

---

# General Principles of International Trade and their Environmental Dimensions

---

Carol Chouchani Cherfane  
Economic and Social Commission for Western Asia



## PART I: General Principles of International Trade

## Public International Economic Relations

- The General Agreement on Tariffs and Trade (GATT)
  - Post World War I, entered into force in 1948
  - Purpose: To negotiate tariff concessions between signatories and provide a mechanism for dispute resolution. No formal institution.
- World Trade Organization (WTO)
  - Operational January 1995; Secretariat based in Geneva
  - 148 Members (not yet Lebanon, Syria, Algeria, Libya, Yemen, Iraq)
  - Purpose: To facilitate trade between nations (via trade rounds); only international organization for negotiations on global trade rules.
- GATT/WTO Agreements provide the basic legal framework governing international trade among Member States.
- Regional and Bilateral trade agreements often include similar framework provisions.

## Selected WTO Agreements

(with environmental implications)

### WTO Agreements for types of regulations:

- Agreement on Technical Barriers to Trade (TBT)
- Agreement on the Application of Sanitary & Phytosanitary Measures (SPS)
- Trade-Related aspects of Intellectual Property Rights (TRIPs)
- General Agreement on Trade in Services (GATS)
- Agreement on Pre-Shipment Inspection
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures

### WTO Agreements for specific sectors:

- Agreement on Agriculture
- Agreement on Textiles and Clothing

## **GATT/WTO General Principles**

---

Article I	Most Favored Nation Clause
Article III	National Treatment Clause
Article VIII	Fees & Formalities Connected with Importation & Exportation
Article X	Publication & Administration of Trade Regulations
Article XI	Elimination of Quantitative Restrictions Clause
Article XX	General Exceptions

---

Product standards v/s Production methods  
Transparency  
Dispute Settlement

## **Most Favored Nation Clause**

---

Countries must not discriminate between like imported products from different sources.

## **National Treatment Clause**

---

Countries must not discriminate between imported and like domestically produced products.

## = Non-Discrimination Principle

- Most Favoured Nation (MFN) clause ensures that imports from all sources are subject to the same treatment.
- National Treatment (NT) clause ensures non-discrimination between domestic and imported goods.

**Implications for environmental enforcement,  
customs, consumer protection and  
standard-setting**

## Product Requirements

- Countries are allowed to differentiate between products based on product characteristics, and adopt national regulations on product standards.
- **Conditions:**
  - Same standards must be applied to like domestic products
  - Same standards must be applied to like imported products from different WTO Member States
- **Sample product standards (should be able to be tested):**
  - Composition, ingredients
  - Packaging requirements
  - Labeling requirements
- ISIC, HS classification systems help to classify products.

## **Process and Production Methods (PPMs)**

---

- Countries are generally **NOT** allowed to pass regulations that differentiate between products based on their **process or production methods**.
- Accordingly, even if two items are produced differently (one in a polluting manner and the other in a non-polluting matter), they are still considered **LIKE** products.
- Sample PPMs (which usually can not be tested for by testing the product itself, since it involves certification of the way a product is produced):
  - Organic agricultural products
  - Use of genetically modified organism (GMO) seeds
  - Highly energy intensive production v/s more energy efficient production.

## **Article VIII: Fees & Formalities Connected with Import & Export**

**Commitment to avoid use of customs procedures as non-tariff barriers to trade**

(e.g., customs analysis, inspection, documentation, certification)

---

## **Article X: Publication & Administration of Trade Regulations**

**Notification & Transparency Principles**

(e.g., requirements or prohibitions on imports or exports;  
Detailed further in TBT Agreement)

## Article XI Elimination of Quantitative Restrictions

- Prohibits countries from banning the import of any product because only duties, taxes or charges “shall be instituted or maintained on the importation or exportation of any product.”
- Effectively means that WTO Member State can not ban (impose a quota of “zero”) on the export or import of harmful substances
  - *But what about toxic materials? hazardous waste? illicit drugs? sensitive military equipment? etc.*

## Implications for Multilateral Environmental Agreements

Some Multilateral Environmental Agreements (MEAs) conflict with the GATT/WTO principle seeking elimination of quantitative restrictions:

- Basel Convention on Hazardous Waste Trafficking
- Convention on International Trade of Endangered Species (CITES)
- Preventing trade of Domestically Prohibited Goods



## **General Exceptions – Article XX**

Allows States **NOT** to apply WTO rules for measures:

- a) Necessary to protect public morals;
- b) Necessary to protect human, animal or plant life or health;**
- c) Relating to the importation or exportation of gold/silver;
- d) Necessary to secure compliance...[for] customs enforcement, monopolies, protection of patents, trademarks, copyrights and the prevention of deceptive practices;
- e) Relating to the products of prison labor;
- f) Imposed for the protection of national treasures or artistic, historic or archaeological value;
- g) Related to the conservation of exhaustible natural resources** if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- h) Etc.

## **How does a Member State Claim Art XX?**

- ✓ **Transparency** of process of adopting a technical regulation
  - ✓ **Notification** of expected regulation under Article XX
  - ✓ **Opportunity for Comment** by other Member States, including possible request Clarification regarding the draft regulation
  - ✓ **Justification** of regulation in response to questions, if asked
  - ✓ **Other procedures under “Code of Good Practice” for standard-setting**
- OR – if challenged (and **ONLY** if challenged) through
- ✓ **Dispute Resolution**



## Dispute Resolution

- **WTO Dispute Resolution Understanding (DSU)** provides the legal framework for enforcing the trade agreement agreed to by its Members.
- **Three Levels of Dispute Resolution:**
  1. Countries are encouraged to engage in **consultations** to settle trade disputes amicably through bilateral or multilateral negotiations.
  2. If consultation is not fruitful, a country (or group of countries) may request the WTO to establish a **dispute resolution panel**
    - Countries in Dispute must Agree on the Panel Members
  3. If decision of Panel not accepted by one of the parties to the dispute, Member can request an **appellate body** to rule on the dispute.
    - But can only rule on the arguments made by the panel, not present or examine new information regarding the case.



## But, Enforcement How?

- In the end, Members are Sovereign Countries
- WTO Secretariat can not force countries to change their laws or obey the rules
  - The WTO is only as strong as its Members
- **BUT** non-compliance with decisions of a panel or appellate body allows a country to **secure compensation or impose retaliatory measures** (for example, sanctions, countervailing duties, etc.) to offset financial loss suffered due to the other country's non-compliance with a DSU ruling
  - *Thus, Member needs to decide, is the dispute worth it?*

## PRIVATE International Economic Relations

- Bear in mind that only WTO Member States and their GOVERNMENTS are subject to WTO Agreements and rules.
- COMPANIES are not and can not be members of the WTO. Accordingly, International Contract Law governs international commerce between firms (not the WTO DSU).
  - Private importers and exporters must thus respect government regulations, but may require standards that are MORE stringent than those required by governments without running against the WTO non-discrimination principle.
- COMPANIES can be represented in international standard-setting bodies recognized by the WTO.
  - Larger companies with R&D capacities may thus have an advantage over smaller firms, particularly those in LDCs.



## PART II: General Principles of International Environmental Law

## **Environmental Principles that have implications for International Trade**

---

While these are not incorporated or recognized by the GATT/WTO, which focuses exclusively on trade, these environment principles often guide MEAs and may run contrary to WTO measures depending on their application.

- **Pollution prevention**
- **Precautionary approach**
- **Polluter-pay principle**

## **Soft Law Principles**

---

- **Precautionary approach (Rio, Article 15)**
  - More conservative approach to risk assessment
  - Shifts the burden of proof by requiring potential polluters to demonstrate that their actions do *not* damage the environment
  - Implications for SPS and TBT Agreements.
  - SPS Agreement allows for precaution to be exercised only when pending collection of technical information needed to justify the measure
- **Polluter-pays principle**
  - Raises issues of liability and responsibility for environmental degradation
  - Begs the question if those who pollute the global commons more should pay more, and how.

## Trade Principles that have implications for MEAs

Some basic principles of international trade are not necessarily compatible with measures applied in MEAs.

- **Principle of Non-Discrimination** – can not differentiate between like products based on PPMs
- **Most Favored Nation Clause** – if trade in a certain product is only restricted to some countries
- **National Treatment** – if differentiation is allowed between like products that are domestically produced or imported

## A Couple International Law Fundamentals

1. **One international agreement can not be subject to the terms of another agreement, unless specified and agreed to by the Contracting Parties to each agreement**
  - Therefore: International trade agreements do not have supremacy above international environmental agreements signed by the same Member States.
2. **Chronology doesn't count**
  - International agreements are equally valid over time, and are amended through agreements among the Contracting Parties (which may chose or decline to sign on to amendments or follow-up protocols)
  - An agreement that is signed first does not have supremacy over another agreement signed later, or the inverse, unless a clause in the most recent agreement stipulates otherwise.

Thank you.



**Economic and Social Commission for Western Asia**  
**United Nations**

P.O. Box 11-8575

United Nations House – Beirut – Lebanon

Tel: 961.1.981.301

Fax: 961.1.981.510

Web: <http://www.escwa.org.lb>

E-mail: [chouchanicherfane@un.org](mailto:chouchanicherfane@un.org)