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# The Effect Of Article Xx of the General Agreement and Tariff and Trade (Gatt) on Environmental Protection Measures: The Case of Malaysia

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**Abstract**

International trade has regulations which could affect environmental protection measures. Similarly, to this, environmental protection measures will also have an impact on international trade especially on market access of goods and services. Environmental protection measures are imposed on the trading of goods which might affect human health, animals, and plants. Although it is necessary to protect the environment, an environmental protection measure invoked could also be a disguised restriction to international trade and could be an act of protectionism by a country of its domestic trades. The World Trade Organization (WTO) have taken steps in dealing with these situations and with the existing Article XX of the General Agreement on Tariff and Trade (GATT), have managed to contain any issues in regards to restriction in international trade for the sake of environmental protection. This study is carried out by analyzing the WTO Agreements, Article XX of the GATT, the decision made by the Dispute Settlement Bodies of the WTO in the international dispute cases, Malaysia's domestic laws and regulations; and journal articles. The significance of this study is to determine Malaysia's effort in dealing with the international trade rules when invoking environmental protection measures.

**Keywords**: Malaysia, Compliance, World Trade Organization, General Agreement of Tariff and Trade, Environmental Protection Measures

## Introduction

The World Trade Organizations (WTO) was established in 1994 during the Uruguay Round. The Marrakesh Agreement was signed at this Round and the preamble of the Agreement in establishing the WTO states:

"Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production

of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development".

It can be inferred from this preamble, that the WTO's goals include promoting environmental preservation in addition to preventing discrimination in global trade. The WTO and the General Agreement on Tariffs and Trade (GATT) both incorporated trade regulations that might prevent limitation and discrimination in the name of environmental protection in international trade. When environmental protection laws restrict a good or service's access to a market, they will have an effect on global trade. The sale of items that may have an impact on the environment—in this case, the health of people, animals, and plants—is subject to restrictions. Although environmental conservation is important, taking action to protect the environment could also be a covert trade restriction or a nation's attempt to protect its own domestic industries or producers.

The GATT and WTO accords established regulations pertaining to cross-border trade between WTO members. The trade-related environmental provisions of its rules permit members to enact environmental protection measures if doing so will not adversely affect commerce. The WTO also has trade agreements that contain environmental provisions. These agreements are the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement of Technical Barrier to Trade (TBT Agreement). The GATT, however, has exceptions to the prohibition of invoking environmental protection measures that would affect international trade. The exceptions which concern environmental measures, are stated in Article XX paragraph (b) and (g) of the GATT which in this context is about the protection of human health, animals, and plants.

Environmental protection measures invoked with respect to these matters are usually in the form of regulations and procedures that would affect the market access of the exporting parties; and in the form of rules and requirements that need to be complied with by the importing parties, respectively. The objective of this article is to explore Article XX paragraphs (b) and (g) and their effect on Malaysian trade regulations at present. Further, it is also to investigate the fundamentals of abiding by international trade laws and determine whether the Malaysian government did so when enacting environmental protection measures. It is also to explore whether further research could be made on the country's application and compliance with international trade law.

The WTO seeks to protect the environment in addition to preventing discrimination in global trade. The WTO, which includes environmental protection in its provisions, is also making every effort, through its Dispute Settlement Panel, to verify that any environmental protection measures adopted by members are sincere and, if so, can be maintained. Every environmental protection measure should not be a technical trade barrier or favor one member of the WTO over another. If the WTO Agreements are broken, a member may file a complaint, and the Dispute Settlement Panel will be established to resolve any disputes.

Technical obstacles to international trade can arise from environmental protection. A nation's economy could be safeguarded by taking environmental protection measures. An action could be taken by a nation to defend its domestic manufacturers from foreign ones when it comes to the marketing of commodities and other items. These measures could take the shape of laws, fees, or taxes. When evaluating a matter, the WTO Dispute Settlement Panel has a duty to distinguish between an environmental protection measure that is legal and one that is being used as a covert trade restriction (Ghei, 2007). It is up to the WTO Panel to decide

whether any unilateral action made by a single state or region qualifies as a harmful trade-related environmental policy. Even a unilateral move made by a single state or region is regarded as a harmful trade-related environmental policy, and it is up to the WTO Panel to decide whether such a move actually protects the environment (Winter,2003).

Despite the fact that the WTO Agreement and GATT did not include environmental protection as one of their goals, environmental protection procedures were incorporated into their provisions (Shih,2006). Only if environmental protection measures have an impact on international trade will the WTO's environmental requirements be applied (Matsushita et all, 2006). Through it examining the WTO laws, the Dispute Settlement Panel may have incorporated free trade concepts into environmental protection measures (Ghei, 2007). However, it is challenging to reconcile the environment with development, and any issue that does so is also challenging to resolve. The concept of sustainable development does not actually reflect the balance that international law requires because environmental protection has been sought at the expense of international economic law. Sustainable development does not fully reflect the balance that international law is attempting to attain, and environmental protection has been pursued at the expense of international economic law (Fuentes, 2002).

In regards to the WTO law and the rulings made by the Dispute Settlement Panel, it was submitted by Segger & Gehring (2003) that the findings and judgments of the Dispute Settlement Panel do contribute to the development of WTO law. The Appellate Body has the chance to strengthen the relationship between trade liberalization and sustainable development by evaluating the Panel's ruling in the European Communities — Measures Affecting Asbestos and Products Containing Asbestos Case. The WTO's increased knowledge and expertise may open up new opportunities for applying its rules to protect the environment (Green & Epps, 2007) . The trade rules could somehow only be carried out successfully if they are successfully put into practice at home. It is only appropriate for international law to address cross-border issues. As different nations would require different solutions to their environmental challenges, the state and condition of every country should also be taken into consideration when enforcing environmental law (Anderson & Grewell, 2001). Chang (2007) states that giving developing nations more latitude in implementing WTO regulations would help to rebalance the rights and obligations of WTO members. This is only possible, though, if the proposed policy move can help meet the demands of developing nations for development and if no less trade-restrictive alternatives are available.

Since the 1970s, there has been recognition of the connection between environmental preservation and international trade, as well as the resulting tensions. Nations and organizations worked hard to maintain a balance between these two topics. A number of agreements and laws have been passed in an effort to achieve the balance (Fuentes, 2002). Therefore, since environmental protection measures have the potential to restrict trade, countries and institutions that implement them must demonstrate that their efforts are necessary, non-discriminatory, and not a covert form of trade restriction. This is because trade is impacted by environmental concerns (Sand, 2009). A nation may also employ regulatory authority as a means of defense. A nation has utilized national regulations as a means of protecting its domestic producers or to differentiate between its states. When tariffs were reduced or removed through multilateral trade agreements, non-tariff measures became the alternative to pursue environmental protection. (Ando & Obashi, 2009)

Developed nations would utilize environmental regulations to preserve their own domestic markets and as a covert kind of trade restriction. This influences emerging nations' access to markets. Thus, developing nations must deal with the challenges posed by industrialized

nations' trade-related environmental regulations. If developed nations discovered that developing or least developed nations produced commodities and products that they believed might endanger their environment, they would impose trade restrictions on these nations; developing nations would then have to cope with these limitations. (Khatun, 2002). This trade-related environmental policy may take the shape of rules, levies, or fees. For instance, industrialized nations may utilize environmental regulations linked to trade as a covert trade barrier and a way to defend their home markets. This will impact the economic development of emerging nations by affecting their access to markets. (Khatun, 2002)

Thus, Malaysia needs to enhance their compliance and application of the international trade rules so as not to face difficulties in future in responding to the trade-related environmental measures. This includes carrying out its' obligation in complying with the GATT and the WTO environmental provisions and these are in the form of applying the regulations and implementing them; and also complying with environmental measures taken out by importing countries. As Malaysia is one of the member countries of the WTO, it has the obligation to follow the rules taken out by the organization and the GATT. Thus, by complying with these rules, Malaysia would be able to comply with the trade requirements of the member countries as well.

**Article XX of the General Agreement on Tariff and Trade (GATT)**

In respect to the environmental protection issues, Article XX paragraph (b) and paragraph (g) states the requirements which need to be proved by the relevant party before they would consider taking out environmental protection measures.

Article XX paragraph (b) and (g) of the GATT states:

Subject to the requirement 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; and

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

To determine whether an environmental action implemented by a country could satisfy Article XX(b) and (g) and justify under its "chapeau," the WTO Dispute Settlement Panel used a "two step" approach. The first need is that the measure complies with either exemption (b) or (g) of the Article. Therefore, it should be determined that the action is required to safeguard human, animal, plant, or environmental health, and that it has to do with the preservation of finite natural resources. The nation that implemented the legislation should later provide proof that it was necessary. Additionally, they must show that their action is necessary to protect natural resources that are both exhaustible and vital, such as oil or even animals like turtles.

According to Article XX of the GATT, a measure must be necessary, and the definition of necessary can be determined by looking at the rulings made by the WTO's Dispute Settlement Bodies in the relevant disputes. In the case of Thai-Restrictions on Importation of and Internal Taxes on Cigarettes, for instance, it was determined that a measure must be essential even if it is intended to preserve human health. The government of Thailand implemented a policy that limits the importation of cigarettes from the United States. The United States, however, asserted that the restriction only applied to cigarettes produced abroad and not in the

country. The WTO Dispute Settlement Panel had ruled that the restrictions are discriminatory and not warranted. Additionally, the context of the issue at hand should be taken into account while determining if a step is necessary.

Despite the Thai government's claims that their cigarettes pose a reduced health risk, it was decided that cigarettes marketed in Thailand by domestic manufacturers were identical to cigarettes made in the United States. Because Thailand's action in barring the importation of cigarettes from the United States was discriminatory and made as a means of defending their own cigarette manufacturer, their defense under Article XX paragraph (b) of GATT was rejected. The Panel's judgment that the measure was superfluous. Environmental regulations that impose different standards on domestic and foreign producers and rely largely on quantitative limits that effectively erect a barrier to entry may be seen as impeding international trade, according to some experts. Assume that in the example of Thailand, this nation invoked a measure that discriminatory and was contested by the United State and was successful in having the environmental trade measure lifted. Thailand has lost in this situation, and as a result, their ambition to achieve economic prosperity by this deed has been quenched.

A nation must also demonstrate the necessity of the measure it has invoked. The Dispute Settlement Panel must also apply a necessity test in order to determine if a measure is actually necessary, as claimed by a member while invoking such action. The Panel must use the weighing and balance method when conducting this examination. In the Brazil — Measures Affecting Imports of Retreaded Tires Case, the Panel merely needed to demonstrate that the ban might make a significant contribution toward Brazil's goal, which it did. The Panel's conclusion that the import ban will reduce the amount of discarded tires was accepted by the Appellate Body. It was also decided that when using the weighing and balancing test, all pertinent case-specific variables must be taken into account especially "the extent of the contribution to the achievement of a measure's objective and its trade restrictiveness in light of the significance of the interests or values at stake" (Van Calster, 2008) .

The Panel shall determine whether the measure is discriminatory or not, and not a covert restriction on international trade as required by the "chapeau" of Article XX, after satisfying the exceptions in Article XX(b) and (g). For examples like in the cases such as United States- Standards for Reformulated and Conventional Gasoline, United States- Import of Certain Shrimp and Shrimp Products and European Communities- Measures affecting Asbestos and Asbestos –Containing Products, the WTO Panel was successful in determining whether an environmental measure is a valid environmental protection or just a technical trade barrier and justification for protectionism (Ghei, 2007). It was decided in the Thai- Restrictions on Importation of and Internal Taxes on Cigarettes case, that a measure invoked must be necessary even if it is for the protection of human health. The Thai government invoked a measure that restricts the import of cigarettes from the United States. However, the United States claimed that the measure was imposed on foreign cigarettes only and not on cigarettes which are produced locally. The WTO Dispute Settlement Panel had also decided that the restrictions were not necessary; moreover, they are discriminatory.

Further, to determine the necessity of a measure, the surrounding circumstances of the matter concerned should be taken into consideration. In the case of the United States- Standards for Reformulated and Conventional Gasoline, Brazil and Venezuela complained to the WTO in regards to the United States Clean Air Act , it has found that domestic and foreign gasoline are ‘like products’ and that the Act has treated the product differently. The Panel then decided not to go to the second step of the two-step test in order to find whether the

measure was discriminatory or not. The case went to the Appellate Body and the Appellate Body applied the two-step test and reversed some of the Panel findings. The Appellate Body found that the Gasoline Rule was a conservation measure and therefore fell within Article XX paragraph (g).

The Appellate Body then examined whether the measure fell within the 'chapeau' of Article XX. Since the Gasoline Rule gave no time and opportunity to the foreign producers to comply with it, it was found to be discriminatory.

Article XX (b) and (g) of the GATT contain the exclusions that deal with environmental measures that are relevant to commerce. A nation would appear unable to enact environmental protection measures if they were required to precisely adhere to these regulations. Thus, the commitment of WTO members contains limitations that are outlined in Article XX of GATT. Members may implement environmental protection measures if they can offer justification in the form of arguments or supporting data.

Here it can be understood from the discussion that the requirements that need to be complied with before a trade-related environmental measure can be taken out are whether such measure should be and is :

i) necessary;
ii) non-discriminatory; and
iii) not a restriction and a technical barrier to trade;

**Malaysian compliance to the General Agreement of Tariff and Trade (GATT) and the World Trade Organization (WTO) environmental provisions**

A developing nation like Malaysia must fulfill its obligations as a WTO member and create national legislation to carry out the provision locally. International accords must be ratified in accordance with each nation's constitution. Countries have different methods for creating and enacting the necessary laws, and the success of these agreements depended on how well they were implemented domestically. Malaysia's environmental laws are fairly sound, and they are enforced more effectively than in many other developing nations. The situation isn't exactly encouraging, (Ansari, 2007).

Malaysia compliance to the international trade rules in respect to environmental protection are seen through its applying the terms of the WTO agreements and the GATT agreements into its domestic law and further by enforcing the laws in accordance to the international trade rules. Apart from these, the government ensured that the implementation of the trade laws needed to be in accordance with GATT and the WTO requirements. This could be seen through the enforcement and the compliance to it by the government's relevant departments. As far as international treaties are concerned, even though the treaties bind the member country to the treaty under international law, the treaty has no legal effect domestically unless the local government passes a legislation to give effect to the treaty. A rule of international law will become a part of domestic law only after the transformation of it into domestic law by means of statute or an act of parliament. Malaysia practiced the doctrine of transformation and thus had given effect to the international treaty through its domestic law made by Parliament (Shuaib, 2008).

Malaysia has the following laws for the protection of human, animal and plant health. These laws are the Plant Quarantine Act 1976, Plant Quarantine Regulations 1981, Animal Act 1953 (Revised 2006), Fisheries Act 1985, Food Act 1983 and Food Regulations 1985. Due to the country's obligation under the WTO, any environmental measures invoked under these laws should be within the ambit of the WTO and GATT.

(i) measure should be necessary;

The Malaysia domestic law in respect to food is the Food Act 1983. The Food Act 1983 preamble describes that the act is "an act to protect the public against health hazards and fraud in the preparation, sale and use of food and for matters incidental thereto or connected therewith ". Section 13 states that "Any person who prepares or sells any food that has in or upon it any substances which is poisonous, harmful or otherwise injurious to health commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both. Subsection 2 states that "In determining whether any food is injurious to health for the purpose of subsection (1), regard shall be had not only to the probable effect of that food on the health of a person consuming it but also to the probable cumulative effect of the food of substantially the same composition on the health of the person consuming the food in ordinary quantities." Section 14 prohibits any sale of food which is not of the nature, substance and quality demanded. These provisions are made to specifically combat any malpractice of handling of food and their production. The necessity of a measure was reiterated in the Food Act 1983 and that the breach of any of the laws could amount to conviction. Section 29 provides that the importation of any food which does not comply with this Act and any regulation thereunder is prohibited. If any food which is imported does not comply with this act in respect to labeling, processing and conditioning, it needs to be relabeled, reprocessed and reconditioned.

In respect to international trading, Malaysia has specified certain requirements as to respective food and will give notification to the importer and exporter as to the requirements. For example, in order to avoid any restriction or any rules becoming a technical barrier to trade, the Malaysian government had given notification to all its trading partners in respect to all its trade-related environmental protection provisions. For example, one of the new plant protection provisions is the implementation of a new import requirement for fresh mangosteen into Malaysia. Notification on the new import requirement for fresh fruits of mangosteen from all countries was dated 30th March 2015. The new import requirement was implemented starting 1st of July 2015 with a grace period of four months until 31st October 2015. Therefore, full implementation shall commence from 1st November 2015. This information is also a notice to domestic stakeholders
(https://docs.wto.org/dol2fe/Pages/FE_S_S009-DP.aspx).

Under Malaysian food standards and regulations, domestic and imported food products must be processed, stored and handled in a sanitary manner. The authorities have worked to harmonize food standards with those applied internationally and also contributed to the development of Codex standards. Thus, nutritional labeling requirements are imposed for certain food products, including cereals, breads, milk, various canned foods and fruit juices, soft drinks and salad dressings (WT/TPR/S/156).

(ii) measures need to be non-discriminatory,

Malaysia's issues with non –discrimination of the WTO goes back to 1997 when the country took out an action against the United States for imposing an environmental measure that is trying to protect not only the domestic environment but also the environment beyond their jurisdiction. In the case of United States-Import Prohibition of Certain Shrimp and Shrimp products, which went before the WTO's Dispute Settlement Panel in 1997, India, Pakistan,

Thailand and Malaysia filed a complaint against the United States for invoking an embargo on their exports of shrimps and shrimp's product.

The issue which the Dispute Settlement Panel had to decide was whether the United States justified in using the environment measure and whether the ban on the imports of shrimps and shrimps' products from these countries for the protection of sea turtles was necessary and non-discriminatory. In April, 1998, the Dispute Settlement Panel decided that Section 609 has violated Article XX of the General Agreement of Tariff and Trade (GATT) and that the import ban taken out by the United States on the shrimps and shrimps' product from India, Pakistan, Thailand and Malaysia constituted an "unjustifiable discrimination" and inconsistent with the WTO practice of multilateral trading system.

The United States filed an appeal to the Appellate Body of the WTO which then analyzed the decision made by the Dispute Settlement Panel. They agreed with the panel's decision that the United States had violated Article XX but did not agree with the panel's argument in that case. The Appellate Body found that the panel was right when they decided that the United States' regulation was threatening the multilateral trading system but found that the panel did not examine as to whether the United States regulation was "unjustifiable" and "discriminatory" and was not inconsistent to GATT Article XX paragraph (b) and (g). The Appellate Body however found that the ban was inconsistent with Article XX of GATT.

In the case of the United States-Import Prohibition of Certain Shrimp and Shrimp Products, The United States believed that they could still maintain the ban and remedied only whatever which was claimed to be unjustified by the Appellate Body. Ironically, the Appellate Body agreed with the United States arguments in that case and believed that the United States had made an effort in the implementation of the Appellate Body's decision by negotiating with the relevant countries concerning the ban. Malaysia's claim that an international agreement should be concluded in regards to the lifting of the ban had been dismissed by the Appellate Body. It is believed that an environmental measure that imposes different standards between domestic producers and foreign producers, and relies heavily on quantitative restrictions which effectively create a barrier to entry may be a measure which functions as a barrier to trade. A strict environmental measure can also be deemed to be a technical barrier as found by the Dispute Settlement Panel in United States-Import Prohibition of Certain Shrimp and Shrimp Products case. However it is, the WTO is about to succeed in determining the difference between these actions.

iii) not a restriction and a technical barrier to trade;

Environmental measures can be used as a barrier to international trade in order to protect the domestic producer and the domestic market of a product. This can be found in the case of Thai- Restrictions on Importation of and Internal Taxes on Cigarettes. In this case, Thailand had restricted imports of cigarettes and imposed a higher tax rate on imported cigarettes from other countries. However, they still sell their own type of cigarettes domestically. In 1990, the United States had requested the WTO Dispute Settlement Panel to declare that the Thailand act is discriminatory. They claimed that Thailand act was "inconsistent with Article XI paragraph 1 of the GATT, was not justified by the exception under Article XI paragraph 2(c) because cigarettes were not an agricultural or fisheries product in the meaning of Article XI paragraph 1 and was not justified under Article XX paragraph (b) because the restrictions were not necessary to protect human health." The Dispute Settlement Panel ruled against Thailand. However, the main issue here is whether Thailand was justified in taking out the measure under the Article XX paragraph (b) exceptions. The Panel held that the measures can only be

"necessary" if there is no alternative measure which is consistent to the GATT provisions or "less inconsistent" with which Thailand could take out in order to achieve its health policy objectives. The Panel decided that the Thailand measure was not "necessary" and that Thailand could take out a measure which is consistent with GATT in order to achieve its health policy objectives.

The Ministry of Health (MOH) manages food safety matters through the Food Safety and Quality Division. The Malaysian Quarantine and Inspection Services (MAQIS) is a one-stop shop offering integrated services for import and export certification and quarantine, whether it be for animals, fish, agricultural products, plants, soils, or microbes. Additionally, MAQIS conducts inspections and upholds laws pertaining to food and associated issues. MAQIS is the department which is responsible for dealing with the procedure of quarantine, importation and exportation of plant, animal, food, fish and others such as soil and microorganism for international trading for the country. This department will be responsible for enforcing the regulation in respect to the trade- related environmental measures. They will carry out the procedure as required and regulated by the respective law and regulation. For example, Malaysia changed the rules for importing specific grains, oil seeds, and cereal products for processing as of April 1, 2021. From now on, a phytosanitary certificate from the exporting country's national plant protection organization and an import authorization from MAQIS are required for shipments from all nations. (WT/TPR/S/436).

As for its obligation under Article XX (g) in respect to the conservation of endangered species, the regulation could be found in the Malaysia Fish Act 1983. This rule is to determine that its fishing wouldn't affect any of the endangered species. The Fisheries Act 1985 is an act which "is relating to fisheries, including the conservation, management and development of maritime and estuarine fishing and fisheries, in Malaysian fisheries water, to turtles and riverine fishing in Malaysia and to matters connected therewith or incidental thereto". Section 6 of the Act is about the preparation of fisheries plans. It states that "The director general shall prepare and keep under continual review of fisheries plans based on the best scientific information available and designed to ensure optimum utilization of fishery resources, consistent with sound conservation and management principles and with avoidance of overfishing".

Section 27 of Fish Act 1983 lays down regulation in respect to the aquatic mammals or turtles in Malaysian fisheries waters.

Section 27 states that:

(1) No person shall fish for, disturb, harass, catch or take any aquatic mammal or turtle which is found beyond the jurisdiction of any State in Malaysia.

(2) The provisions of the relevant State law shall apply in respect of aquatic mammals and turtles which are found within such jurisdiction.

(3) Where any aquatic mammal or turtle which is found beyond such jurisdiction is caught or taken unavoidably during fishing, such aquatic mammal or turtle shall, if it is alive, be released immediately or, if it is dead, the catching or taking thereof shall be reported to a fisheries officer and the aquatic mammal or turtle shall be disposed of in accordance with his directions.

**Conclusion And The Significance Of The Study**

It is expected that Malaysia can comply with the GATT and the WTO agreements and be able to implement them. However, Malaysia's ability to comply with the international trade rules could further be enhanced through more effort and strategy. Meagher (2015) stated that developing countries' ability to comply with the regulatory standards imposed by developed countries due to unfair regulatory convergence is questionable. Therefore, it is suggested that East Asia should start to study the environmental regulation impact of trade rules in order to deal with the problems (Shih. 2006). Elsig (2015) claimed that there is first order compliance and second order compliance. First order compliance is with respect to the ability of states to carry out their obligations under the international treaty and whether their national policies and enforcement are in conformity with the agreement. It is submitted that Malaysia has successfully taken out the first order compliance.

The importance of this study is to acknowledge Malaysia's efforts in addressing international trade regulations, particularly the GATT and WTO environmental measures, and to discover a method for addressing regulations that have an impact on the environment. Malaysia has conformed to the GATT and WTO standards as a WTO member by incorporating them into domestic law. Although Malaysia has made an effort to follow the environmental regulations implemented by other countries, much more work has to be done in this area. Malaysia should be granted more latitude to apply the GATT and WTO standards because it is a developing nation. Malaysia should put in place a good trade regulation that would take into account the effect of trade on the environment and vice versa. It could be better as well that the government would look at the law of remedies in international trade and whether we have good enough laws to challenge the WTO regulations. Trade remedies are trade policy tools that allow governments to take remedial action against imports which are causing material injury to a domestic industry (Lim &Singh, 2018).

In terms of remedies for international trade regulations, Malaysia has the Safeguard Act 2006 .With this Act, safeguard measures on products imported into Malaysia will be investigated, determined, and other pertinent issues will be covered. The Safeguard Act came into force on 22 November 2007. The government may, on its own initiative, or the domestic business may start a petition. The establishment of a spike in imports is necessary to meet the conditions for a safeguard measure. Next, it must be demonstrated that the imports have seriously harmed the domestic industry or pose a severe risk of doing so. If factors other than the increased imports of the goods under review are harming or threatening to harm the domestic industry concurrently, the increased imports will not be held responsible for that harm. (Lim &Singh, 2018).

The regulations in the Safeguard Act 2006 stated as follows:

Section 8 (1) states that: A determination of whether increased imports have caused or are threatening to cause serious injury to a domestic industry under this Act, all relevant factors of an objective and quantifiable nature of the product under investigation, the like products and directly competitive products of the domestic industry shall be evaluated in the prescribed manner, having a bearing on the situation of that industry;

Section 9 states that: A determination of a threat of serious injury caused by increased imports shall be based on facts and not merely on allegation, conjecture or remote possibility; Section 10 states that: A request for an investigation to determine whether increased imports of the product under investigation have caused or threaten to cause serious injury to a domestic industry may be initiated—
(a) upon a written petition addressed to the Ministry of International Trade and Industry by or on behalf of the domestic industry; or (b) on the initiative of the Government;
Since 2018, Malaysia has not been a respondent in any new WTO dispute settlement cases. In July 2021, a dispute panel was constituted by the WTO at Malaysia's request to look into EU policies pertaining to palm oil and biofuels derived from oil palm crops. It has reserved its third-party rights in 17 recent cases, namely the United Arab Emirates – Goods, Services and IP Rights, complaint by Qatar (DS526); US – Fish Fillets, complaint by Viet Nam (DS536); US – Steel and Aluminum Products, complaints by China (DS544), India (DS547), the European Union (DS548), Canada (DS550), Mexico (DS551), Norway (DS552), the Russian Federation (DS554), Switzerland (DS556), and Turkey (DS564); US – Safeguard Measures on PV Products, complaints by the Republic of Korea (DS545) and China (DS562); Russia – Additional Duties, complaint by the United States (DS566); India – Additional Duties, complaint by the United States (DS585); EU – Palm Oil, complaint by Indonesia (DS593); and Australia – AD/CVD on Certain Products, complaint by China (DS603). (WT/TPR/S/436).
As a developing nation, Malaysia ought to be allowed more latitude in applying WTO and GATT regulations. Malaysia ought to implement sound trade laws that consider how commerce affects the environment and vice versa. This would alleviate the nation's need for rapid economic expansion. The study's importance lies in highlighting Malaysia's efforts to comply with global trade regulations, particularly the environmental standards set forth by the WTO and GATT. Malaysia has adhered to the GATT and WTO regulations by incorporating them into its national laws as a WTO member. Although Malaysia has made an attempt to follow the environmental regulations implemented by other countries, it is believed that much more work needs to be done in this area, particularly on the compliance by Malaysia with the international trade regulations.
Thus, Malaysia needs to put in place a strong regulatory approach to implement and enforce the GATT and the WTO environmental provisions. Malaysia is also obliged to find ways in safeguarding the environment without affecting its international trading with other countries of which could later would affect Malaysia economic productivity. If not, then Malaysia would face the same problems as Thailand government in the Thailand and US Cigarettes dispute. Therefore, Malaysia needs to find the balance by having a proper regulatory approach. This regulatory approach could be a kind of a method, principle, rule, or regulation. As Malaysia need to ensure that their effort to succeed in economic development will not affect the environment, it would need a kind of regulatory approach that it could resort to, in order to find the balance between economic development and environmental protection.
The government of Malaysia would be able to hinder protectionism and discrimination in international trading. It is to be expected that the country could use this regulatory means to make laws or agreements to their advantage amid the trade and environmental conflict. The parties which could benefit are the government itself, Malaysia’s exporters, and importers; and the producers of goods. This could enhance Malaysia market access and would help the economic development. This could also benefit the relevant industry in Malaysia by making it easier for the industry player to deal with any complicated regulation that would affect their

trading activities. It is hoped that the regulatory approach could assist them in coping with environmental protection and in turn would not affect their international trading.

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