations Environment Programme
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Committee on Trade and Development
WTO	World Trade Organization

## **LIST OF RELEVANT GATT/WTO CASES**

1. Brazil – Retreaded Tyres case (3 December, 2007. Appellate Body report adopted)
2. EC – Asbestos (Article 21.5) (5 April, 2001. Appellate Body report adopted)
3. Thailand – Cigarettes (7 November, 1990. Panel Report adopted)
4. US – Reformulated Gasoline (20 May, 1996. Appellate Body report adopted)
5. US – Shrimp/Turtle I (6 November, 1998. Appellate Body report adopted)
6. US – Shrimp/Turtle II (Article 21.5) (21 November, 2001. Appellate Body report adopted)
7. US – Tuna/Dolphin I (3 September, 1991. Panel Report not adopted)
8. US – Tuna/Dolphin II (16 June, 1994. Panel Report not adopted)

# CHAPTER 1

## INTRODUCTION

### 1.1 Background of the Study

Today most of the global environmental degradation is considered to be the direct consequence of increased scale of worldwide economic activity largely triggered by acceleration of International trade. Environment, serving as the prime resource for major industrial activities became its central target resulting in greater consumption, exploitation and contamination of natural resources. As a result, the concerns regarding resource depletion and environmental degradation have constantly been growing at the national, regional and international level, aiming to achieve slow paced resource exploitation and implementation of stringent environmental regulations.<sup>1</sup>

The Millennium Ecosystem Assessment (2005) found that almost 60 percent of the world's ecosystem services are being degraded or exploited. Global carbon dioxide emissions have quadrupled and we are confronted with catastrophic era of climate change. Half of world's fish stocks are being fished at their biological limits and another quarter are beyond that point, or depleted. If the present trend is to prevail, three and a half billion people will have to face "water stress" having less than 1,000 liters of water per person per year. Every day almost 6,000 people particularly children lose their lives because of diseases caused by lack of access to clean water or sanitation.

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<sup>1</sup> Kym Anderson, "Environmental Standards and International Trade," (Paper presented at the Eighth Annual Conference on Development Economics, World Bank, Washington, D.C., April, 1996) 317.



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