Katarina Brockova[1], **Stanislav Mraz**[2]

MULTILATERAL TRADE RULES AND ENVIRONMENTAL PROTECTION

This paper deals with the correlation between multilateral trade rules and environmental protection needs. The aim of this paper is to analyze WTO's approach to dealing with situations when multilateral trade rules collide with its member states' environmental policies. The WTO's Committee on Trade and Environment and the WTO's Appellate Body in some of its landmark decisions analyzed in this paper contribute significantly to clarifying the space WTO members have in applying their trade-restrictive and potentially WTO-inconsistent environmental policies.
Keywords: multilateral trade rules; WTO; environmental policy; trade restriction.

Катаріна Брочкова, Станіслав Мраз

БАГАТОСТОРОННІ ТОРГОВЕЛЬНІ ПРАВИЛА ТА ЗАХИСТ НАВКОЛИШНЬОГО СЕРЕДОВИЩА

У статті досліджено взаємозв'язок між багатосторонніми правилами торгівлі та потребами захисту навколишнього середовища. Проаналізовано підхід СОТ до вирішення ситуацій, коли багатосторонні правила торгівлі знаходяться у протиріччі до національної політики із захисту навколишнього середовища. Рішення Комісії СОТ з торгівлі та навколишнього середовища та Апеляційного органу СОТ, проаналізовані авторами, є яскравими прикладами того, що у країн-членів СОТ є певний простір для знаходження балансу між накладанням обмежень у торгівлі та вирішенням екологічних проблем.
Ключові слова: *багатосторонні правила торгівлі; СОТ; екологічна політика; обмеження торгівлі.*
Літ. 17.

Катарина Брочкова, Станислав Мраз

МНОГОСТОРОННИЕ ТОРГОВЫЕ ПРАВИЛА И ЗАЩИТА ОКРУЖАЮЩЕЙ СРЕДЫ

В статье исследована взаимосвязь между многосторонними правилами торговли и потребностями защиты окружающей среды. Проанализирован подход ВТО к разрешению ситуаций, когда многосторонние правила торговли находятся в противоречии с национальной политикой по защите окружающей среды. Решения Комиссии ВТО по торговле и окружающей среде и Апелляционного органа ВТО, проанализированные авторами, являются яркими примерами того, что у стран-членов ВТО есть определённое пространство для нахождения баланса между наложением ограничений в торговле и решением экологических вопросов.
Ключевые слова: *многосторонние правила торговли; ВТО; экологическая политика; ограничения торговли.*

Introduction. International trade is an important factor contributing to economic development of nations. Multilateral trade exchange opens up new markets, contributes to consumption increase while exercising pressure on producers to find new more cost-effective ways of production. This, on the other hand, brings about increased environmental concerns.

International trade, generally based on multilateral trade rules laid down in multilateral agreements concluded among members of the Word Trade Organization, is

[1] University of Economics, Bratislava, Slovakia.
[2] University of Economics, Bratislava, Slovakia.

often perceived as a factor contributing to accelerated deterioration of the Earth's environment.

The topic of trade and environment has long been subject of thorough analysis. Many academics and practitioners have published on this issue. Among others, D. Esty (2001) of the Yale School of Forestry and Environmental Studies has published extensively on the topic of sustainability and environmental issues and the relationships between environmental protection and corporate strategy, competitiveness, trade, globalization, metrics, governance, and development. C.J. Beyers (1992), J.M. Harris (2004) and others also have works on policies and practices in the relations between of trade and environment.

Despite the fact that WTO members have not concluded any agreement that deals specifically with environment, its protection and preservation of environment, and the optimal use of the world's resources with the aim of achieving sustainable development, have been listed among the main objectives of this organization in the preamble of the Agreement establishing it. The signatories to the WTO Agreement specifically recognized "that their relations in the field of trade and economic endeavour 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" (Agreement Establishing the WTO).

Outside WTO, there are currently in force over 250 multilateral environmental agreements (MEAs) dealing with various environmental issues. About 20 of these MEAs include provisions to control trade in order to prevent damage to the environment (e.g., the International Plant Protection Convention (IPPC), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Convention on Biological Diversity (CBD), Kyoto Protocol to the United Nations Framework Convention on Climate Change).

The lack of clear correlation and hierarchy in application of multilateral trade rules and rules laid down in multilateral environmental agreements show the absence of concerted international efforts to bring about an effective approach to environmental protection and sustainable development. As the topic of environmental resources and trade is of multidisciplinary nature, there is a need to initiate the dialogue strengthening collaboration and to analyze the interlinks between societal factors and ecosystem response with the aim of increasing the level of resilience under new climatic and economic conditions (Cernota, 2014).

Recognizing the need for coherence in international effort to tackle environmental challenges, the WTO's Committee on Trade and Environment engages in discussions among WTO members as well as with secretariats of various multilateral environmental agreements, especially on the issue of specific trade obligations contained in multilateral trade agreements that could have a potentially restricting impact on multilateral trade.

Notwithstanding the contribution of specialized WTO bodies to better understand and form the interaction between environmental protection and sustainable

development needs on the one hand and rules of multilateral trade on the other, it is argued here that the WTO's approach to resolving actual situations when WTO member states do apply trade-restrictive measures for the sake of preserving environment is best reflected on the WTO's dispute settlement bodies' decisions in environmental trade disputes.

Environmental trade disputes. The WTO dispute settlement bodies, the panels and especially the Appellate Body have played a significant role in the process of interpreting and streamlining the application of the existing multilateral trade rules.

The GATT dispute settlement panels – later transformed into the WTO panels and WTO Appellate Body – have dealt with a number of environmental disputes. This paper aims to analyze the decisions adopted by the WTO's Dispute Settlement Body in environmental disputes throughout the span of the past 25 years in order to examine whether there had been any progress as well as coherence in interpreting and applying the underlying trade rules.

The WTO's approach to resolving actual conflicts between its member states with respect to their trade restricting policies introduced for the purposes of preserving or protecting the environment, is best demonstrated through the analysis of a number of trade disputes dealing with the application of the general exceptions clause contained in Article XX of the GATT 1994: "Article XX. General Exceptions. 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 Member 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".

Article XX GATT 1994 allows WTO members apply measures inconsistent with their WTO obligations, provided that such measures are necessary to achieve the objectives set forth in this Article, e.g. protection of human, animal and plant life and conservation of natural resources, however, provided that the measure is applied in a non-discriminatory manner.

Tuna/Dolphin I Case. The first landmark environmental dispute brought to the GATT dispute settlement system was the famous Tuna/Dolphin Case (US restrictions on tuna imports) that was based on the US Marine Mammal Protection Act (MMPA). MMPA was designed to protect dolphins that were caught in fishing nets along with tuna by imposing a ban on imports of yellowfin tuna and its products from the countries using the purse seine net fishing techniques. Mexico was not ready to comply with these requirements, thus neither yellowfin tuna, nor its products were accepted to the States from Mexico.

Consequently, Mexico brought a complaint through the GATT dispute resolution system against the United States stating that the ban on imports of tuna and tuna products was inconsistent with the US obligations under the GATT, particularly Article XI (general elimination of quantitative restrictions), Article XIII (non-discriminatory administration of quantitative restrictions) and Article III (national treatment). The United States argued that their import ban was not imposed in vio-

lation of their obligations under GATT. However, the US further argued that even if the import ban were considered to be inconsistent with the relevant GATT provisions, it could be justified under the general exceptions clause in Article XX (b) (Paragraph 3.33 of the Panel Report) and Article XX (g) of the GATT. (Paragraph 3.27 of the Tuna/Dolphin Panel Report) General exception under Article XX (b) of the GATT was designed to allow the GATT members introduce trade restrictive measures, provided that these measures were necessary for protection of human, animal and plant life and health. The United States argued that the import ban was necessary to protect the life and health of dolphins. Article XX (g) of the GATT was designed to provide the GATT members can introduce trade restrictive measures, provided that these measures were necessary for the conservation of exhaustible natural resources (dolphins in this particular case).

However, the Panel sided with Mexico's arguments in many respects, stating that the US could not invoke general exceptions clause under Article XX (b) of the GATT for ban imposition basing on fishing techniques used by other countries because this would allow the United States apply its laws outside its own jurisdiction. The Panel further stated that even if Article XX (b) were to be interpreted as to permit such extra-jurisdictional protection of life and health, the United States were not able to demonstrate that the measure in place was indeed necessary, i.e. they had exhausted all options reasonably available to them to pursue dolphin protection that were less trade restrictive. In particular, as less trade restrictive alternatives available to achieve the aim of protecting dolphins, the panel listed the negotiation of international cooperative arrangements which would seem to be desirable in the view of the fact that dolphins roam the waters of many states and high seas (Paragraph 5.28 of the Panel Report).

With respect to the United States' justification of its importation ban under general exception in Article XX (g) of the GATT, the Panel concluded that the US import prohibition could not be justified under this provision as the measure was aimed at protecting an exhaustible natural resource outside its jurisdiction (Paragraph 5.31 of the Panel Report).

To sum up, the panel in the Tuna/Dolphin Case decided that the United States could not justify its ban on tuna and tuna products for several reasons. Most importantly, the panel said that exceptions under Article XX of the GATT must be interpreted restrictively, and thus very narrowly. The panel concluded that the USA did not demonstrate that the trade restrictive measures taken were necessary to achieve the proclaimed objective, there were other less trade-restrictive alternatives reasonably available, such as the negotiation on multilateral agreement aimed specifically at protecting ocean mammals. In addition, the panel concluded that the trade restrictive measures applied under justification of Article XX of the GATT cannot be applied in such a way as to impose environmental regulations outside the jurisdiction of a member state applying the measure.

Despite the Panel's decision being heavily criticized by environmentalists as having clearly prioritized free trade over environmental protection, it can be argued that it brought the United States to intensify its endeavours with respect to concluding an international agreement aimed at dolphins protection.

Some scholars, however, voiced the opinion that multilateral solutions should be the first choice, however, not the only choice. Especially due to the concerns that

multilaterally agreed environmental solutions reduce the environmental protection to the least common denominator, while unilateral measures may prove to be far more effective in achieving environmental objectives (Beyers, 1992).

Shrimp/Turtle Case. Not long after the establishment of the World Trade Organization in 1995, another similar environmental dispute had been initiated against the United States by several Southeast Asian countries in 1996 (WT DS58, United States – Import Prohibition of Certain Shrimp and Shrimp Products). India, Malaysia, Pakistan and Thailand filed a complaint against the USA through the WTO dispute settlement system after the United States introduced an importation ban on certain shrimp and shrimp products from non-certified countries, i.e. countries that were not able to demonstrate the use of turtle excluder devices (TEDs) in fishing nets catching shrimp. The TED was meant to prevent the incidental taking of several endangered species of sea turtles that live in the same waters where shrimps harvest.

The complainants argued that by imposing the importation ban the United States violated their obligations under the GATT 1994, particularly Article XI (general elimination of quantitative restrictions). The US conceded to violating Article XI of the GATT 1994, stating, however, that their imposition of a quantitative restriction on shrimp import was justified by Article XX GATT 1994 (general exceptions). In particular, they argued that their trade restrictive measure with respect to importation of shrimps from non-certified countries was necessary for the conservation of endangered species of sea turtles, which they claimed to be exhaustible natural resources.

Despite the evident similarities of the Tuna/Dolphin and the Shrimp/Turtle cases, the outcome of the latter was significantly different.

The case was brought after the establishment of the WTO, thus, under the new dispute settlement mechanism, which allowed for the initial panel decision to be reviewed by a newly established Appellate Body.

In its decision, the Appellate Body introduced a fundamentally novel approach to legal interpretation of the general exceptions provision under Article XX of the GATT, namely the *two-tier* test. This test is designed to determine, in a proper sequence of steps, whether a measure, otherwise inconsistent with GATT obligations, can be justified under the general exceptions clause. Thus, for a GATT-inconsistent measure to be justified under Article XX, it must first be established whether the requirements of one of the exceptions listed in paragraphs (a) to (j) of Article XX are met, i.e. the measure must be *necessary* to achieve the objectives stated in these paragraphs, and second, whether the requirements of the introductory clause, commonly referred to as the *chapeau*, are met, i.e. whether the measure had not been applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail (Bossche, 2008).

Quite significantly, as regards the justification of the importation ban on shrimps under the general exceptions clause of Article XX GATT, the Appellate Body concluded that the importation ban was provisionally justified under Article XX (g) of the GATT 1994, i.e. that it was necessary for the conservation of sea turtles, considered to be exhaustible natural resources. To this end, the Appellate Body confirmed that "from the perspective embodied in the preamble of the WTO Agreement, we note that the generic term "natural resources" in Article XX (g) is not "static" in its content or reference but is rather "by definition, evolutionary"" (Paragraph 130 of the Panel Report).

The US maintained that sea turtles were a "global resource" and they had ranges extending thousands of kilometers and navigated coastal water of many countries. Thus, if any one country in the range of a sea turtle population adopted practices resulting in high sea turtle mortality, the population would be endangered throughout its entire range (Paragraph 3.159 of the Panel Report).

With respect to the objection raised by the complainants regarding the United States' imposition of its environmental policies outside their jurisdiction, the Appellate Body stated "it is not necessary to assume that requiring from exporting countries compliance with, or adoption of, certain policies (although covered in principle by one or another of the exceptions) prescribed by the importing country, renders a measure a priori incapable of justification under Article XX" (Paragraph 121 of the Appellate Body Report). This conclusion of the Appellate Body demonstrates the evolution of views on this extra-jurisdictional issue from the position taken by both the Panel in the Tuna/Dolphin Case (Paragraph 7.44 of the Panel Report).

Thus, while applying the first step of the *two-tier* test, the Appellate Body concluded that the importation ban on shrimp from the countries which were not able to demonstrate the use of devices preventing the incidental killing of sea turtles, was justified under Article XX (g) of the GATT, i.e. that it was a measure related to conservation of exhaustible natural resources. Furthermore, the Appellate Body concluded that the measure had been made effective in conjunction with the restriction on domestic production and consumption, thus meeting all conditions attached to provision of letter (g) of general exceptions under Article XX.

Proceeding with the second step of the *two-tier* test, the Appellate Body examined whether the US application of the trade restrictive measure satisfied the requirements of the introductory provision, the *chapeau* of Article XX GATT 1994. The Appellate Body found that the United States applied the importation ban in a manner that constituted arbitrary or unjustifiable discrimination between countries where the same conditions prevail, thus not meeting the conditions of the *chapeau*.

The Appellate Body found that the US application of their import ban to be an arbitrary or unjustifiable discrimination especially due to the following facts: (i) apart from the negotiation of the Inter-American Convention for the Protection and Conservation of Sea Turtles in 1996, the United States failed to engage in serious multilateral negotiations with other members exporting shrimp (paragraph 166 of the AB Report); (ii) 14 countries in the wider Caribbean/Western Atlantic region had "phase-in" periods or 3 years to commit themselves to use TEDs on all commercial shrimp trawling vessels, other countries had only 4 months to implement the required use of TEDs, (iii) the USA rigidly required that countries applying for import certification adopt a comprehensive regulatory program essentially the same to the US program, without inquiring into its appropriateness for the conditions prevailing in exporting countries (paragraph 177 of ABR), and (iv) the non-transparent manner of certification process applied by the USA.

Thus, as a result, the Appellate Body concluded that although the importation ban was a measure related to conservation of exhaustible natural resources and thus provisionally justified, it had been applied in a manner that unjustifiably and arbitrarily discriminated among WTO members, in particular favouring the countries of the Caribbean and West Atlantic region over Southeast Asian exporters of shrimp and

shrimp products. As a result, the United States were expected to adapt their application of the import ban so as to eliminate the discrimination.

Brazil – Retreaded Tyres (WT DS332). In 2005, the European Communities initiated a dispute against Brazil at the WTO following Brazil's imposition of an import ban on retreaded tyres and other measures (such as fines for importation, transportation and storage) that adversely affected exports of retreaded tyres from the European Communities to Brazilian market. Moreover, Brazil introduced an exemption from the import ban for retreaded tyres from other MERCOSUR countries.

Similarly, as in previously discussed cases, Brazil sought to justify its GATT-inconsistent measures (found by the Panel to be in violation of Article XI of the GATT 1994 on General elimination of quantitative restrictions) within the meaning of the general exceptions clause contained in Article XX (b) of GATT 1994.

Brazil's main justification for the ban on retreaded tyres was that accumulation of waste tyres on its territory and the difficult disposal thereof contribute significantly to the spread of potentially life-threatening mosquito-borne diseases such as malaria, yellow fever, dengue etc. Thus, Brazil argued that the importation ban on retreaded tyres was a measure necessary to protect human, animal and plant life and health within the Article XX (b) GATT 1994 as it would contribute to reducing the number of waste tyres accumulated in its territory if imported retreaded tyres would be replaced either by domestically retreaded tyres made from tyres used in Brazil, or with new tyres capable of future retreading (Paragraph 135, WT DS332 Appellate Body Report).

The Panel "weighed and balanced" the contribution of the import ban to its proclaimed objective against its trade restrictiveness, while considering the importance of the underlying interests or values. The European Communities suggested there were other less trade-restrictive options available to Brazil to achieve the objective. One of the suggested alternatives was to ensure higher effectiveness of waste management in Brazil, including collection and disposal of tyres, such as landfilling, stockpiling; incineration of waste tyres in cement kilns and similar facilities and material recycling (Paragraph 162, WT DS332 Appellate Body Report). In the light thereof, the Panel concluded that none of the less trade-restrictive alternatives suggested by the European Communities constituted "reasonably available" alternatives to the ban. It was confirmed that high costs involved and the required commitment of substantial resources or advanced technologies or know-how to implement these alternative measures would result in only a limited impact on the achievement of the stated policy objective, i.e. the reduction of health risks posed by accumulation of waste tyres.

With respect to the contribution of the import ban to reduction of risks to human, animal, and plant life and health arising from waste tyres, the Panel stated that "a reduction in this accumulation, even if it does not eliminate it, can reasonably be expected to constitute a step towards the reduction of the occurrence of the diseases and the tyre fires" (Paragraph 136, WT DS332 Appellate Body Report).

Upon the EC's objection that the Panel erred by not quantifying the reduction of waste tyres resulting from the import ban, the Panel noted that it was not disputed that "is within the authority of a WTO Member to set the public health or environmental objectives it seeks to achieve, as well as the level of protection that it wants to obtain, through the measure or the policy it chooses to adopt" (Paragraph 140, WT DS332 Appellate Body Report).

Moreover, with respect to the examination of conditions to be met for justification of the import ban under the General exceptions clause of Article XX GATT 1994, the Panel rejected the notion that it was obliged to quantify the contribution of the import ban to the objective achievement. Rather, it concluded that the choice of a qualitative analysis "was within the bounds of the latitude it enjoys in choosing a methodology for the analysis of the contribution" (Paragraph 147, WT DS332 Appellate Body). It was sufficient, in the view of the Panel, that the import ban was only one of the key elements of a comprehensive strategy designed by Brazil to deal with this environmental problem (Paragraph 154, WT DS332 Appellate Body Report).

Upon confirming that the import ban and related trade-restrictive measures were necessary and thus provisionally justified under general exceptions of Article XX (b) of GATT 1994, the Appellate Body turned to the examination of whether the measures were applied in accordance with the *chapeau* of Article XX GATT 1994. It came to the conclusion that the exemption from the import ban on retreaded tyres that was introduced for other MERCOSUR countries was inconsistent with the requirement of non-discrimination stated in the introductory part of Article XX. Thus, the Appellate Body recommended Brazil bring its trade policy into conformity with its obligations under WTO agreements. As a result, Brazil was required to either remove the MERCOSUR exemption, or remove the import ban.

China – Raw Materials (WT DS394, 395, 398). In 2009, the United States (WT DS394), European Union (WT DS395) and Mexico (WT DS398) brought China to the WTO dispute settlement mechanism for the imposition of several restraints on the export of various forms of raw materials, e.g. certain forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorous and zinc. The complainants cited 32 measures through which China allegedly imposed restraints on the exports in question in addition to some other alleged unpublished restrictive measures. Among the measures established there were export duties, export quotas, minimum export price requirements, export licensing requirements, and restrictions with respect to administration and publication of trade regulations.

As for the export restrictions, although China admitted they were inconsistent with Article XI of GATT 1994, it claimed that these measures were necessary for the protection of citizens health und thus justifiable under general exceptions. This was particularly due to the high level of environmental pollution connected with the extraction of various raw materials and metals production.

According to China, the export restrictions on these products would lead to a reduction in the production of these metals (because of the reduced demand for them outside China) and therefore a reduction of pollution associated with their production. China also argued that its export duties on magnesium scrap, manganese scrap, and zinc scrap (used as inputs in secondary production/recycling) were justified under Article XX(b) and that secondary production should be favoured over EPRs (energy-intensive, highly polluting, resource-based) because it is more environmentally friendly than highly polluting production of EPRs.

However, the Appellate Body concluded that "export restrictions generally do not internalize the social environmental costs of EPRs' production in the domestic economy. ... This is because export restrictions reduce the domestic price of EPRs

and therefore they stimulate, instead of reducing, further consumption of polluting EPR products" (WT DS398 Appellate Body Report).

Thus, according to the Appellate Body, China was unable to demonstrate that its export duties and quotas would lead to pollution reduction in the short or long term.

China also argued that these restrictions were also related to conservation of exhaustible natural resources and thus justifiable under Article XX (g) of GATT 1994. It had not been disputed that the raw materials at issue represent exhaustible natural resources. The Panel concluded, however, that the other condition attached to this exception, i.e. that such trade restrictive measures must be made effective in conjunction with the reduction of domestic production and consumption, had not been met. This is due to the fact that China was not able to provide evidence on the reduction of domestic production and consumption of the raw materials in question.

Most significantly, the Appellate Body came to the conclusion that the export restrictive measures introduced by China need not only be reviewed with respect to the provisions on general exceptions of GATT 1994, but also in the light of China's Accession Protocol to the WTO. In paragraph 11.3 of this Protocol China undertook to eliminate all export taxes and charges applied to exports unless specifically provided for in Annex 6.

Thus, the Appellate Body arrived at the result that there was no basis in China's Accession Protocol to allow the application of general exceptions under Article XX GATT 1994 for the export restraints introduced by China. This decision of the Appellate Body came in 2011, rather unsurprisingly, just in time before Russia acceded to the WTO with its own Accession Protocol. Perhaps this might have been a signal to other members that the sum of concessions they are able to agree upon in the accession process may not be easily expanded through applying trade restrictive measures, even if potentially justifiable through general exceptions in GATT 1994 or other principal WTO agreements. Notably, environmental concerns seemed to have taken a back seat in a situation when the supply of highly demanded raw materials required in many high-tech industries are jeopardized.

Conclusion. The main aim of the World Trade Organization is the facilitation of progressive trade liberalization. However, over the past 20 years, it has become evident that tensions may arise between international trade on the one hand, and, public health and environmental concerns, on the other, especially when WTO members introduce trade restrictions to protect environmental interests. In this respect, it had been established by the WTO's Appellate Body on numerous occasions that, fundamentally, the WTO Members have the right to determine the level of protection they consider appropriate in a given context. However, in order to meet the strict criteria for WTO-consistent application of exceptional trade restrictive measures in order to protect legitimate environmental interests of WTO members, these measures need to be necessary and effective with respect to achieving the proclaimed policy objective and there must be no alternative less trade-restrictive measure available. In this context, it is important to note that it is in the discretion of the WTO Appellate Body whether to apply qualitative or quantitative analysis for the examination of measures effectiveness.

In our opinion, this approach results in quite a large space for the WTO dispute settlement body to apply different criteria and methods for the evaluation of the

necessity of the measure at stake in view of achieving the proclaimed objective in various disputes. Thus, the absence of a standardized method for examination of the effectiveness of such measure makes it nearly impossible to make reasonable conclusions on the consistency of the Appellate Body's decisions in some disputes. This may potentially lead to diminished predictability of the outcomes of future environmental disputes brought to the WTO.

On the other hand, our analysis shows that the WTO's Appellate Body is quite consistent and strict in safeguarding the non-discriminatory application of trade-restrictive measures provisionally justified under the general exceptions clause of the GATT 1994.

Lastly, the China-Raw Materials dispute analysed above shows that the Appellate Body is keen on limiting the access to general exceptions under GATT 1994 for WTO members which have negotiated elaborate accession protocols, where numerous exceptions from the WTO rules have been granted to them under the special and differential treatment principle applicable to developing countries.

References:

1994 Ministerial Decision on Trade and Environment // www.wto.org.

Agreement Establishing the World Trade Organization // www.wto.org.

Agreement on Technical Barriers to Trade // www.wto.org.

Agreement on the Application of Sanitary and Phytosanitary Measures // www.wto.org.

Beyers, C.J. (1992). The U.S./Mexico Tuna Embargo Dispute: a Case Study of the GATT and Environmental Progress, 16 Md. J. Int'l L. 229 // digitalcommons.law.umaryland.edu.

Bossche, P.V.B. (2008). Trade and Policy of the World Trade Organization. Cambridge University Press, New York.

Brazil – Measures Affecting Imports of Retreaded Tyres (WT DS332) // docs.wto.org.

Cernota, M. (2014). Cooperation challenges in socio-natural systems under climate variability. In: EDAMBA 2014 proceedings of the international scientific conference for doctoral students and young researchers (pp. 87–91). Bratislava, Publishing House EKONOM.

China – Measures Related to the Exportation of Various Raw Materials (WT DS394) // www.wto.org.

China – Measures Related to the Exportation of Various Raw Materials (WT DS395) // www.wto.org.

China – Measures Related to the Exportation of Various Raw Materials (WT DS398) // www.wto.org.

Esty, D.C. (2001). Bridging the Trade-Environment Divide. Journal of Economic Perspectives, 15(3): 113–130.

General Agreement on Trade and Tariffs // www.wto.org.

Harris, J.M. (2004). Trade and the Environment. A GDAE Teaching Module on Social and Environmental Issues in Economics. Global Development and Environment Institute, Tufts University // www.ase.tufts.edu.

Shaffer, G. (2001). The World Trade Organization Under Challenge: Democracy and the Law and Politics of the WTO's Treatment of Trade and Environment Matters (February 22, 2010). Harvard Environmental Law Review, 25: 1–93, Winter 2001 // ssrn.com.

United States – Import Prohibition of Certain Shrimp and Shrimp Products (WT DS58) // www.wto.org.

United States – Restrictions on Imports of Tuna, Report of the Panel (DS21/R–39S/155) // www.worldtradelaw.net.

Стаття надійшла до редакції 26.07.2015.