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Article XX of the GATT 1994 and WTO Members: sufficient freedom to define and pursue environmental policy objectives

Abstract. *Providing free trade conditions to all WTO Members, the GATT 1994 includes general exceptions to Article XX, which allows members to adopt trade and legislative restrictions and measures to promote values and interests and the protection of the environment. Driven by the aim of protecting the environment, various countries have been adopting a considerable number of measures to protect the environment and all human, animal and plant life and health under their jurisdiction. However, such restrictions are likely to influence the free trade regime through a clash of interests and relationships between WTO Members, which are challenged through WTO dispute settlement mechanisms. Although the WTO provides exceptions under Article XX of its free trade conditions to protect the environment via the national environmental measures of WTO Members, the justifications for such measures are challenged in meeting the requirements of Article XX.*

Keywords: *GATT 1994, WTO, WTO Members, environmental policy, Article XX of the GATT, Article XX case law, international trade.*

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Introduction

International trade and environmental protection measures have become a centre of debate over the last decades, creating significant tension with WTO Members. [1] Providing free trade conditions to all WTO Members, the General Agreement on Tariffs and Trade (GATT) 1994 includes general exceptions to Article XX, which allows members to adopt trade and legislative restrictions and measures to promote values and interests and the protection of the environment. [2, Article XX] Driven by the aim of protecting the environment, various countries have been adopting a considerable number of measures to protect the environment and all human, animal and plant life and health under their jurisdiction. However, such restrictions are likely to influence the free trade regime through a clash of interests and relationships between WTO Members, which are challenged through WTO dispute settlement mechanisms. Although the

WTO provides exceptions under Article XX of its free trade conditions to protect the environment via the national environmental measures of WTO Members, the justifications for such measures are challenged in meeting the requirements of Article XX. This paper will discuss the extent to which WTO Members have the latitude to adopt environmental measures to restrict international trade under Article XX. First, it will examine the general environmental exceptions within the GATT Agreement. Section two will consider case law under the scope of Article XX (b) and (g) with various interpretations as to the meaning and language of this provision. The efficiency of regulation of environmental measures of the WTO will be discussed in the following part of this paper. Finally, possible recommendations and changes to environmental policies will be provided.

Methodology

The methodological basis of the article is based on comparative legal, logical, systemic methods of scientific cognition, as well as a complex of general scientific methods (system-structural, system-functional, analytical) were used. The empirical base of the research involved studying international treaties and cases regarding the issue of environmental policies.

Discussion

The GATT agreement and general environmental exceptions. Being the result of multilateral negotiations, the GATT provides international trade with the key principles of most-favoured nation treatment [2, Article I], national treatment [2, Article III] and non-discrimination in the administration of quantitative restrictions [2, Article XIII]. There are, however, exceptions from these obligations provided for in Article XX, where sub-paragraphs (b) and (g) create environmental measures and state that: '… such measures are not applied in a manner which would constitute a means of *arbitrary or unjustifiable discrimination* between countries where the same conditions prevail, or *a disguised restriction* on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: … (b) necessary to protect human, animal or plant life or health; (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption' (emphasis added). [2] At first glance, the broad reading of this provision appears to give many opportunities for WTO Members to adopt environmental measures under their domestic jurisdictions.

However, the adoption and results of environmental measures are subject to justification under the scope of Article XX. Therefore, to determine the consistency of environmental policy in accordance with GATT/WTO obligations, the WTO Dispute Settlement Body has developed a test, through two steps of analysis, for given exceptions and chapeau of Article XX. The first step focuses on defining the objectives – within the scope of exceptions of the measures – by looking at the nature of the policy connected to the conservation of exhaustible natural resources [3, para 6.22.]. Thus, to apply this provision in dispute settlements adequately and accurate, an interpretation is needed by which the WTO Appellate Body can refer to the Vienna Convention on the Law of Treaties Article 31: '[a] treaty shall be interpreted in good faith … with the ordinary meaning … in the light of its object and purpose' [4] as in its *US-Gasoline* [3] case report. Moreover, some scholars, such as Knox, argue that the WTO and its Dispute Settlement Body should place greater reliance on the Law of Treaties Convention to allow for greater consistency and predictability. [5] Second, it looks at the application of the policy and discriminatory means of its application. Prohibition of measure application by chapeau falls under the scope of Article XX (g) by constituting a) "arbitrary discrimination" (between countries where the same conditions prevail); b) "unjustifiable discrimination" (with the same qualifier); or c) "disguised restriction" on international trade. [3] The Appellate Body has used these two steps of examination of environmental measures in the *US-Gasoline* and *US-Shrimp* cases where measures inconsistent with GATT obligations were found. [6]

Case law regarding the issue of environmental policies. Article XX (b): Human, animal, or plant life or health. Sub-paragraph (b) is particularly significant within the Article XX exceptions due to the permission it grants regarding measures 'necessary to protect human, animal or plant life or health'. [7] Therefore, examining an approach to a defense under this provision consists in determining, firstly, measures which are pursuant to the protection of human, animal, or plant life or health which fall under the scope of this sub-paragraph and that the measure is 'necessary'. [8, paras 7.195-7.199] There are six cases under Article XX (b) considered by the WTO regarding controversial issues dealing with human life or health.

US – Gasoline. The panel agreed and accepted the argument of the US about causing risks to human, animal, and plant health and life through air pollution that fall under the measures taken by the US under the scope of Article XX (b). [9, para 6.21] Next, it examined whether that measure was 'necessary' and inconsistent with Article III:4, which means whether this was a necessary step to achieve the objectives determined under Article XX (b). However, the focus of the panel was more specific; rather than looking at a whole, therefore, the panel's conclusion was that the import of gasoline to the US with 'less favorable' treatment was discriminatory and was not 'necessary' according to the provision of Article XX (b). [9, paras 6.21-6.25] Although the US did not appeal the panel's findings, it offered a defense under Article XX (g), where, consequently, the Appellate Body rejected the approach taken by the panel.

The Appellate Body made its analysis in a two-tiered manner via testing the justification for the provision by characterisation of the measure under XX (g) and then assessment of the measure under Article XX's chapeau. [3] Shifting the attention of the Appellate Body to the conditions of the use of the measure in accordance with Article XX's chapeau was the first time the Appellate Body had undertaken such practice in such proceedings. [10] In doing so, this case shows the interaction of Article III and the chapeau of Article XX in their non-discrimination obligation and non-discrimination requirement, respectively. To understand what the difference is in prohibiting the non-discrimination requirement in Article XX's introductory clause while it is already prohibited by Article III, scholars have put forward an explanation that makes a distinction between the *effect* in Article III and *intent* in the chapeau. Although a discriminatory effect of measures is sufficient to constitute a violation of Article III: 4, there can be no such violation of the chapeau. However, the Appellate Body has found violations of the introductory clause of Article XX because discrimination was intentional and, therefore, 'must have been foreseen' and 'not merely inadvertent or unavoidable'. [7] Therefore, the Appellate Body in its report concluded that '… the baseline establishment rules in the Gasoline Rule, … constitute "unjustifiable discrimination" and a "disguised restriction on international trade"…'. [3] Publication of the *US-Gasoline* report previous to a case of *US-Shrimp* that arose a year before gave a new aspect to Article XX. This is because the following cases solutions would not claim to address environmental issues pertaining to trade measures under Article XX (b) or (g) similarly in *Tuna-Dolphin* I dispute. Moreover, this dispute would not clarify the direct or indirect effects of the measure, such as in the *Tuna-Dolphin* II case. The main challenge has become the application of measures under the scope of Article XX (b) or (g) with the result of 'arbitrary or unjustifiable discrimination' which contradicts Article XX's chapeau conditions. [10]

EC – Asbestos. This case in French law regarding the prohibition of chrysotile asbestos fibres and any products containing this substance by way of manufacture, sale and distribution as well as import, which were challenged by Canada under the claim that the prohibition violates Article III and Article XI of the GATT. Although it is known that asbestos has harmful effects, Canada argued that such asbestos could be handled safely with appropriate precautionary regulations. Therefore, the claim was about an unjustified ban under French law. [7] Considering the issue of whether this measure fell under the scope of Article XX (b), the panel stated that 'the policy of prohibiting chrysotile asbestos … falls within the range of policies designed to protect human

life or health'. [11, para 8.194] Next, considering necessity issue and supported the French measure as 'necessary' because 'the EC has made a *prima facie* case for the non-existence of reasonably available alternatives to the banning of chrysotile and chrysotile-cement products and recourse to substitute products' [11, para 8.222]. Furthermore, the Appellate Body concluded about Canada's claim of "controlled use" that it 'also upholds the Panel's conclusion, … that the Decree is "necessary to protect human … life or health" within the meaning of Article XX (b) of the GATT 1994' [11, para 175] because '… "controlled use" would not allow France to achieve its chosen level of health protection by halting the spread of asbestos-related health risks. … would, thus, not be an alternative measure…' [11, para 174].

This case is the only dispute which was successful in justifying a GATT-inconsistent measure under the scope Article XX. Although it represents a somewhat limited success by WTO Members, some scholars claim that it does not mean that Article XX plays only a marginal role in allowing WTO Members to adopt environmental measures under Article XX. Because of this, although many measures which have been found unjustifiable under Article XX they have been subsequently modified in accordance with the recommendations of the Dispute Settlement Body and were not challenged further. [12]

Article XX (g): Conservation of exhaustible natural resources. This norm provides an exception for policies 'relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'. It is important to note the non-application of this provision to the protection of the environment because it is given in a narrow focus for conserving 'exhaustible natural resources'. Nevertheless, theoretically this phrase can be interpreted with a broad meaning; for instance, the panel and the Appellate Body found in favour of some cases that clean air and sea turtles as natural resources. These led to the acceptance of the provision in a wider scope. [7]

US – Shrimp. This case dealt with measures undertaken by the US, themselves quite complex, about using turtle excluder devices (TEDs) for shrimp trawlers. This dispute was the second case brought under Article XX (g). Although initially the measure applied only to Caribbean countries, i.e., the Western Atlantic, in 1995 the application of these rules were expanded worldwide. As a result, few WTO Members brought claims to the WTO where a violation of GATT Article XI was found by the panel, the US defended themselves through Article XX (g). Despite agreeing that 'the sea turtles … constitute "exhaustible natural resources" for the purposes of Article XX (g) of the GATT 1994' [13, para 134], finding that 'Section 609 is a measure "relating to" the conservation of an exhaustible natural resource within the meaning of Article XX (g) of the GATT 1994' [13, para 142] and holding that 'Section 609 is a measure made effective in conjunction with the restrictions on domestic harvesting of shrimp, as required by Article XX(g)' [13, para 145], the Appellate Body reversed the decisions of the panel and conducted its own further examination in accordance with the measures of the terms of the introductory clause of Article XX. Furthermore, the Appellate Body found the existence of 'unjustifiable discrimination' with emphasis on factors such as the 'coercive effect' on the specific policies for WTO members, not taking into account the different conditions of countries (prohibition of import of shrimp using TEDs, but not a certified country), not engaging in negotiations with complainant countries (India, Pakistan, Thailand, Malaysia) by the US, and a lack of time for implementing the rules (only four months) compared to Caribbean counties. [13, paras 161-176] However, neither the chapeau of Article XX nor any other part of Article XX of the GATT suggests negotiation or cooperation with other WTO Members as a precondition to the exercise of rights under Article XX (g). [14] The findings of the Appellate Body of 'arbitrary discrimination' were based on factors such as the limited flexibility to determine certification, and the non-transparent and non-predictable features of the certification process. [13, paras 177-183]

Claiming that the Appellate Body's analysis in the *US-Shrimp* case had no logical structure and a lack of grounds in the context of the introductory clause, Gaines states that through disqualification of any measure under the Article XX chapeau

would result in the application of trade pressure and restrictions on other countries, the Appellate Body effectively nullified Article XX (g). [10]

Furthermore, Meier claims that finding the appropriate balance between the protection of the environment and trade interests by the GATT/WTO has remained a significant issue. While Article XX is subject to various interpretations because of its ambiguity, it does not, in fact, provide any justification for prioritising environmental measures above trade interests. It is indicated the jurisprudence of cases where the approach to the interpretation of Article XX is narrow. Meier goes further, stating that the GATT/WTO foundation document, as a 'relic of 1947' took economic growth as the priority, rather than the environmental consequences of industrial development. [15]

The efficiency of the WTO as a regulator of environmental policies. Because of the many challenges presented by environmental measures and their inconsistency in accordance with Article XX (b) and (g) and the dispute settlement practices of the panel and the Appellate Body, the question of the efficiency of the WTO regulatory functions have arisen and, indeed, have remained open. [1] The GATT/WTO adjudicative role and jurisdiction makes concern and fear of environmentalists because it is confining only in its own agreements with law application and ignores international law dealing with environmental protection. Therefore, it decreases the adoption of international environmental protection measures due to the GATT/WTP litigation records with the unfamiliarity of judges regarding the laws and agreements of international environmental protection. [16] For instance, the killing or injuring of around 250,000 sea turtles every year by fishermen has reduced their numbers between 65-90%, and shows the grave threat of international trade to the environment. [17]

Assessing the decisions of the panel and the Appellate Body, Gaines argues that interpretation of the Article XX introductory clause and the reasons given by the Appellate Body in the *US-Shrimp* case in particular were impaired more than view of law and practice of the US which qualify protection under Article XX. [10] Moreover, Gaines stated that the Appellate Body's non-discrimination test under the Article XX introductory clause as an "eye of the needle" makes it almost impossible to pass any national environmental measure. He went on to claim that although the *US-Shrimp* case analysis was with a broad reading of the provision of Article XX, application of this provision was with strict criteria under the chapeau conditions. This leaves the Appellate Body with no analytical output for the cases in the future. Therefore, a rethink of interpretation of the introductory clause of Article XX is needed by the WTO, the Appellate Body or the membership. [10]

Lack of capacity of the WTO and the Appellate Body in analyses in such disputes as *US-Shrimp* and severe deficiency of environmental expertise have become the WTO's most serious weaknesses. Moreover, a comprehensive understanding of the meaning of environmental policies can be obtained only through experience. Therefore, hired scientific experts and trade experts with experience in dealing with environmental cases cannot themselves evolve the capacity to settle issues of environmental policy. [10]

Results and implications for Kazakhstan as a member of WTO

Five years of the full membership of Kazakhstan in the WTO enables Kazakhstan to both integrate into the world trade space and study such experiences of the WTO members. Since Kazakhstan can be a plaintiff, so it can itself become the object of claims from other states, in this regard, it is very important to study the practice of resolving disputes and relevant cases in the WTO mechanism. In addition, Kazakhstan can be involved as a third party in disputes that could potentially affect its interests with new opportunities and challenges. Therefore, it is useful for Kazakhstan to participate in the resolution of WTO disputes as a third party for the formation of relevant practice and learn from it to define and pursue its national environmental policy objectives. In this regard, Kazakhstan as a member of WTO might use given opportunities for application of Article XX to adopt environmental measures under its domestic jurisdictions.

The issue of application of Article XX is not in a textual formulation of the GATT as it is claimed by scholars; however, there is a problem in how the Appellate Body interprets this and shapes its practice. Therefore, the most suitable solution is not the GATT amendment itself, but a comprehensive, jurisprudentially conservative and definitive reconsideration of Article XX, and of its imposed conditions and created tests, to alleviate trade and environmental tensions. [10]

For procedural and institutional reinterpretation of Article XX, there would be three basic approaches: 1) revision of Article XX's introductory clause by the Appellate Body in the future dispute; 2) adopting an interpretive statement defining the meaning of Article XX in the WTO understanding by the WTO Council or the Conference of Ministers; 3) to provide a new textual foundation, Article XX could be amended with necessary balancing tests. [10] It appears that the second solution is more appropriate due to the competence of the structural bodies of the WTO, and which would be an authoritative and less time-consuming step.

Another point of view suggested by Guruswamy argues that to generate genuine reformation of the GATT/WTO, challenging the judicial monopoly of the GATT/WTO is needed. The author suggests including international environmental law within the remit of the GATT/WTO's consideration. Furthermore, Guruswamy recommends bringing both trade and environmental issues under UNCLOS (United Nations Convention on the Law of the Sea) tribunal competence, which would accommodate such types of a dispute under its umbrella convention, through considering them from the perspective of international law as treaty law as customary law. [16] Although not all states are parties to the UNCLOS as Kazakhstan, this would appear to be a more reasonable solution in the cases of many disputes of other member-states invoked against the US related to the conservation of dolphins and turtles.

Conclusion

In conclusion, although Article XX purports to provide exceptions for environmental measures, developed case law does not express a comprehensible test that allows the national environmental policy to meet its requirements. Related disputes show that the scope of values and areas for protection are expanding gradually. Despite that, it appears that the protection of the environment is not a priority, notwithstanding the need to increase the tendency towards environmental considerations within the GATT/WTO framework. [15] Therefore, it is evident that Article XX (b) and (g) allow the legislative and trade restrictions for environment protection, but as previous practices have shown the justifications for these measures are not straightforward. The GATT 1994 Article XX provides WTO Members with sufficient freedom to define and pursue their environmental policy objectives in theory, but inconsistent practice within the WTO dispute settlement body leaves little incentive to use that right to its full potential.

Global environmental challenges faced nowadays by the international community require an open mind on the part of the WTO dispute settlement bodies to eliminate and prevent future adverse consequences, though not from a trade perspective. [18] Therefore, consideration of environment protection as a common recourse of the international community and as a global concern should not be limited within the GATT/WTO framework. For the sake of future generations, environmental protection policies must be prioritised above international trade.

References

1. Deere T.A. Balancing Free Trade and the Environment: A Proposed Interpretation of GATT Article XX's Preamble //International Legal Perspectives. -1998. – Vol. 10, - P. 1-21.

2. General Agreement on Tariffs and Trade (GATT) 15 April 1994 [Electronic resource]. – 1994. - URL: https://www.wto.org/english/docs_e/legal_e/ gatt47_01_e.htm (accessed 10.01.2021)

3. Appellate Body Report, United States – Standards for Reformulated and Conventional Gasoline (US-Gasoline), adopted 20 May 1996, WT/DS2/AB/R [Electronic resource]. – 1996. - URL: https://www.wto.org/english/tratop_e/dispu_e/2-9.pdf (accessed 04.12.2020)

4. Vienna Convention on the Law of Treaties, 29 May 1969 [Electronic resource]. -1969. - URL: https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf (accessed 01.02.2021)

5. Knox J.H. The Judicial Resolution of Conflicts Between Trade and the Environment //Harvard Environmental Law Review. -2004. -Vol. 28. -P. 1-78.

6. Ghei N. Evaluating the WTO's Two Step for Environmental Measures Under Article XX //Colorado Journal of International Environmental Law and Policy. -2007. -Vol. 18. – P. 117-132.

7. Lester S., Mercurio B., Davies A., World Trade Law. Text, Material and Commentary. - Hart Publishing. - 2012, - 934 p.

8. Panel Report, European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, (EC – Tariff Preferences), WT/DS246/R, 1 December 2003 [Electronic resource]. -2003. – URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds246_e.htm (accessed 25.03.2021)

9. Panel Report, US-Gasoline, 29 January 1996, WT/DS2/R [Electronic resource]. – 1996. – URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm (accessed 03.11.2020)

10. Gaines S. The WTO's Reading of the GATT Article XX Chapeau: A Disguised Restriction on Environmental Measures //University of Pennsylvania Journal of International Economic Law. – 2001. – Vol. 22. -P. 739-755.

11. Appellate Body Report and Panel Report, European Communities - Measures Affecting Asbestos and Asbestos-Containing Products (EC-Asbestos), WT/DS135/12, 11 April 2001 [Electronic resource]. – 2001. – URL: https://www.wto.org/ english/tratop_e/dispu_e/cases_e/ds135_e.htm (accessed 29.11.2020)

12. Bossche P.V., Zdouc W. The Law and Policy of the World Trade Organization. Text, Cases and Material. - Cambridge University Press. – 2013. - 1045 p.

13. Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, US-Shrimp, WT/DS58/AB/R, 6 November 1998 [Electronic resource]. – 1998. – URL: https://www.wto.org/english/tratop_e/dispu_e/ cases_e/ds58_e.htm (accessed 15.01.2020)

14. Trebilcock M., Howse R., Eliason A. The Regulation of International Trade. - Routledge Taylor&Francis Group. – 2013. - 948 p.

15. Meier M. GATT, WTO, and the Environment: to What Extent Do GATT/WTO Rules Permit Member Nations to Protect the Environment When Doing So Adversely Affect Trade? //Colorado Journal of International Environmental Law and Policy. – 1997. – Vol. 8. - P. 241-265.

16. Guruswamy L.D. Should UNCLOS or GATT/WTO Decide Trade and Environmental Disputes? // Minnesota Journal of Global Trade. -1998. – Vol. 7. – P. 287-328.

17. Threats From Commercial Trawl Fishing, [Electronic resource]. – 1996. – URL: https://conserveturtles.org/information-sea-turtles-threats-commercial-trawl-fishing/ (accessed 20.12.2020)

18. Bree A. Article XX GATT – Quo Vadis? The Environmental Exception After the Shrimp/Turtle Appellate Body Report //Dickinson Journal of International Law. -1998. – Vol. 17. - P. 99-134.

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1994 ж. ГАТТ XX бабы және ДСҰ мүшелері: экологиялық саясатты анықтауға жеткілікті еркіндік және мақсаттарына жету

Аңдатпа. ДСҰ-ның барлық мүшелеріне еркін сауда шарттарын ұсына отырып, 1994 ж. ГАТТ мүшелеріне саудалық және заңнамалық шектеулер мен шараларды қабылдап, құндылықтар, мүдделер мен қоршаған ортаны қорғауға ықпал етуге мүмкіндік беретін жалпы ерекшеліктері бар XX-бапты қамтиды. Қоршаған ортаны қорғау мақсатында әр түрлі мемлекеттер қоршаған ортаны және олардың құзыретіндегі бүкіл адам, жануарлар мен өсімдіктер өмірі мен денсаулығын қорғау бойынша көптеген шаралар қа-

былдады. Алайда мұндай шектеулер ДСҰ мүшелері арасындағы мүдделер мен қатынастардың қақтығысы арқылы еркін сауда режиміне әсер етуі мүмкін, олар ДСҰ-ның дауларын реттеу механизмдері арқылы шешіледі. ДСҰ XX-бабына сәйкес ДСҰ мүшелерінің ұлттық экологиялық шаралары арқылы қоршаған ортаны қорғау үшін өзінің еркін сауда шарттарының ерекшеліктерін қарастырғанымен, мұндай шаралардың негіздемелері XX-баптың талаптарын қанағаттандыру кезінде дау тудырады.

Түйін сөздер: 1994 ГАТТ, ДСҰ, ДСҰ мүшелері, экологиялық саясат, ГАТТ XX-бабы, XX баптың сот практикасы, халықаралық сауда.

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Статья XX ГАТТ 1994 и члены ВТО: достаточная свобода для определения и достижения целей экологической политики

Аннотация. Предоставляя всем членам ВТО условия свободной торговли, ГАТТ 1994 включает общие исключения к статье XX, которая позволяет членам принимать торговые и законодательные ограничения и меры для продвижения ценностей и интересов и защиты окружающей среды. Руководствуясь целью защиты окружающей среды, различные страны принимают значительное количество мер по защите окружающей среды, а также всей жизни и здоровья людей, животных и растений, находящихся под их юрисдикцией. Однако такие ограничения могут повлиять на режим свободной торговли из-за столкновения интересов и отношений между членами ВТО, которые оспариваются через механизмы урегулирования споров ВТО. Хотя ВТО предусматривает исключения в соответствии со статьей XX условий свободной торговли для защиты окружающей среды посредством национальных природоохранных мер членов ВТО, обоснованность таких мер оспаривается в соответствии с требованиями статьи XX.

Ключевые слова: ГАТТ 1994, ВТО, члены ВТО, экологическая политика, статья XX ГАТТ, прецедентное право статьи XX, международная торговля.

References

1. Deere T.A. Balancing Free Trade and the Environment: A Proposed Interpretation of GATT Article XX's Preamble //International Legal Perspectives. -1998. – Vol. 10, - P. 1-21.

2. General Agreement on Tariffs and Trade (GATT) 15 April 1994 [Electronic resource]. - 1994. - URL: https://www.wto.org/english/docs_e/legal_e/ gatt47_01_e.htm (accessed 10.01.2021)

3. Appellate Body Report, United States – Standards for Reformulated and Conventional Gasoline (US-Gasoline), adopted 20 May 1996, WT/DS2/AB/R [Electronic resource]. – 1996. - URL: https://www.wto.org/english/tratop_e/dispu_e/2-9.pdf (accessed 04.12.2020)

4. Vienna Convention on the Law of Treaties, 29 May 1969 [Electronic resource]. -1969. - URL: https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf (accessed 01.02.2021)

5. Knox J.H. The Judicial Resolution of Conflicts Between Trade and the Environment //Harvard Environmental Law Review. -2004. -Vol. 28. -P. 1-78.

6. Ghei N. Evaluating the WTO's Two Step for Environmental Measures Under Article XX //Colorado Journal of International Environmental Law and Policy. -2007. -Vol. 18. – P. 117-132.

7. Lester S., Mercurio B., Davies A., World Trade Law. Text, Material and Commentary. - Hart Publishing. - 2012, - 934 p.

8. Panel Report, European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, (EC – Tariff Preferences), WT/DS246/R, 1 December 2003 [Electronic resource]. -2003. – URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds246_e.htm (accessed 25.03.2021)

9. Panel Report, US-Gasoline, 29 January 1996, WT/DS2/R [Electronic resource]. – 1996. – URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm (accessed 03.11.2020)

10. Gaines S. The WTO's Reading of the GATT Article XX Chapeau: A Disguised Restriction on Environmental Measures //University of Pennsylvania Journal of International Economic Law. – 2001. – Vol. 22. -P. 739-755.

11. Appellate Body Report and Panel Report, European Communities - Measures Affecting Asbestos and Asbestos-Containing Products (EC-Asbestos), WT/DS135/12, 11 April 2001 [Electronic resource]. – 2001. – URL: https://www.wto.org/ english/tratop_e/dispu_e/cases_e/ds135_e.htm (accessed 29.11.2020)

12. Bossche P.V., Zdouc W. The Law and Policy of the World Trade Organization. Text, Cases and Material. - Cambridge University Press. – 2013. - 1045 p.

13. Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, US-Shrimp, WT/DS58/AB/R, 6 November 1998 [Electronic resource]. – 1998. – URL: https://www.wto.org/english/tratop_e/dispu_e/ cases_e/ds58_e.htm (accessed 15.01.2020)

14. Trebilcock M., Howse R., Eliason A. The Regulation of International Trade. - Routledge Taylor&Francis Group. – 2013. - 948 p.

15. Meier M. GATT, WTO, and the Environment: to What Extent Do GATT/WTO Rules Permit Member Nations to Protect the Environment When Doing So Adversely Affect Trade? //Colorado Journal of International Environmental Law and Policy. – 1997. – Vol. 8. - P. 241-265.

16. Guruswamy L.D. Should UNCLOS or GATT/WTO Decide Trade and Environmental Disputes? // Minnesota Journal of Global Trade. -1998. – Vol. 7. – P. 287-328.

17. Threats From Commercial Trawl Fishing, [Electronic resource]. – 1996. – URL: https://conserveturtles.org/information-sea-turtles-threats-commercial-trawl-fishing/ (accessed 20.12.2020)

18. Bree A. Article XX GATT – Quo Vadis? The Environmental Exception After the Shrimp/Turtle Appellate Body Report //Dickinson Journal of International Law. -1998. – Vol. 17. - P. 99-134.

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