

**CONFLICT OF NORMS BETWEEN INTERNATIONAL ENVIRONMENTAL
LAWS AND TRADE REGIME: A CONTEXTUALISED STUDY OF
CLIMATE CHANGE**

**A Thesis Submitted
To
Sikkim University**



**In Partial Fulfillment of the Requirement for the
Degree of Doctor of Philosophy**

**By
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October 2024

Date:

DECLARATION

I, **NEELAM RAI**, hereby declare that the research work embodied in the thesis titled “**Conflict of Norms Between International Environmental Laws and Trade Regime: A Contextualised Study of Climate Change**” submitted to the Sikkim University in partial fulfilment of the requirement for the **Degree of Doctor of Philosophy** is my original work. This thesis has not been submitted for any other degree of this University or any other University.

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CERTIFICATE

This is to certify that Thesis titled "**Conflict of Norms Between International Environmental Laws and Trade Regime: A Contextualised Study of Climate Change**" submitted to the Sikkim University for the partial fulfilment of the degree of Doctor of Philosophy in the Department of Law, embodies the result of *bona fide* research work carried out by NEELAM RAI under my guidance and supervision. No part of the dissertation has been submitted for any other Degree, Diploma, Association and fellowship.

All the assistance and help received during the course of investigation have been duly acknowledge by him.

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“Conflict of Norms between International Environmental Laws and Trade Regime: A Conceptualized Study of Climate Change”

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Place: Gangtok

Dated:

(Miss Neelam Rai)

LIST OF CASES

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2.	Tuna- Dolphin (Case II) Mexico v. United State (1994)
3.	Banana Case- Ecuador, Guatemala and Honduras v. European Union (1994)
4.	European Commission Asbestos Case- Canada-vs- European Union (1997)
5.	Shrimp- Turtle India, Malaysia, Philippines, and Thailand v. United State (1998)
6.	USA: Massachusetts v. Environmental Protection Agency (2007)
7.	American Electric Power Co. v. Connecticut (2011)
8.	Canada: Renewable Energy/Feed-in-Tariff Case v. European Union (2011)
9.	Argentina: Barrick Exploraciones Argentines S.A. and Others v. National Government (2012)
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14.	Australia: Gloucester Resources Limited v. Minister for Planning (2017)
15.	Netherland: Urgenda Foundation v. State of the Netherlands (2019)
16.	Kenya: Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd (2019)
17.	Germany: Neubauer et al. v. Germany (2021)
18.	Netherlands: Milieudefensia et al. v. Royal Dutch Shell plc (2021)
19.	Poland: Client Earth v. Enea (2021)
20.	West Virginia v. EPA (2022)
21.	Iberdrola abd Others v. Repsol Renewable Energy Company (2024)

**CONFERENCE OF THE PARTIES UNDER THE UNITED NATION
FRAMEWORK CONVENTION ON CLIMATE CHANGE**

NO	YEAR	NAME	ALTERNATIVE NAME	LOCATION	COUNTRY
1.	1995	COP1		BERLIN	GERMANY
2.	1996	COP2		GENEVA	SWITZERLAND
3.	1997	COP3		KYOTO	JAPAN
4.	1998	COP4		BUNENOS AIRES	ARGENTINA
5.	1999	COP5		BONN	GERMNAY
6.	2000	COP6		THE HAGUE	NETHERLAND
7.	2001	COP6-2		BONN	GERMANY
8.	2001	COP7		MARRAKEC H	MOROCCO
9.	2002	COP8		NEW DELHI	INDIA
10.	2003	COP9		MILAN	ITALY
11.	2004	COP10		BUENOS AIRES	ARGENTINA
12.	2005	COP 11	CMP1	MONTREAL	CANADA
13.	2006	COP 12	CMP2	NAIROBI	KENYA
14.	2007	COP 13	CMP 3	BALI	INDONESIA

15.	2008	COP 14	CMP4	POZNAN	POLAND
16.	2009	COP15	CMP5	COPENHAGEN	DENMARK
17.	2010	Cop 16	CMP6	CANCUN	MEXICO
18.	2011	COP 17	CMP7	DURBAN	SOUTH AFRICA
19.	2012	COP 18	CMP8	DOHA	QATAR
20.	2013	COP19	CMP9	WARSAW	POLAND
21.	2014	COP 20	CMP 10	LIMA	PERU
22.	2015	COP 21	CMP 11	PARIS	FRANCE
23.	2016	COP22	CMP 12/CMA 1	MARRAKECH	MOROCCO
24.	2017	COP 23	CMP 13/CMA 1-2	BONN	GERMANY
25.	2018	COP 24	CMP 14/ CMA 1-3	KATOWICE	POLAND
26.	2019	SB50		BONN	GERMANY
27.	2019	COP 26	CMP 15/CMA 2	MADRID	SPAIN
28.	2021	COP 26	CMP 16/ CMA 3	GLASGOW	UNITED KINGDOM
29.	2022	COP 27	CMP 17/ CMA 4	SHARM-EL SHEIKH	EGYPT
30.	2023	COP 28	CMP 18/ CMA 5	DUBAI	UNITED ARAB EMIRATES

ABBREVIATION

APA	Ad-hoc Group
AOSIS	Association for Small Island States
AF	Adaptation Fund
AIDCP	Agreement on International Dolphin Conservation Program
APEC	Asian-Pacific Economic Cooperation
AB	Appellate Body
ASEAN	Association of Southeast Asian Nation
APC	Air Pollution Control
ACP	Asian, Caribbean, Pacific Nation
BFA	Banana Framework Agreement
BAPA	Buenos Aires Plan of Action
CITES	Convention on International Trade in Endangered Species
COPs	Conference of the Parties
CEC	Commission for Environmental Cooperation
CDM	Clean Development Mechanism
CERS	Certified Emission Reduction
CFC	Chlofluorocarbons
CMPs	Conference of the Parties serving as the meeting of the Parties to the Paris Agreement
CMAAs	Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol
DSB	Dispute Settlement Body
DSS	Dispute Settlement System

EU	European Union
EC	European Communities
FITs	Feed-in-Tariffs
GATT	General Agreement on Trade and Tariff
GATS	General Agreement on Trade and Service
GEF	Global Environmental Fund
GPP	Green Public Procurement
GHGs	Greenhouse Gas
HCFCs	Hydrocrochloflurocarbons
ITO	International Trade Organization
IPCC	Intergovernmental Panel on Climate Change
INC	Intergovernmental Negotiating Committee
ICSU	International Council of Scientific Unions
ICJ	International Court of Justice
JI	Joint Implementation
LDC	Least Developed Countries
MFN	Most Favoured Nation
MEAs	Multilateral Environmental Agreements
MRMS	Mero Rukh Mero Santati
NTM	Non-Tariff Measures
NT	National Treatment
OECD	Organization for Economic Corporation and Development
PV	Photovoltaic
PTA	Preferential Trade Agreement

PPM	Process and Production Method
R&D	Research and Development
RE	Renewable Energy
SHW	Solid and Hazardous Waste
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
SDG	Sustainable Development Goal
SAPTA	South Asian Preferential Trade Agreement
TBT	Technical Barrier to Trade
US	United States
UNGA	United Nations General Assembly
UNFCCC	United Nations Framework Convention on Climate Change
UNDP	United Nations Development Program
UNEP	United Nations Environmental Program
UNACTAD	United Nations Conference on Trade and Development
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization
WHO	World Health Organization
WMO	World Meteorological Organization

PREFACE

This exertion is distributed into six parts dealing with numerous features of exploration effort first section is “Introductory”. This section expresses the problem for the study in the region of trade fundamental principles and environmental treaties especially with regard to climate change norms. It also articulates the method engaged and provides an outline literature of the anticipated study. The Second section is “Comprehending Trade and Environment Linkage” analyses the “historical development” of both trade and environment. It also combines the evolution of international trade and environmental law as well as the relationship between two regimes. Similarly it also integrates the historical development of climate change and its effect, definition, and instruments to deal with climate challenge and its effects on environment at global level. The Third Chapter “Legal Instruments Governing International Trade” gives an account of systematic study of international trade system and its governing instruments. It incorporates the history of “International Trade Organisation” (ITO) and “General Agreement on Trade and Tariffs” (GATT) to permanent trade organization i.e. “World Trade Organization”. Further it also di\scusses the mechanism of trading system such as fundamental principles, dispute settlement body, review policy mechanism, and formation of multifaceted trade agreements on numerous aspects trade such as goods and services, intellectual property rights etc. The Fourth Section “Legal Responses to Climate Change at International Level” discusses various multilateral environmental treaties to highlight the legitimate matters of climate change and trade norms. To discourse the problem it also combines the initiatives taken by the “United Nations” by crafting many international environmental treaties such as “First International Environmental Summit” (1972) which led the creation of “United National Environmental Programme” (UNEP), and “Earth Summit” in 1992 which led the creation of global climate accord known as “*Global Climate Accord*” (UNFCCC). It also embraces a few climate conferences (COPs) which plays an essential role of legal mechanisms to discourse the problem at global level. The Fifth Section “Climate Change Related Trade Issues in the Setting of Intercontinental Trading System” throws light on the trade-measures on climate policy. It also integrates the standard which governments have implemented such as renewable energy subsidies, emissions trading, trade in environmental friendly products etc. Further a profound vision has also been made into the inclusion of “*Green Industrial Policy*” by grinding the approaches of

different States government especially emergent nations with the help of decided case laws. It further anticipates to assess the balance between two regimes with the help of constructing the loopholes with different remedial approaches such as establishing temporary peace provision under “Article IX.1” of the Accord, interpreting trade provisions under “Article IX.2”, applying relevant tools (waiver) under “Article IX.3” of the “Marrakesh Accord”, and deploying some experts in the arena of trade and climate change to decide the conflicting disputes between two regimes. The Sixth Part “Conclusion and Suggestions” addresses the assumption and proposals arrived at as outcome of two different regimes and their fundamental principles, obligations, instruments, and commitments. An effort has been made to point out the mutual relationship between two by constructing a harmonious space with an intention to make more flourish relationship by contributing more policies by trading system to facilitate the diffusion of environmental friendly technologies and green products to achieve sustainable development.

CHAPTER-1

INTRODUCTION

1.1. Introduction

Over the past 15 years, intercontinental trade has stretched at a rate almost twice that of global economic activity, making it an increasingly important engine of fiscal development. Trade concerns are playing a gradually important character in modelling commercial policy in both established and developing nations, with a mounting figure of emerging nations viewing trade and speculation as essential components of their development strategy. At \$11 trillion annually, the regulations governing trade movement's plays a powerful role for social, economic, and environmental change.¹ Open trade with established standards is sensible from an economic and business perspective. All nations, even the most impoverished, have financial, natural, industrial, and human resources that can be exploited to produce merchandises and amenities for their own markets or to compete internationally. Comparative advantage is useful in this situation.²

International trade is now able to propel economic growth at previously unheard-of heights because to globalization and liberalization. The productive end of the “*Uruguay Round*” and the embracing of outward-oriented growth strategies by emerging nations have increased the likelihood of expanding and creating a worldwide division of labour. It is anticipated that the current trend of exceeding the expansion of global trade would continue, increasing the involvement of all nations in international trade.³

Nonetheless, major global environmental changes happened at the similar period. The extinction rate of species is 1,000 times higher now than it was a century ago; nitrogen emissions from vehicles and chemical manures are rising steadily, killing off seas and

¹ United Nations Environmental Program, Environment and Trade, A Handbook, 2nd Edition (2005), available at: https://www.iisd.org/system/files/publications/envirotrade_handbook_2005.pdf (last visited on 2.2.2022)

² Tilman Santarius, Holger Dalkmann, Markus Steigenberger, Karin Vogelpohl, *Balancing Trade and Environment* (Wuppertal, Climate, Environment, Energy, Feb. 2004), available at: <http://www.santarius.de/wp-content/uploads/2003/03/WP-133e-Trade-and-Environ.pdf> (last visited on 2.2.2022)

³ Mr. Arvind Subramanian, Mr. Richard T. Harmsen, Mr. Peter P Uimonen, Ms. Naheed Kirmani, and Mr. Michael P. Leidy, *Principal Issues* 43, (International Monetary Fund, 1995)

lakes; part of the world's fish stocks are actually fished to their living limits, and extra part are outside that point, meaning they are depleted; and if existing movements continue. Over the next two decades, 2.5 billion people will live in nations experiencing water stress, where they will have fewer than 1,000 litres of water per year.⁴

Organizations associated to the environment have also changed. Twelve other worldwide environmental accords have come into up shot from the time when it was first was contracted in 1973, addressing topics like migratory species, hazardous waste transportation, and ozone depletion other than 70% of the world's nations have ratified all thirteen of the treaties. Roughly a thousand more have been enforceable at the provincial or consensual level, creating a vast and intricate body of global “environmental regulation”.⁵

The current situation necessitates the alignment of trade and environmental policies for mutual benefit. Successfully integrating these policies needs a constructive conversation and a profound appreciative of the intricate connection between “*trade and the environment*”.⁶

The expansion of intercontinental trade is accountable for a significant amount of environmental harm. As economic globalization and the universal feature of many ecological challenges become more apparent, the multilateral legal arrangements that regulate them are certain to collide.

Intercontinental Environmental Regulation and Intercontinental Trade Regulation are two independent fields of international law that handle the nexus between “*trade and the environment*”, with the former controlling multidimensional environmental covenants and the latter subject to WTO regulations.⁷

⁴*Supra Note 2*

⁵United Nations Environmental Program, *Environment and Trade, A Handbook*, 2nd Edition (2005), available at: https://www.iisd.org/system/files/publications/envirotrade_handbook_2005.pdf (last visited on 2.2.2022)

⁶Dr. Klaus Töpfer, *Environment and Trade A Handbook* (UNEP) (2000), available at https://www.iisd.org/system/files/publications/envirotrade_handbook.pdf (last visited on 2.2.2022)

⁷Todd Weiler, “WTO & Sustainable Development”, *JOWT*, 75(2000).

Trade and the environment are inextricably intertwined, with liberalization helping to conserve the environment while simultaneously emphasizing the negative effects of trade.⁸

Liberalized trade can help governments overcome resource limits, allowing them more economic potential subsequent economic activity increases, enhancing environmental protection resources, which necessitates increased income, especially in third-world countries, to improve environmental quality.⁹ Trade liberalization can also benefit the environment by allowing for the trade of ecologically friendly products, services, and technology.

Trade liberalization hinders the safeguarding of the environment by nature. Intercontinental Environmental Covenants may include trade measures that are not legitimate under WTO rules.¹⁰ Most trade agreements include provisions for unrestricted market access. Agreements limit governments' capacity to establish domestic environmental rules. This will lead to conflicts between free trade agreements and Multilateral Environmental Agreements. This creates a challenge in determining the appropriate measures to be adopted and hampers environmental efforts.¹¹

Environmentalists often oppose free trade due to concerns about standards. Nations with subordinate environmental guidelines may have a comparative advantage over those with greater ones. High product and process standards might be costly to comply with. This can lead to lower standards in order to strive. It is feared that 'pollution havens' would emerge, leading to a 'race to the bottom'.¹² Some consider this allegation a fantasy.¹³

The connection amid “*trade and the environment*” is complex, with both positive and negative impacts on the ecosystem due to increased free trade. Despite the existence of such a relationship, it is frequently asked why the WTO should safeguard the environment.

⁸ Katie A Lane, “Protectionism or Environmental Activism? The WTO as a Mechanism of Reconciling the Conflict between Trade and Environment”, *IALR*, 103Vol. 32, (2001).

⁹Michael Voight, "Economy, Trade and the Environment", *JOWT*, 172 (1993)

¹⁰Cheriachen V. Ak.kett, "Environmental protection under the WTO regime "39-92*TALR*Vol. 29 (2005)

¹¹Gilliam White "The Greening; realistic or lost cause?"266 *TUOA*(1999)

¹²Daniel C. Esty. "Trade and Standard Requirements a Bane for the Environment' 296 *JOWT* (1996)

¹³James A. Holbein. "The Litigation for UnregulatedBusiness", 505 *ELQ* (1995)

The WTO bears moral responsibility for environmental damage as it promotes more trade. Furthermore, member nations have delegated major trade authority to the WTO. As a result, they might be held accountable for the ecological effect of their acts.¹⁴ Further, Corporate social responsibility aims to hold corporations accountable for their impact on non-financial sectors like environmental conservation, given their position in the “*global economy*”. “*World Trade Organization*”(WTO) could be held accountable for the environmental consequences of commerce.

Those Nations who accept social responsibility for the wellbeing of their population cannot hide behind a trade organization to avoid accountability to citizens. The WTO, as the collective organization of states, may be held accountable for the ecological effect of trade. There are various reasons why the WTO should handle environmental concerns.¹⁵

“*Trade and the environment*” are fundamentally linked because the environment is the foundation of all economic activity. All basic inputs, such as metals and minerals, forests, and fisheries are derived from it. The waste products of economic activity are also received by it. Environmental issues have a direct impact on trade since exporters have to meet consumer demand for more environmentally friendly products.¹⁶

The “environment” and “trade” are two independent parts of international rule. Trade law is incorporated into organisations such as the “*World Trade Organization*” and the regional trade agreements. Environmental legislation is implemented through multilateral environmental agreements, regional agreements and national and sub national regulations. International environmental law is increasingly shaped by the way countries structure their economic activity.¹⁷

Now the association concerning commerce and the environment has emerged as a strategic question in international trade relations. As people become more aware of the

¹⁴Daniel C. Esty. "Trade and Standard Requirements a Bane for the Environment' 296 *JOWT* (1996)

¹⁵Fiona McMillan, *WTO and the Environment*, 7 (Sweet & Maxwell, London, 2001)

¹⁶Daniel Esty, "Trade and Environmental Agreements: Collision or Congruence?" 31, *JOWT*(1997)

¹⁷Individual targets, *available at*:

https://unfccc.int/kyoto_protocol#:~:text=In%20short%2C%20the%20Kyoto%20Protocol,accordance%20with%20agreed%20individual%20targets.

connotation of safeguarding the *environment* and fostering sustainable development, there is an increasing usage of environmental policy initiatives.¹⁸

Environmental policies implemented by governments can impact trade in several ways. It is worth noticing three of these. First, there are concerns that environmental regulations may alter competitive conditions. Producers in nations with tougher environmental requirements are concerned about the impact on their costs and competition in international marketplaces. Manufacturers in nations with less strict standards, such as developing nations and markets in transition, are concerned about trade measures imposed on products produced by industries that do not meet importing countries' higher pollution or emission standards. Imposing a compensatory tax, prohibition, or limits on imports unilaterally asserts control over other nations' environmental practices and priorities.¹⁹ Thirdly, there has been an increase in public awareness of concerns about species diversity, animal welfare, and contamination of the international commons, such as *ozone depletion* and *climate change*.

As seen from the standpoint of trade policy, this has brought up a crucial question: Should members of “*international environmental agreements*” negotiating such global environmental issues be required to impose trade restrictions on non-parties in order to coerce them into joining the agreements? Nevertheless, it is vital to analyse the consequences of environmental concerns on trade since the relationship between trade-related environmental policies and international trade obligations is presently being verified and because developed countries are attempting to use environmental measures to impose trade barriers.

Neither the GATT nor its successor, the WTO, which was endorsed by at least 85 founding countries, including India, have up till now openly and publicly addressed environmental issues or policies that impact trade.²⁰ The worldwide trading community is concerned about the relationship between green strategy and trade. There is a chance that some Multilateral Global Environmental Agreements will clash with WTO.²¹

¹⁸The WTO and Sustainable Development: An Independent Assessment (International Institute for Sustainable Development, Winnipeg, 2003).

¹⁹Fieleke, Norman S., "The Uruguay: An Overview", *NEER* (May 1995)

²⁰Jackson, John. H, "Watershed Innovation or Cautious Small Step Forward", Sven Arndt and Chris Milner, (eds.), *The World Economy*, 13(1995)

²¹A. David Ambrose, "Implicationson India", *WTO24*(Chennai, 1996)

1.2. Climate Change

Climate change covers variety of topics, including energy, the environment, geography, politics, chemistry, biology, and economics. Climate has had an important influence in shaping the progress that humans have made. Climate change's impact on our lives, ecosystems, additionally, the surroundings have been widely discussed in recent years. According to the IPCC report, Climate change is caused by humans and will continue to pose a significant threat to humanity. The conclusion is that climate change should be reduced in a socially responsible and sustainable manner. ‘Everybody has heard about climate change. Some people believe it is real, others do not. We are convinced that climatic alteration is imminent if not already with us.’²²

Various organizations have given varied interpretations of "climate change." “The United Nations Framework Convention on *Climate*” (UNFCCC)²³ and Intergovernmental *Panel on Climate Change* (IPCC)²⁴ have distinct definitions of Climate change. IPCC asserts that natural or external factors, such as humans, may be responsible for “*climate change*”, while the UNFCCC directly or indirectly links human activity to climate change. Research has indicated that “*climate change*” is something that happens naturally, and the world we live on has altered throughout time to become a suitable place for life due to sustained changes in climate.

United States National Space Agency (NASA) defines Clime Change as follows:-

*“Climate Change is a variation in the usual weather found in a place. This could be a change in how much rain a place usually gets in a year. Or it could be a change in a place’s usual temperature for a month or seasons. The Climate Change is also change in change in where rain and snow usually fall on earth”*²⁵.

²²Joke Waller-Hunter Executive Secretary United Nations Framework Convention on Climate Change, September 2004.

²³The UN process for reaching a deal to restrict hazardous climate change is known as the UNFCCC. A global agreement among nations in place. Reducing the amount of greenhouse gases entering the atmosphere is the primary strategy for achieving this. At the Rio de Janeiro-hosted Earth Summit, 154 governments signed it in 1992.

²⁴IPCC- United Nations intergovernmental organization. Its mission is to increase scientific understanding of how human activity is causing climate change. The IPCC was established Program (UNEP).

²⁵Dan Stillman and Jo Casta Green, “What is Climate Change? NASA (August 7, 2017), available at <http://nasa.gov/audience/forstudent/k-4/stories/nasa-knows/what-is-Climate-Change-k4.html>.

It is now a day's extensive acknowledged that the earth is facing a various ranges of ecological tests, which can only be addressed through universal support. Improvements in technology and science have heightened the probability of considerate the human activities its consequences up on environment as well as other numerous surprisingly be falling events.²⁶ The quantity of intercontinental environmental accords has significantly increased in the preceding few years which addresses a diverse range of challenges, including but not limited to *ozone* weakening, Climate change, biodiversity loss, toxic and hazardous wastes, river pollution, and exhaustion of freshwater supplies. The early environmental legal advances were narrowly focused and of restricted scope. Most legal actions were directed toward addressing particular problems, like whaling regulation, fisheries, waterways, and birds.²⁷

There is no fixed international authority or organization to create laws on the subject of the environment. These laws are a contribution of a variety of sources created by different international bodies from time to time.²⁸ Article 38(1)²⁹ of the “*Statute of the International Court of Justice*” affords that accords, customs and common doctrines of regulation acknowledged by cultured nation-states are the foremost foundations for international law. While accords and accustomed commandment are significant foundations of global environment regulation, the legitimate command for the security of the environment also embraces a variety of officially non-binding mechanisms which comprises affirmations and guidelines.³⁰ The progression of “International Environmental Law” has created diverse effects. While several treaty systems have been successful in achieving the intended outcomes³¹ Under the above circumstances the rules regulating the environment has developed rapidly and included a various range of sub-specialties, for example biodiversity law and water law, law of sea etc.³² The symbolic “Environmental Legal Tree” to take shape is that of Climate Change law.

²⁶Introduction to International Environmental Law, Module Paper, An MHRD Project, pp 1-11 (NME-ICT), available at <http://epgp.inflibnet.ac.in>.

²⁷*Ibid.*

²⁸ Sources of International Environmental Law, 30 June, 2020, Published by iLeadersLawSikho, available at <http://www.blog.ipleaders.in>

²⁹“Article 38(1) of ICJ” derives the law from primary which includes conventions or treaties, customary law and general principles recognized by civilized nations and secondary sources which includes judicial decisions and the teachings of highly qualified publicists, available at <https://newjurist.com/article-38--of-the-international->

³⁰*Supra Note 28*

³¹*Supra Note 29*

³²Gerry Bates, “Environmental Law in Australia”, 6th Edition, 2006, available at www.search.library.uq.edu.au.

Surfaced in the structure of escalating scientific, political, social, and economic discussions about how greenhouse gas emissions affect the global climate system. In response, a unique set of legal concepts and regulations known as "Climate Change Law" has been developed through the accumulation of case laws, legislative development, and international regulation.³³

The preservation of the ecosystem is now crucial for the assistance of coming generations. To avoid actions of other governments from undermining government initiatives aimed at enhancing environmental protection, environmental protection requires international cooperation regulations, sanctions, or both.³⁴ These regulations occasionally also include trade-restricting policies.

Conversely, trade liberalization has a decisive part in improving global economic well-being and expanding opportunities for billions of people to live fulfilling lives. There is, in fact, some evidence that trade policy and environmental policies are compatible, at least insofar as raising global welfare can prompt public demands and political action to strengthen environmental protection.³⁵ The poorest nations in the world cannot afford such protection, but as welfare increases protection becomes more affordable.

Climate change is increasingly at the forefront of domestic and international policy priorities, and solutions are urgently needed. No doubt trade acts a focal part in the release of greenhouse gases that worsen climate change through its consequences on the location and scale of production, consumption decisions and emissions from the international transporting of merchandises and the transfer of technologies that may support to lower emissions during production.³⁶ Maximum latest evaluations indicates that around a quarter of all global emissions are linked to international trade flows. While attention is currently focused on reducing emissions, it is increasingly recognized that the climate is already changing and solutions to acclimatize to the dangerous

³³P.W Birnie and A. E Boyle, "International Environmental, 2nd Edition 2002, available at <http://oceanlaw.ru/wp-content/uploads/2017/10/International-Law-and-the-Environment-Third-Edition-Patricia-Birnie.pdf>.

³⁴John H. Jackson, "World Trade Rules and Environmental Policies: Congruence Or Conflict", Vol 49 Issue 4. Rev. 1227 (1992), available at: <https://scholarlycommons.law.wlu.edu/wlu/vol49/iss4/4>

³⁵Gene M. Grossman & Alan B. Krueger, "Environmental Agreement", Discussion Papers EcoN. (Princeton, N.J.), Nov. 1991, available at www.jstore.org (visited on 2.2.2022)

³⁶ Paul Brenton and Vicky Chemutia, "The Urgency and opportunities for Developing Countries," 2021 International Bank for Reconstruction and Development/ The World Bank 1818 H.Street NW, Washington, DC 20433, available <https://openknowledge.worldbank.org/bitstream/handle/10986/36294/9781464817700.pdf>.

climatic actions and rising temperatures are urgently needed. According to the WMO³⁷, the summer of 2021 has seen intense and unprecedented heat waves, especially in the Northern Hemisphere.³⁸

The interface of trade and climate change has gaining it's momentum although not expressly mentioned in the (GATT)³⁹ or the World Trade Agreement (WTO)⁴⁰ as academic circle has not yet realized what was to come in the climate filed caused by the international trade. The role of (WTO)⁴¹ in environmental protection presents question i.e. to what extent institutional arrangement of (WTO) works for the safeguard of environment. The WTO mainly focuses on free trade between member states without discrimination, however, the environmental protectionist is forcing the WTO to consider environmental issues⁴² through applying various trade environmental measures. According to the UNCTAD⁴³ manufacturing for the purposes of exports was responsible for 27% of global carbon dioxide emission in 2013. Thus, policies to control climate change are closely linked to the movement of products and services and new climate-friendly technologies across borders.⁴⁴ The IPCC⁴⁵ states that evolving countries are likely among those suffering the most from climate change.⁴⁶

Later on by the time the WTO Agreement was drafted in 1994, there was already much empirical evidence regarding the link concerning climate change and trade and yet this link was not addressed. Mitigating climate change is currently the largest sustainable development challenge faced by the global community.⁴⁷ Environmental protection measures to discourse climate change need to be fully compatible with the international

³⁷ Herein after the acronym WMO is World Meteorological Organization.

³⁸ *Supra Note 12*

³⁹ "General Agreement on Tariffs and Trade"

⁴⁰ Joel. P. Thrachtman, "Trade and Problems, Cost-Benefit Analysis and Subsidiary", pg no. 32 -85, publication European Vol 9, Issue, available at <https://doi.org/10.1093/ejil/9.1.32> (visited on 2.2.2022)

⁴¹ Herein after the acronym of WTO is World Trade Organization.

⁴² Jacqueline Peel, "Climate Change Law: The Emergency of a New Legal Discipline, P. 32 Melbourne U.L. Rev. (2008).

⁴³ Herein after the acronym of UNACTAD is "United Nations Conference on Trade and Development".

⁴⁴ UN: World Investment Report: 013, P. 164 (2013), *available at* http://umctad.org/en/publicationslibrary/wir2013_en.pdf (2.2.2022)

⁴⁵ Herein after the acronym of IPCC is "Intergovernmental Panel on Climate Change".

⁴⁶ IPCC 2007 Synthesis Report, *available at* <http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4-syr-spm.pdf>

⁴⁷ Barrett, S. "Climate Change and International Trade", Lessons on their linkages from International Environmental Agreement", (2010), Background paper written for the TAIT second Conference, "Climate Change, Trade and Competiveness, Issue for the WTO" Geneva, 16-18 June, *available at* http://graduateinstitute.climate/ctei/home/events/TAIT_Climate_Confrence/TAIT_Papers.

trade rules for financial expansion and social advancement too. It is a big challenge that transcends borders and requires solutions not only at national levels but at the international level as well.⁴⁸ The WTO on one hand is the architecture of multilateral cooperation thus it provides a framework of disciplines to facilitate global trade⁴⁹ and acts as a platform for talks to achieve more trade liberalization. Moreover the WTO is relevant because climate change measures and policies overlap with international trade in numerous different ways.⁵⁰ The relationship between trade agreements to measures and mitigate the consequences of climate change remain a controversial part of the discussion. It is therefore relevant to explore key legal and institutional issue⁵¹ arising from the climate change debate including the relationship between the WTO Agreement and Multilateral Environment Agreement that address climate change. However, in contrast WTO rules have accepted that certain level of trade control is also needed to reach positive policy goals as long as the said restriction has not inconsistency with WTO rules. A number of WTO rules may be appropriate to mitigating climate change includes discipline on tariffs, common injunction against border quotas, general non-discrimination principles, rules on subsidies etc.⁵²

1.3. “General Agreement on Tariffs and Trade” (GATT) or World Trade Agreement (WTO)

Preceding few years, a diverse range of institutions addressing climate change have emerged, impacting the regime's rule-making. The core objectives of the “*World Trade Organisation*” and “GATT” are environmental preservation and sustainable development. They are valued in the “*Marrakesh Agreement*”, which formed the “*World Trade Organization*”, and they strike a compromise between the goals of reducing trade barriers and doing away with unfair trade practices. WTO regulations do not contain a specific agreement on the environment, but members are free to enact

⁴⁸World Trade Organisation, *available at* https://www.wto.org/english/tratop_e/envir_e/climate_change_e.pdf

⁴⁹*Ibid*

⁵⁰*Ibid*

⁵¹*Supra Note 10*

⁵²World Trade Organization report on ‘Climate Change and the potential relevance of WTO rules’, *available at* https://www.wto.org/english/tratop_e/envir_e/climate_measures_e.htm

trade-related policies that safeguard the environment as long as they are not abused for protectionist purposes.⁵³

So the “WTO” associates are focusing on ways of further strengthening cooperation and coherence between the WTO and multilateral environmental agreement.⁵⁴ Furthermore, negotiators are focusing on "reducing, or as appropriate, eliminating “*tariff*” and “*non-tariff*” hurdles to items and services related to the environment ". The WTO case law has confirmed that WTO rules do not overtake environmental requirements.⁵⁵ For instance, it was discovered that a boarder measures related to climate alteration was not consistent with one of the basic provisions of the “GATT”, its justification might nonetheless be sought beneath the “general exceptions” to the GATT i.e. Article XX.

Besides the Article XX (General Exception) there are other core provisions like GATT Article-I. “Most Favoured Nation” (MFN) which deals with treating other people (member nations) equally. Under WTO agreement countries cannot classify among their dealing partners.⁵⁶ For example if a country does a special favour for someone, like lowering the customs duty rate on one of their products, that country can do the same for every other WTO member. Similarly we have another core principle i.e., National treatment Article III which says that treating foreigners and locals equally which means imported and locally- produced goods should be treated equally.⁵⁷ This means that both local and foreign trademarks, copyrights, and patents should be treated equally, as well as foreign and domestic services.

1.4. “United Nation Framework Convention on Climate Change” and Conferences of the Parties (COPs)

The “United Nation Framework Convention on Climate Change” is legally binding agreement produced at the “United Nation Conservation on Environment and Development” (UNCED) in the year 1992. Reducing greenhouse gas (GHG)

⁵³World Trade Organization Report. Available at https://www.wto.org/english/tratop_e/envir_e/envir_e.htm

⁵⁴ Trade and Climate change, United Nation Environment Programme, available at https://www.wto.org/english/res_e/booksp_e/abstract_trade_climate_change_e.pdf (visited on 2.2.2022)

⁵⁵*Ibid*

⁵⁶World Trade Organization Report on understanding the WTO basic, available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (4.2.2022)

⁵⁷*Ibid*

absorptions in the air to stop harmful anthropogenic interaction with the climate structure was the primary objective of the UNFCCC. However, it wasn't legally binding and does not set any mandatory⁵⁸ limits but rather it would set the end or targets and legally binding enforcement i.e., protocols. Thus the principle updates was "Kyoto Protocol" and "Paris Convention". The "Intergovernmental Negotiating Committee", a free-standing entity created by the "United Nation General Assembly", oversaw the negotiations of the aforementioned conventions.⁵⁹

Even financial support under the convention has to go through the "World Bank's Global Environmental Facility", UNDP⁶⁰. The UNFCCC is the primary climate accord that served as the basis for the majority of future international agreements on climate⁶¹ for example the (UNFCCC) birthed two major Protocols i.e., "Kyoto Protocol" (1997) and "Paris Agreement" (2016). Entire spectrum of wealthy and developing nations has endorsed this convention. To Prevent Hazardous Human Interference in the "*Climate System*" is the convention's primary goal.⁶² Despite the convention's support from a large international consensus, accomplishing this aim is challenging. Common but distinct obligations, statistics gathering and broadcasting, and administrative institution, structure, and procedure are some of the utmost significant ways that the UNFCCC has shaped and continues to affect international climate negotiations.⁶³ Three affect domains—sustainable development, agricultural production, and ecological response—are used to gauge the convention's definition of "dangerous interference." According to the convention, the acceleration of climate change need to be stopped within a timeframe that permits "ecosystems to adapt naturally" to the changing conditions, does not obstruct sustainable development, and preserves agricultural output.⁶⁴ Under the convention the parties provided national inventories of sources and

⁵⁸General Knowledge Today-India's Daily E-Magazine of GK and Current Affairs. Published on 23 May 2011. available at <http://www.gktoday.in/united-nations-framework-convention-on-climate-change>(visited on 4.2.2022)

⁵⁹Brown Weiss (ed), 'United Nations Conference on Environmental and Development,' Vol 31, No 4. Published by Cambridge University Press (1992). available at <http://www.jstor.org/stable/20693712>.

⁶⁰Herein after the acronym of UNDP is United Nations Development Programm.

⁶¹K.F.Kuh, "Encyclopaedia of the Anthropocene", available at <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/united-nations-framework-convention-on-climate-change>.

⁶²Lee Hannah, "Climate Change Biology, 2010, available at <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/united-nations-framework-convention-on-climate-change> (visited on 4.2.2022)

⁶³*Supra Note 34*

⁶⁴*Supra Note 33*

sink of greenhouse gases, and regulate national reports on policies and measures that limit emissions of these gases and enhance the sinks for them, since all these inventories and reports was subjected to international review by the parties.⁶⁵

In the year 1978, the first “World Climate Conference”⁶⁶ identified climate change being among the urgent world problem and issued an announcement on governments to protect and guard against climate hazardous. The world Climate Program was directed by the “World Meteorological Organisation”, UNEP⁶⁷, and ICSU⁶⁸ and followed by several intergovernmental conferences of climate change. The IPCC⁶⁹ published the first calculation account about the condition of the world climate in the year 1990. It became the core bases for negotiations under the “United Nations General Assembly” on a Climate Change Convention beginning in the late 1990.⁷⁰ On December 21 the “United Nations General Assembly” established by Resolution the “*Framework Convention on Climate Change*” (INC) and “*Intergovernmental Negotiating Committee*” to serve as a unified intergovernmental negotiation procedure under the General Assembly.⁷¹ Finally in the 1992 the INC finalised convention and fully launched in June at the “Rio de Janeiro Earth Summit” where 154 states signed it. The “*Intergovernmental Negotiation Committee*” on climate change completes work and fully prepared for the execution of the Concord. Thus, the “Conferences of the Parties” became the Convention’s ultimate authority and held first session i.e., COP 1 in Berlin.⁷²

Ground rules of the “Kyoto Protocol” was COP 1, since the UNFCCC organised the first COP in Berlin in the year 1995. The said COP mainly focused on commitments on expanding emission reduction commitment in the future and negotiations that would contain tougher legally binding reduction targets too.⁷³ The first COP focused was to

⁶⁵ UNFCCC- Conferences of Parties (COP): A short history. Minerva, UN Climate Conference., available at <http://www.minerva.unito.it/E/ClimateConferenceHistory.htm> (visited on 3.2.2022)

⁶⁶UNFCCC: Handbook. Bonn, Germany: Climate Change Secretariat. (2006), available at <http://www.passeidireto.com/arquivo/25964623/unfccc-kyoto> (visited on 3.2.2022)

⁶⁷Herein after the acronym of UNEP is United Nation Environmental Program

⁶⁸Herein after the acronym ICSU is “International Council of Scientific Unions”.

⁶⁹Herein after the acronym IPCC is “Intergovernmental Panel on Climate Change”.

⁷⁰*Supra Note 41*

⁷¹Protection of the global climate for present and future generation of mankind, United Nations General Assembly, 71st plenary meeting, 21 December 1990. Available at www.un.org/documents/ga/res/45/a45r21.htm.

⁷²*Ibid*

⁷³Shahruk Rafi Khan, “Trade and Environment: Difficulty Policy Choices at the Interface, 2002 Published by Zed Books Ltd, 7 Cynthia Street London N1.

review the agreement confined in the agreement was adequate to combat climate effectively or not. However, the review was negative instead of voluntary obligations under the Convention a lawful and practice requisite was needed with new national emission reduction targets and clear time frame.⁷⁴ In demand to keep the intensification in the average global temperature to 1.5 degrees Celsius, nations at COP 26 approved the “*Glasgow Climate treaty*”, which aims to make the 2020s a period of weather stroke and sustenance. The COP26 brought parties together to take speed act concerning the aims of the “Paris Agreement” and the UNFCCC.⁷⁵ Similarly after COP26 the 27th session of the COP was held in “*Sharm El-Sheikh, Egypt*” and the “Democratic Republic of Congo” took the initiative to host the said COP27 from 3 to 5 October, 2022.⁷⁶ The COP27 main focused areas are climate adaptation which means reducing carbon emission is no longer enough to halt the consequence of alteration in climate. So many countries are realizing and adapting to a warming world through ecosystem based adaption like implementing projects⁷⁷ that utilize ecosystem services and biodiversity as part of a holistic adaptation strategy. Another adaptation is through climate adaptation project list which means supporting projects on Ecosystem-based Adaptation, National Adaptation Plan, Early Warning Climate System and more.⁷⁸

1.5. The Theory of Fragmentation of International Law and its Impact upon Trade and Environmental Conflict

It is basically the consequence of the development of international law and it has seen that International Organizations like the ICJ⁷⁹ have raised the issues on the Fragmentation of International Law. In its 54th session of Law Commission report⁸⁰, the study group noted that fragmentation and diversification account for the development and expansion of international law as it responds to modern demands of a

⁷⁴Chronicle of climate change conference-BMUB, Safety (18 May 2016), available at <http://www.bmub.bund.de/P1302-1/> (visited on 4.2.2022)

⁷⁵ Report on the Glasgow Climate Pact, UK 2021. Available at <https://ukcop26.org/>

⁷⁶Sharm El-Sheikh Climate Change Conference (UNFCCC), Report by Newsletter IISD, SDG Knowledge Hub. available at <https://sdg.iisd.org/events/2021-un-climate-change-conference-unfccc-cop-27/> (visited on 4.2.2022)

⁷⁷ United Nation Environmental Program report on Climate Adaptation, available at <https://www.unep.org/events/conference/un-climate-change-conference-unfccc-cop-27> (visited on 4.2.2022)

⁷⁸*Ibid*

⁷⁹Herein after the acronym of ICJ is “International Court of Justice”.

⁸⁰Mr. Martti Koskeenniemi, “Report of finalized, 2006, available at <http://www.legal.un.org>. (visited on 4.2.2022)

pluralistic world. It was also mentioned that fragmentation could occasionally lead to disputes between regimes and laws, which could make it more difficult in effective implementation.⁸¹

The fragmentation of the intercontinental social environment has directed to the formation of specialized and autonomous legal rules, organizations, and practice areas.⁸² The area of operation for once-seemingly-governed "general international law" has given way to specialized systems such as "trade law," "human rights law," "environmental law," and even "investment law" or "international refugee law," each with its own institutions and guiding principles.⁸³

The Commission 2002 recognized that fragmentation increases both formal and functional glitches. The earlier have concerning jurisdiction and ability of several organizations relating international legal rules and their graded affairs inter se. The Commission has ruled to leave this request away. The institutions themselves are the best people to discourse the concern of organised competencies.⁸⁴ The Commission has preferred to concentrate on the substantive issue, which is the division of the law into extremely specialized "boxes" that make claims to relative independence from the general law and from one another. What are the substantive effects of specialization? How should the relationship between such "boxes" be conceived? More concretely, if the rules in two or more regimes conflict, what actions are feasible?⁸⁵

Like the majority of academic commentators the commission has understood the subject that has both positive and negative side. One could argue that fragmentation increases the risk of contradictory and incompatible laws, ideologies, regulatory frameworks, and institutional norms.⁸⁶ Thus reflection of how international law has spread into new domains and how its goals and methods have also become more varied. The formation of novel and unique legal categories, mentioned as "self-contained regimes," provides the Commission's justification for handling fragmentation.⁸⁷ Treaty

⁸¹*Ibid*

⁸²Sharda Chawla, "A critical Analysis", 2021, Available at <http://papers.ssrn.com> (visited on 4.2.2022)

⁸³Baboki Jonathan Dambe, "Realities and Myths", 2018, available at <http://www.journals.ub.bw> (4.2.2022)

⁸⁴ United Nations, (2006), pp 175- 184 July 2014, available at <http://www.un.library.org> (visited on 4.2.2022)

⁸⁵*Ibid*

⁸⁶*Supra Note 22*

⁸⁷*Ibid*

systems that are geographically or functionally confined generate challenges of coherence in International Law.

It is not by coincidence that new categories of specialized law develop; rather, they aim to address evolving functional and technical needs. The emergence of “*Environmental Law*”, for example, is a response to growing concern over international environment.⁸⁸ “*Trade Law*” changes as an instrument to seize chances brought about by comparative advantage in international economic relations. “Trade law” and “environmental law”, for example have highly specific objective and rely on principles that may often point in different directions.⁸⁹ Novel sorts of treaty provisions or practices that might conflict with outdated general law or the laws of other specialized branches are frequently included in new laws in order to make them effective.⁹⁰ Frequently, new laws or policies are created specifically to depart from previous provisions made by the general law. The truthfulness of the rule is compromised when these exceptions spread widely and become customary.

The Commission's work on fragmentation aims to provide a legal-professional framework for assessing and managing inevitable fragmentation. That framework is provided by the VCLT.⁹¹ Consequently, the VCLT already offers a cohesive framework for these developments.⁹²

The judicialization of the resolution of international issues has increased owing to the proliferation of international courts and tribunals. Though there are abundant benefits to this, there may also be drawbacks. These include the potential for international law to become fragmented and for several international tribunals to develop overlapping authorities.⁹³ The main issue with the idea of the proliferation of courts and courses is a list of norms that are globally consistent but will be interpreted differently in cases resolved by tribunals that are located far away. However, in contrast, even judge Schwebel of ICJ indicated that increased number of international tribunals has some advantages as potentially more and more cases will be resolved by legal proceedings.

⁸⁸*Supra Note 23*

⁸⁹ K Oellers-Frahm, “Multiplication Conflicting Jurisdiction- (2001) pp 77-78, available at <http://www.mpil.ed> (visited on 4.2.2022)

⁹⁰*Ibid*

⁹¹Hereinafter the acronym of VCLT is “Vienna Convention on the Law of Treaties”.

⁹²*Supra Note 23*

⁹³*Supra Note 26*

The advantages that proliferation provides for, includes solidification of the credibility and reliability of international commitments undertaken in specific multidimensional contexts.⁹⁴

1.6. Statement of Problem

There are many different policy tools available to any nation for fighting Climate Change. While many nations are implementing subsidies into their plans for curbing greenhouse gas emissions, etc., economists typically argue for the effectiveness of instruments like environmental levies. However, these subsidies could contradict through the procedures of World Trade Organization. So there are major points of caution while architecting climate change policy. Therefore, here stand countless conflicts with key legal and institutional issues concerning unrestricted trade and conservational measures.

1.7. Rational and scope of study

In earlier decade free trade expansion and ecological security initiatives have evolved separately and their developmental routes increasingly clashes with each other. For example disputes between Mexico and United State concerning the meaning of terminology applied to U.S Marine Mammal Protection Act. In the said case Mexico contended that the U.S MMP Act products prohibition on “tuna imports” which was in contrast with the provision of GATT/WTO. And the MMP Act has indeed the abuse of the Article III which says that ‘imported product should no less favorable treatment than domestic products. Since, no country has permit to enforce measures falling outside its territorial jurisdiction in the label of environmental measures which is arbitrary and unjustifiable indiscrimination amongst countries to limit foreign trade as those for the preservation of environment, human, animal safety etc.

⁹⁴*Supra Note 23*

However, the free trade supporters are concerned that the increased use of restrictive trade measures pertaining to the safety of the environs by the Multilateral Environmental Agreement would conflict with free trade obligations established by WTO and imposed on its members thus nullifying the said free trade objectives.

Another issue related to trade and environmental disputes is externalities, which are intimately linked to environmental protection as solitary of the utmost significant core dilemmas or policy problems.

Likewise we have another problem or conflicts of norms with regard to GATT/WTO provisions arise between trade and environment they are National Treatment (Article III) and Most Favored Nation (Article I). Another conflict is with regard to General Exception (Article XX) as there are many interpretive problems and few are key to the environmental-trade liberalization clash.

Similarly, another problem is with regard to conflict of norms is Article XI of GATT/WTO which speaks about the no restriction or prohibition other than tax, duties, other charges etc. That means most environmental protection trade restrictive measures are in the shape of numerical limitations. Example Shrimp-Turtle case between India, Malaysia, Philippine, Pakistan and Thailand vs. United State.⁹⁵

Another problem is with regard to process and production problem which closely relate to Article XX exception and Article III. Let's assume that an importing country wishes to prohibit the sale of domestic or imported automobiles that emit more pollutants in their exhaust than permitted by a specified standard. If the product itself is polluting, then on a non-discriminatory basis the rule of the importing state may prohibit its sale which arise a conflict between GATT/WTO Article and government i.e., environment trade restrictive measures.

Furthermore another problem is with regard to dispute settlement and transparency since the WTO body that settles disputes is not structured an appropriate to address environmental disputes because many environmental protectionists dispute that the said settlement body is not an appropriate forum. So many trade related environmental

⁹⁵Importation of Shrimp and Shrimp products (1998).

issues/ disputes lend themselves to non-judicial alternative dispute resolution mechanism,

Another controversy of trade restriction for environmental purpose is with more rigid environmental controls and this concern is not only based on environmental consideration but also apprehension regarding the unfair competition from foreign companies. Moreover GATT and WTO rules apply to provisions of *Multilateral Environmental Agreement* and several of those provisions are predictable to be found contradictory or inconsistency with GATT.

So, is commerce environmentally beneficial or detrimental? Which countries will they impact: those that import, those that export, or the entire world? Furthermore, whose job is it to address environmental issues brought on by trade? The issues listed above are a few that have gradually drawn notice in recent years.

So as long as there is no international synchronization of these policies (Trade and Environmental) the maximum countries lack adequate motivation to participate in climate change policy

1.8. Literature Review

International commerce and protection of environment have had a tense relationship when it comes to mitigating climate change during the past 20 years. Recent increased concern from sustainable development has generated many questions about the relationship between market access and the environment. Like Saira Bajwa (2009), opined that till now World Trade Organization dealt with unilateral environmental rules but WTO had never dealt with MEA⁹⁶ trade disputes. Nonetheless here remain countless argumentative issues in developing countries regarding environmental protection and their policies.⁹⁷ While Christina Voigt (2005), explained that international law has many pieces and consists of numerous fragmented separated treaties, different customary norms and principles. And due to all these difficulties arises and difficult to fit together due to regulatory overlaps.⁹⁸ For many reasons

⁹⁶Hereinafter the acronym of MEA is Multilateral Environment Agreement.

⁹⁷SairaBahwa, "The Environment", Gonzaga University, 25 January 2009. *available at* <http://www.law.gonzaga.edu>.

⁹⁸Christina Voigt, "Conflicts and Convergence in Climate Change and Trade Law: Development" (2005) *available at* www.esil-sedi.eu/sites/default/files/Voigt_0.PDF

market-based or economic mechanism trade related environment processes remained familiarised in the Climate change rule and these are the areas which are most prone to conflicts with other areas of multilateral regulation especially WTO rules because of their potential to distort free trade by being potentially discriminatory. Thus, the author argues, it is imperative to consider international law in its entirety.

In earlier studies of market access and environmental protection is mainly focus on GATT Article XI⁹⁹. During this period of time most environmental protection trade restrictive measures were in the nature of quantitative restriction. Ted L. Mac Dorman (1991), reviews several trade restrictive disputes between U.S and other countries and concludes that U.S is barred by the GATT XI from import prohibition unless the prohibition fits a recognised exception.¹⁰⁰ On the other side, Baker (1992) also examined several disputes between U.S.A and Canada as well as those between Mexico and Thailand on import restrictions that are illegal under GATT Article XI.¹⁰¹ However, Vanda Jakir (2013) examine for refusing to recognise the environmental methods by its participants due to their hostile impact on universal trade guidelines. Further the author considers the tension between environmental preservation and trade liberalization and explores at recent changes to WTO rules. The author's examination is mainly based on the famous United States- Tuna-II (Mexico) case law and Tuna-Dolphin case law. As well as he recommended for a new suggestion that the WTO "Dispute Settlement Body" try to find a balance between promoting economic prosperity through unrestricted trade and preserving the environment.¹⁰²

Almost many researchers' published that trade liberalization and environmental protectionist refers to the Article XX of the GATT as general exception and that might be used by the members to legitimate their imposition on any import items. Among them Steve Charnovitz (1997), study of the "GATT Article 20" is the most complete. After analyses the GATT XX he concludes that the said Article was designed to encompass the environment measures. However, the conflict resolution mechanism tends to interpret this Article too insufficiently.¹⁰³ So he suggests judging the legitimacy

⁹⁹Article XI- 'No prohibition or restrictions member'. *available at*<http://www.wto.org>.

¹⁰⁰Ted L. MacDorman, "The Turtles", 1991, pp. 20 to 23, Geo. Wash. J. Int'l L&Ecom.

¹⁰¹Besty Bakers, "Protection, GATT", (1993) pp. 453- 477, 26 Venderbilt Journal of Transitional Law.

¹⁰²Vanda Jakir, "The new WTO Tuna Dolphin Decision: Reconciling Trade and Environment?", 2013. *available at*:<https://hrcak.srce.hr/file/168962> (visited on 6.2.2022)

¹⁰³Steve Charnovitz, "Exploring the Environmental Exception in GATT Article XX", 1997, pp 91, 25 Journal World Trade 37, available at

of non-tariff barriers under the banner of environmental issues. Nissen (1997) supports a reform of “Article XX” and an annex to this subsection to specify the kind of environmentally related trade actions that ought to be permissible under the GATT. However, she doesn’t suggest any mechanism of specifying how GATT should do the implement those measures that would be concluded after this amendment.¹⁰⁴

Di Matteo (2003), have also analyse that environmental law cannot be separated from social and economic development under the principle of long-term growth which the preamble of the WTO refers and also cannot be read in segregation too. Whether at the local, regional, and global arenas it is a paradigm of cross-cutting regulation influencing other fields and being influenced by other filed of law.¹⁰⁵ As argue by the Thomas Cottier and Manfred Elsig (2011), its cross-cutting nature also explains why environmental law is inherently fragmented and has not so far been placed under the roof and umbrella of single international organisation.¹⁰⁶

OECD¹⁰⁷ studies (1994) and analyse the theoretical framework of GATT and have come to the conclusion that all of GATT basic principles are applicable to interaction between free commerce and protecting environment. These principles include the Most Favoured Nation Principle and National Treatment. Some studies include these basic principles in their analysis of their current environmental protection related GATT regulations.¹⁰⁸

The two authors analyzed and presented the institutions and laws of the agreed-upon global climate change regime Yamina and Depledge (2004) and emphasize how nation states should implement “Public International Law” in dainty of climate change. Besides, the authors attempt to highlight nearly of the discrete legal issues and uncertainties within the legal framework of the “Kyoto Protocol”.¹⁰⁹ As argue by the

https://charnovitz.org/publications/Exploring_the_Environmental_Exceptions_JWT.pdf

¹⁰⁴J.L Nissen, “Achieving a Balance Enviornment: The Need to Amend the WTO/ GATT to Include Multilateral Enviornment Agreement”, (1997) 28 Law &Pol’Y OF Int’LBuston 902.

¹⁰⁵L. DiMatteo, et al., “The Doha Declaration and Beyond: Giving a Voice to Non-Trade Concerns within the WTO Trade Regime”, publication Vanderbilt Journal of Transnational Law, pp 95- 160, Vol 36.

¹⁰⁶Thomas Cottier and Manfred Elsig, “International Law and the Environment”, pp 14 2011, available at www.elgoronline.com (visited on 5.2.2022)

¹⁰⁷Herein after the acronym of OECD is Organization for Economic Corporation and Development.

¹⁰⁸Trade Principles and Concepts, “Organization for Economic Corporation and Development”, Paris 1995, Online OECD Homepage <<http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380, EN-documents 24-nondirectorate-no-10-24,FF.html>>

¹⁰⁹FarhanaYamin and Joanna Depledge, “The Procedures” (2004) Cambridge University Press.

Doelle (2005) his text present an overview of the compliance system under the “Kyoto Protocol” and analysis the potential impact of the trade organization on the Climate change rule and the potential role of the quarrel redressal provisions under United Nation. The author point out that the main purpose is to evaluate the usefulness of these various mechanisms in motivating states to take action on green mission and comply with the Climate Change regime.¹¹⁰

D.C Esty (1994) thoroughly examines the conflict between environmental preservation and free commerce and divided those conflicts into two categories i.e., the market access conflict (considered South i.e., developing countries) and competitiveness conflicts (considered North i.e., developed countries).¹¹¹ D. Gerandi (1997) also suggests a harmonization and improvement of the GATT dispute settlement process as solution to these conflicts. However, it is obvious from their argument that harmonization is too expensive an approach to implement especially for the developing countries.¹¹²

Nicola Anna May Durrant (2008) states that no legal analysis has been recognised which addresses the application of an effective integrated legal response to climate change through international and domestic sphere inside the structure of utilising effective regulatory, liability and market mechanisms.¹¹³ James Bacchus (2019) explains that the term Climate change is not defined in some of the intercontinental agreements response measures. He highlights that notwithstanding the absenteeism of legal clarification a wide acknowledgement that climate change measures should not comprise arbitrary, inconsistency or unjustifiable discrimination on trade. He argue that how can we determine if they are legitimate measures that truly are intended in demand to battle climate change when there is no agreed definition response measures.¹¹⁴

Runnalls (1998) states that unindustrialized nations are not oppose to improving their environmental protection level. Moreover, the south (developing countries) has lost

¹¹⁰MeinhardDoelle, “From Hot Air to Action? Climate Change, Compliance Environmental Law” (2005), Dalhousie University Canada. *available at*<http://dalspace.library.dal.ca> (visited on 5.2.2022)

¹¹¹D.C Esty, “Greening the GATT: Trade Environment and the Future,” 1994, Washington, D.C: Institute for Int. Economics. *available at*<https://EconPapers.repec.org/RePEc:ie:ppress:40> (visited on 5.2.2022)

¹¹²Damien Gerandi, “Trade and Environment: EC and US Law,” 1997 Cambridge: Cambridge University Press. *available at*<https://www.cambridge.org> (visited on 5.2.2022)

¹¹³Nicola Anna May Durrant, “The Approaches”, Thesis from Queensland University of Technology Briseban (2008), pp. 39 to 41. *available at*:- <http://eprints.qut.edu.au> (visited on 5.2.2022)

¹¹⁴James Bacchus, Report Title “What is Climate Response Measure?”, published by Central for International Governance Innovation (2019), *available at*<https://www.jstore.org/stable/resrep24970.8>

billions of revenue because of tariff and non-tariff barrier in North (developed countries). Thus the developing countries speculate that the motives of the advanced nations initiating environmental protection issues.¹¹⁵ Oliver C. Ruppel (2018) contends that rich nations have over the previous century drained resources and engaged in environmentally destructive behaviours, therefore the concerns surrounding Intercontinental Trade and the Surroundings are unquestionably important to developing countries. The developing countries demand a general but differentiated responsibility seeking open trade and compensation for adopting environmentally restraining policies. In contrary developed countries protect their industries with subsidies, special trade and tariff systems which place exporters at disadvantages in developing countries. Hence, developing nations must overcome many obstacles, such as high export tariffs and subsidised competition.¹¹⁶

Elena Cima (2022) analyse clarification which ME Treaties contained trade-related environmental measures as there is no clarifying relationship between trade- related provisions in MEA and WTO.¹¹⁷ Tilman Santarius and Holger Dalkmann (2004) explains that some MEA highlighted trade sanctions as a medium of enforcing their goals and others provided for measures that would impact commerce. Thus, both the authors has no idea that which law shall be apply when an environmental agreement provides for trade restriction to achieve certain goals.¹¹⁸

Jagdish Bhagati (2009) argue that trade and atmosphere are constitutently related that is why many disputes are coming up at the GATT. The author mainly focuses on PPM¹¹⁹ since the Tuna- Dolphin case is with regard to PPM only. He analyse that PPM as a general case should not be allowed to be used to regulate the entry of imports because they might discriminate against specific suppliers while appearing non-

¹¹⁵D. Runnalls, "Shall we dance? What North Needs to do to Fully Engage the South in the Debate?," 1998. *available at* <http://iisd.ca> (visited on 5.2.2022)

¹¹⁶Oliver C. Ruppel, "International Trade, Environment and Sustainable Development", pp. 771- 813, Ed- 1, 2018. *available at* <https://www.jstore.org/stable/resrep24970.8> (visited on 5.2.2022)

¹¹⁷Elena Cima, "Can Promotion- Based model", pp. 212- 277 (2022). *available at* <https://www.jstore.org/stable/resrep24970.8> (visited on 5.2.2022)

¹¹⁸Tilman Santarius, Holger Dalkmann, et.al. " Balancing Trade and Environment: An ecological reform of the WTO as a Challenge in Sustainable Global Governance", Feb 2004, Published Wuppertal Institute for Climate, Environment, Energy. *available at* www.epub.wupperinst.org (visited on 5.2.2022)

¹¹⁹Herein after the acronym of PPM is Process and production method

discriminatory.¹²⁰ Thomas J. Schoenbaum (1992) argues that all these restrictions are legitimate tools to preserve global environment but the proliferation of such agreements raise several issues between trade and environmental norms. He points out that any restrictions prepared by any member's courtiers in the shape of measures like for example PPM should not violate the trade provisions and must not be unfair to additional nation's members.¹²¹

“WTO” in its report opined that if trade opening is merely viewed seen as a GDP generator and if proper policies are not placed to address its consequences, such as increase in international transport, trade liberalization can lead to increased resources use and population.¹²² In 2017, for e.g., the “European Commission” conducted a calculation of the consequence of the “*Transatlantic Trade and Stock Partnership*” (an contract between the “European Union” and the “United States” which has been under intervention since 2013) on Climate change and concluded that the growth in output and trade would lead to arise in emissions due to the augmentation of the amount of business activity, increases in emissions from transportation, and changes in the composition of industries and trading partners.¹²³ However, WTO-UNEP¹²⁴ argue that trade opening may leads to the construction of value chains that make more efficient use of resources globally, and that can provide access to low-carbon technologies. In the presence of sound environmental policies, lower trade barriers example the removal of tariffs and non-tariffs barriers on climate-friendly products and services and well-functioning institutions, global commerce has the probability to be an effective strategy for moderating and acclimatizing to climate change.¹²⁵

Kasturi Das (2018) argue that in the structure of the worldwide interchange structure, policies and regime coherence are especially crucial. In the globalised world trade

¹²⁰JagdishBhagati, “Reflections”, Trade Forum, Competiveness: Is a Collision Inevitable? (2008/ 2009), pp. 171- 176, published by” Brookings Institution Press. *available at* [http:// www.jstor.org/stable/20799653](http://www.jstor.org/stable/20799653).

¹²¹Thomas J. Schoenbaum,“Free International Trade: Irreconcilable Conflicts 1992, Vol 86, No. 4 1. pp 700-704. Published in the American Society of International Law.

¹²²See WTO Report, “The impact of trade opening on climate change” *available at* https://www.wto.org/english/tratop_e/envir_e/climate_impact_e.htm (visited on 5.2.2022)

¹²³ EC, Report SIA in support of the negotiations (TTIP), *available at*https://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155464.pdf (visited on 6.2.2022)

¹²⁴ Herein after the acronym of UNEP is United Nations Environmental Programme

¹²⁵ WTO-UNEP Report, Making, prosperity and resilience, Short Answers to Big Questions on Environment. *available at* https://www.wto.org/english/res_e/publications_e/envirqapublication_e.htm (visited on 5.2.2022)

liberalisation influences emissions patterns worldwide, so trade rules also matter for the diffusion of climate-friendly technologies. He further opined that implementing the said determined contribution countries can take different direct trade measures, such as removing or lowering the price of environmental products and services, implementing carbon pricing, developing technical standards for “low-carbon products”, reassigning “low-carbon technologies” etc.¹²⁶ Further, Harro Van Asselt (2008), argue that an amendment if rectified by all WTO members can permanently alter the WTO obligations as it reduce the legal uncertainty challenging climate policies and measures deriving from the case-by-case character of the WTO's dispute resolution mechanism system. Further, he consider that this would ease the burden on the WTO dispute system body which is already overburdened while facilitating normative harmony between the regulation and mitigation strategies for climate.¹²⁷

Amelia and Thomas L. Brewer (2013) analyse that another major challenge is that WTO amendments for climate change measures in general are binding only on those members that rectify and not on all members. The un-amended WTO guidelines would still be in effect for some WTO associate who rejects an amendment, and that member would still be able to file and succeed in a quarrel against any Climate change policy that contravenes the un-amended rules.¹²⁸ Gary Clyde Hufbauer and Jisun Kim (2019) similarly the authors examine the issue and opined that the waiver decision becomes one of the legally effective, as he points out that a waiver consents for a common modification of WTO rules in bearing of non-economic interests. Instances of current exemptions include the rationalization of non-reciprocal trade preferences for goods originating from underdeveloped nations, as well as regional economic integration. He further suggests a waiver for measures that are taken in furtherance of a UNFCCC climate agreement e.g. the “Paris Agreement” or a plurilateral “climate club”. He goes on to say that a waiver makes it conceivable to generally alter WTO regulations in order to serve non-economic purposes. To put it more precisely, the author believed that it confine the stimulus of the WTO to "other international legal regimes which may have

¹²⁶Kasturi Das, Susanne Droege, et al., “Making Options”, July 2018, Climate Strategies Organisation, available at https://climatestrategies.org/wp-content/uploads/2018/07/CS-Report-_Trade-WP4.pdf

¹²⁷Harro Van Asselt, “Global Climate Change”, 2008, Vol 30, Issue 4, pp 423, published University of Denver. available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9930.2008.00286.x>.

¹²⁸ Amelia Porges and Thomas L. Brewer, “Climate WTO”, The E15 Initiative- Strengthening the Global Trade System, 2013, Published by International Centre for Trade and Sustainable Development (ICTSD). available at <https://e15initiative.org/wp-content/uploads/2015/09/E15-CETs-Porges-and-Brewer-Final.pdf>

greater competence and legitimacy than the WTO to deal with certain issues" and which genuinely have a mandate that has an impact on trade. If waivers were used repeatedly, this could also create a longer-term effect for consideration of climate policy issues under the WTO.¹²⁹

1.9. Hypothesis

Trade norms are barriers in embracing environmental measures for mitigation of climate change.

1.10. Research Objective

1. To examine whether the existence of sound environmental policies and global trade can be a strong instrument for coping with and acclimatizing climate change.
2. To examine whether trade policies has increasingly been used as an important tool to support climate mitigation.
3. To examine what opportunities exist for trade to contribute mitigation and adaptation of climate change.
4. To examine whether trade rules can be designed or change to facilitate in any way direct or in direct climate change action without damaging trade rules.

1.11. Research Question

1. Whether environmental policies i.e., Multidimensional Environmental Treaty plays a crucial part to mitigate the environmental problem caused by free trade?
2. To what extend can trade measures be used as incentives to promote global environment governance commonly and Climate Change negotiations specifically?
3. How ongoing implementations with regard to climate change policies will raise numerous unresolved issues in WTO regime?

¹²⁹Gary Clyde Hufbauer and Jisun Kim, "The WTO and Climate Change: Challenges and Options," Conference Draft, 2009, Think Ahead on International Trade (TAIT), *available at* https://www.wto.org/english/res_e/statis_e/tait_sept09_e/hufbauer_e.doc.

4. How ongoing negotiation to protect environment both at the World Trade Organisation and the (UNFCCC)¹³⁰ will serve to resolve the conflicts of norms?

1.12. Methodology

This research proposes doctrinal method to conduct this research. A comprehensive review of existing literature, journals, articles, reports, mixed with newspapers articles will be primarily relied to get a clear updated pictures of the current position of “International Trade Law” and its inconsistency with several other environmental policies. The disputes reports of the appellate organisation will be examined to understand the dispute of norm conflict. The study will proceed by examining the customs that have been settled with regard to climate change mitigation agenda at the “WTO” and the “UNFCCC” conferences respectively. These interfaces and the conflict between these norms would be analysed as the subsequent stage to recognise how the climate change mitigation agenda is being developed in “WTO Law” and “International Environmental Law”. The next step would be evaluating the norm conflict in the regional trade treaties, with the motive to evaluate the course norm conflict has taken in these new age trade agreements.

1.13. Limitation of the Study

The thesis will conduct a critical analysis of the current and prospective part of law in effectively addressing climate change. It will also offer recommendations for the required changes that need be made in order to generate additional effective legal response to this worldwide issue going forward.

This thesis will analyse the legal complications prevail towards the architecture of mutual policy design between commerce and mitigating climate change measures. Therefore, WTO provisions/principles and environmental laws are critically examined in direction to convey another side of literally work on trade-climate policy framework. Moreover, significant discussion on the roles of developing nations have been discussed that are important constituents to be considered during ongoing climate change multilateral talks.

¹³⁰ Herein after the acronym UNFCCC shall be used for “United Nations Framework Convention on Climate Change”.

CHAPTER-2

COMPREHENDING TRADE AND ENVIRONMENTAL LINKAGE

2.1. Introduction

“We must embrace courts in the Climate alteration since we have no other choice. No auxiliary subsists for the court structure. Leaving Climate change out of the courtroom makes no sense when judges are tasked with making decisions about “life”, “death”, “love”, “human rights”, and “national security” - Justice Antonio Herman Benjamin.¹³¹

Recently there has been an increasing concern on the sustainable growth in the framework of “International Environmental Law”. There are several international conventions, which emphasis on the significance of sustainable development. For e.g. the Stockholm Declaration¹³² which refers to the equilibrium concerning the environmental fortification and the economic development says that in mandate to deliver the maximum benefit to the people, the State should integrate economic development with protection of the environment.¹³³ While the States have a sovereign right to use assets provided by mother nature, they must ensure that such use does not adversely affect the environment of neighbourhood States.¹³⁴ Furthermore, the World Charter for Nature¹³⁵ mentions about the importance of environmental protection in the economic development. It however emphasises on the specific principles of environmental protection, which are designed to guide the economic development. Finally, the Rio Declaration emphasises on the principle in balancing between the economic development and the environmental protection.¹³⁶

Not just for environmental experts but also for individuals and organizations with an emphasis on economics, energy, technology and other pressing international issues

¹³¹Climate change, Coming soon to a Court Near You, International Climate Change Legal Frameworks, Dec 2020 Asian Developing Bank, available at <http://dx.doi.org/10.22617/TCS200365-2>.

¹³² UN Declaration (1972), Stockholm Declaration.

¹³³ Principle 13 of Stockholm Declaration

¹³⁴ Principle 21 of Stockholm Declaration

¹³⁵ World Charter for Nature (28 October, 1982), 48th Plenary meeting, United Nations on General Assembly, available at <https://ejc.orfaleacenter.ucsb.edu/wp-content/uploads/2018/03/1982.-UN-World-Charter-for-Nature-1982.pdf>.

¹³⁶ Rio (1992), Principle 15, available at https://www.iau-hesd.net/sites/default/files/documents/rio_e.pdf

climate change has emerged as a major topic for international discussion and negotiation.¹³⁷ Yet most discussion of institutions and governance for climate change remain narrow. Observers often focus on the compromise progression under the UNFCCC including Kyoto Protocol, along with its associated institutions,¹³⁸ equating success and failure in battling climate change with success and failure in those arenas. The emphasis remains on how climate activities fit into larger environmental concerns and institutions when attempts are made to expand the multilateral governance discourse beyond climate-specific forums.¹³⁹ Besides negotiations process a climate related policies should institutionalize which are already exists. It can take a while to establish new institutions, especially ones that have the authority and capability to handle delicate diplomatic situations or significant financial transfers. Whether or not a new international climate accord calls for the establishing of new climate-relevant institutions, policymakers should exercise caution to confirm that there isn't another chance to maximize and improve current capacity.¹⁴⁰ It is argued that new institutions are required to confrontation climate change because many of the powerful current organizations, including the WTO, have significant weaknesses.

As many current institutions' mandates increasingly centre on mitigating and adjusting to Climate Change, authorities must exercise caution to avoid adversely distorting other institutional goals. The existing environmental institutions, such as UNEP, also have significant limits. Their expertise on energy systems is limited in scope; as a result, they are unlikely to play significant roles in various fragments of the future mitigation effort, particularly those involving large-scale investments.¹⁴¹ Supplementary UNDP help unindustrialized nations to draw the attention for aid and use it for commercial and societal improvement. Meanwhile UNDP advantage compared with other UN organization is its strong presence on the ground, with operations in more than 166

¹³⁷Kal Raustiala and David G. Victor, "The Regime Complex for Plant Genetic Resources," Vol. 58, pp. 277-309, International Organization, available at <https://www.cambridge.org/core/journals/international-organization/article/regime-complex-for-plant-genetic-resources/5C6B7B9E45268249D2893621CC>

¹³⁸ *Supra Note*

¹³⁹ *Ibid*

¹⁴⁰ Katherine Michonski and Michael A. Levi, "Harnessing International Institutions to Address Climate Change", (2010), available https://ciaotest.cc.columbia.edu/wps/cfr/0018651/f_0018651_15973.pdf

¹⁴¹ *Supra Note*

countries, many of which face significant climate challenges.¹⁴² As developing countries will be among the most vulnerable and the least able to adjust with Climate change, so UNDP can show a vital character in helping them to react the climate change through capacity-building activities and through advocacy work. Multilateral development bank constituted the third set of international institutions with everyday accomplishments that are pertinent to responding to climate change. Since the World Bank whose mission is to reduce poverty through economic development, stands to show a central character the priority is to fund climate alteration and alleviation programs in developing nations.

So with regard to sustainable development climate is among the main environmental issues or challenges facing the whole world today. Climate change is linked with various unfavourable impacts on agriculture, water resources, biodiversity and health for example declining in agriculture productivity mostly confronted by the unindustrialized and under developed nation who are depended on agriculture directly or indirectly. Other major impact is on the natural and socioeconomic arrangements that are previously incrustation terrific burden owing to hasty urbanization, industrialization and economic development. Preceding few years, scientist has collected proof of alterations in “*temperature*” and *added climate* variables.¹⁴³ The statistics also revealed intensification in the magnitude of “*greenhouse gases*” such as *carbon dioxide*, *methane*, and *nitrous oxide*,¹⁴⁴ in the air owing to anthropological actions are correspondingly some of the foremost cause for climate change.

Having risen from relative insignificance as few as ten years ago, climate change now appears large among environmental policy matters. It is depressing to consider the whole extent of the potential response to the potential limitations on human choice, which affect people's most fundamental aspirations across all nations, as the main source of energy in the modern economy.¹⁴⁵ Climate change is an antique circumstance

¹⁴²Maria Ivanova, “Can the Anchor Hold? Century”, (2005), publication School of Forestry & Environmental Studies Series, Yale University, available at <http://elischolar.library.yale.edu/fes-pubs>.

¹⁴³ UN Environment (United Nations Environment Programme) United Nations, Geneve, March 2017, available at https://globalpact.informea.org/sites/default/files/documents/PDF%20lessons%20%20Climate%20Change_0.pdf

¹⁴⁴*Supra Note*

¹⁴⁵Jason Shogren and Michael Toman, “ Climate Change Policy”, Discussion Paper 00-22, May 2000, Published by Resources for the Future, Washington, D.C, available at <https://media.rff.org/documents/RFF-DP-00-22.pdf>.

as exemplified by the ice ages. Portion of climate discussion is the level to which human deeds are accountable for dissimilarities in the climate structure. While recognizing the countless doubts around the specific environment and asset of the relationship amid human actions and climate change, many scientists argued that the evidence¹⁴⁶ points as result from public emitting too much CO₂ and other GHGs into the atmosphere. Climate change has several effects like:-concentrated yield of natural assets that individuals use or mine from the regular environment; destruction to *human-built* environments; risks to *life* and *limb* for example heat waves, hurricanes, and other natural disasters cause death and harm to less managed resources such as natural circumstances conducive to various landscapes, wilderness regions, normal habitations for threatened classes and biodiversity.

Another reason for Climate changes are emission of “*Greenhouse Gas*” which means the earth’s climate is exaggerated by the collaboration of radioactivity from the sun and the earth. The atmosphere comprises of nitrogen, oxygen and numerous regular fumes containing “*Carbon dioxide*”, “*Methane*”, “*Nitrous oxide*”, “*Ozone gas*” and chlorofluorocarbons. Exterior of the Earth absorbed fragment of sun’s radiation but residue is reflected into space.¹⁴⁷ Another reason is natural events for example volcanic eruption or discrepancies in oceanic tides can modify the dissemination of warmth and rainfall and the intermittent heating of the “*Eastern Pacific Ocean*” can disturb climate arrangements everywhere in the world triggering hefty showers in some places and drought in others. Anthropological accomplishments are another foremost issue for climate change.

Carbon dioxide is comparatively formed by using “*coals*”, and “*natural gas*” as well as agriculture activities and deforestation. No doubt chlorofluorocarbon and methane are also released to the air as a result of anthropological activity.¹⁴⁸ The increased in the release of these smokes can be accredited to the universal commercial progression which partakes subsequently after the industrialized insurgency in 1950s, as well as amplified stages of ingesting plus the amplified mandate for electricity and the practice of vehicles. Such noteworthy upsurge in the ordinary world temperature will lead to

¹⁴⁶ *Supra Note*

¹⁴⁷ Climate change International Legal Regime, UNEP by United Nations Institute for Training and Research, 2017, available at https://globalpact.informea.org/sites/default/files/documents/PDF%20lessons%20-%20Climate%20Change_0.pdf

¹⁴⁸ *Supra Note*

severe effects on the environment.¹⁴⁹ Professionals envisage that this universal heating will cause augmented precipitation in numerous zones increased desertification and the harm of shield in the Polar areas.

A Climate change indicates to long- term alterations in weather patterns and temperatures shifts can be fluctuations in the activity of the “*Sun*” or “*volcanic eruptions*”. In other hand, since 1800s, human’s activities had been the major drive of climate change, mostly owing to the combustion of non-renewable energy, i.e. coals, oil or gas etc.¹⁵⁰ While Climate change influences the transmission, frequency and severity of communicable diseases through different means depending on the environment of the disease.¹⁵¹ Increases the temperature of sea surface and sea level which can directly lead to amplified occurrence of water-borne infections and toxin-related illnesses etc. Well it is projected that amid the year 2030 to 2050, climate change will result in an additional 250,000 fatalities annually which leads to 1.2 million bereavement sowing to cardiovascular and respiratory ailment yearly.¹⁵²

While we are talking about the climate change the most frequently asked question is what factors can contribute or determine earth’s climate. As we all know comprising the atmosphere, land surface, snow and ice, seas and other bodies of water, and living organisms.¹⁵³ Climate system is a difficult and dynamic system. Atmospheric element of the climatic system is unmistakably designated as the climate, which is commonly described as "average weather." The means and variability of temperature, precipitation, and wind across a time span, fluctuating between months and millions of years, are commonly used to characterize climate, for e.g. the classical periods is 30 years.¹⁵⁴

Climate scheme changes over time as a result of both internal dynamics and forcing—a term used to describe changes in external forces that affect climate. Therefore,

¹⁴⁹ *Ibid*

¹⁵⁰ United Nations, “What is Climate Change?”, available at <https://www.un.org/en/climatechange/what-is-climate-change>.

¹⁵¹ *Ibid*

¹⁵² World Health Organization, “Climate Change”, available at [https://www.who.int/docs/default-source/wpro---documents/hae---regional-forum-\(2016\)/climatechange-factsheet-rfhe.pdf?sfvrsn=75d570fd_2](https://www.who.int/docs/default-source/wpro---documents/hae---regional-forum-(2016)/climatechange-factsheet-rfhe.pdf?sfvrsn=75d570fd_2)

¹⁵³ Ulrich Cubasch (Germany), Yihui Ding (China), et.al, “Historical Science”, Intergovernmental Panel and Climate Change, available at <https://www.ipcc.ch/site/assets/uploads/2018/03/ar4-wg1-chapter1.pdf>.

¹⁵⁴ *Ibid*

external forcing encompasses both human-induced modifications in the arrangement of the air and natural events like solar fluctuations and volcanic eruptions. Another explanation for why the Earth's surface is so warm is that “*Green House Gases*” are present,¹⁵⁵ which serve as a kind of partial blanket for surface-based long wave radiation. The term “natural greenhouse effect” describes this covering. However, at that moment, clouds do have a blanketing effect akin to greenhouse gases.¹⁵⁶ However, this effect is mitigated by their reflectance, therefore clouds tend to have a cooling influence on the climate. Thus, there are various comments or processes in the “*Climate System*” that can either augment i.e., positive feedback or diminish i.e., negative feedback that effects of a climate in climate forcing.¹⁵⁷ Thus, detecting, interpreting, and precisely quantifying climate feedbacks has been a major focus of science based research into the intricacies of Earth's climate.

2.2. “International Trade and Environmental”

Increased international trade, based on the theory of 'comparative advantage', can benefit the environment by permitting nations to specialize in producing goods and services that are more efficient. Trade can help countries optimize output from limited resources, making it beneficial for environmental sustainability. However, trade can have a harmful effect upon the environment. Economic theory has tended to regard the surroundings as a free good in abundant supply, and so irrelevant in assessing comparative cost advantages. If environmental externalities are not considered in economic pricing and decision-making, commerce can exacerbate unsustainable patterns of behaviour, such as contamination and resource depletion. To safeguard the environment, product prices must represent all external costs of manufacturing and consumption, including environmental costs.¹⁵⁸

Put another way, a significant amount of the relationship concerning trade and the environment falls under the purview of the “*critique of the economic growth*” paradigm, which holds that trade between countries has a role to play insofar as it is thought to encourage growth. This involves the question of whether trade liberalization's effects

¹⁵⁵R. G. Barry, “Models”, March 1979, Vol 3, Issue 1, available at <https://journals.sagepub.com/doi/abs/10.1177/030913337900300106>

¹⁵⁶ *Ibid*

¹⁵⁷ *Supra Note 153*

¹⁵⁸Duncan Brack, "Guide to the Issues" in Duncan Brack, ed., *Trade and Environment: Conflict or Compatibility?* (London: Earthscan Publications Ltd., 1998), pp.1-17.

on growth primarily lead to the postponement of the economic subsystem at the expense of the ecological subsystem, increasing resource depletion and straining the earth's ecosystem's ability to absorb pollution from rising production and consumption, or whether the opposite is true, with rising incomes freeing up more funds for environmental protection and raising public preference for a clean environment.¹⁵⁹

2.2.1. Evolution of “Trade and Environmental Law”

International trade has existed throughout history. It has been discovered that international trade dates back to 2000 B.C. With the increasing complexities and enlargement of intercontinental trade, there was a perceived urgent requirement for a universal code to govern the blossoming of trade. Native and overseas policies have a substantial role in managing international trade, necessitating a unified law to promote growth and prosperity. International laws primarily control transactions between nations. International commercial transactions should obey to mutually local and global laws, as individually national devours its particular established protocols governing transactions between nations. To ensure transactions are carried out, governments create treaties or agreements based on common norms and customs.¹⁶⁰

Legal scholars examine "Hugo Grotius's *De Jure Belli ac Pacis*".¹⁶¹ He founded the study of transnational law by advocating for freedom of the seas and free trade. He was a firm believer in natural law and its impact on international trade. The convergence of state laws and trade practices among participating countries in international commerce led to new economic developments. States were limited in their trade activities by the “*Law of the Land*”. The lack of suitable "laws of the land" among participating governments stood a task for emerging countries involved in international trade.

According to “*Article 13*” of the “UN Charter”, the charter's responsibility is to support nations' actions and promote international cooperation. To begin, the UN studied the

¹⁵⁹Carsten Helm, "A Policy for Trade and the Environment in a Global Economy", *Economics*, vol.55/56, 1997, p. 94.

¹⁶⁰ Gupta, Raavi, and M. A. Haseeb. “Path to Pathologists Make Your Community Stronger.” vol. 141, no. 12, *College of American Pathologists*, Dec. 2017, p. 1602.

¹⁶¹Law of war and peace (1583-1645) Sanson M. *Essential International Trade Law* 2/e. Routledge-Cavendish; 2005 Jun ,p.1 - 2

challenges of harmonizing and unifying trade laws to find a comprehensive solution among member countries.¹⁶²

International trade laws govern the norms, customs, and procedures for facilitating trade between countries. Additionally, it facilitates trade between private sector enterprises in other nations. With the mainstream of the world's countries joining the “*World Trade Organization*” WTO, studying intercontinental trade regulation is crucial due to its widespread relevance.

The field of ITL is constantly increasing and rather complicated to approach. Since 1948, the GATT has formed the "backbone of international trade laws".¹⁶³ The GATT aims to promote fair trade and reduce trade obstacles. GATT members grant 'Most Favoured Nation (MFN)' designation and levy tariffs to decrease obstacles. The lowest applicable tariffs from the MFN. GATT supports fair trade by reducing the practise of unfair subsidies, bounties, and grants.¹⁶⁴

Intercontinental environmental commandment has evolved over three main periods: 1900-1972, 1972-1992, and 1992-2012. This corresponds to the early stages of international environmental awareness. The objective is to build a basic structure for global rule and link it to other disciplines. The periods are defined by two international conferences: “1972” “Stockholm Conference” on the “Human Environment” and the 1992 “Rio Session” on “Environment and Development”. Both conferences were ground breaking as their work and events contributed to substantial progress in implementing the intercontinental environmental commandment.¹⁶⁵

The “*United Nations Environmental Programme*” UNEP is the most recent institutional reaction to the “*Stockholm Summit*”. The “*General Assembly*” executed the proposals from the 1972 summit. “*Resolution no. 2997*” (XXVII) underscores the prominence of assisting developing nations in implementing environmental procedures and programs that align with their development goals.¹⁶⁶

¹⁶²Subedi SP, editor. Textbook, International Trade and Business Law. People's Public Security Publishing; 2012.P21.

¹⁶³International trade law. (2004, June 31). Wikipedia, the free encyclopaedia. Retrieved August 12, 2020, from https://en.wikipedia.org/wiki/International_trade_law

¹⁶⁴Subedi SP, editor. Textbook, International Trade and Business Law. People's Public Security Publishing; 2012.P21

¹⁶⁵Syamchandra Seshu, Dasari, “Right to environment law and policy perspectives” 2018.

¹⁶⁶U.N. General Assembly Resol 2997 (XXVII) 15 December, 1972 Preamble, Para 9.

The UNEP underscores the prominence of welfares and competencies of developing countries when codifying reformist growth and implementing environmental laws which includes providing mechanical assistance and assistance.¹⁶⁷

UNEP's international treaties demonstrate a developing legal reaction to integrating environmental and improvement problems. These advancements ended in the Recognition of policy-related announcements or recommendations.¹⁶⁸ At the end of the initial period, the campaign to promote “*United Nations Conference*” on “*Human Environment*” (UNCHE) principles had merely moderately accomplished its goals. After the “*Stockholm Conference*”, other international environmental agreements were established during the next two decades. At the conclusion of the decade, hundreds of international legal instruments focused on the environment or had significant environmental elements. This figure includes both binding agreements and nonbinding legal documents, such as the United Nations' “*Stockholm Declaration*” on the “*Human Environment*”.¹⁶⁹

International environmental agreements saw shifts in their themes and areas of attention between 1972 and 1992. International environmental accords were typically divided into several agreements for various issues, each with its own monitoring and reporting system, secretariat, and finance facility to support implementation. In 1993, it was discovered that there was “treaty congestion” and the system needed to improve efficiency. It took about 16 months to secure a consensus during the intergovernmental discussions for the global climate accord (UNFCCC). In general, the accords took longer to implement than to negotiate.

The scope of agreements has shifted from controlling transboundary pollution to addressing global pollution issues like *ozone layer* reduction, wildlife protection, ecosystem conservation, trade control, and environmental protection within national borders (e.g., protecting natural world heritage sites, wetlands, and biological

¹⁶⁷Montevideo Programme Periodic Review of Environmental Law (UNEP, 1982)

¹⁶⁸The number of governmental agencies charged with environmental protection proliferated from a handful to more than 100 today__ – Michael Weiskopf and Julia Preston, U N Earth Summit Opens with Calls to Save Planet“, The Washington Post, 4th June, 1992 p A – 29.

¹⁶⁹These include the World population Conference, (Bucharest, 1974), World Food Conference (Rome, 1974 involving FAO), Habitat Conference (Vancouver, 1976), International Women’s conference (Mexico, 1975) Conference on Long-Term Sustainable Development (Nairobi, 1982), convened two special sessions in 1974 and 1975 to study the problems of raw materials, development and the optimum use of the world’s natural resources.

diversity). New accords imposed more stringent requirements on national sovereignty compared to previous ones.

Significant advancements in international environmental legislation and policy have taken place in the years following Rio Convention. The field has grown more extensive and resilient. Increasingly significant participants now include industrial associations, civil society, and international intergovernmental organizations. Trade, human rights, and national security have all come to be diligently associated with intercontinental environmental regulation. There are now revised and new guidelines and precepts. The emphasis now is on executing and adhering to international accords rather than developing new legal instruments.

2.2.2. The relationship concerning “International Trade Law” and “Environmental Law”

The relationship among “International Trade Law” and “Environmental Law” is inclined to divergent view. Global rivalry among manufacturers and trade liberalization may promote the efficient use of *natural resources*, or they may impede government regulatory actions aimed at shielding the surroundings, which could result in the spread of harmful substances. As we all know trade is an economic activity that is, *inter alia*, based on natural resources, which are portion of the environment.¹⁷⁰ The effect of trade liberalization on ecological safeguard is uncertainty because it may lead to contamination of the surroundings, or may result in well-organized usage of ordinary assets. Trade liberalization could further more lead to a wider circulation of environment-friendly goods and technologies.¹⁷¹ Trade may contribute positively for the environmental protection by providing opportunity for the universal spread of environmental services and technologies to address particular environmental problems. Additionally, where trade is promoted,¹⁷² it may bring about economic efficiency and growth, which turn may raise income and provide more money for environmental protection. The stress between multilateral environmental treaties and trade regulations are inevitable. It is asserted that trade places constraints on legitimate environmental

¹⁷⁰Mitsuo Matsushita, “The Policy”. (2015), 3rd Edition, pp. 719, The Oxford International Law Library: Oxford, available at <https://ideas.repec.org/b/oxp/obooks/9780199284566.html>

¹⁷¹Julia Grubler and Roman Stollinger *et.al.*, “Wanted! Vienna Institute for International Economic Studies, The Research Report 451, available at <https://wiiw.ac.at/wanted-free-trade-agreements-in-the-service-of-environmental-and-climate-protection-dlp-5589.pdf>

¹⁷²*Ibid*

restrictions or contributes to the wider circulation of polluting substances. Trade may have a negative effect where hazardous waste on harmful chemicals is involved or where sale relates to products from endangered species.

The trade of goods originating from threatened or endangered species directly affects the environment.¹⁷³ There could also be an industrial activity that by-product or involve waste disposal would pollute the environment. Critics asserted that Trade may have a negative effect upon the environment by fostering economic expansion that leads to waste generation and excessive resource usage. Wherever there is no environmental safeguard, unless suitable environmental protection mechanisms are integrated into the trade system's architecture. Trade rules and liberalization often override environmental regulations.¹⁷⁴ However, it is establish that strict environmental regulation impedes environmental goods. Conversely, though, studies discovered that stringent ecological guideline decreases trade capacity, however stimulate green friendly goods. In some cases, environmental regulations limit trade and this creates conflicts concerning the two systems. For instance, the regimes that protect the environment would result in lower consumption.¹⁷⁵ Environmental law imposes standards on chemical handling, processing and labelling food, and standards to protect natural resources and wildlife which affects trade.

International trade law, conversely, though “limits the government intervention and allow the unimpeded flow of goods and services”. According to environmentalists, environmental law limits trade rules so as to the environment. Trade experts, on the contrary, start from the premise that States should not intervene in trade promotion.¹⁷⁶ Environmental law could increase cost in production by requiring using more environmental friendly technologies. Conflicts between international environment and trade may be normative and or they may attributable to legitimacy. Normative conflicts are conflicts involving two or more norms of intercontinental rule, or it may also occur in domestic laws. A normative conflict in intercontinental regulation is contradiction of

¹⁷³ *Supra Note 150*

¹⁷⁴ J, Bernard and S.K. Mandal (et.al.) “An empirical analysis of merging and developing economies”, WIT Transactions on Ecology and The Environmental, Vol. 203, pp. 197, available at <https://www.witpress.com/Secure/elibrary/papers/EID16/EID16018FU1.pdf>

¹⁷⁵ Daniel Bodansky and Jessica C. Lawrence, “Trade and Environment”, (2012), The Oxford University Press available at <https://asu.pure.elsevier.com/en/publications/trade-and-environment>.

¹⁷⁶ SimenehKirosAssefa, “The Trade and Environment Debate: “Incongruity”, (2008), Vo. 2, No. 2, 311338, Mizan Law Review, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3156610

obligation arising from “International Trade Law” and “International Environmental Law”.¹⁷⁷ Thus a conflict between obligation arising from intercontinental trade rule and an obligation from International Environmental Commandment is a normative conflict. Conversely, though legitimacy conflicts involve an international obligation and domestic measures. A legitimacy conflict is one arising concerning “International Trade Law” and domestic measures based on environmental consideration.¹⁷⁸ It can involve contradiction between domestic environmental measures and intercontinental trade commandment norms. For example, the competing interest between environmental and trade law can be seen from the GATT Article XX exclusions and an implicit test of balance between nations' sovereign rights to avoid protectionist policies hindering trade.¹⁷⁹ Many States are pursuing ‘green industrial policies’ namely policies that aspire to develop strong competitive industries in environment-related sectors, for instance, renewable energies. In such case, they may be hindered by intercontinental trade and venture disciplines unless trade law evolves towards the outward looking conception that is considered on the complementarity of commerce and surrounding rather than the inward looking trade-off between the two pursuits.¹⁸⁰

Well climate change and global warming are expressions that are occasionally used synonymously but they devise dissimilar significance that a ‘warming’ is merely unique phase of the grander climate structure on earth that unsurprisingly topographies alteration. Bodily confirmation on earth and in space has aided researchers comprehend that there are countless dynamics that can add to the fluctuating of the planet’s climate on a continuing basis.¹⁸¹ For example lunar radioactivity echelons, earth’s trajectory everywhere the sun, volcanic bustle, ocean tides and even salver tectonics. More recently, Earth’s climate has been studied by the “*Intergovernmental Panel on Climate Change*”, an organization formed by scientists who specialize in climate studies. The IPCC¹⁸² has issued four reports over recent years that have studied the connections

¹⁷⁷ Reich Vranes, “Trade and the Environment Fundamental issues in International, (2009), Volume 19, Issue 1, pp. 769–773, Yearbook, available at <https://doi.org/10.1093/yiel/19.1.769>

¹⁷⁸ *Ibid*

¹⁷⁹ Mark Wu and Janes Salzman, “The next Generation of Trade and Environment Conflict:- The Rise of Green Industry Policy”, Vol. 108, pp. 401- 474, North-Western University Law Review, available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1022&context=nulr>

¹⁸⁰ *Ibid*

¹⁸¹ Rich Seymour, “Understanding the Global Warming”, School of Education, Dominica University of California, December 2008, available at <https://files.eric.ed.gov/fulltext/ED503680.pdf>.

¹⁸² Hereinafter the acronym of IPCC is “Intergovernmental Panel on Climate Change”.

between human activity and climate change.¹⁸³ The existing climate change information, declared that the consensus of the group is that around 90% certainties that global warming directly related to human greenhouse gas emission. Since, the “*Intergovernmental Panel on Climate Change*” Fourth Assessment Report was released; a growing number of scientists believed that climate change prognostications could devise too conservative and that the rate of climate change may be closer to the worst-case scenarios.¹⁸⁴ With the undesirable results of Climate change already apparent in extreme weather, melting glaciers and altered ecosystems, time is of the essence. Carbon emitted in the next decade will stay in the atmosphere for well over a hundred years and power plants built in the next decade will determine the carbon intensity of our energy supply for ages to derive.¹⁸⁵

The 4th “Assessment Report” of IPCC has projected a serious picture of the earths’ future. The Report states that warming may have a devastating. Accumulation of trace in the atmosphere, caused mainly due to anthropogenic actions such as ignition of non-renewable energy, is believed to altering the Earth’s climate structure. The “Intergovernmental Panel on Climate Change” in its assessment report observed that “warming of climate system is now undeniable, as is now evident from observations of in global average in air and ocean temperatures, widespread melting of snow and ice, and rising global sea levels”.¹⁸⁶ The IPCC on Climate Change projects that the global means temperature may increase day by day and this unprecedented increase will probable have serious collapse on the global system, ecosystem, sea level, crop production and related processes etc. Hence, the impact would be particularly harsher in the tropical areas, which mainly consist of developing countries.¹⁸⁷

The UNCED¹⁸⁸ in the year 1992 at Rio de Janeiro led to FCCC¹⁸⁹ which placed the framework for the maintenance of “Green House Gases” in the atmosphere, recognizing

¹⁸³*Supra Note 161*

¹⁸⁴ Climate Change Policy: Recommendations to Reach Consensus, 2009 Brookings Blum Roundtable “Climate Crisis, Credit Crisis”, Global Economy and Development, available at https://www.brookings.edu/wp-content/uploads/2016/06/09_climate_change_poverty.pdf.

¹⁸⁵*Ibid*

¹⁸⁶ S. D.Solomon, M. Manning (eds.), “Climate Change: The Physical Science Basis”, Fourth Assessment Report of the Intergovernmental Panel on Climate Change” (2007), pp. 996, available at https://www.researchgate.net/publication/371731269_Economic_impact_of_climate_change_on_apple_in_high_hills_of_Himachal_Pradesh_Ricardian_approach

¹⁸⁷ Jayant Sathaye, P. R. Shukla et.al., “Climate Concerns”, (2006), Current Science, Vol. 90, No. 3, pp. 314-325, available at http://www.ssvk.org/climate_change_sustainable_development.pdf

¹⁸⁸ Hereinafter the acronym UNCED is “United Nations Conference on Environment and Development”.

¹⁸⁹ Hereinafter the acronym FCCC is Framework Convention on Climate Change

the mutual but distinguished duties and individual abilities, social and economic conditions.¹⁹⁰ However, nations are differently exaggerated by Climate change and have different history; different levels of development, sources of uses of energy having widely different political pressures etc. As a global issue,¹⁹¹ Climate change presents an incentive for states to free ride on the efforts of others by letting others shoulder the expense of carbon reductions. Thus, the present strategy in international climate negotiations—exemplified by the Paris Agreement—emphasizes universal participation rather than aiming for a uniform approach to the issue, with each country deciding how it wants to participate and how ambitious it wants to be. The outcome is widely different climate strategies are diverse in worldwide, with some regions imposing relatively strict controls on emissions and others, including numerous of the world's chief emitters doing very little.¹⁹²

2.3. Historical Development: Cause and Effect of changing climate.

Changing climate covers an extensive topics, including energy, the environment, geography, politics, chemistry, biology, and economics. Climate has had an important influence in shaping the progress that humans have made. Climate change's impact on our lives, ecosystems, and the environment has been widely discussed in recent years. According to the IPCC report, climate change is initiated by people and will continue to pose a significant threat towards humanity. Conclusion herein is climate change must be abridged in a socially responsible and sustainable manner. 'Everybody has heard about climate change. Some people believe it is real, others do not. We are convinced that Climate change is imminent if not already with us'.¹⁹³

¹⁹⁰*Supra* Note 167

¹⁹¹David A. Weisbach and Samuel S. Kortum, "Climate Problems", Last Revised: 21 March, 2023, University 813, University of Chicago Coase – Sandor. 971, available at <http://ssrn.com/abstract=4328814>

¹⁹²*Ibid*

¹⁹³Joke Waller-Hunter Executive Secretary UNFCCC, September 2004.

2.3.1. Historical background and Definition of Climate and Climate Change.

The science museum's¹⁹⁴ slides provide fascinating information on the development of the earth and describes how it became habitable. 375 million years ago, new plants developed with a unique ability to absorb and progressively eliminate “Carbon Dioxide” from the environment. Carbon dioxide retains heat, thus reducing it in the atmosphere helps chill the earth. Over the past Hundred Million Years, universal temperature has decreased by approximately 10 degrees Celsius.¹⁹⁵ 251 million years ago, the temperature began to rise again. Scientists believe this was created by massive volcanic eruptions in Earth's history. This process is thought to be responsible for the formation of the “*Siberian Traps*”. The eruptions lasted around a million years and covered a region the size of Europe. The eruptions emitted a significant amount of CO₂, causing the world-wide temperature to rise by 6 degrees Celsius over a few million years.¹⁹⁶ After that, Fifty Six Million Years before, there was an abrupt carbon release that caused the temperature to rise by 6 degrees Celsius once more.¹⁹⁷

Climate data is documented in binary ways. First, there are data series that monitor the quantifiable and enduring changes in Earth's weather patterns, including a range of dramatic and disruptive climatic phenomena that are visible over years. Another method of analysing climate change is by using computer simulations of future climatic behaviour.¹⁹⁸

Climate science originated in the late eighteenth and nineteenth centuries as an interest in studying glaciers. Already in the 1770s, Swiss scientist Horace-Bénédict de Saussure proposed that the atmosphere acts as a greenhouse, shielding the external of the Globe and those who dwell on it from excessive temperatures.¹⁹⁹

John Tyndall, a prominent British scientist of the nineteenth century, was the first to conduct experiments that established the greenhouse effect. But in the nineteenth century, the term "greenhouse effect" did not make reference to global warming.

¹⁹⁴www.sciencemuseum.org.uk (visited on 24-06-2022)

¹⁹⁵www.sciencemuseum.org.uk, pictorial representation 1, (visited on 24-06-2022)

¹⁹⁶www.sciencemuseum.org.uk, pictorial representation 2, (visited on 24-06-2022)

¹⁹⁷www.sciencemuseum.org.uk, pictorial representation 3, (visited on 24-06-2022)

¹⁹⁸ Daniel Yergin, *Search*, 425, (Penguin Books, 2011).

¹⁹⁹ Baruch “Important Moments of my journey” available at https://blogs.baruch.cuny.edu/zoundi/?page_id=36

Scientists who were worried round Climate change anticipated global cooling and the return of an “Ice Age”, which may destroy civilization.²⁰⁰

For ages, people have been aware of climate changes. Louis Agassiz (1837) hypothesized that Switzerland's mountains were originally covered by ice sheets similar to those seen in “Greenland” and “Antarctica”. Agassiz noticed scratch and etch markings that resembled those left by a vast sheet of flowing ice.²⁰¹ Religious views did not support his idea that the landscape was caused by the biblical flood. Later, the ice age idea became accepted.

During the 1st part of the 20th century, few scientists believed that global warming caused by greenhouse gases would be beneficial. In 1894, “Swedish Chemist” “Svante Arrhenius” calculated the impact of CO₂ on atmospheric temperature, following Tyndall's work.²⁰²

In contrast to current fears about climate change, Arrhenius believed that warming would benefit both weather and agriculture in Scandinavia. In (1896), “Svante Arrhenius” released the initial calculations and predicted better climates for the planet. In the 1950s, few scientists realized that rising levels of CO₂ leads to a few Degrees Celsius rise in universal temperature.²⁰³

The actual birth of contemporary climate science occurred in the 1950s. Oceanographer Roger Revelle and his colleagues at the “Scripps Institution of Oceanography” made noteworthy assistances to the area, starting with work on temperatures throughout different ocean strata. Additionally, Revelle led a number of studies that were initiated in 1957 and 1958 is a component of the International Geophysical Year.²⁰⁴

²⁰⁰Mike Hulme, On the origin of ‘the greenhouse effect’: John Tyndall's 1859 interrogation of nature May 2009 64(5):121-123 available at https://www.researchgate.net/publication/249883082_On_the_origin_of_the_greenhouse_effect'_John_Tyndall's_1859_interrogation_of_nature#:~:text=In%201859%2C%20John%20Tyndall%20presented,obvious%20%5B%E2%80%A6%5D%20the%20atmosphere%20admits%20assesses%20on%2027-06-2024.

²⁰¹Spencer Weart, *Invention of Universal Heating*, 4, (Harvard University Press, RevEd.2008) available at

<https://www.scientificamerican.com/article/discovery-of-global-warming/#:~:text=In%201896%20the%20Swedish%20scientist,raise%20the%20planet's%20average%20temperature.>

²⁰² *Ibid*

²⁰³ *Supra Note 201*

²⁰⁴Daniel Yergin, “Hunting of the Globe” 442, (Penguin Books, 2011)

These scientists aimed to gain a deeper comprehension of climate in addition to weather. Charles David Keeling's research was funded by Revelle. Keeling started measuring the increasing amounts of carbon in the atmosphere from a hilltop observatory in Hawaii, leading to the formation of the “Keeling Curve” The most senior of these researchers, Roger Revelle, openly conjectured that the greenhouse effect might have “a violent effect on the earth's climate” in the twenty-first century.²⁰⁵

He believed that as temperatures rises, the Antarctic and Greenland ice caps may eventually melt as a result level of the sea will rise to the point where coasts would be flooded.²⁰⁶ Observing that historical temperature shifts may have contributed to the collapse of entire previous civilizations, Revelle informed a Congressional committee in 1957 that the green house result can eventually cause Southern California and Texas to become “*real deserts*”.

He also mentioned that the “Arctic Ocean” could become ice-free, which would benefit Russia. This issue began to be regarded seriously only after 1960, when interpretations revealed that CO₂ levels in the air were quickly growing. The “Private Conservation Foundation” sponsored a ground breaking symposium in 1963 on the “Implications of *“Rising Carbon Dioxide Content”* of the Atmosphere”. A ground breaking research on “Man's impact on the global” Environment” done at the “Massachusetts Institute of Technology” in 1970, predicted that greenhouse heating would product in widespread droughts, shifting ocean levels, and other issues, but was unable to go past these nebulous fears.²⁰⁷

In the late 1960s, political discussions concerning climate change began. Daniel Patrick Moynihan, a White House Counsellor (and eventually a United States Senator), wrote Richard Nixon in 1969 that the President "really ought to get involved" in climate change. He predicted a seven-degree increase in average temperatures by 2000, along with shifting ocean levels, resulting in "Good-bye New York" and "Good-bye Washington."²⁰⁸

In the 1970s, there was a significant dispute between those who worried global warming and others who feared "global cooling" and a potential new ice age. However, increased

²⁰⁵Time Real deserts: Revelle in United States Congress (85:2), pp. 104-106 (1956)

²⁰⁶ Spencer Weart, 7, (Harvard University Press,Rev.Ed. (2008)

²⁰⁷Study of Critical Environmental Problems (SCEP) Report (1970) p 18.

²⁰⁸Daniel Yergin, 446, Penguin Books (2011).

satellite imaging and computer modelling in the years that followed strengthened the concept of global warming. Deeds conceded out by humans, like the combustion of hydrocarbons, were found to significantly add to Climate change, according to these models.

IPCC formed in 1988 marked a significant turning point in the climate change discussion. This international network of scientists from all over the world publishes periodical publications that summarize current climate science research.

A. Definition of Climate

Climate refers to a region's average weather conditions over time, including “temperature”, “air pressure”, “humidity”, “precipitation”, “sunshine”, “cloudiness”, and “winds”.²⁰⁹

Climate - the average course or condition of the weather at a place usually over an era of years as showed by hotness, airstream rate, and precipitation.²¹⁰

Climate broadly covers not just the mean circumstances, but also the underlying statistics (frequency, amplitude, persistence, trends, and so on), which are frequently used to characterize phenomena such as drought. The mean and variability of important variables across time which might span from months to thousands or millions of years are statistically described as the climate. Temperature, wind, and precipitation are examples of surface qualities that are commonly seen as relevant. The “World Meteorological Organization” typically recommends averaging these factors over a 30-year period.²¹¹

B. Definition of Climate Change

A shift in the patterns of the global or regional climate, particularly one that became noticeable in the middle to late 20th century and was primarily ascribed to the higher amounts of atmospheric Carbon Dioxide brought about by the ignition of non-renewable energy.²¹²

²⁰⁹ <http://dictionary.reference.com/browse/climate> (visited on 4-06-2022).

²¹⁰ <http://www.merriam-webster.com/dictionary/climate> (visited on 4-06-2022).

²¹¹ Cubasch, U.D. “Introduction. In: Change” [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K., p.126. Also available http://www.ipcc.ch/publications_and_data/ar4/wg2/en/annexessglossary-a-d.html accessed 4-06-2024.

²¹² Climate Change, <http://www.oxforddictionaries.com/definition/english/climatechange> (last visited on 4.6.2022)

Any alteration in the Climate over time, whether brought on by human action or natural variability, is denoted as Climate change.²¹³

Climate change is demarcated as an alteration that is statistically significant that lasts for a lengthy phase (usually decades or longer) either the average condition of the weather or its variability. Natural processes, outside forces, or persistent human changes to the atmosphere's composition or land use can all contribute to climate change.²¹⁴

Climate change is demarcated as alterations in the global atmosphere's composition produced by human action, either unswervingly or circuitously. This is in accumulation to the natural fluctuation in the climate that has been documented throughout similar time periods.²¹⁵

A long-term change in the weather, as evidenced by variations in temperature, precipitation, winds, and other variables, is called “*Climate Change*” which impact both average conditions and variability, such as the occurrence of extreme situations.²¹⁶

Various organizations have given varied interpretations to the term “Climate Change”. The “Convention on *Climate*” (UNFCCC)²¹⁷ and “Intergovernmental *Panel on Climate Change*” (IPCC)²¹⁸ have distinct definitions of the above term. The IPCC asserts that natural or external dynamics, humans, may be liable for climate change, while the UNFCCC directly or indirectly links human activity to climate change. Research has indicated “*Climate Change*” is rather that happens naturally, and the ecosphere we live on has altered throughout time to convert a suitable place for life due to sustained

²¹³IPCC Fourth (2007), *available at*:
http://www.ipcc.ch/publications_and_data/ar4/wg2/en/annexessglossary-a-d.html (last visited on 4.6.2022)

²¹⁴ IPCC 3rd Report, *Climate Change* (2001), *available at*:
http://www.ipcc.ch/publications_and_data/ar9/wg5/en/annexessglossary-a-b.html

²¹⁵ UNFCCC (Article 1), *available at*:
https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven.pdf

²¹⁶ The (OECD), *Adaptation to Climate Change:Key Terms*, International Energy Agency (May 2006), *available at*:<http://www.climatechange.gc.ca/default.asp?lang=en&n=65CD73F4-1> (visited on 6.4.2022)

²¹⁷The UN process for reaching a deal to restrict hazardous climate change is known as the UNFCCC. A global agreement among nations is in place. Reducing the amount of greenhouse gases entering the earth is the primary strategy for achieving this. At the Rio de Janeiro-hosted Earth Summit, 154 governments signed it in 1992.

²¹⁸ IPCC a United Nations intergovernmental organization. Its mission is to increase scientific understanding of how human activity is causing climate change. The IPCC was established in 1988 (UNEP).

changes in climate. However, these modifications are slight and do not immediately and drastically affect life on Earth. The IPCC acknowledged that “*Climate Change*” is primarily affected by human actions as stated in both its Fourth²¹⁹ and Fifth²²⁰ Assessment Reports.

Identifying an appropriate solution, it is obligatory to understand the numerous elements that support to “*Climate change*”. As often stated in IPCC reports, changes in climate are a regular progression. According to popular opinion, our planet is the only one with life on it. The natural process of climatic change is what has allowed life to continue. Then, there must be another cause for the comprehensive character of the “*Climate Change*” issue and the nations' concerted attempts to tackle it. The explanation is straightforward: our actions, which have caused significant alterations on the earth plus atmosphere, are responsibility for the current dramatic shifts in climate.

2.3.2. Changing Climate and Effects

Melting of Glaciers over the previous 150 years, glacier volume has significantly declined in all alpine zones. During that period, several minor glaciers vanished. Glacier shrinkage (area and volume decline) was common internationally, especially in the 1940s and 1980s.²²¹

Global Water Cycle Affected Since 1960: Climate change has caused changes in the geographic ranges, seasonal activities, migration patterns, abundances, and interactions of various species, including “terrestrial”, “freshwater”, and “marine”. Although Climate change couldn’t be straight related to species extinction, ecological shifts devise vanishing of numerous species over millions of years.²²²

The Global Mean Rise in the Marine Level, since 1970: As carbon dioxide levels rise, the ocean's chemistry changes, becoming more acidic. The ocean is over 40% more acidic than it ever was. As the oceans heat up, they absorb 90% of the extra heat from

²¹⁹ 4th AR on Climate Change, Synthesis Report. CWG I, II and III (2007), *available at*: <https://www.ipcc.ch/assessment-report/ar4/> (visited on 5.6.2022)

²²⁰ 5th AR on Climate Change, Synthesis Report. CWG (2014), *available at*: <https://www.ipcc.ch/assessment-report/ar5/> (visited on 5.6.2022)

²²¹ Spencer Weart, *The Discovery of Global Warming*, 4, (Harvard University Press, HUP Rev. Ed. 2008).

²²² Peter D. Ward, *Glacier* (Basic Books, 2010).

the air and become more acidic. This causes the oceans to expand, leading to rising sea levels. Our Arctic critters need ice, but it's disappearing; forests are increasingly vulnerable to lethal infestations; coral and shellfish are suffering: Mammals that depend on sea ice, such as polar bears and walruses, struggle to survive when the ice melts. The yields from agriculture have also been effected by Climate change. For instance, yields of maize and wheat. The suffering becomes worse by the rising costs of pulses and cereals, suggesting that change in Climate might be a contributing factor in the situation.²²³

Health Problems: Smog, or ground-level ozone, is created by chemical reactions that are accelerated by a warmer environment. Most common lung irritants and a principal reason of asthma attacks is smog. The air is further deteriorated by wildfire smoke. Severe summer temperatures intensify the threat of heat waves and facilitate the tumour of germs that pollute drinking water due to warmer freshwater.²²⁴

Extreme Weather: These days, extreme weather events are frequent. “*Heat waves*” are arising more frequently, and their effects differ depending on a person's age, region, and socioeconomic status. Universally, “*anthropogenic*” climate change has an effect on the occurrence and ruthlessness of river floods.²²⁵

Effects Cloud Albedo: Clouds affect climate by increasing albedo, cooling the globe, and warming it through infrared radioactive transfer. The cloud's overall radioactive effect, whether cooling or warming, is determined by its physical attributes (level of event, upright expanse, water route, and active cloud particle size), composition of its condensation nuclei.²²⁶

Greenhouse Gases: Humans directly contribute to the “Greenhouse Gas” effect by generating “GHGs” such as “CO₂”, “CH₄”, “N₂O”, and “CFCs”. Furthermore, toxins such as “Carbon Monoxide” “CO”, “Volatile Organic Compounds” “VOC”, “Nitrogen

²²³How climate change plunders the planet, EDF, *available at:*
<https://www.edf.org/climate/how-climate-change-plunders-planet>(last visited on June 10, 2024).

²²⁴ *Ibid*

²²⁵Fluvial flooding relates quite simply to river flooding, UK, *available at:*
<https://www.landmark.co.uk/products/argyll/> (visited on 10.6.2022)

²²⁶*Supra* note 90

Oxides” “NO_x”, and “Sulfur Dioxide” “SO₂”, which by themselves constitute minor greenhouse gas emissions. “Global Warming” is the term used to describe the heating of the earth caused by a progression in the absorption of “Greenhouse Gases” in the air. The extremely quick rise in regular temperature of the Earth's over the previous century is known as Global Warming, and it is ordinarily produced by greenhouse gases generated when fossil fuels are burned. Amid, Nineteen Hundred Six and Two Thousand Five, the average worldwide surface temperature increased by Zero point Six to Zero point Nine degrees Celsius (01.01 to 01.06 degrees Fahrenheit), with the degree of evolution having practically doubled in the previous half-century. The reduction of the “Ozone Layer”, for which the international community has established a Protocol and a Convention, is the other principal consequence of rising greenhouse gas concentrations.²²⁷

2.3.3. Changing Displays of the Climate

There are numerous signs of change in Climate. Physical responses contained variations in the land temperature, atmospheric water vapour, precipitation, extreme weather, glaciers, ocean and land “ice”, and “sea level”. Climate change, whether caused by natural or human factors, can influence dangerous Weather and Climatic events' frequency and intensity including extreme precipitation and warm spells. A life-threatening weather conditions event is one that occurs seldom in a specific location or season. Extreme climate events occur when extreme weather persists for a season and produces extreme averages or totals, such as drought or high rainfall.²²⁸

2.4. Mechanism/Instrument to discourse Global Climate Change

Change in Climate is a global problem that calls for a global response. Whether releases of Greenhouse Gases originate from Beijing, Washington, London or Sikkim in India, they all have the same consequence on the atmosphere, they alter climate arrangements that compromise agricultural yields and raise the likelihood of disastrous flooding.

²²⁷Vienna Convention (1985), *available at* <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A21988A1031%2801%29> (visited on 10.6.2022)

²²⁸IPCC Special Report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation Chapter III, Seneviratne *et al.*, (2012), *available at* https://www.ipcc.ch/site/assets/uploads/2018/03/SREX_Full_Report-1.pdf

Indeed, the necessity to combine a global solution with local execution has brought nations together in reply to Climate change

Consequently, addressing this issue, which has been covered below, a common platform or mechanism was needed:-

2.4.1. “United Nations Environment Programme” 1972 (UNEP)

In 1972²²⁹, the “United Nations Environment Program” (UNEP) was founded. After the 1972 “UN Meeting on the “Human Environment” in Stockholm, Sweden, suggested the formation of an international organization to serve “United Nation” system's environmental conscience, UNEP was founded as an outcome of the “Stockholm Conference” is undoubtedly the UNEP. Its goals are as follows:²³⁰

“UNEP” *Governing Council*, consists of 58 states chosen for four-year by the “UN General Assembly”, assesses the comprehensive surroundings, sets program priorities, and approves budgets.

The “UNEP” *Secretariat* is headquartered in “Nairobi”, “Kenya”, and serves as a heart for UN system-wide coordination and achievement on the surroundings. The Executive Director holds the title of “United Nations” “*Under-Secretary General*”.

UNEP's environmental efforts will be funded through a voluntary Environment Fund, complemented by trust money and UN regular budget allocations.

2.4.2. “Stockholm” and “Rio Declaration”

In 1968-69, the *General Assembly* approved “*resolutions 2398 (XXIII) and 2581 (XXIV)*” to hold a universal seminar in “Stockholm” in 1972. The drive of the meeting was to deliver strategies for protecting and improving the human surroundings, preventing impairment.²³¹The “United Nations” “*Educational, Scientific, and Cultural Organization*” “UNESCO” suggested that the seminar conscripted a Universal Declaration on the “*Protection and “Preservation of the Human Environment*” which befitted one of the conference's main goals. This "document of basic principles" was an

²²⁹UN General Assembly adopted Resolution 2997.

²³⁰The (UNEP) celebrated its 50th anniversary in 2022. available at: <https://www.unep.org/environmental-momentsunep50timeline#:~:text=Founded%20in%201972%20following%20the,to%20the%20world's%20environmental%20challenges>.

²³¹ Audio visual Library of International Law, available at: <https://legal.un.org/avl/ha/dunche/dunche.html> (last visited on June 17, 2024)

affirmation on the “Human Environment”. “*Preparatory Committee*” of the conference began work on the pronouncement in 1971, and an international working group was tasked with actually crafting the document. The declaration's progress was slowed due to disagreements between countries about the specificity of its ethics and strategies, including whether it recognized the individual's need for a satisfactory environment.²³² Consider general principles outlining states' environmental rights and obligations. Conversely, the employed assembly had produced one affirmation, which the group felt needed more study. They did not conduct a substantive assessment of the draft declaration, which included a Preamble and “Twenty Three” principles, as they did not want to disrupt the “delicate balance” of the compromise text. The option to regenerate the script was provided to delegations in Stockholm. The document was overwhelmingly approved by the seminar on June 16, 1972, and it was then forwarded to the “General Assembly”. During discussions *General Assembly's* second committee, a number of nations had concerns regarding various aspects; however they did not contest the proclamation itself.

The General Assembly finally stated in “Resolution 2996 (XXVII)” that Principles Twenty One and Twenty Two of the statement on the international responsibilities of States with favour to the situation could not be affected through resolutions adopted during this session. *The resolution no. 44/228* of December 22, 1989, the General Assembly resolved to call a summit of the UNCED and to begin the preliminary agency process for UNCED, in reply to the 1987 implementation of the “*Environmental Perspective*” Two Thousand and Beyond,²³³ a wide framework to direct international collaboration and state action in support of ecologically rigorous expansion and in reaction to particular proposals made by the “*World Commission*” on “*Environment and Development*” (WCED).²³⁴

The resolution urged the conference to advance “International Environmental Law” and consider establishing general environmental privileges and duties for states. Continue pursuing this objective and “combining such values in an applicable mechanism/ deed/ proclamation/ testimony, pleasing owing reason and suppositions from provincial

²³²*Ibid*

²³³Uttam Dabholkar, “Beyond: A Framework for World Development”, Vol. 16, No. 1, *JSTOR* Spring 49-53 (1989).

²³⁴UN General Assembly Resolutions Tables, available at: <https://research.un.org/en/docs/ga/quick/regular/42> (last visited on June 27, 2024)

preparative sessions” simultaneously. The mandate of Working Group Three WG-III on established legal issues was expanded to include "development" and the privileges of other stakeholders, including individuals, groups, women, and indigenous peoples. In 1991, Working Group Three held its 1st functional conference at the Preparatory Committee's 3rd sitting in Geneva. The proposed instrument's text was not drafted until the 4th and concluding Preparatory Committee meeting in “New York in March/April 1992”.²³⁵

2.4.3. “United Nations Framework Convention on Climate Change” 1992 [UNFCCC]

In 21st March 1994, the United Nations “*Framework Convention on Climate Change*” UNFCCC came into effect. Its membership is nearly universal today. Gatherings to the covenant are the 195 nations that have endorsed the agreement. Therefore, it is evident that the Convention is among the international agreements that have the broadest support currently in place.²³⁶

Article 2 of UNFCCC, 1992.²³⁷

“The ultimate goal of the concord and some associated authorized mechanisms is known as “*Conference of the Parties*” could embrace is to stabilize Green House Gas absorptions in the environment at a degree that would stop hazardous anthropogenic interfering with the environment structure, in compliance with the appropriate requirements of the concord. Achieving this level should happen in a phase structure that permits ecosystems to adjust with Climate change naturally, guarantees that food supply is not jeopardized, and permits sustainable economic development.”

The Convention acknowledges that increasing atmospheric quantities of greenhouse gases are due to anthropogenic emissions pose a hazard to the universal Climate system. The concords do not specify a perimeter for entire anthropogenic “*GHG*” emissions, which, mandate to accomplish the goal, must be fulfilled. It does not postulate the brink of total “*GHG*” absorptions that would root dangerous anthropogenic interaction with

²³⁵ Report, Vol II, (1992), *available at*: <https://digitallibrary.un.org/record/143314?v=pdf&ln=en> (last visited on 12.6.2022)

²³⁶The UNFCCC secretary at (UN).

²³⁷ UNFCCC (1992), *available at*: https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

the climatic scheme. The concord does not include items of the “GHG” to be controlled. The term solely covers carbon dioxide, the most common greenhouse gas, and “Other Greenhouse Gases not controlled by the “Montreal Protocol”.”²³⁸

Article 3 (2) discusses the various ways in which the Convention's implementation measures and the effect of changing climate on Parties.²³⁹ Which is consistent by “Principle 6” of the “Rio Declaration”.²⁴⁰

The counteractive value, which is frequently represented in conservational law and ecological accords, it further emphasizes on how important cost-effectiveness is. Therefore, any actions made to put the Convention into effect should not put undue strain on the economy is mentioned in Article 3 (3).²⁴¹ Which is similar with the Principle Fifteen of the “Rio Declaration”.²⁴²

The obligation and right to promote sustainable development are outlined in Article 3 (4) which states that actions and regulations aimed at preserving the climatic system.²⁴³ This aligns with Rio Declaration Principle 3.²⁴⁴

In order to enable the members to better discourse the problems of climate change, Rio Declaration's Principle 12²⁴⁵ and Article 3(5) are closely related and defends the value of unrestricted trade and calls on them to support an open and cooperative intercontinental monetary scheme that would result in justifiable commercial

²³⁸ UNFCCC, (1992) Commitments, Article 4 (2) (a), *available at*: https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on 12.6.2022)

²³⁹ Principles, Article 3 (2)..*available at*: https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on 12.6.2022)

²⁴⁰ Rio, (3-14 June 1992) Principle 6: *available at*: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf(last visited on 12.6.2022)

²⁴¹ Principles, Article 3 (3)..*available at*: https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on June 20, 2024)

²⁴² Rio Development (Report) Principle 15: *available at*: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf(last visited on 12.6.2022)

²⁴³ UNFCCC, (1992) Principles, Article 3 (4).*available at*: https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on 12.6.2022)

²⁴⁴ Rio (3-14 June 1992) Principle 3: *available at*: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (last visited on 12.6.2022)

²⁴⁵ Rio (3-14 June 1992) Principle 12..*available at*: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

progression and expansion for all Parties, especially unindustrialized nation members without any discrimination.²⁴⁶

The Concord do not set any particular objectives for limiting or reducing GHG emissions. However, *Article 4 “(2)” “(a)” and “(b)”* requires Annexure One parties to bring their GHG discharges to 1990 levels, either individually or collectively.²⁴⁷

The “*Conference of the Parties*” (COP)²⁴⁸ held that “*Article 4(2)(a) and (b)*” unsatisfactory during its 1st Session in 1995. Which prepared the route designed for consultations on more restrictive objectives. The “*Kyoto Protocol*” of 1997²⁴⁹ establishes additional limits on GHG emissions for *Annex I Parties*²⁵⁰ alone. Article 3²⁵¹ outlines the Convention's principles, which govern Parties' conduct but are not exhaustive. *Article 3 (1)* emphasizes the ideals of justice and common but differentiated obligations. The latter idea was articulated in “1992” as code “Seven” of the “Rio Declaration”.²⁵²

This code has multiple applications within the arrangement. Parties have differing abilities and assets to tackle the reasons and effect of Climate change, their historical and current GHG discharges are spread disproportionately between them. Thus, industrialized nations are urged by Article 3 (1) “*take the main role in battling Climate change and the hostile impacts thereof*”. The distinction made in the concord between the nations registered in Annexure One and the nations not recorded in Annexure One (the so-called *non-Annex I Members*) reflects this. Additional distinctions are drawn

²⁴⁶UNFCCC, (1992) Principles Article 3 (5):.available at:

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven_g.pdf

²⁴⁷ UNFCCC, (1992) Commitments, Article 4 (2) (a) & (b), available at:

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven_g.pdf

²⁴⁸(COP) is the supreme governing body of an international convention.

- Basel Convention
- Chemical Weapons Convention
- Kyoto Protocol
- Ramsar Convention
- Rotterdam Convention

- **United Nations Climate Change conference**

²⁴⁹The Kyoto Protocol encourage nations to reduce greenhouse gas emissions..

²⁵⁰Binding commitments.

²⁵¹ Supra note 109

²⁵²Report of (June 1992) Principle 7: available at:

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

between these two fundamental divisions to excuse various aptitudes, unique circumstances, and weaknesses of Parties.²⁵³

All countries after signing the agreement have obligations, the majority are outlined in *Article 4 (1)* however, Annex I Gatherings are obligatory to meet certain standards and prove spearheading the battle in contradiction of Climate change. They must implement programmes and activities to decrease their “Greenhouse Gas” releases and improve their “greenhouse gas” sinks and reservoirs to abide by with *Article 4 (2)*.²⁵⁴

Article 4 (7), expresses the division of responsibilities under the Convention. This states the level wherein Developing nation parties will successfully apply in their obligations.²⁵⁵

The Convention recognizes that certain communities in underdeveloped countries are mainly defenceless to the negative effects of these changes. Which comprise nations with coastlines and those disposed to drought. Nations that depend on significantly on fossil fuels may be more exposed to the Economic effect of these change and mitigation initiatives. The Convention prioritizes actions that address the detailed requirements and apprehensions of vulnerable countries, including investment, insurance, and technology transfer.²⁵⁶

“Article 7” as the highest organisation of the (UNFCCC) Convention “The Conference of the Parties” (COP) is hereby established.²⁵⁷

Article 12 governs how parties transmit implementation information. The concord mandates Annexure One Parties to decrease “GHG” discharges to nineteen ninety

²⁵³United Nations Framework Convention on Climate Change,(1992) Principles Article 3 (1). *available at:*

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on 12.6.2022)

²⁵⁴ UNFCCC, (1992) Commitments, Article 4 (1)& 4 (2), *available at:*

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on 12.6.2022)

²⁵⁵Commitments, Article 4 (7).*available at:*

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on 15.6.2022)

²⁵⁶UNFCCC, (1992) Commitments, Article 4 (8) & 4 (9), *available at:*

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on 15.6.2022)

²⁵⁷ UN, (1992)Conference Of The Parties, *available at:*

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven g.pdf (last visited on 15.6.2022)

points by the completion 1990s, allows for calculating the appropriateness of these pledges.²⁵⁸

2.4.4. “Intergovernmental Panel on Climate Change” [IPCC]

Despite not being a Convention entity, the IPCC provides valuable scientific data that aids in the understanding of climate change, offer a reliable source of current multidisciplinary knowledge on Climate change, “World Meteorological Organization” (WMO) and the “United Nations Environment Programme” UNEP developed it in 1988, previous to the Convention's adoption. It do not organises its own study; instead, it thoroughly evaluates the global body of peer-reviewed books, journals, and other sources that provide scientific, technological, and socioeconomic data on climate change. All WMO and UNI members are welcome to join the IPCC. Its secretariat is located in Geneva at the WMO headquarters.²⁵⁹

The organization of the IPCC is most renowned for its thorough assessment reports, which combine the conclusions of its three uniquely established Working Groups and are regarded as reliable sources of data on climate change.

Working Groups: Two Co-Chairs are appointed to each, one from a Advanced nation and one from a Evolving one. Every Working Group is supported by a technical support section. The Summary of scheming and special reports for Policymakers is approved in Working Group sessions. Each Bureau is fragment of a Working Group. These are its Vice-Chairs and co-chairs.

Working Group I: Examines the methodical facets of the Climate structure and its evolution.

Working Group II: Evaluates as to how these changes are having an impact up on ordinary and anthropological structures and evaluates the choices for adaption.

Working Group III: Examines the techniques aimed at dropping Green House Gas emissions in mandate to condense climate change. (A term for "mitigation").

“*National Greenhouse Gas Inventories Task Force*”: Creates techniques for scheming discharges of Green House Gases.

²⁵⁸United Nations (FCCC), (1992), Article 12. *available at:* https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven_g.pdf (last visited on 15.6.2022)

²⁵⁹(IPCC) is the United Nations set up the in 1988.The inventories., *available at:* <https://www.ipcc.ch/> (last visited on 15.6.2022)

In 1990, the “Intergovernmental Panel on Climate Change” IPCC finished writing its first assessment report, “FAR”. The UNFCCC was founded on it. The first (COP), which was convened in Berlin in 1995. Formation of the UNFCCC were both impacted by this study.²⁶⁰ According to the executive summary of the working group-1 Summary for Policymakers report, scientists were positive that discharges commencing social action are significantly raising the absorptions of “Greenhouse Gases” in the atmosphere, on average, causes the Earth's surface to warm even more. With confidence, they concluded that shared heightened greenhouse effect is triggered by rise of CO₂. Based on the “IPCC” “SAR” released in 1995²⁶¹ as a result of talks made available to Conference of Parties²⁶² (COP 2) in 1996, the “Kyoto Protocol” was adopted.²⁶³ The IPCC 3rd Assessment Report “TAR”²⁶⁴, which was presented to (COP7) in 2001, added to and strengthened the (SAR's) findings about global warming. The 4th Assessment Report (AR4) was issued in 2007,²⁶⁵ the 5th Assessment Report “AR-5” “United Nations” “*Intergovernmental Panel on Climate change*” IPCC was completed in 2014,²⁶⁶

²⁶⁰Intergovernmental Panel on Climate Change, First Assessment Report (FAR), prepared by (Working Group I, Scientific Assessment, 1990), *available at*: https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_I_full_report.pdf (Working Group II, Impact Assessment, 1990), *available at*: https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_II_full_report.pdf (Working Group III, Response Strategies), *available at*: https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_III_full_report.pdf (last visited on 15.6.2022)

²⁶¹Intergovernmental, Second Assessment Report (SAR), (1995), *available at*: https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_sar_wg_I_full_report.pdf (last visited on 15.6.2022) (Working Group II, Impacts, Adaptations and Mitigation of Climate Change: Scientific-Technical Analyses, 1995) *available at*: https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_sar_wg_II_full_report.pdf (last visited on 15.6.2022) (Working Group III, Economic and Social Dimensions of Climate Change, 1995) *available at*: https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_sar_wg_III_full_report.pdf (last visited on 16.6.2022)

²⁶²(COP) is the supreme governing/decision making body of an international (UNFCCC) adopted in (New York on 9 May 1992). *available at*: <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop> (last visited on 16.6.2022)

²⁶³The Kyoto Protocol was an international treaty which extended the 1992 (UNFCCC) *available at*: https://unfccc.int/kyoto_protocol#:~:text=The%20Kyoto%20Protocol%2C%20like%20the,the%20impacts%20of%20climate%20change (last visited on 16.6.2022)

²⁶⁴The IPCC Third Assessment Report (TAR), *Climate Change 2001*, is an assessment.

²⁶⁵The IPCC Fourth Assessment Report (AR4), *Climate Change 2007*, *available at*: <https://www.ipcc.ch/report/ar4/wg1/>,

²⁶⁶The (IPCC) Fifth Assessment Report (AR5), *Climate Change 2014*, *available at*: https://www.ipcc.ch/site/assets/uploads/2018/04/ipcc_ar5_leaflet.pdf

2.4.5. Kyoto Protocol 1997

“United Nations” “Framework Convention on Climate change” UNFCCC is associated with the Kyoto Protocol, an intercontinental agreement that binds its members by establishing globally enforceable carbon reduction objectives. As a concern of over 150 Years of business commotion, industrialised nations are primarily accountable for the existing extraordinary intensities of Greenhouse Gas discharges in the atmosphere. Accordingly, the Protocol imposes a greater burden on these countries under the concept of mutual but distinguished responsibilities.²⁶⁷ The "Marrakesh Accords" are the specific guidelines for carrying out the Protocol that were decided upon during COP 7 in “Marrakesh, Morocco”, in 2001.

On December 8, 2012, the “Doha Amendment” to the “Kyoto Protocol” was ratified in Doha, Qatar. The modification consists of:²⁶⁸

Annexure one parties to the “Kyoto Protocol” have made new obligations for a subsequent period spanning from January 2013 to December 2020.

Parties will report on reviewed items of (GHGs) during their 2nd obligation passé.

Amendments to the “Kyoto Protocol” were made to address difficulties from the first pledge dated and update them for the second.

2.4.6. United Nations “World Summit on Sustainable Development”

At the “World Summit on Sustainable Development” (WSSD), identified as “Earth Summit 2002”, the “Johannesburg Declaration” on “Sustainable Development” was embraced. “Johannesburg Declaration” expands upon previous statements made at the “Earth Summit” in “Rio de Janeiro” in 1992 (*Rio Declaration*) and the “Conference on the Human Environment” in Stockholm in 1972 (*Brundtland Report*). The world's nations are pledged to *sustainable development*, but multilateralism is also heavily mentioned as the way forward.²⁶⁹

²⁶⁷Kyoto Protocol (Kyoto, 11 December 1997) available at:

https://treaties.un.org/doc/Publication/CTC/Ch_XXVII-7-b.pdf(last visited on 20.6.2022)

²⁶⁸What is the Kyoto Protocol?, available at: https://unfccc.int/kyoto_protocol(last visited on 20.6.2022)

²⁶⁹The WSSD (2002. available at: <https://sustainabledevelopment.un.org/milestones/wssd> (last visited on 20.6.2022)

CHAPETR-3

LEGAL INSTRUMENTS GOVERNING INTERNATIONAL TRADE

3.1. Introduction

We are currently living in the stage of globalization which led to increased integration of trade, industry and markets worldwide. Worldwide trade is a multifaceted structure predisposed by numerous individuals and governed by various authorities and organizations. The “World Trade Organization” (WTO) is undoubtedly the most important of these institutions as well as a permanent institution that replaced the temporary “General Agreement on Trade and Tariffs” (GATT). The “United Nations” was founded in 1995 and has more than 100 associate nations and their agenda²⁷⁰ spans trade, service, intellectual property, and investment problems.

Without a doubt, the process of globalization is a WTO pioneer, meaning that the amalgamation of a country’s economy with the intercontinental economy can be described as globalization.²⁷¹ This implies opening up the economy to foreign direct investment by liberalizing rules and regulations and providing a favorable and stimulating industrial environment. Many researchers suggest that globalization encompasses economic integration, policy transfer, knowledge transmission, cultural stability, power relations, and the creation of a global market free of sociopolitical control.²⁷² As stated by Swedish journalist that globalization involves shrinking the planet and bringing everything closer together. The concept denotes to the ease with which individuals on opposite sides of the sphere can interact and benefit from one another.²⁷³

Further Anthony Diddens²⁷⁴ defines globalization as the increase of social relations between distant location, influencing local events and vice versa. Likewise, according

²⁷⁰ John Baylis and Steve Smith, *et.al.* (eds.), “The Relation”, *Oxford University Press*, 3rd Edition, pp. 601 (2005), available at <https://tudents.aiu.edu-resources-onlineBook>

²⁷¹ Giuseppe Gaburro and Edward O’Boyle, “Norms for Evaluating Economic Globalization”, *International Journal of Social Economics*, Vol. 30, No. ½, pp. 95-118 (2003), available at <https://doi.10.1108/03068290310453628>

²⁷² *Ibid*

²⁷³ Thomas Larsson, “The Story of Globalization”, Review Edition, Washington D.C, U.S: Cato Institute, pp. 9 (2001), available at <https://www.academia.edu>

²⁷⁴ Anthony Giddens, “The Consequences of Modernity”, California US: *Standford University Press*, pp. 64 (1990), available at <https://voidnetwork.gr>

to Chiyu Chang²⁷⁵, globalization is a vital period in the cultural process since it encompasses a constant struggle between similarity and diversity. This stage is characterized by extreme disjunctions between global fluxes, creating unpredictable landscapes. Globalization involves transnational productions, a new division of labor, and new migratory flows. The new economical situation accelerates processes from “South to North”, leading to the internationalization of state-making into globalizing agencies.²⁷⁶ National activities must be performed with a global mindset and perspective.²⁷⁷

Over the last fifty years, the “WTO” and its ancestor, the GATT, have efficaciously concentrated trade obstructions for a rising amount of nations. The GATT, the antecedent to the WTO, started in “1947” with only 23 associates and now has more than hundred associates, for over 97% of global commerce. While the WTO recognized in 1995, but its roots may be outlined back to the “*Bretton Woods Conference*” after “World War-II”.²⁷⁸ The Conference established the GATT to promote economic recovery as glowing their primary goals was to decrease impediments to intercontinental trade. Different trade agreements were used to decrease charge barricades, measurable limits, and subsidies. GATT was an arrangement and not an association. Formerly, GATT aimed to convert into an intercontinental organization, similar to the “World Bank” or “International Monetary Fund”.²⁷⁹ Though, the settlement remained unratified so it stayed merely an arrangement. Soon WTO has substituted the purposes of GATT.

GATT originated into power in the year 1948 and India is its unique founder members. During the commencement there were 122 associate nations and the majority was below industrialized and emerging nations. GATT nurtured its participation and reduced trade barriers. GATT members met regularly for what became known as

²⁷⁵ Chi-Yu Chang, “How American Culture Correlates the Process of Globalization”, *Asian EFL Journal*, Vol. 6, Issue 3 (2004), available at <https://www.asian-esp-journal.com>

²⁷⁶ Krisztina Varro, “Changing Narratives on EU Multi-level Space in a Globalizing Era: How Hungary as a National Space Story”, *European Planning Studies*, Vol. 16, Issue 7, pp 955-969 (2008), available at <https://doi.org/10.1080/09654310802163751>

²⁷⁷ Ian Clark, “Globalization and International Relations Theory”, pp 48 (19991), available at <https://antpolitics.files.wordpress.com>

²⁷⁸ Meredith Crowley, “An introduction to be the WTO and GATT”, *Economic Perspective*, Vol. 27, 4th, No. 4 (2003), available at <https://www.chicagofed.org>

²⁷⁹ Vasudeva P K, “India and World Trade Organization”, *Planning and Development Delhi: A.P.H. Publishing, Corporation* (2000), available at <https://www.abebbooks.com>

negotiating rounds.²⁸⁰ During the same period, trade between GATT members increased significantly. In 2000, trade between WTO members was twenty-five times more than in 1950.²⁸¹

The GATT principles are the important fundamental principles based in Most-Favored-Nation Treatment (MFN) under Article I; National Treatment (NT) Article III; Anti-Non-Tariff Barriers Principle; Tariff Concession Principle. Since during GATT the capacity of the trade between GATT associates showed that trade grew unhurriedly than world GDP.²⁸² Despite this some issues have arisen by GATT framework. For example, the GATT's clash clearing practice was not as effective as intended. Countries with long-standing variances failed to resolve disputes such as administration aids for trades and limitation on overseas investment.²⁸³ Furthermore, several commodities, most notably *agricultural products* and *textiles*, stood broadly exempt commencing GATT rules. Likewise, it was commonly felt that certain types of administrated trade protection, such as *anti-dumping duties*, *voluntary export restraints*, and *countervailing duties*, were limiting trade and altering trade configurations in assortment of important industries.²⁸⁴

The rules governing trade-related venture processes, such as local procurement necessities for plants established with overseas interrupted venture, were heavily debated. To resolve these issues, another meeting of trade discussions began in 1986 as the "*Uruguay Round*".²⁸⁵ The Uruguay Round's goals stood extra determined than previous rounds. It aimed to implement significant changes in what way the universal dealing structure would function. GATT accord of 1994 assigned through the Round, created the "World Trade Organization" which was first envisioned by delegates of the "*Bretton Woods Conference*" fifty years ago.²⁸⁶

GATT succeeded as an effective international organization sponsoring eight series of all-party trade discussions. The "Uruguay Round" piloted from 1987 and concluded in

²⁸⁰ *Ibid*

²⁸¹ Hoekman Bernard and Kostecki Michel (eds.), "The world trading system: from GATT and WTO", USA:, pp. 20 (1995), available at <https://www.global.oup.com>

²⁸² T.N. Srinivasan, "Developing Trading System: From GATT, 1947 to the Third Ministerial Meeting of WTO, 1999", Department of Economics, Yale University, (19991), available at <https://www.iatp.org>

²⁸³ *Supra Note 281*

²⁸⁴ *Supra note 282*

²⁸⁵ Alan Oxley, "The Achievements Uruguay Round", *A Journal of Policy Analysis and Reform*, Vol. 1, No. 1, pp. 45-53 (1994), available at <https://www.jstor.org/stable/43198662>

²⁸⁶ *Ibid*

the “Marrakesh Agreement” in 1994 as a result formation of the “World Trade Organization” which further incorporates the fundamental ideologies of the GATT.²⁸⁷ In this manner, the Uruguay Round replaced the GATT with a more egalitarian and truly global one, resulting in an essential uniformity of the regulations for all member nations. Associates have to follow instructions and obligations; regulations are extended to new “Uruguay Round” topics, etc. GATT trade regulations were extended to previously exempted areas since they remained considered too difficult to liberalize during the Round.²⁸⁸

The WTO’s functions included overseeing the application, management, and procedure of the enclosed accords. It assists as a medium for compromise and dispute resolution. Furthermore, it is accountable for reviewing and disseminating domestic trade procedures, ensuring trade policy consistency and transparency through monitoring in international monetary policymaking.²⁸⁹ WTO prioritizes helping developing, least-developed, and low-income nations migrate to WTO rules and disciplines concluded methodological assistance and teaching. The WTO encouraged trade liberalization which is crucial to commercial and societal progress to achieve justifiable growth and ecological protection.²⁹⁰

WTO members have different view regarding environment or sustainable development as how to implement it within the member nations. Since the advanced and evolving nations has a long debate over the sustainable development. Since the developed countries often impose penalties or bans on products from unindustrialized countries that are non- environmental friendly products.²⁹¹ So here is a wide divergence of opinion between the two clusters of nations.

Further “Regional Trade Agreements” (RTAs) inside WTO are important components of intercontinental trade relations, which associates and the Secretariat working together to gather information and foster discussion about RTAs to improve transparency and understanding of their effect on the large multidimensional exchange

²⁸⁷ William R. Cline, “Evaluating the Uruguay Round”, *The World Economy*, Vol 18, Issue1, pp. 1-23 (1995), available at <https://doi.org/10.1111/j.1467-9701.1995.tb00198>

²⁸⁸ *Ibid*

²⁸⁹ Thummuluri Siddaiah, “International Financial Management”, Pearson Education India, Business & Economics, pp. 450 (2009), available at <https://www.scribd.com>

²⁹⁰ *Ibid*

²⁹¹ WTO- Understanding the WTO- The Uruguay Round, available at <https://www.wto.org>

structure. After that WTO has started multilateral trading agreements between dual or additional parties in command to work smoothing inside the structure of WTO rules.²⁹²

The “World Trade Organization” focuses on international business and facilitates the resolution of trade disputes. It also helps developing countries maintain positive relationships with developed economies by lowering tax and trade barriers. It eliminated trade discrimination between developed and emerging economies, ensuring equitable treatment for all countries in global trade. So the WTO promotes international trade.²⁹³

3.2. Inception of GATT/ WTO

Nations do business since it benefits them. Naturally, there may be extra aspects at play, but participant gain is the principal carter of international trade. Specialization allows resources to be directed to their most productive use in each trading nation, which primes to the emergency of international trade.²⁹⁴ Many nations assumed that they could produce one or more commodities at a real cost of production that was lower than that of their trading partners. It follows that by specializing in those commodities in clear competitive advantage, each nation determines to export those goods and import other goods that it produces at a higher actual cost than everyone else.²⁹⁵ The Smoot-Hawley Tariff Act²⁹⁶, passed by the “US Congress” in the year 1930s during the Great Depression increased US tariffs to an ordinary 60%. United States trade partners also raised similar tariff barriers and engaged in competitive devaluation of their currencies. These actions established the current international economic order.²⁹⁷ The Great Depression grew worse as a significance of the subsequent competition to the extremity, higher tariff barriers, and additional price declines. The catastrophic effects of the

²⁹² Regional Trading Agreements, CFI Team, *available at*<https://corporatefinanceinstitute.com>

²⁹³ *Supra Note 278*

²⁹⁴ Baldev Raj Nayar, “Globalization and Politics in India”, Oxford University Press (2007), *available at* <https://www.abebooks.com>

²⁹⁵ India, WTO and Trade Issues, Bi- monthly Newsletter of Centre for WTO Studies, Centre for WTO Studies, Vo. 1, No. 8 (2009), *available at*<https://wtocentre.iift.ac.in>

²⁹⁶ The Smoot-Hawley Tariff Act of 1930 was enacted to protect U.S farmers’ foreign competition by increasing tariffs on certain foreign goods. It was also intended to shield other from foreign rivals. *available at*

<https://www.investopedia.com>

²⁹⁷ Amanpreet Kaur, “World Trade Organization and India”, Department of Political Science, Guru Nanak Dev University (2017), *available at*<https://hdl.handle.net/10603/285455>

1930s’ ‘beggar-thy-neighbor’²⁹⁸ tactics endured in the minds of decision-makers long after the war. It was acknowledged that the presence of international institutions is essential for the maintenance of state cooperation.²⁹⁹ Avoiding a repeat of the dreadful experience of the interwar period’s international economic relations was the main goal of the meetings. The ‘beggar-thy-neighbor’ policies of the 1930s Great Depression, in which each nation attempted to shift its economic despair to the others by imposing high tariffs and depreciating its currency, caused in the nearly total collapse of the intercontinental trade system, intensifying and extending the economic crisis.³⁰⁰

3.2.1. “Bretton Woods Conference”

During World War II there was no opportunity to restructure the universal transaction structure. As the war ended, major trading nations rushed to restructure the economic system internationally to avoid repeating the 1930s economic downturn. In 1944, the Bretton-Woods Conference recommended establishing international bodies to maintain economic cooperation. The “*International Monetary Fund*” (IMF) was established to address stability of disbursement issues.³⁰¹ The “*International Bank for Reconstruction and Development*” (World Bank) was established to rebuild the war-torn economies of “Western Europe”. WTO address issues related to intercontinental trade. The (IMF) was founded in July 1944, while the “World Bank” was established in December 1945.³⁰²

In accumulation to acting as a platform for collaboration and consultation, the (IMF) was tasked with managing a scheme of permanent interchange tariffs established on the US “currency and gold” and providing short-term financial support to nations who were temporarily experiencing steadiness of disbursements short falls. Financial support to the nations shattered by conflict and the advancement of less developed nations’ economic fell under the purview of the IBRD.³⁰³

²⁹⁸ The phrase ‘beggar-thy-neighbor’ refers to a group of economic practices that a nation implements to alleviate its own financial difficulties but ultimately make other nations’ financial issues worse. The policy’s effect of turning neighbouring countries become ‘beggar’ is where the phrase originates.

²⁹⁹ *Ibid*

³⁰⁰ Jayanta Bagchi, “World Trade Organization: An Indian Perspective”, *Calcutta: Eastern Law House*, 1st Edition (2000), available at <https://bharatlawhouse.in>

³⁰¹ Bandari Surendra, “World developing countries: diplomacy to rules based system”, Delhi: Deep & Deep Publication, pp. 503- 514 (1998), available at <https://catalogue.nla.gov.au>

³⁰² *Ibid*

³⁰³ Bretton Woods-GATT, 1941-1947, MILESTONES: 1937-1954, available at <https://history.state.gov>

In 1947, after four years of negotiations on trading system and other issues including the framework for proposed new body to manage intercontinental trade and the regulations governing tariff negotiations. The first round of tariff discussions which took place at Geneva in year 1947, resulted in a bond for the “*International Trade Organization*” (ITO) and a reduction in tariffs.³⁰⁴ In addition, participant’s nation signed the “General Agreement on Tariffs and Trade” (GATT), which was meant to act as temporary codifications of the regulations governing trade relations among signatories nation until the ITO was fully established, in addition to putting the agreed-upon tariff reduction into effect. The “*United Nations*” “*Conference on Trade and Employment*” met in Havana in year 1947 to deliberate the draft ITO charter.³⁰⁵ After four months of talks, representatives from fifty-three nations signed the final documents in March 1948. Underneath the GATT 8th series of discussion on trade discussions as a consequence noteworthy decrease in charge between its associates earlier it was succeeded by the new organization known as “World Trade Organization” in 1995.³⁰⁶

3.2.2. International Trade Organization (ITO)

Global bests were restless to include institutions and protections into the global structure later the “Great Depression” to prevent the world from experiencing another one of these catastrophic tragedies. In calculation to the “World Bank” and the worldwide Monetary Fund, the 1944 “Bretton Woods Conference” acknowledge the want for a parallel worldwide trade organization, which would eventually be suggested as the “International trade Organization” (ITO).³⁰⁷ Probably only finance ministry personnel attended Bretton Woods and not trade ministry representatives; no trade deal was negotiated there. The U.S took the lead in advancing the view that free trade provided an important for achieving world peace.³⁰⁸

The “Department of State” US published proposals for expanding employment and global trade in 1945. These suggestions proposed the formation of an ITO and the overall idea of intercontinental trade codes. The effort on the agreement of “International Organization for Trade” started by a preparatory committee and

³⁰⁴ Ajay Chhibber, “What Ails the Bretton Woods Sysyte?”, *Modernizing for The Twenty-Fist Century*, Atlantic Council, pp. 6-8 (2022), available at <https://www.jstor.org/stable/resrep44037.4>

³⁰⁵ *Ibid*

³⁰⁶ *Supra Note 297*

³⁰⁷ Bhat M K, “International trade & Financial Environment”, *Anne Books India* (2014), available at <https://www.bookswagon.com>

³⁰⁸ *Ibid*

encountered for the initial phase in London in the year 1946. The committee continued to work from *April to November 1947*.³⁰⁹ Simultaneously, the consultations regarding the Geneva GATT progressed satisfactorily, leading to an agreement in October 1947; eight of the twenty-three nations that had participated in the GATT's negotiations signed the protocol of "*Provisional Application of the GATT*". In March 1948, fifty-three countries signed the charter in Havana, Cuba. The ITO Charter set vital guidelines for international commerce.³¹⁰

However, the Havana Charter negotiators emerged at a final package that failed to satisfy somewhat of the requests of the numerous and frequently conflicting ITO members. It is immediately apparent that the signatory nations would not generally accept the ITO charter. The embracing of the charter was hindered by disagreements concerning the "US & Britain" regarding the planned ITO's authority over government actions.³¹¹ Other countries decided that an ITO without the participation of the US would be meaningless as it remained unratified by the US Senate. Likewise, no other countries rectify it either and surprisingly the ITO died before it was borne and collapsed.³¹² However, emerging nations disrupted the secure consensus in London by demanding that the Charter have exceptions allowing them to apply unique quantitative and other constraints to support their economic development. The resulting combination of commitment was unstable, contradictory, and unsustainable.³¹³ The ITO Charter didn't drive extreme in eliminating trade obstacles and consisted solely of exceptions.

During the Geneva Conference in 1947, the "Havana Charter" negotiations on a global convention reducing tariffs got underway. A subsequent round of talks created the "General Agreement on Tariff and Trade". Since its auspicious beginning, GATT has transformed universal trade, and its expansion has been an essential sign of its success.³¹⁴ With twenty-three contracting parties when it began in 1947, the GATT

³⁰⁹Eberhard Böhne, "The World Trade Organization: Institutional Development and Reform", UK: Palgrave Macmillan (2010), available at <https://www.psychobabel.co.uk>

³¹⁰ *Ibid*

³¹¹Debashis Chakraborty and Amir Ullah Khan", "WTO, London: Sage (2008), available at <https://kalnet.kshec.gov.in>

³¹² A Correspondent, History Repeating itself at WTO, Economic & Political Weekly, Vol. 42, Issue. 44 (2007), available at <https://www.epw.in>

³¹³ *Supra Note 311*

³¹⁴ Theo Eicher, John H. Mutti, et.al. (eds), International Economics, Taylor and Francis, 1st Edition (2009), available at <https://www.perlego.com>

extended to include more than hundred parties. The countries that made up the contractual parties collectively accounted for almost 90% of international trade. A government had to remove any import quotas (quantitative limits on imports) that hindered international trade and grant the most-favored-nation status to every other contractual party to join the GATT.³¹⁵ This temporary agreement established the international commercial system for forty-seven years. GATT was an intergovernmental treaty rather than a recognized international organization. GATT has only contractual parties rather than member states. In the late 1944s, it was expected that GATT would be combined into the New International trade Organization which was also being negotiated.³¹⁶

GATT aimed to liberalize international trade and promote overall economic prosperity. The preface to the GATT, listed the following important objectives: Goals include improving living standards, confirming complete engagement, aggregate real income and demand, maximizing global resources, and expanding production and international trade; establish a framework to gradually eliminate trade restrictions; establish regulations that prevent countries from acting unilaterally.³¹⁷ GATT established treaties and general instructions for global trade among countries. According to GATT rules, before making any changes to their tariffs or commercial policies member countries must ask with other associates. They should also work towards reducing tariffs and obstacles to worldwide trade, which should be negotiated inside the structure of GATT.³¹⁸

There were eight rounds conducted under GATT's aegis. Tariffs on goods were the main topic of discussion throughout the GATT series. These series were intended to significantly reduce trade barriers, including tariffs, to benefit both parties. The first three rounds of tariff cuts were successful due to the willingness of the U.S.A, a supporter of unrestricted trade, to reduce import duties from Europe without imposing

³¹⁵ Jane Ford, "A Social Theory of Trade Regime Change: GATT to WTO", *International Studies Review*, Vol. 4. Issue. 3, pp. 115-138 (2003), available at <https://doi.org/10.1111/1512-9488.00267>

³¹⁶ *Ibid*

³¹⁷ Hema Garg, "WTO and regionalism world trade", New Delhi: New Century, 1st Edition (2004), available at <https://opac.bangabasi.ac.in>

³¹⁸ K.R. Gupta, "GATT and underdeveloped countries", ATMA RAM & sons (1976), available at <https://library.cbn.gov.ng>

quantity restrictions.³¹⁹ The ensuing four rounds did not result in comparable tariff reductions. The US Administration's reduced negotiating authority, the unwillingness of Britain and commonwealth countries to reduce preferences, and establishment of the "European Community" all hampered liberalization efforts. As membership increased, it befitted flawless that existing procedures would not result in significant progress.³²⁰

The Kennedy Round expanded outside the assortment of the previous five GATT conferences. It was acknowledged that, while old GATT tactics had delivered significant results, they were no longer suitable to address the changing circumstances global commerce. In October 1962, President Kennedy signed the US Trade Expansion Act, allowing the administration to convert charge discounts of up to 50%.³²¹ This paved the stage for the "Kennedy Round" of trade negotiations in Geneva in 1964. Tariffs differences, agricultural problem exceptions, and non-tariff obstacles are all examples. Tariff negotiations have yielded significantly higher results than prior conferences. The "Kennedy Round" reduced charges on factory-made merchandises by an average five percent.³²²

Following the "Kennedy Round", the "Tokyo Round" imposed lower tariffs that did not pose significant impediments to trade in industrialized countries. The said Round was a treaty to abolish or reduce various non-tariff obstacles.³²³ Despite of liberalization efforts of Tokyo Round, many world leaders felt that GATT system was failing as GATT member had increasingly used bilateral arrangements, for instance distribute limitations, and added trade misrepresenting action, related intellectual property, service and agriculture. Additionally, they felt that the developing nations had been neglected in the preceding GATT meeting of trade discussions, these concerns lead to Uruguay Round.³²⁴

³¹⁹Pefela Gildas Nyugha, "The Principles of (WTO) and its Contributions to the Promotion and Protection of Trade: Case of Cameroon", University of Dschang (2016), *available at* <https://documents1.worldbank.org>

³²⁰ *Supra Note 301*

³²¹Anwarul Hoda, "Tariff Conferences and Rounds of Multilateral Trade Negotiations", *Cambridge University Press* (2018), *available at* <https://doi.org/10.1017/9781108157803.00>

³²² Sylvia Ostry and C. Fred Bergsten", *Brookings Institution Press*, pp. 167-204 (1999), *available at* <https://www.jstor.org/stable/25063141>

³²³ *Supra Note 321*

³²⁴ Dani Rodrik, "What Do Trade Agreements Really Do?", Vol. 32, No. 2, pp. 73-90 (2018), *available at* <https://www.jstor.org/stable/26409425>

The eight GATT rounds, which spanned from “1986 to 1994”, changed the GATT become the World Trade Organization. It began in Punta del Este, Uruguay, and was followed by talks in Montreal. It included nearly every trade agreement ever made and was arguably the biggest ever. It looked destined to fail at one point. However, the “Uruguay Round” ultimately resulted in the largest overhauling of the international trade system.³²⁵ The “Uruguay Round” covered more ground than just the guidelines and conventions of the transaction structure. The discourse in novel domains such as trade in *intellectual property rights*, merchandises and amenities, and trade in stock measures was also illustrated.³²⁶

Which resulted in a comprehensive program of agricultural reform, including the liberalization of commitments on tariffs, domestic supports, and export subsidies, and the replacement of all quantitative restrictions and other non-tariff measures by tariffs. It also achieved a mediocre upsurge in the proportion of tariff binding from twenty-one percent to seventy-three percent from developing countries, seventy-eight percent to ninety-nine percent for advanced nations, and seventy-three percent to ninety-eight percent for transition economies.³²⁷ *Agriculture, textile* and apparel industries, which were virtually disqualified after the GATT, were reintegrated into the agreement in the “Uruguay Round”.³²⁸

By late 1990, the “Uruguay Round” should have concluded. However, negotiations broke down when a deadlock was reached on the issue of agriculture throughout the executive gathering in Brussels in December 1990. So Arthur Dunkel, the GATT Director General, published the Draft Final Act, also discussed to as the Dunkel package or the Dunkel Draft Text (DDT), on December 1991.³²⁹ This document summarized the outcomes of the “Uruguay Round” of multidimensional trade negotiations. By December 1990, provisional agreements had been made several locations. In such circumstances, DDT reproduced them in areas where remaining differences persisted; the language was prepared by the chairs of several negotiation

³²⁵ Training Programme on WTO and Its Implications on Indian Agriculture, Reading Material, National Institute of Agricultural Extension Management (MANAGE), Hyderabad, *available at* <https://www.manage.org.in>

³²⁶ Joseph, “Challenge”, (1999), *available at* <https://ssrn.com/abstract-623972>

³²⁷ Seema Bathla, “Trade Policy Reforms”, *Sage Journal*, Vol. 7, Issue. 1 (2006), *available at* <https://doi.org/10.1177/139156140500700102>

³²⁸ *Ibid*

³²⁹ *Supra Note 326*

groups, who proposed compromise options. The DDT is a four hundred and sixty pages 'take-it-or-leave-it' document designed to overcome deadlocks in many areas.³³⁰

So the closing action of the "Uruguay Round" was signed in Marrakesh, Morocco in 1994 contained four hundred pages document. The goal was to fetch command to the unruly condition of transnational trade in merchandises and amenities worth trillion dollars. It aimed to replace bilateralism with a collection of universal codes governing multilateral global trade in merchandises and services.³³¹ The "Uruguay Round" led to the formation of "World Trade Organization". The overreaching objective stood to develop the opportunity of GATT commercial procedures to include previously excluded but increasingly significant fresh ranges, i.e. trade in amenities and knowledgeable stuff rights and trade-related investment measures, as well as areas that were previously exempted as they were too problematic to relax, like agriculture and textiles. The WTO formalizes and expands the organizational framework that has gradually developed above a retro of almost fifty years, building upon the GATT's secretarial system and organizational structure.³³²

In 1990, Canada proposed a Multilateral Trade Organization (MTO), which was later supported by the EU, which surprised many. The proposal was determined by the aim to establish a unified institutional framework for global trade. This would include the updated GATT, sister bodies on services, "Agreements on Trade and Service" (GATS), and "Intellectual Property" (TRIPS), and any other agreements made in the "Uruguay Round".³³³ The rule based trading system imposed obligation of compliance after the creation of new trade organization which was necessary to world trading environment. After WTO the dispute settlement measures seek to establish discipline in the trading practices of the WTO member States. Second, 'Trade Policy Review' paves the way for regular consultations of trade policies of member states, assisting supplementary trade liberalization.³³⁴ Third, it brought legal binding commitments under various trading agreements. Fourth, the WTO's duty to develop a free and equitable trade

³³⁰ M.C Vaish and Sudama Singh, "International economics", *New Delhi: Oxford & IBH Publishing Co. Pvt. Ltd*, 9th Edition (2013), available at <https://libcatmaysore.informaticsglobal.com>

³³¹ Kevin C. Kennedy, "The GATT-WTO System At Fifty", *Wisconsin International Law Journal*, (1998), available at <https://api.law.wisc.edu>

³³² William Reinsch and Jack Caporal, "A Renewed Global Trade System", *Trade Framework*, pp. 12-19 (2021), available at <https://www.jstor.org/stable/resrep28661.5>

³³³ Declaration of the Fourth Ministerial Conference (2001), available at <https://www.wto.org>

³³⁴ *Supra Note 332*

regime encompasses all commodities, goods, services, and innovative products that are traded.³³⁵

3.2.3. Structure

All of the treaties and legitimate mechanisms established in linking with the “Uruguay Round” will be made easier to execute and operate by the WTO. Established an environment for all talks and administer the covenant on the guidelines and processes controlling the trade program analysis process and dispute resolution. Further, they work collected with the ‘World Bank’ and IMF to improve the coherence of global economic policymaking.³³⁶ The WTO reiterates the GATT’s goal. These include increasing incomes and living standards, guaranteeing complete engagement, boosting commerce and production, and making the best practice of the world’s properties. The preface of WTO encompasses these purposes to deal sectors such as, it familiarizes the awareness of ‘sustainable development’, that focuses on making the best practice of the assets available to the world while maintaining environmental preservation and protection in line using altered stages of domestic pecuniary improvement. It identifies the importance of making proactive steps to guarantee that emerging nations, predominantly the minimum advanced ones, acquire a large piece of the expansion in global trade.³³⁷

Under the *Article 3* of the treaty creating the “*Multidimensional Trade Institute*” and specified five purposes of WTO. First, the WTO offers structure for the execution, controlling, and maneuver of trade promises and promotes the application, direction, and advancement of the goals of WTO agreements and multilateral trade agreements.³³⁸ It offers a framework for transport out the negotiation’s outcome, as resulted by the executive seminar. Second, the WTO perform as collaborator to further negotiations regarding their multidimensional trade relationships in areas covered by WTO contract and included in its annexes.³³⁹ Third, it oversees the appreciative on Guidelines and

³³⁵ *Supra Note 331*

³³⁶ Earl L. Grinols and Roberto Perrelli, “The WTO Impact on International Trade Disputes: An Even History Analysis”, *The Review of Economics and Statistics*, Vol. 88, Issue. 4, pp. 613-624 (2006), available at <https://www.jstor.org/stable/40043023>

³³⁷ *Ibid*

³³⁸ Richard Baldwin, “The World Trade Organization Multilateralism”, Vol. 30, No. 1, pp. 95-115 (2016), available at <https://www.jstor.org/stable/43710012>

³³⁹ Christina L. Davis and Sarah Blodgett Bermeo, “Who Files? Developing Country Participation in GATT/WTO Adjudication”, Vol. 71, No. 3, pp. 1033-1049 (2009), available at <https://doi.org/10.1017/s0022381609090860>

processes overriding the disbursement of Differences and manages the “Trade Policy Review Mechanisms”. Fourth, WTO collaborates with the “IMF” and “World Bank” when needed in command to promote more commercial consistency in the devising of worldwide economic policies.³⁴⁰

Further, WTO’s highest authority is the Ministerial Conference made up of ministerial-level representatives from every WTO member and devises the authority to select on any issue pertaining to any multidimensional trade contract. The conference must take place every two years. The Ministerial Conference serves as the WTO’s executive and is in charge of executing its duties. The “*General Council*” which is a composition of delegates of all WTO associates is compulsory to be present in the Conference and daily business of the WTO.³⁴¹ The council organizes the “*dispute settlement body*”, for disagreement clearing measures and the “*Trade Policy Review Body*”, to demeanor fixed evaluation of the program of WTO members. Furthermore, the council representatives responsibilities to three major councils such as, the council of “Trade in Goods” “Trade in Service” and (TRIPS council).³⁴² The three are in charge of in what way the WTO trade sectors treated is implemented. There are also additional bodies for these three. The “*General Council*” is reported to by six additional bodies. They address topics like environmental concerns, trade and development, provincial trade contracts, and administrative matters.³⁴³

The Director General is in charge WTO Secretariat, the activities of over a hundred workers. Its duties encompass supporting WTO delegates’ bodies, negotiating and implementing agreements, negotiating new member accession, and proposing mechanical support and knowledge to developing nations.³⁴⁴ The Director General cannot start a dispute settlement against a member, even if they have violated WTO regulations. The Secretariat cannot interpret WTO law or determine whether a

³⁴⁰ Ann Capling and Richard Higgott, “Introduction: The Future of the Multilateral Trade System-What Organization?”, *Global Governance*, Vol. 15. No. 3, pp. 313-325 (2009), available at <https://www.jstor.org/stable/27800760>

³⁴¹ Vanessa P. Sciarra, “The World Trade Organization: Services, Investment, and Dispute resolution”, *The International Lawyer*, Vol. 32, No. 3, pp. 923-931 (1998), available at <https://www.jstor.org/stable/40707447>

³⁴² Rachel Brewster, “Rule-Based Dispute resolution in International Trade Law”, *Virginia Law Review*, Vol. 92, No. 2, pp. 25-288 (2006), available at <https://www.jstor.org/stable/4144980>

³⁴³ John Ragosta, NavinJoneja and Mikhail Zeldovich, “WTO Dispute Settlement: the System if Flawed and Must Be Fixed”, Symposium: The United States, The Doha Round and the WTO- Where Do We Go From Here?, *The International Lawyer*, Vol. 37, No. 3, pp. 697-752 (2003), available at <https://www.jstor.org/stable/40707736>

³⁴⁴ Supra Note 341

member's policy complies with WTO regulations. The WTO delegation often examines the materials produced by the Secretariat closely. The WTO Director-General has limited power to choose what will be discussed on the organizations agenda.³⁴⁵

3.2.4. Principles of “Trading System”

WTO treaties are long and multifaceted as they are permitted transcripts casing a varied series of actions, such as farming, fabrics and dress, finance, communications, supervision acquisitions, manufacturing criteria and artifact security, diet hygiene regulations, knowledgeable stuff and much further. However, a sum of modest, vital ethics runs through all of these documents.³⁴⁶ These ethics are the base of the multifaceted transaction structure. The basic and important doctrines of the “WTO” are non-discrimination embodying two key modules i.e. Most-Favored-Nation (MFN) rules, and the “National Treatment Principle”. Bestowing to the MFN norms, a products created by an associate nation must be treated similarly with a ‘like’ one from another country. If a trading partner receives a five percent duty on a particular item, it is essential be functional promptly to imports from all WTO members.³⁴⁷ Once it arises to internal taxation, national treatment dictates that imported items must be treated no less happily than similarly or directly competitively produced domestically, provided they have fulfilled any boarder restrictions, that is, duties, fees and laws governing imported commodities must be ‘no less favorable’ than those governing comparable domestically produced goods when they remain in the nation.³⁴⁸

Some exclusion is allowed for example, nation can establish a allowed trade contract that relates solely to goods exchanged within the group, thereby discriminating against commodities from other countries. Alternatively, they might grant emerging countries preferential access to their markets.³⁴⁹ On the additional indicator, a country might impose tariffs on products from specific countries that it believes are being traded unfairly. Countries may discriminate in services under certain conditions. However, the agreements only allow for certain deviation under rigid conditions.³⁵⁰ In MFN principle

³⁴⁵ *Supra Note 343*

³⁴⁶ World Trade Organization- Ministerial Conferences (2021), *available at* <https://www.wto.org> (visited on 3 June, 2023)

³⁴⁷ Fact Sheets on European Parliament (2024), *available at* <https://www.eurorl.europa.eu>

³⁴⁸ *Supra Note 346*

³⁴⁹ World Trade Organization (2021), *available at* <https://www.wto.org> (Visited on 3 June, 2023)

³⁵⁰ Mitsuo Matsushita and Thomas J. Schoenbaum, *et.al.*, “The Policy”, *Oxford University Press* (2015), *available at* <https://scholarship.law.columbia.edu>

implies that if a nation drops a trade barricade or unlocks a bazaar, it must ensure for the similar commodities or service from all of its transaction associates, rich or deprived, fragile or durable. In case of domestic handling indicting taxes obligation on an importation is not an abuse of the principle merchandises subject to an equal tax' domestic behavior only smears after a merchandise, service, or piece of knowledgeable tuff has entered the market.³⁵¹

(GATT) prohibits the usage of straight trade restraints, including quantitative limitations, unless certain conditions are met. Countries have to provide an explanation for imposing import quotas, tariffs, or other trade-distorting regulations under this principle. Further, a nation that receives a discount from additional must provide 'equivalent' discount in return, bestowing to the reciprocity principle.³⁵²

In schedule of concession the charge obligations made by the WTO members in multidimensional trade compromise are specified. These lists establish 'ceiling binding', requiring members to negotiate reparation through the main sellers of the merchandises before raising tariffs above the bound levels.³⁵³ The (MFN) regulation assures that compensation, like tariff reductions, be extended to all "WTO" associates, increasing the penalty for reneging.

The final principle embodying in the "WTO" in definite situations, administration must be intelligent to control trade. Here are few kinds of requirements in their construction such as, articles that use trade measures for non-economic purposes, like protecting "public health" or "national security", fall under this category.³⁵⁴ Objects aimed at maintaining 'fair competition' include imposing countervailing charges on subsidized and dumped imports, respectively. Provisions allowing involvement in trade for pecuniary reasons; this type comprises necessities for taking action in the occurrence of substantial government support for a fresh industry.³⁵⁵

The WTO reiterates the GATT's objectives and functions. However, certain new areas established in the "Uruguay Round" stood before excused as too tough to liberalize.

³⁵¹Palmer D and PC Mavroidis, *et.al.*, "Dispute Settlement Organization" Cambridge University Press (2022), available at <https://www.cambridge.org>

³⁵²Parizek, "Supply 1995-2014", *Cambridge University Press* (2019), available at <https://doi.1017/S1474745618000393>

³⁵³ *Supra Note 350*

³⁵⁴ZdenekDrabek, "Is the WTO terminally ill? Threats to the international trading system", *Asian*, Vol. 4, issue. 1 (2024), available at <https://doi.org/10.1016/j.aglobe.2024.100078>

³⁵⁵ *Ibid*

Formerly the “Uruguay Round”, agriculture trade stayed not liberalized or included in GATT framework. The Round member countries signed the first “Agreement of Agriculture” (AOA) on 1994, in Marrakesh.³⁵⁶ The perseverance of the (AOA) is to replace every restriction on bazaar entrance for agricultural products with tariffs and decrease the amount of export subsidies by twenty-one percent over a retro of six years from the base period and fourteen percent for one-year intervals for developing nations. Additionally, the accord called for a thirty-six percent reduction in export subsidies over a six-year period for rich nations and a twenty-four percent reduction over a ten-year period for under-developed nations.³⁵⁷

Transnational trade in fabric and fashion, an area of specific concern for workers, has stretched remained substance to country-specific restriction. Since 1974, the Multi-Fiber Arrangement (MFA) has governed international textile and garment trade, allowing major importers to set quotas. Bilateral agreements safeguard domestic industry from modest low-cost merchandises from unindustrialized countries.³⁵⁸ Scheduled to be gradually eliminated through GATT 1994 integration, where ruled by the similar regulations that applied to supplementary industrialized products.³⁵⁹ The MFA restrictions was in four phases; products that made up sixteen acquires starting, further seventeen and less than a further eighteen.³⁶⁰

Since the “WTO” has a broad set “TRIMs Agreement” has a more confined scope and contains protection against technology transfer requirements and minimum export requirements. It forbids two investment-related practices that limit trade. One is the demand for domestic content, which limits the use of imported parts in production by requiring a certain percentage of production in the host nation.³⁶¹ Another is a demand for a trade balance, sometimes known as a foreign exchange balance, which mandates that a business export commodities in proportion to the quantity it imports. Although

³⁵⁶ Anwarul Hoda and Ashok Gulati, “WTO Negotiation on Agricultural and Developing Countries”, Issue Brief 48, *IFPRI* (2008), available at <https://ideas.repec.org>

³⁵⁷ Ibid

³⁵⁸ Marco Fugazza and Alessandro Nicita, “The direct and relative effects of preferential market access”, Vol. 89, Issue. 2, pp. 357-368 (2013), available at <https://doi.org/10.1016/j.jinteco.2012.09.001>

³⁵⁹ WTO Analytical Index: (report), (2023), available at <https://wto.org-analyticalindex>

³⁶⁰ Supra Note 358

³⁶¹ Simon Lester, “The Clothing”, *Research Gate* (2005), available at https://doi.10.1007/0-387-22688-5_9

international companies frequently complain about being subject to such rules, these provisions do not specifically address businesses.³⁶²

The GATS is the initial established of multilaterally agreed-upon and legally enforceable rules assigned to shield intercontinental trade in services.³⁶³ The GATS assigned through the “Uruguay Round” which comprises state programs of bazaar entrance commitment, occupies speaking extraordinary requirements unique to particular sectors, and a structure of common procedures and standards. An assembly aimed at business in amenities oversees the agreements’ administration.³⁶⁴

The “Agreement” on “Trade-Related Aspects of Intellectual Property Rights” was established as fragment of “WTO”. TRIPS acknowledges that inconsistent criteria for defending and implementing knowledgeable stuff privileges, as well as nonexistence of multidimensional frameworks to address intercontinental trade in fake goods, have caused tensions in universal commercial interaction.³⁶⁵ The TRIPS planning seeks to guarantee that all WTO associate nations have appropriates standards for knowledgeable stuff protection and inhabitants of associate countries get correspondingly positive behavior for that protection.³⁶⁶

The executive meeting is the WTO highest decision-making body which assembled each two years and unites all of the WTO’s associates, which are both countries or taxes union. Under each of the ‘multilateral trade agreements’, the “Ministerial Conference” has the ability to resolve on any issue. Eight ministerial conferences beneath the WTO system address a variety of themes related to trade liberalization.³⁶⁷ First Conference was organized in year 1996 at Singapore joined by 128 associate nations. Important highlights of the meeting are restatement of the “International Labor Organization” and dedication to upholding global labor standards. The efficiency and trustworthiness of the disagreement clearance mechanism will be further enhanced by more experience with it, and associates settled to form a working group to investigate the correlation

³⁶²Biswajit Dhar, “WTO Agreement on Agriculture: Worsening India’s Agrarian Crisis”, *Sage Journal*, Vol. 71, Issue 1 (2023), available at <https://doi.org/10.1177/00194662221146638>

³⁶³ (GATS), European Commission, available at <https://trade.ec.europa.eu>

³⁶⁴(GATS): In International Law, Treaty, available at <https://itlaw.fandom.com>

³⁶⁵ Cristian Timmermann & Henk van den Belt, “Intellectual movement”, *Liverpool Law Review*, Vol. 34, Issue 1, pp. 47-73 (2013), available at <https://philpapers.org>

³⁶⁶ *Ibid*

³⁶⁷ Seventh WTO Ministerial Conference, World Trade Organization (2009), available at <https://www.wto.org>

concerning investment and trade.³⁶⁸ Whereas in second Seminar was held in 1998 at Geneva 132 nations joined this convention. The key pronouncements of the convention are flustering up a device to guarantee complete and authentic enactment of prevailing multidimensional covenants; rejecting protectionist measures and embracing an uncluttered and crystal clear rules-based trading system.³⁶⁹

Third Session was held in 1999 Seattle but failed as the evolving nations conjointly dissented in contradiction of the deficiency of limpidity and impositions of the observations of industrialized nations on the under-developed countries.³⁷⁰ Since the main objective was to evaluation the operational of WTO in the preceding five years and to resolve on the outline for a fresh dialogs round. The fourth session held in “*Doha, Qatar*” on 9-14 November 2001 total 124 countries participated in the conference.³⁷¹ The main conclusion of the conference was to execution of the “Executive Session” “*Doha Development Agenda*” (DDA).

The “*Doha Ministerial Conference*” led to the “*Doha Development Agenda*” (DDA) which aims to promote monetary progress in the world’s poorest regions. The DDA’s principal focus was the liberalization of worldwide trade and venture rules.³⁷² The DDA sponsored “Special and Differential Treatment” (SDT) to integrate the world’s poorest countries into the worldwide interchange structure. Further, DDA aims for elimination of export subsidies, and reduce trade distorting domestic support from developed countries negotiations.³⁷³ The work program aims multilateral system for notifying and registering geographical indications in wine and spirits. The WTO recognizes the need to construe and device the *TRIP’s Agreement* to preserve public health and ensure universal access to pharmaceuticals.³⁷⁴

³⁶⁸Biswajit Dhar, “Hijacking of WTO Ministerial Conference”, *Economic and Political Weekly*, Vol. 32, No. 4, pp. 152-154 (1997), available at <https://www.jstor.org/stable/4405014>

³⁶⁹ *Supra* Note 367

³⁷⁰ World Trade Organization (WTO)- Doha Ministerial 2001: Ministerial Declaration”, *International Legal Materials*, Vol. 4, No. 3, pp. 746-754 (2002), available at <https://www.jstor.org/stable/20694256>

³⁷¹ *Ibid*

³⁷² Financial Times (2015), available at <https://www.ft.com> (visited on 10.6. 2023)

³⁷³ WTO- Doha Development Agenda, World Trade Organization, available at <https://www.wto.org> (visited on 10.6.2023)

³⁷⁴ Randy Schnepf, “WRO Doha Round: Implication for U.S. Agriculture”, CRS Report (2014), available at <https://nationalaglawcenter.org>

3.2.5. “Dispute Settlement Body”

The “dispute settlement body” has the jurisdiction to convene panel, adopt reports, monitor implementation, and take retaliatory measures for non-compliance of recommendations. Big improvement over GATT’s fragmented dispute resolution amongst the committee and multiple Tokyo Round panels.³⁷⁵ Major changes in DS such as, method beneath WTO has schedules; resolutions beneath the WTO events are very challenging to block as a consensus is needed for blocking the decisions; so decision appealed;³⁷⁶ Panel of a dispute at the WTO, countries to and settle ‘out of court’. At all phases, the WTO “Director-General” is available to mediate or facilitate conciliation.

Havana Charter after creation of ITO provides for “dispute settlement device” in its chapter VIII comprising of Article 92 to 97. In chapter VIII dispute settlement procedures are laid down for complaint by a Member if it considers that another Member is not fulfilling its obligations and situation arise which nullifies or impairs benefits which it receives under the Charter.³⁷⁷ As member may, after first consulting with the other Member of Members concerned, or through arbitration, provide notice to ITO if it considers that any benefits that it is receiving implicitly or explicitly under the Charter’s provisions, is canceled or impaired.³⁷⁸ According to Article 96, the ITO is able to ask the “International Court of Justice” ICJ for advice-giving thoughts on lawful matters that come up when conducting ITO business, in accordance with its statute, interested Members may also request advisory opinions from the Court in imperative to get a review of Conference decision.³⁷⁹ The ‘Dispute Settlement Body’ of the WTO exists to resolve trade disagreements among countries that arise between their rights and obligations contained in the covered agreements.³⁸⁰ The associate states of the WTO have not granted the panels of the argument clearing group the authority

³⁷⁵ Keith Bradsher, “Trade Exports”, (2005), *available at* <https://www.nytimes.com> (visited on 10.6.2023)

³⁷⁶ Alan Beattie, “Expectations low as Doha talks begin”, Financial Times, New Delhi (2008), *available at* <https://www.ft.com-Asian-Pacific-EU>

³⁷⁷ Patricia Brandstetter, “The Participation of NGO’s System”, Seminar ausvolkerrecht, International Economic Law, 2003, *available at* <https://eur-int-comp-law.univie.ac.at>

³⁷⁸ Thomas A. Zimmermann, “Negotiating the Review of the Understanding”, Cameron (2006), *available at* <https://ssrn.com/sbstract=1007535>

³⁷⁹ *Supra Note 376*

³⁸⁰ *Supra Note 378*

to operate as courts of broad jurisdiction. Therefore, WTO law should aid as the base for both defense and the claims that nations submit to the DSB.³⁸¹

3.2.6. “Trade Policy Review Mechanism”

The Instruments, time-honored in 1989, have a permanent position in the WTO. Systematic observing and investigation of countrywide trade procedures aims to improve transparency and knowledge, as well as assess their impact on the world wide transaction structure. Struggles being prepared by régimes to convey local trade law into conventionality using WTO provisions.³⁸² Distinctive clutch were set up to scrutinize original provincial unrestricted skill agreements. In 1996, a single “Regional Trade Agreement” committee was forms superseding these different operational revelries. The committee attempted to promote worldwide trade liberalization and analyze the impact of these agreements on the polygonal system.³⁸³

The transnational public began preparing for a post “World War-II” methodical bilateral structure for global fiscal, financial, and trade affairs in 1945. The objective of this framework was to raise trade barriers, particularly tariffs, to avoid the US from enacting trade strategies that would affect other nations. The intention remained to create an organized, bilateral structure for global trade, finance, and economic ties.³⁸⁴ In the years following WW-II, the economic system was primarily sponsored by the wealthy countries with the purpose of achieving its monetary goals. When the countries realized that the GATT centered system was not in their best interests, they began to strive aimed at innovative structure that emanated over the WTO in 1995.³⁸⁵

3.3. Significance of GATT/ WTO

“*General Agreement on Trade and Tariff*” agreements founded on a non-ratified executive agreement between countries, it was recognized in 1948 to address trade limitation imposed after Second World War, replacing the “International Trade

³⁸¹ Hereinafter the acronym DSB shall be used for Dispute Settlement Body

³⁸² (TPRM), available at <https://www.wto.org>

³⁸³ J.P. Nicholas, “Trade Beyond Boundaries: The Unrestricted Struggle Towards Humanitarian Global Trade”, APSA Annual Meeting Paper (2010), available at <https://dx.doi.org/10.2139/ssrn.1619586>

³⁸⁴ Jagdish Bhagwati, “Reshaping the WTO”, *Far Eastern Economic Review* (2005), available at <https://www.columbia.edu>

³⁸⁵ Cecilia Albin, “Using negotiation to promote legitimacy: An assessment of proposals for reforming the WTO”, *International Affairs*, Vol. 84, No. 4, pp. 757-775 (2008), available at <https://doi.10.1111/j.1468-2346.2008.00736.x>

Organization” (ITO).³⁸⁶ GATT was supposed to serve as a short-term structure for trade liberalization initiatives while the ITO was being approved. It has no implementation machinery, norms, or administrative framework to oversee its actions.³⁸⁷ It influenced no enforcement mechanism, no codifies instructions, and no executive configuration to monitor its operations. Despite this, GATT has endured and continued to serve as the cornerstone of the universal trade system that has governed commerce for almost fifty years.³⁸⁸

The Global Trade Agreement was a widely used description but it was limited to ‘trade limitation’. The ideologies of GATT (Articles I) and (III), forbid discrimination, form the root of this agreement. They require associates to give equally weights to other imports and equally with domestically produced ‘like products’ (national treatment requirement) once custom tax are paid.³⁸⁹ GATT rule recognizes that countries may essential to indirect measures connected to the environment, and certain clauses are significant to analyzing trade-related environmental policies. To better appreciate the impact of GATT standards on the environment, it’s important to review them.³⁹⁰

The GATT Preamble focuses on economic aims, stating that trade and economic endeavors should aim to raise living standards, develop global resources, and expand product on and interchange of products. The idea of consensus decision-making is probably the supreme main and constant aspect of GATT administration.³⁹¹ The greatest vital and enduring aspect of GATT governance may be the consensus decision-making principle. Instead of having an ‘executive board’ structure like its peers at Bretton Woods, the GATT opted for a ‘committee of the whole’ structure.³⁹²

In the “Uruguay Round” international agreements remained recognized for the initial stage ever pertaining to the trade of amenities (GATS) and the defense of knowledgeable stuff (TRIPS). Even after the ‘World Trade Organization’ was founded,

³⁸⁶ Sidney Picker Jr, “World Trade GATT, by John H. Jackson”, *Case W. Rsr. L. Rev.*, Vol. 22, Issue. 3 (1971), *available at* <https://scholarlycommons.law.case.edu/caselrev/vol22/iss3/16>

³⁸⁷ *Ibid*

³⁸⁸ Vanessa P. Sciarra, “The World Trade Organization: Services, Investment, and Dispute Resolution”, *The International Lawyer*, Vol. pp. 923-931 (1998), *available at* <https://www.jstor.org/stable/40707447>

³⁸⁹ *Ibid*

³⁹⁰ *Supra Note 386*

³⁹¹ Kendall Stiles, “Negotiating Institutional Reform: The Uruguay Round, WTO”, *Global Governance*, Vol. 2, No. 1, pp. 119-148 (1996), *available at* <https://www.jstor.org/stable/27800131>

³⁹² *Ibid*

international trade law kept evolving.³⁹³ This was brought about by the members' commitment to carry out additional discussions on unresolved concerns and the desire to eradicate trade barricades even after the launch of the "WTO".

Returning to the creation of the "World Trade Organization", the "Uruguay Round" was a key drive of its establishment. The GATT went through eight rounds of negotiations, with the Uruguay Round being the final one. After eight years of deliberation, the "World Trade Organization" established a new trading system.³⁹⁴ This was the most extensive, challenging, and lengthy round. This round of international commerce reformed norms, as well as addressed new challenges. The Round aims to address strategic issues related to the global economy, such as money, trade, and finance.³⁹⁵ Further, the Round goal was to secure a balanced agreement among the participants in accordance with increase in market access, improvements in procedures, institutional matters covering almost every aspects of trade.³⁹⁶

The Round covered nearly fifteen trade- related concerns, ranging from banking to telecommunication, rice genomes to pharmaceuticals. Fourteen of the fifteen negotiating groups are concerned with commodities trade, while the other fifteen are concerned with service trade liberalization.³⁹⁷ Later on all these issues were reduced from fifteen to seven which includes Agriculture, textiles and clothing, trade rules, TRIMS, TRIPS, dispute settlement, market access areas/ issues etc. so various commitments were made to advance bazaar entrance and some constitutional reforms had been undertaken by the Round.³⁹⁸

The 'Final Act' embodying the magnitudes of the "Uruguay Round" of "Multilateral Trade Negotiations" is a legal document that outlines the outcomes of the negotiations since the Round was initiated in "Punta del Este", Uruguay, in 1986 contracted by ministers in Marrakesh on April 1994. The said Act included texts of Ministerial

³⁹³ Dr. Alexander Ajazayeri, "Main Features of World Trade Law: With TBT Agreement: A guideline", Physikalisch-Technische Bundesanstalt (2011), available at <https://www.ptb.de>

³⁹⁴ *Supra Note 391*

³⁹⁵ Muhammad Ljaz Latif, "Uruguay Round of GATT and Establishment of the WTO", *Pakistan Horizon*, Vol. 65, No 1, pp. 53-70 (2012), available at <https://www.jstor.org/stable/24711208>

³⁹⁶ *Ibid*

³⁹⁷ Ashok V. Desai, "India and the Uruguay Round", *Economic and Political Weekly*, Vol 23, No. 45/ 47, Special Number, pp. 2371-2375 (1988), available at <https://www.jstor.org/stable/4394007>

³⁹⁸ Gilbert R. Winham, "The Prenegotiation phase of the Uruguay Round", *International Journal*, Vol. 44, No. 2, Getting to the Table: Process of International Prenegotiation, pp. 280-303 (1989), available at <https://doi.org/10.2307/40202599>

Decision and Declarations that provide additional clarification on special terms of certain agreements.³⁹⁹ With two significant exceptions, the Final Act addressed every negotiation topic included in the “Punta del Este Declaration”. First is the ‘market access negotiations’ in which individual countries made legally binding initiatives to lessening or eradicate definite “tariffs” and “non-tariff” blockades to product.⁴⁰⁰ These concessions are documented in national schedules, which are an integral component of the “Final Act”. The second is ‘initial commitments’ to liberalize trade in services. National schedules reflect commitments to liberalization.

The fragment of the “Final Act” was the “Uruguay Round Protocol” which includes national scheduled of concessions that record the results of bazaar contact consultations, including promises to remove or decrease tariff charges and non-tariff methods for trade. The ‘Uruguay Protocol’ had five appendices,⁴⁰¹ Appendix I-section A deals with agricultural products- tariff concessions on Most-Favored Nation basis; Appendix II-section B deals with agricultural Products and tariff shares; Appendix II: includes tariff discounts on a Most-Favored Nation (MFN) origin on extra produces; Appendix III: preferential tariff- Part II of schedules (if applicable); Appendix IV: Discounts on Non-Tariff Measures- Part III of Schedules; Appendix V: Farming Produces: Commitments Limiting Subsidization.⁴⁰²

The Schedule related to the Uruguay Protocol each member’s agreed- upon tariff reduction for non-agricultural items will be implemented in equal rate reduction unless stipulated otherwise in their schedule.⁴⁰³ Each consecutive reduction shall take effect on January 1 of each subsequent year, with the ending rate entry into the treaty forming the WTO.⁴⁰⁴

The WTO’s ultimate goal is to assist its associates practice trade to enhance living standards, generate occupations, and develop public’s lives. Global trade rules provide

³⁹⁹ Bruce Muirhead, “The Uruguay Round, 1986-1994: Era”, *C. Hurts and : Company* (2014), available at <https://www.jstor.org/stable/resrep15524.11>

⁴⁰⁰ *Ibid*

⁴⁰¹ Donald Mac Laren, “The Uruguay Round Agreement on Agriculture: A New Order?”, *Agenda: A Journal of Policy Analysis and Reform*, Vol. 2, No. 3, pp. 281-290 (1995), available at <https://www.jstor.org/stable/4318744>

⁴⁰² David S. Christy, Jr, “Round and ‘Round We Go..”, *World Policy Journal, Duke University Press*, Vol. 25, No. 2, pp. 19-27 (2008), available at <https://www.jstor.org/stable/40210176>

⁴⁰³ Michael Northrop, “The Uruguay Round: A GATTastrophe”, *Alternative: Global, Local, Political, Sage Publication, Inc*, Vol. 18, No. 2, pp. 171-200 (1993), available at <https://www.jstor.org/stable/40644772>

⁴⁰⁴ *Supra Note 402*

assurance and stability. Consumers and producers have reliable supplies and a broader selection of completed merchandises, materials, and services to use. Manufacturers and supplier understand that overseas bazaars will continue available to them.⁴⁰⁵ Every decision in the “WTO” are normally reached through compromise between all associates and endorsed by associate nations. Trade frictions are channeled through the WTO’s disagreement clearing procedures, which focuses on construing treaties and obligations and ensuring that countries trade policies comply with them.⁴⁰⁶

The “WTO” treaties sold engaged the vast transaction economies and approved in their assemblies, are at the sentiment of the multidimensional trade system. These accords serve as the legal framework for universal trade and protect WTO member’s important trade rights.⁴⁰⁷ They also oblige governments to maintain transparency and predictability in their trade policies which benefits everyone. The agreements establish a stable and transparent environment for producers of products to perform their operations and to develop the wellbeing of the general public of the WTO member nations.⁴⁰⁸

The “WTO” is solitary youngest international institutions, succeeding the GATT, which was founded during “World War-II”. The exchange structure that was initially established under the GATT is over 75 years old. But over the past seventy-five years an outstanding progression has seen and has been a potent device by fifteen times more than the worldwide economy each year. This means the GATT aided to generate a robust as well as thriving transaction structure backing to the progress of trade at global level. The trading system was created through a sequence of talks, rounds, and discussion conducted under the GATT. The initial rounds focused mostly on tariff discounts, but late talks expanded to include “anti-dumping” and “non-tariff” actions. The “Uruguay Round”, which grabbed abode between 1986 and 1994, resulted in the formation of the WTO.

⁴⁰⁵Shabana Qamar, “Role of WTO in the liberalization case study of India”, Aligarh Muslim University, Department of Commerce (2002), *available at* <https://hdl.handle.net/10603/60815>

⁴⁰⁶ Nicholas Bayne, “In the Balance: International Trade Negotiations”, Government and Opposition, *Cambridge University Press*, Vol. 26, No. 3, pp. 302-315 (1991), *available at* <https://www.jstor.org/stable/44482590>

⁴⁰⁷Nitya Nanda, “WTO and Trade Facilitation: Some Implications”, *Economic and Political Weekly*, Vol. 38, No. 26, pp. 2622-2625 (2003), *available at* <https://www.jstor.org/stable/4413724>

⁴⁰⁸ *Supra Note 406*

In 1997, the WTO expanded their trade on various aspects such as telecommunications services, banking, etc with sixty-nine states agreeing to broad liberalization events that went far beyond those approved upon in the “Uruguay Round”. Further, forty governments successfully ended discussions for tariff-free trade in technological products, while seventy members signed a financial services agreement that covered more than ninety-five percentage of trade in investment sectors, securities, and financial information.⁴⁰⁹ Further, in 2000 new discussions on farming and fisheries began which were combined into a large work driver, the “Doha Development Agenda”, which was launched during the fourth “WTO” “Ministerial Conference” in Doha, Qatar, in 2001.⁴¹⁰

The new work program included dialogs and extra effort on non-agricultural tariffs, trade, and the environment, WTO rules on anti-dumping and subsidies, trade assistance, transparency in administration, intellectual property, and other topics elevated by emerging markets as barriers to implementing WTO agreements.⁴¹¹ Talks on them and added issues have resulted in significant modifications of WTO “rulebook”. A new Government Procurement Agreement, adopted at the WTO’s 8th Ministerial Conference in 2011, increased coverage of the original agreement by an estimated \$100 billion each year.⁴¹²

The progress of the “Information Technology Agreement” concluded at the “10th Ministerial Conference” in “Nairobi” in 2015, eliminated tariffs on additional two-hundred information technological products valued at more than US\$ 1.3 trillion per year.⁴¹³ Alternative consequence of the Conference was the decision to abolish agricultural export subsidies, fulfilling one of the UN “Sustainable Development Goal” “zero hunger” targets. More recently, the “12th Ministerial Conference” in 2022 approved a historic step known as “Agreement on Fisheries Subsidies” and global remedies to the food crisis and the COVID pandemic.⁴¹⁴

⁴⁰⁹ Supra Note 407

⁴¹⁰ Ibid

⁴¹¹ Jack Caporal and William Reinsch, “WTO Jurisprudence”, In *towards a Climate-Driven Trade Agenda*, pp. 18-29 (2021), available at <https://www.jstor.org/stable/resrep28809.6>

⁴¹² Chad P. Bown, “Mega-Regional Trade Agreements and the Future of the WTO”. *Global Order and the New Regionalism*, pp. 29-40 (2016), available at <https://www.jstor.org/stable/resrep29885.6>

⁴¹³ Tania Voon, “Eliminating Trade Remedies from the WTO: Lesson from Regional Trade Agreements”, *The Quarterly*, Vol. 59, No. 3, pp. 625-667 (2010), available at <https://www.jstor.org/stable/40835427>

⁴¹⁴ Supra Note 412

We can ensure that trading system is fair and free as the negotiations norms must followed by supporters of the “WTO” and its regulations or agreements result from talks among its members. The present arrangement is essentially the consequence of the 1986-1994 Uruguay Round discussions, which comprised a main change of the novel GATT.⁴¹⁵ It established new sets of regulations for dealing the trade in amenities and knowledgeable stuff and implement a new methods for settlement of disputes. The entire set is around thousands of pages long and includes over thirty agreement individual member commitments known as Schedules rates and service market liberalization.⁴¹⁶ Through these accords, the WTO members preserve a non-discriminatory fundamental principle that specifies their rights and obligations. This means every member is assured that its exported products will be honored in member’s markets. The method also allows developing economies to be more flexible in achieving their obligations.⁴¹⁷

A. Goods and Services

It all started by trade in merchandises from year 1947 to 1994, the “GATT” was the platform for exchanging minor tariffs and extra trade obstacles; the language of the GATT outlined important norms, including non-discrimination. Since 1995, the “Marrakesh Agreement” establishing the “WTO” and its annexes (amended GATT) has severed as WTO’s authority agreement.⁴¹⁸ It has extensions allocating by explicit segments of commodities, such as agriculture, as well as particular topics such as products standards, subsidies, and anti-dumping operations. A recent notable addition was the “Trade Facilitation Agreement”, which went into effect in 2017.⁴¹⁹

Furthermore, banks, insurance businesses, telecoms, tour operators, hotel chains, and transportation corporations seeking to conduct business benefit from the same more

⁴¹⁵ *Supra Note 413*

⁴¹⁶ Judith L. Goldstein and Douglas Rivers, et.al., “Institutions Trade”, *International Organization*, Vol. 61, No. 1, pp. 37-67 (2007), available at <https://www.jstor.org/stable/4498137>

⁴¹⁷ *Ibid*

⁴¹⁸ Xuepeng Liu, “Trade Agreements and Economic Growth”, *Southern Economic Journal*, Vol. 82, No. 4, pp. 1374-1401 (2016), available at <https://www.jstor.org/stable/26632320>

⁴¹⁹ *Ibid*

open commerce concepts previously only relevant to trade.⁴²⁰ The (GATS) outlines these principles. The “WTO” associates have also made separate vows under the (GATS) declaring service areas they are ready to open up to alien war and how undeveloped those bazaars are.⁴²¹

A.1. Intellectual Property

The “Intellectual Property Agreement” provides standards for the exchange of ideas and creative works. The regulations specify in what way “*copyrights*”, “*patents*”, “*trademarks*”, “*geographical names*” items, industrial designed, and concealed data such as trade confidences ‘intellectual property’ should be safeguarded once trade is involved.⁴²²

A.2. “Dispute Settlement”

The WTO’s under the “Dispute Settlement” is critical for implementing thereby confirming that trade moves smoothly. Governments files complaints with the WTO if they believe their privileges under the WTO accords are being violated.⁴²³ Judgments made by specially chosen independent experts are established on elucidations of covenants and singular members’ commitments. The approach encourages members to resolve their issues through consultation with one another.⁴²⁴ If this fails, they can proceed through a *stage-by-stage* process that involves the potential of a decision by a board of specialists and the opportunity to challenge the ruling legally. The amount of circumstances brought before the WTO demonstrates assurance in the system.⁴²⁵

A.3. Trade Monitoring

The WTO’s “Trade Policy Review Mechanism” is designed to improve transparency and understandings of trade policies adopted by WTO associates. The “WTO” associates are subject to periodic examination, with each assessment involving reports

⁴²⁰Kalim Siddiqui, “International Trade, WTO and Economic Development”, *World Review of Political Economy*, Vol. 7, No. 4, pp. 424-450 (2016), available at <https://www.jstor.org/stable/10.13169/worlrevipoliecon.7.4.0424>

⁴²¹ *Ibid*

⁴²² *Supra* Note 418

⁴²³ Keisuke Iida, “Is WTO Dispute Settlement Effective?”, *Global Governance*, Brill, Vol. 10, No. 2, pp. 2070225 (2004), available at <https://www.jstor.org/stable/27800522>

⁴²⁴ Jeffrey Walters, “Power in WTO Dispute Settlement”, *Journal of Third World Studies*, Vol. 28, No. 1, pp. 169-83 (2011), available at <https://www.jstor.org/stable/45194766>

⁴²⁵ *Ibid*

from both the member and the WTO Secretariat.⁴²⁶ In adding, the WTO conducts frequent monitoring of global trade measures originated in 2008 during financial crisis. The global trade monitoring initiative has now become a regular purpose of the WTO. It showcases WTO members' enforcement of both trade-facilitating and trade-restricting measures.⁴²⁷

The WTO "*Committee on Trade and Development*" has responsibilities of mechanical assistance, and increasing involvement of evolving economies at global trading level, which examines the distinctive requirements of developing nations.⁴²⁸ WTO members initiated the "Aid for Trade" project in 2005 to assist developing economies in strengthening their infrastructure, increasing their trade capacity for trade, and maximizing the advantages of trade openings. Over billion has been distributed thus far to fund projects related to Aid for Trade. Each two years, the initiative is reviewed globally at the WTO's headquarters.⁴²⁹

The only multilateral partnership whose sole aim is to support least established nations in using trade as a facilitator for economic growth, sustainable development, and poverty alleviation is the "Enhanced Integrated Framework" (EIF) collaborates with governments, organizations, and academic institutions.⁴³⁰ Another partnership supported by the "WTO" is the Standards and Trade Development Facility (STDF), established to assist developing economies in meeting international standards for food safety, plant and animal health is another cooperation backed by the WTO. The STDF trust fund, which has given funding to support initiatives in low-income economies, is accomplished by the "WTO", and its Secretariat is housed there.⁴³¹

The main goals of the WTO are to enable its members to practice trade as a tool to improve people's living standards and trade movements as effortlessly and certainly as feasible. It accomplishes this by managing trade agreements and serving as a platform

⁴²⁶ Gretchen Heimpel Stanton (ed.), *Framework and Operation*, pp. 53-74 (2001), available at <https://www.jstor.org/stable/10.20851/j.ctt1t304rx.10>

⁴²⁷ *Supra Note 424*

⁴²⁸ Dmitry Grozoubski, "The World Trade Organization: An Optimistic Pre-Mortem in Hopes of Resurrection", *Lowy Institute for International Policy* (2020), available at <https://www.jstor.org/stable.resrep26112>

⁴²⁹ Christian Broda and NumoLimao, et.al., "Optimal Evidence", *American Economic Review*, Vol. 98, No. 5, pp. 2032-65 (2008), available at <https://doi:10.1257/aer.98.5.2023>

⁴³⁰ Patrick Low, "Potential Future Functions of the World Trade Organization", *Global Governance*, Vol. 15, No. 3, pp. 327-34 (2009), available at <https://www.jstor.org/stable/27800761>

⁴³¹ *Ibid*

for trade talks. Resolving disagreements about trade examining nation trade regulations enhancing emerging economies' capacity to trade by working by further intercontinental organizations.⁴³² The parliaments of every member state have approved the WTO's agreements. The Executive Meeting is the WTO's upper most policy making group which convenes each two years. Below this WTO has an ambassadors known as "General Council" sent from members' nation which meets numerous intervals in the "Geneva" headquarters.⁴³³ The "General Council" receives reports from the "Goods Council", "Services Council", and "Intellectual Property (TRIPS) Council" at a higher level. Additionally, a huge amount of specialist agencies, working groups, and functioning parties handle particular agreements and additional topics like membership applications, development, the environment, and regional trade agreements.⁴³⁴

A.4. Principles of the Trading System

Over the past few years, the trade organizations' "*Working Group on Trade and Competition Policy*" has given Members a forum to discuss the 'relevance of fundamental WTO principles of national treatment, transparency, and most-favored nation's behavior to competition program and vice versa'. The WTO does not explain or specific outcomes; rather, it creates a structure for trade policies.⁴³⁵ It is vigorous to appreciate five guiding principles for both the "WTO" and the GATT prior to 1994. The domestic dealing and the "Most Favored Nation" (MFN) treatment are the two primary components of it. Although their exact nature and scope vary across various domains, both are incorporated in the primary WTO covenant on knowledgeable stuff, commodities, and services.⁴³⁶ The WTO applies the most favored rules to all "WTO" associates under the same terms which it permits trade in a particular product type with added WTO associates must occur under the same conditions.⁴³⁷ There are multiple exceptions, such as when states join in unrestricted trade covenants or when

⁴³²Malati Anagol, "Contemporary issues in global trade and fiancé", *Bombay Himalayan Publication* (1993), available at <https://opac.library.iitb.ac.in>

⁴³³Menjor Singh, "World" (2005), available at <https://libopac.kannuruniversity.ac.in>

⁴³⁴ *Supra Note 432*

⁴³⁵ WTO Understanding the WTO- The GATT years: from Havana to Marrakesh (2018), available at <https://www.wto.org>

⁴³⁶ Christian Broda, "Optimal Evidence", *American Economic Review*, Vol. 98, No. 5, pp. 2032-65 (2008), available at <https://doi:10.1257/aer.98.5.2032>

⁴³⁷ Kern Alexander, "The Financial Stability: The Balance between Liberalization and Regulation in the GATS", Cambridge University (2003), available at <https://core.ac.uk>

underdeveloped countries receive special treatment. It indicates that imported goods should be treated equally than domestically produced goods as it was adopted to tackle non-tariff barriers to trade.⁴³⁸

Another principle is designed to limit the opportunity of “free-riding” that might occur as an outcome of the MFN regulation and a desire for improved access to foreign markets.⁴³⁹ The WTO is obliged to publish their trade related regulations and notify or review changes in their policies to the trading agreements. These internal transparencies are supplemented by “Trade Policy Review Mechanism” based on their periodic reports. Even in some circumstances managements are competent to check trade to protect environment and achieve sustainable development.⁴⁴⁰

B. Membership to WTO

To become a WTO member the process is exceptional to each nation and determined by the country’s stage of commercial progress and the existing trading regime. The process take about five years or more, although it might take longer if the country is not completely devoted to the method. The Kyrgyz republic’s accession negotiations were the shortest, whereas Russia’s was the longest.⁴⁴¹ A nation that wants to connect with “WTO” must apply to the “General Council” and include a detailed account of all trade and economic measures that the country feels may impact WTO accords. The application is succumbed and examined by the working party after necessary information the party focuses on discrepancy between WTO guidelines and the applicant’s transnational and internal trade policies.⁴⁴² The applicant country and other working members negotiated bilaterally in the final stage of admission to determine obligations and bazaar contact for products and services. Despite being agreed bilaterally, the new member’s agreements have to be functional to all “WTO” associates below standard non-discrimination norms. The “Protocol of Accession”, is a draft involvement accord, list of the members and all working parties’ meetings are incorporated in the accession package and forwarded to the common assembly after the

⁴³⁸ *Supra Note 436*

⁴³⁹ The WTO: An Historical, Legal, and Organizational Overview, *available at* <https://internationalecon.com/wto.ch1.php> (Assessed on 12 June, 2023)

⁴⁴⁰ Jeanne J. Grimmett, “Dispute: An Overview”, Congressional Research Service (2012), *available at* <https://www.crs.gov>

⁴⁴¹ Objectives and Organization of the WTO, *available at* <https://www.sansad.org.in/pdf/WTOREPORTENGLISH.pdf> (Assessed on 12 June, 2023)

⁴⁴² *Supra Note 437*

bilateral talks come to an end.⁴⁴³ After the general council adopts the accession, the applicant's assembly requisite endorses the "Protocol of Accession" before becoming a member. Some countries might have faced lengthier concurrence procedure owing to negotiations problem with additional WTO associates. Accordingly to research, if WTO didn't exist, the average country's export duties would increase by additional thirty percent.⁴⁴⁴

3.4. Trade Agreements as Legal Instruments of Trading System

The WTO agreements address trade in products, amenities, knowledgeable stuff, and many other issues related with trade. They emphasis the ideologies of liberalization and allow for changes. Individual countries have committed to lowering customer tariffs, barriers and opening their service markets. They provide mechanism for resolving conflicts and recommend specific treatment for poor countries. Governments must implement their trade policies open by notifying WTO laws and measures and reporting regularly to the WTO Secretariat. These contracts are also known as rule-based that governments have negotiated.⁴⁴⁵ The WTO control global trade and knowledgeable stuff rights. Governments must adhere to these standards when developing their strategies and performs. These agreements establish enforceable rights and obligations for states in a multilateral framework. The primary goal is to offer WTO members fully competitive trade opportunities in a universal measure, guided by two principles i.e. national treatment and most-favored nation treatment (MFN).⁴⁴⁶

Generally, goods exported to some country should have free entrance. However, WTO accords allow for the placement of tariffs on imported products, affecting competitiveness. Beside, in certain situations, these agreements also permit imposition of non-tariff measures to restrict imports. There is a framework in place to decrease rates and set maximum levels for specific items. Nontariff measures, as opposed to tariffs, are not normally permitted.⁴⁴⁷ For example, a member cannot typically prohibit

⁴⁴³Pardit N. Thomas, "trading the Nation: Multilateral Negotiations Communications in India", *Sage Journal*, Vol. 61, Issue.3-4 (1999), available at <https://doi.org/10.1177/001654929906100306>

⁴⁴⁴ Roy Harrod and Douglas Hague, "International Trade Theory in a Developing World", McMillan and Company Limited, London (1964), available at <https://link.springer.com/book>

⁴⁴⁵ Ramesh Tiwar, "WTO and international trade", Jaipur Aavishkar Publisher (2006), available at <https://library.niti.gov.in>

⁴⁴⁶ Jeremy Gatlula, Ever Higuait and Rafael Madarang, "RP-US FTA: Trade Remedies, Competition Policy and Government Procurement", 2006-13, available at <https://pidswebs.pids.gov.ph>

⁴⁴⁷Bhagirath Lal Das, "An agreements", London: New York: Zed Books (1998), available at <https://www.bloomsbury.com>

the ingress of goods into its territory. Non-tariff measures require specific preconditions and must be implemented following established processes. The WTO agreements provide these requirements and procedures. A member may impose tariffs or quantitative limitations on imports to guard its business from unknown surges or cut imports to address balance of payments issues. The circumstances and procedures for such actions are stated in the relevant agreements.⁴⁴⁸ These agreements protect against unfair trade practices, such as government subsidies for exports or predatory practices like dumping. Disadvantaged members can take measures to offset the effects of these practices.⁴⁴⁹ Later on agriculture and textiles which remained external choice of general disciplines has bring them into the fold of the rules outlined in WTO agreement. The quarrel clearance method aims to protect members' rights and fulfill their obligations within an integrated enforcement framework.⁴⁵⁰

3.4.1. Composition of the “WTO Agreements”.

The “Uruguay Round” of “Multilateral Trade Negotiations” concluded with around sixty agreements, and decisions which are divided into six parts; an canopy contract, agreements for goods, services, intellectual stuff, quarrel settlement, and analyses of government trade. The WTO trade ministers started the “Doha Development Agenda” in 2001 that commanded to the negotiation of numerous accords.⁴⁵¹ The WTO agreement encompasses six major areas such as goods, services, intellectual property, disputes, and trade policy. These agreements had been signed and ratifies by WTO member nations upon membership. For example, the “*General Agreements on Trade and Service*” (GATS), “*Agreement on Agriculture*” (AoA), “*Agreement*” on “*Trade-Related Aspects of Intellectual Property Rights*” (TRIPS), “*Agreement*” on the “*Application of Sanitary and Phytosanitary Measures*” (SPS) and “*Agreement*” on “*Technical Barriers to Trade*” (TBT).⁴⁵²

⁴⁴⁸ *Supra Note 444*

⁴⁴⁹ Johnson HG, “The Pure Theory of International Trade. Prentice Hall, Canadian Journal of Economics and Political (1964), available at <https://doi.org/10.2307/139642>

⁴⁵⁰ *Ibid*

⁴⁵¹ Louise Lutikholt, “Principles of organic agriculture as formulated by Organic Agriculture Movements”, International Federation of Organic Agriculture Movements (2007), available at <https://www.researchgate.net>

⁴⁵² Akbar Rasulov, “revisiting State Succession to Humanitarian treaties for Automaticity?”, *EJIL*, Vol. 14, No. 1, pp. 141-170 (2003), available at <https://ejil.org-pdfs>

WTO covenants are classified as first, goods these treaties stipulate which commodities are unrestricted of importation charges and in what way associates can charge for specific goods. Certain items are priced differently in advanced and poor countries. Second, covenants on merchandises comprise farming yields which aim to preserve their national economies at the identical period simplify intercontinental trade and products.⁴⁵³ Third, service which is alternative problematic expanse to convert, subsequently emerging nations are often stressed to vulnerable market to struggle after industrialized nations such as *investment* and *finance*, *telecommunication* and air-transport services.⁴⁵⁴ Fourth, intellectual property *the right of artists, innovators* etc. whose purpose is to preclude unsanctioned usage of *copyrighted* or untested substantial, manufacturing scheme and trademarks.⁴⁵⁵

3.4.2. The “Agreement on Agriculture” (AoA)

The “Uruguay Round” of multidimensional trade compromise “Final Act”, signed in Marrakesh, included the “Agreement on Agriculture”, which came effective on 1995. The “Uruguay Round” revolutionized global agricultural trading. During the GATT round of worldwide trade discussions, agriculture was given significant attention. The WTO attempted to regulate trade in agricultural products, but it was unable to do so successfully due to several exceptions to the procedures regarding the subsidies and non-tariff measures.⁴⁵⁶ Large-scale domestic subsidies provided to their agrarian segment above numerous ages by industrialized nations remained the key source of distortion in agriculture products. There are now import controls to prevent foreign agricultural items from entering their home market, as well as overproduction that is being dumped on global markets.⁴⁵⁷ So the decrease of local manufacture subventions provided by advanced states and the comestibles of minimal market access chances for agrarian manufacturers globally must be the first steps towards the launching of a reasonable agrarian trade regime. The “Uruguay Round” trade discussions were successful, and the result drastically transformed the multidimensional reading

⁴⁵³ R.R Khan, “Export Management”, *S. Chand, New Delhi* (1979), available at <https://search.worldcat.org>

⁴⁵⁴ *Supra Note 451*

⁴⁵⁵ *Supra Note 453*

⁴⁵⁶ Manoj Pant. “Agricultural Negotiations and WTO”, *The Economic Times*, 9 May (2008), available at <https://m.economictimes.com>

⁴⁵⁷ *Ibid*

landscape. A distinct contract on farming was reached, new trade sectors were brought under the regulations, and the accomplishments of previous rounds were codified.⁴⁵⁸

Historically, during periods of rapid development, agriculture's share of labor and output has decreased. Due to this, several development specialists now consider agriculture to be merely a supporting role in development. Nonetheless, unfair national and intercontinental trade regulations may be the root of the decline in agricultural labor and output.⁴⁵⁹ The agrarian segment necessities to be catalyst for economic expansion, particularly world's low lies evolving nations contributes significantly to GDP a sizable portion of the impoverished reside in rustic regions. In the 1990s governments and international development agencies reduced funding for agricultural programs and research. This hampered universal backing for agrarian development.⁴⁶⁰ Régimes and universal expansion organizations reduced the amount of money they gave to agricultural programs and research throughout the 1990s, indicating weakening of intercontinental provision for agrarian development. Refocusing on this segment is urgently needed to benefit from on the proportional compensations maximum emerging nations partake in agrarian production, given the difficulties postured by manufacturing countries' agrarian trade guidelines, the harshness of rural poverty, and farming to the commercial progression of the emerging world.⁴⁶¹ Progression in agrarian sector is essential to achieving countless goals that developing nations have set themselves. Increasing poverty and overall economic growth are two of these objectives and guarding the environs.

3.4.3. The "Agreement" on "Trade-related Aspects of Intellectual Property Rights" (TRIPS)

The TRIPS started from 1st January, 1995 is the utmost inclusive polygonal contract on knowledgeable stuff. It covers numerous categories of *intellectual property*, industrial designs, and patents (including those protecting novel plant varieties). *Copyright and*

⁴⁵⁸ Stephen Healy and Richard Pearce, et.al., "The Implications on agriculture for developing countries", Roam, pp. 174 (1998), available at <https://digitallibrary.un.org>

⁴⁵⁹ Anna Lanoszka, "The Economy", Lynne Rienner Publishers, (2009), available at <https://www.rienner.com>

⁴⁶⁰ Applebaum, Harvey M and Lyn M. Schlitt, et.al., "The GATT and WTO Understanding the Fundamental Changes", Practicing Law Institute, New York (1995), available at <https://wric-gulaw.primo.exlibrisgroup.com>

⁴⁶¹ Sudiptomundle, "Labour Asia", Economic and Political Weekly, Vol. 18, No. 19/1, pp. 767-778 (1983), available at <https://www.jstor.org/stable/4372122>

related rights (i.e., entertainers, sound recording producers, and broadcasting organizations), trademark including service marks, geographical signs, comprising terms of foundation, and test data.⁴⁶²

Primary standards in the “TRIPS Agreement” has three components individually primary intellectual property domains concealed by the treaty; the Agreement specifies the minimal intensities of defense that separately member must offer. The definitions of individual of the primary components of protection the subject difficulty to be dwindling, the privileges to be granted and the allowable variations the slightest length of protection are provide.⁴⁶³ The domestic process and therapies for the tender of academic rights are covered under the second key set of requirements. It also includes provisions for requirements related to board measures, provisional measures, criminal and civil measures, and administrative procedural remedies. These provisions provide a definite smooth of detail regarding the techniques and therapies that requisite be accessible in order for right holders to rights.⁴⁶⁴

Furthermore, the treaty affords several fundamental principle ideas, including general guidelines to guarantee that procedural challenges in getting or keeping take beginning the Agreement’s stated substantial benefits. Altogether associate nations will be substance to the identical duties under the agreement. However, developing nations will consume added stage to segment them in as distinctive alteration preparations activate in the position somewhere emerging nation ensures not currently deliver merchandise blatant protection.⁴⁶⁵ The “TRIPS Agreement” includes several protections, including mandatory authorizing and exclusions that also the publicizing of all-purpose medication that can be utilized to uphold community fitness and encourage competition. By implementing these precautions, the possible detrimental special effects of the “TRIPS” on medication availability may be reduced. But to practice these protections, nations must include them in their state laws.⁴⁶⁶

⁴⁶²GopuGopakumar Nair, “Impact of TRIPS on Indian pharmaceutical industry”, *Journal* (2008), available at <https://www.researchgate.net>

⁴⁶³Dipankar Sen Gupta, “Beyond the transition phase of WTO: an Indian Perspective on emerging issues”, *New Delhi: Acedemic Foundation in association with Centre de Sciences Humaines*, (2006), available at <https://www.wconbiz.de>

⁴⁶⁴ *Supra Note 462*

⁴⁶⁵Gopakumar G. Nair, “Impact of TRIPS on Indian Pharmaceutical Industry”, *Intellectual Property Rights*, Vol. 13, pp. 432-441 (2008), available at <https://nopr.niscpr.res.in>

⁴⁶⁶ *Supra Note 463*

3.4.4. The “Trade Related Investment Measures Agreement” (TRIMs)

The Agreement is solitary of the Arrangements enclosed beneath (Annex IA) of “Marrakech Agreement”, employed through the last discussion of the “Uruguay Round” (UR) discussions. The Covenant lectures stock procedures that remain trade-related besides that similarly disrupt (Article III) “National Treatment” or (Article XI) “general elimination” of the GATT. A specific gradient actions that disrupt the relationships of the contract is attached to the agreement’s text. These are often related to export limitations, trade balancing requirements, and local content criteria that are connected to investment decision-making.⁴⁶⁷

The Agreement enforced the transition period known as specifies transition periods, two years for industrialized nations and five years for emerging nations, and seven years for Minimum Industrialized Nations. Condition that may impact the agreement to attract “Foreign Direct Investment” (FDI), governments frequently offer fiscal incentives such as⁴⁶⁸ loans, tax breaks, preferential service provisions, etc. in addition to an assortment of rules or regulations intended to promote the procedure of share and their progressive requirements. These requirements are indigenous contented necessities, and knowledge transmission or permitting desires that established the circumstances for admission of speculation interested in a congregation nation. Such stock necessities which misrepresent universal trade in merchandises, are called trade-related investment measures.⁴⁶⁹

3.4.5. “General” “Agreement on trade in Services” (GATS)

Some roughly sixty treaties and verdicts that were agreed during the assumption of the “Uruguay Round” multidimensional trade consultations (1986-1994) and contracted in 1994 is the (GATS). Which created the trading organization, a shared established structure for managing trade associations between associates under the track of the Round, was a crucial accord among nations.⁴⁷⁰ The organization’s goal is to encourage trade liberalization by establishing a traditional instruction based on shared values

⁴⁶⁷ Arvind Subramanian and Richard T. Harmsen, *et.al.*, “International trade Policies: Beyond”, *International Monetary Fund*, Vol. 1 (1995), available at <https://doi.org/10.5089/9781557754691.081>

⁴⁶⁸ *Ibid*

⁴⁶⁹ Omar Malik, “Business Vindorege, UN Trade Officials”, *Journal of International Marketing*, Vol. 6, No. 3, pp. 108-110 (1998), available at <https://www.jstor.org/stable/25048743>

⁴⁷⁰ Ernst-Ulrich Petersmann, “Multilevel Judicial Governance of International Trade Requires a Common Conception of Rule of Law and justice”, *Journal of International Economic Law*, Vol. 10, Issue. 3, pp. 529-551 (2007), available at <https://doi.org/10.1093/jiel/jgm019>

among its associates. WTO emerged as the primary international economic organization possessing the ability to lawfully uphold its agreements via a dispute resolution body that may sanction violators. In current ages, the attention of amenities trade partakes changed away from only supporting trade in products.⁴⁷¹ The industry has arose as an autonomous entity, through amenities trade in all four fund methods providing original prospects. The convergence of wire and super computer knowledge devises enabled cross-border trade of almost any service. Globalization, supported by liberalization strategies and regulatory reforms, has led to sustained expansion in foreign venture and trade in service.⁴⁷²

In 2009, developed countries led the US\$ trillion global spread of marketable amenities, except for India and China, which remained correspondingly between the uppermost twelve exporters. The WTO's '*International Trade Statistics*' 2010, reported that global distribute and ingress evolution in facilities decreased to 12%. Imported development in marketable and services declined in the "US", "EU", and Japan, respectively.⁴⁷³ In 2009 fall in growth of distribute in three board classifications of marketable amenities specifically transportation, tourism and added profitable facilities. India placed midst the highest five in the domain in 2009/ 2008 for the distribution of supplementary marketable amenities, supercomputer and info amenities, communications facilities, and individual, cultural, and leisure facilities where EU is considered as a solitary entity. WTO's "*International Trade Statistic*" 2010, all marketable amenities industries were exaggerated by the universal catastrophe. The decline in global trade was reflected in the expansion of transport services.⁴⁷⁴

Each GATS member's states are obligatory to remove obstacles against Distant Facility dealers in the overhaul subsectors in which it participates. Around numerous rules in GATS brand it favorable for emerging nations such as "*Increasing Participation of Emerging Nations*" under (Article IV), for the privileged behavior of evolving countries.⁴⁷⁵ Second (Article XIX) (*paragraph 2*), which provided for the code of

⁴⁷¹ *Ibid*

⁴⁷² Bernard M. Hoekman, "trade Laws and institutions: good practices and the World trade Organization", World Bank discussion papers, no. QDP 282 Washington, D.C: The World bank, available at <https://documents.worldbank.org/curated/en/98600148739319504>

⁴⁷³ J. Jackson, "The World Trading System: International Economic Relations", Fordham International Law Journal, Vol. 14, issue. 1 (1990), available at <https://ir.lawnet.fordham.edu>

⁴⁷⁴ *Supra Note 472*

⁴⁷⁵ Nico Valckx, "WTO Financial Services Commitments: Determinants and Impac ton Financial Stability:, IMF Working Papers (2002), available at <https://RePEc:imf:imfwpa:2002/214>

reformist liberalization. Third, (Article V), permits nations in pecuniary amalgamation structures to classify in favors of their associates so protracted as this informs to the WTO. Following that, the countries concerned engage in bilateral negotiations to discuss the appeals and offers.⁴⁷⁶

The creation of new transmission technologies to provide services such as satellite communications, electronic banking, and tele-education, the establishment of monopolies in many nations, the progressive liberalization of previously regulated industries like banking, insurance, and transportation, along with shifts in consumer preferences, all added to the increased tradability of services.⁴⁷⁷ Similar to the goods sectors, these advances led to an upsurge in international service flows and the requirement for multilateral disciplines. Following the G-20 Meeting, the WTO's services discussions were given new life.⁴⁷⁸ All members are ready to set up the negotiations in order to take benefit of the brief space of prospect to conclude the negotiations. Since the Doha Round's lack of growth in services isn't the result of issues with the negotiation process, but rather the rich countries' insufficient reaction in areas and sectors of interest for sale to developing nations, and minimal success in agriculture.⁴⁷⁹

3.4.6. Regional Trade Agreements

When a cluster of states eradicates artificial barriers to commerce and antagonism on a provincial worldwide scale, it is recognized as "Regional Economic Integration". The "Inter-American Development Bank" claims that, "Regional Trade Agreements" are usually established between neighboring countries to reduce barriers or custom duties on imports. "Regional Trade Agreements" *violates the* "Most Favored Nation", *a fundamental principle of WTO*.⁴⁸⁰ The agreement has two perspectives and benefits such as the influence of commercial amalgamation on consumer welfare and productive efficiency is static. The second aspect of commercial amalgamation is its dynamic

⁴⁷⁶ Louise L. Hill, "Services Legal Profession", Vanderbilt, Vol. 39, Issue. 2 (2006), *available at* <https://scholarship.law.vanderbilt.edu/vjtl/vol39/iss2/2>

⁴⁷⁷ *Supra Note 475*

⁴⁷⁸ Aaditya Mattoo and Deepak Mishra, "Foreign Professionals And Domestic Regulation", Policy Research Working Papers, (2013), *available at* <https://doi.org/10.1596/1813-9450-4782>

⁴⁷⁹ *Ibid*

⁴⁸⁰ John M. Niehuss, "Development at the Inter-American Development Bank", IMF e- Library (1995), *available at* <https://www.elibrary.imf.org>

effects, which are linked to the associate countries' long-term growth rates.⁴⁸¹ The "Dictionary of Trade Policy Terms" defines regionalism as 'government actions to ease up or simplify trade, sometimes through custom unions or free trade areas.' Provincial profit making unification is the course by which a collection of nations removes (artificial) obstacles to global competitiveness and international trade. Provincial trade covenant has both common and extra definite meanings; it is extra universal, since (RTA) might be pacts settled among nations not essentially going to the identical topographical area.⁴⁸² Preceding fifteen years, provincial trade covenants have gained popularity and have been the preferred method of trade liberalization. "Regional Trade Agreements" do not include the GATT/WTO's "Most Favored Nations" clause, which provides preferential treatment but not equal treatment for non-members. As a result, somewhat such covenant would violate the GATT/WTO's non-discrimination principle.⁴⁸³ Provincial contracts are seen as a positive stride concerning restricted trade and support the less developed nations. Modern RTAs tend to go well beyond tariff reduction exercises. They usually afford a preferred supervisory structure for reciprocated trade and more complex intra-trade laws.⁴⁸⁴

Root of commercial and procedure combination is able to segregate the succeeding categories of provincial agreements. First, "Preferential Trade Agreement" (PTA) in which, additional than two countries create a transaction truncheon or union to cut tariffs on each other's imports, exchanging preferences and concessions. Second, a Free Trade Area is formed when supplementary than two countries eliminate charges beside the repose of the domain. The European, which includes the so-called 'outer seven countries' is an specimen of a unrestricted trade area.⁴⁸⁵ Third, a Routine Merger, similar to unrestricted trade zone, eliminates trade barriers between members. A customs ordered and cohesive than free trade agreements. Tradition unification is formed when other countries eliminate all tariffs and create a shared outer tariff barrier for all imported commodities from other countries.⁴⁸⁶ A traditional unification

⁴⁸¹ India-ASEAN NTA: A Move towards Multilateral Free trade Agreements?", CUTS Centre for International Trade, Economic 7 Environment, (2010), *available at* <https://www.cuts-citee.org>

⁴⁸² Oil Brown and Faisal HaqShaheen, et.al., "Regional Trade Agreements: Promoting conflict or building peace?", (2005), *available at* <https://www.iosd.org/security/tas>

⁴⁸³ *Supra Note 481*

⁴⁸⁴ *Supra Note 482*

⁴⁸⁵ Jianfu Chen, "Regional trade Agreement in Context", (2014), *available at* <https://dx.doi.org/10.12139/ssrn.2752227>

⁴⁸⁶ Chris Devonshire-Ellis, "Understanding ASEAN's Free Trade Agreements", ASEAN Briefing (2014), *available at* <https://www.aseanbriefing.com>

establishes single trade procedure, including external tariffs, through additional nations. The “European Economic Community” is the best example of Custom Union. Fourth, Common Market, in this circumstance the associate nations permit the unrestricted crusade of things and amenities and the dynamics of manufacture, such as investment and labor.⁴⁸⁷ Last we have “Economic Union”, represents the uppermost level of commercial amalgamation among countries. A profitable merger extends the common/internal market by harmonizing institutional frameworks such as competition and procurement strategies, providing policy coordination; the commercial merger serves as a counter balance to a pecuniary unification, allowing for single effective policy coordination.⁴⁸⁸

A country may enter into the agreement for a diversity of reasons. The European Union’s successful establishment in 1957 triggered the primary upsurge of provincial trade agreements. The establishment of Agreement during the 1990s was attributed to various factors. The WTO’s development and multilateral decision-making challenges take steered to the upsurge of provincial trade accords worldwide. There are primary reasons behind the rising number of RTAs.⁴⁸⁹ Such as to escalation bazaar entrance conceivably is the greatest archetypal cause for arriving in RTA.⁴⁹⁰ Another reason is to accomplish fiscal strength as the insecure markets anticipates increasing fiscal strength by establishing RTAs by extra emerging nations.⁴⁹¹

“World Trade Organization” aims to abolish trade restrictions established on the belief of MFN treatment, without discrimination. “Regional Trade Agreements” may appear to violate the MFN principles yet incorporated in “GATT” and “GATS”. WTO members can enter such agreements under particular circumstances outlines in three sets of rules.⁴⁹² Paragraph 4-10 of “Article XXIV of GATT” providing for the founding of taxes unifications and permitted trade zones for trade in merchandises and amenities.

⁴⁸⁷ *Supra Note 485*

⁴⁸⁸ *Ibid*

⁴⁸⁹ Asif H. Qureshi, “The World trade Organization: implementing international trade norms”, *Canada: St. Martin’s Press*, (1996), available at <https://search.worldcat.org>

⁴⁹⁰ Matthew Happold, “the WTO and International trade Regulation”, (2008), available at <https://>

⁴⁹¹ *Ibid*

⁴⁹² Tim Martyn, “A Complete Guide to the Regional trade Agreements of the Asia-Pacific”, The Australian APEC study Centre (2001), available at <https://www.apec.org>

Enabling Clause decree privileged business agreements and (Article V) of “GATS”, merchandises and amenities, for mutually established and unindustrialized countries.⁴⁹³

Regionalism is a growing trend at the universal economy and expected to be prominent component in the future. Regionalism has existed for many years but its relevance in intercontinental trade is increasing. RTAs may also promote regional stability and address security policy concerns. The universal trade structure has seen several waves of Regional Trade Agreements (RTAs), with the most recent waves starting in the 1990s.⁴⁹⁴ The first wave arisen after effects of the “European Economic Community” (EEC), which was recognized in 1957. Modern regionalism aims to reduce discrimination in trade with non-members, expand economic sectors, and eliminate impediments beyond tariffs.⁴⁹⁵ Despite being non-discriminatory, regional trade agreements have become a source of controversy owing to their complication and impact on the WTO’s multifaceted transaction scheme.

The WTO associates are mandatory to inform the “Regional Agreement” participated. It devours stayed discovered that practically all WTO Members have declared membership in any RTAs, with some member’s party. GATT received more than hundred announcements of RTAs (connected merchandises). After the creation of the “World Trade Organization” in 1995, over more than hundreds additional arrangements encompassing trade in various sectors devise remained notified.⁴⁹⁶ Bestowing to WTO, since 1990 the RTA devise developed gradually ubiquitous. Countless WTO associates started tortuous in new RTA intercession and most consultations are consensual. Further, WTO associates are negotiating the Trans-Pacific Partnership Agreement in the “Asia Pacific” expanse and the “*Regional Comprehensive Partnership Agreement*” between (ASEAN)associates and six added WTO associates.⁴⁹⁷

Over the last decades Asia has seen an intensification in RTA. The range of RTA revel an imperative and maybe crucial procedure tendency in the province. RTAs take the

⁴⁹³Sant Ram Saini, “Undia’s foreign trade with ASEAN: An overview”, *JETIR*, Vol. 7, Issue. 11 (2020), available at <https://www.jetir.org>

⁴⁹⁴NeeleshGounder and Bima Chand Prasad, “Regional trade”, Vol. 10, Issue 1, pp. 49-63 (2011), available at <https://www.researchgate.net>

⁴⁹⁵ *Ibid*

⁴⁹⁶ David A. Lynch, “trade and Globalization: An Introduction to Regional Trade Agreement-Softcover”, *Rowman & Littlefield Publisher*, (2010), available at <https://www.abebooks.com>

⁴⁹⁷Sanusi Muhammad Lawal and Sunday Adejoh, “Trade Policies, International trade and Economic Development”, *Arts and Social Science Research*, Vol. 9, (2019), available at <https://fassjassr.com.ng>

capability to achieve greater integration by increasing regulatory cooperation and juxtaposition between stringent parties, unlike global trade liberalization beneath the WTO. Though multi dimensional trade liberalization benefits the supreme economical merchants, RTA can provide additional benefits to less competitive export barriers.⁴⁹⁸ Although RTA increased over time, they differ after added RTA in different techniques containing being less established and institutionalized. In Asian RTAs, trade cooperation is more common than pecuniary collaboration, often the key purpose for their development. ASEAN is a Southeast Asian geopolitical and profitable institute with ten member countries. ASEAN is solitary world's faster expanding areas, with a bazaar magnitude of terminated partial a *billion* public, surpassing that of the "US" and "Europe". Currently, ASEAN has provincial trade treaties with most major Asian countries, including *China, Japan, Australia, South Korea, and India*.⁴⁹⁹

India considers RTAs as helpful in achieving trade liberalization goals. As a result, India participated in numerous RTAs, such as Unrestricted Trade Agreement, Preferential Trade Agreements; "*Comprehensive Economic Cooperation Agreements*" and so on. Above the previous times, India's trade procedure has shifted towards regionalism, resulting in the singing of multiple RTAs. The Bangkok Agreement, signed by the administration in 1975, marked the initial RTA in India.⁵⁰⁰ The "Asian Pacific Trade Agreement" began in 2005 as regional initiatives involving many emerging nations in the Asia Pacific area, but its scope was limited. This led to substantive trade liberalization among participants. The "South Asian" "*Association for Regional Cooperation*", a key provincial trade treaty in India, was recognized in 1985.⁵⁰¹ In 1995, associates of the "South Asian" "*Association for Regional co-operation*" established the PTA⁵⁰² and SAPTA⁵⁰³, a regional effort among South Asian nation under SAARC. Since India has assigned countless RTA with various nations and it desires to endure its inclination of provincial incorporation.⁵⁰⁴

⁴⁹⁸ Kati Suominen, "The Changing Anatomy in East Asia", *Journal of East Asian Studies*, Vol 9, Issue 1, pp 29-56 (2009), available at <https://doi.org/10.1017/S1598240800002800>

⁴⁹⁹ Robert Scollay, "Regional Trade Agreements and Developing Countries: The Case of the Pacific Island's Proposed free Trade Agreement", UNCTAD Blue Series Papers 10, (2001), available at <https://ideas.repec.org>

⁵⁰⁰ Parthapratim Pal, "Regional Trade Agreements in a Multilateral Trade Regime: An Overview", A Survey Report (2004), available at <https://www.networkideas.org>

⁵⁰¹ Supra Note 499

⁵⁰² Hereinafter the acronym of PTA shall be used for Preferential Trade Agreement

⁵⁰³ Hereinafter the acronym of SAPTA shall be used for South Asian Preferential Trade Agreement

⁵⁰⁴ Supra Note 233 (Parthpratim pal)

Furthermore, provincial trade treaties are typically negotiated and agreed upon by member countries and cover a wide range of trade-related issue. Instance the ‘European Union’, the “North American Free Trade Agreement” replaced by the ‘United States-Mexico-Canada Agreements’, the Association of “*Southeast Asian Nations*” Unrestricted Trade Area, and the Mercosur agreement in South America.⁵⁰⁵ Three North American states approached organized to form a commercial block in “North America” through the “North American Free trade Agreement” (1989). The aim stood reducing trade cost and establishes North America as a commercial bloc with competitiveness in the world market.⁵⁰⁶ More than twenty trillion dollar among its three members, NAFTA stands as the largest trade agreement in the world. By signing these agreements, the three associate faithful to moderate trade obstacle between them and expanding the opportunity for small and medium sized enterprises in the US, Canada, Mexico to receive investment.⁵⁰⁷

The Agreement has the key provisions such as, prior to NAFTA, US produced commodities were subject to grater tariffs than Mexican goods that were exported to the US, with tariffs of thirty percent or more applied to goods shipped to Mexico. In order to rectify the trade deficit, NAFTA eliminated certain tariffs right way and phased out the other levies.⁵⁰⁸ The NAFTA signatories suggested establishing industry, fitness and security standards. The participants also decide to do away with national standards as a trade barrier and expedite export product certifications and inspections at the border.

The “European Union” is unique and the world’s chief trading blocs and made trade agreements with numerous countries and regions throughout the world. The object of the accords is to endorse unrestricted and fair trade by lowering or removing tariffs and non-tariff barricades to trade. They also address services, knowledgeable stuff, government earning, competition, and sustainable development.⁵⁰⁹ The European

⁵⁰⁵SejutiJha, “Utility: Experience from India’s Regionalism”, Asia Pacific Research and Training Network on Trade, Working paper (2011), available at <https://repository.unescape.org>

⁵⁰⁶ Ibid 238 (SejutiJha)

⁵⁰⁷ Maria Martins, “Towards a Comeback of regionalism? Prospect for Latin American Integration During the New tide of Leftist Governments”, UNU CRIS, 12 May, 2023, available at <https://cris.unu.edu>

⁵⁰⁸ DITC, UNCTAD, Trade Analysis Branch, South-South Trade in Asia: the Role (2008), available at <https://dx.doi.org/10.2139/ssrn.1279373>

⁵⁰⁹ Robert Z. Lawrence, “Regionalism, Multilateralism, and Deeper Integration”, Brookings, (1996), available at <https://www.brookings.edu>

Union's network of trade agreements provides European businesses with access to global markets while also contributing to pecuniary progress and job creation in Europe. The EU negotiates trade covenants with nations to facilitate the movement of merchandises, services, and investment. It is vivacious to remember that the specifics EU trade agreements might differ depending on the negotiation situation and parties involved.⁵¹⁰ The EU's trade agreement fall under three main categories such as, EU unrestricted trade treaty are the most comprehensive trade deals, removing nearly all tariffs and obstacles to trade with partners. An EU association agreement deals with an establishment a broad political and financial association with partners.⁵¹¹ Lastly, EU trade agreements are modest trade agreements aimed primarily at strengthening trade relation with partners.

Some regional or sub-regional treaties explicitly refer to conventions not signed by signatories, which is a favorable signal.⁵¹² It demonstrates that the signatories are aware of the better international instrument and are concerned that their instruments comply with the fundamental body of internationally recognized law that is upheld by the global community.⁵¹³ Too many regional and sub-regional agreements were not filed with the General Secretariat, despite the provisions to that effect stipulated in Article 14 of the "United Nations Charter".⁵¹⁴

⁵¹⁰ Manoj Pant and Anusree Paul, "The Role of regional Trade Agreements", Vol. 33, No. 3, pp. 538-571 (2018), available at <https://www.jstor.org/stable/26484511>

⁵¹¹ Raquel Fernandez and Jonathan Portes, "Returns to Regionalism: An Analysis of Non-traditional Gains from Regional trade Agreements", *The World Bank Economic Review*, Vol 12, Issue 2, pp 197-220 (1998), available at <https://econpapers.repec.org>

⁵¹² *Ibid*

⁵¹³ *Supra Note 510*

⁵¹⁴ Jean Grosdidier de Matons, "A Review of International Legal Instruments", African Region, The World Bank, SSATP Working Paper No. 73 (2004), available at <https://www.ssatp.org>

CHAPTER-4

LEGAL “RESPONSE TO CLIMATE CHANGE” AT INTERNATIONAL LEVEL

4.1. Introduction

Climate change scientist has argued that it poses a very dangerous threat to humankind and environment unless the level of “GHG” discharge is reduced radically. Production of “GHG” from various factories, industries, etc. has universal impact pollution, whether they are discharged in *Europe, Americas, Africa* or the *Asia*, they speedily dissolve uniformly through the globe.⁵¹⁵ Although many Climate change treaties stressing carbon discharge decline device existed grasped complete intercontinental approaches and regional levels.⁵¹⁶ They are boosted by policy instruments such as efficiency standards of carbon-neutral infrastructure. Due to inadequate alleviation and alteration efforts is now a reality. Climate change has presented new challenges for the global legal community in addressing the loss of life, property, traditional livelihoods, values, among other issues.

While the negative effects required current lawful and procedure framework with specific substantive and procedural processes.⁵¹⁷ Mitigation and adaptation can help to prevent or lessen loss and damage, but dealing with loss affected by Climate change requires a specific regulatory regime. People in the “Least Developed Countries” (LDCs), “Small Island Developing States” (SIDS), and African countries who almost face the threat and the most vulnerable since they lack the resources at adapt.⁵¹⁸ Climate change’s influence and vulnerability, particularly extreme weather events, raise the important legal issue of culpability for damage caused based on proportional participation in climate change.⁵¹⁹ The unbalanced contribution to the reason of Climate change shifts the burden to the industrialized countries, who must take the entire

⁵¹⁵ Policy Responses to Climate Change, August 2021, World Nuclear Association, *available at* <https://world-nuclear.org/information-library/energy-and-the-environment/policy-responses-to-climate-change.aspx>.

⁵¹⁶ Jaap Spier “Legal Strategies to Come to Grips with Climate Change (2012)”, Published by Nomos Verlagsgesellschaft mbH, *available at* <https://www.jstor.org/stable/j.ctv941w8s.10>

⁵¹⁷ *Ibid*

⁵¹⁸ Climate Change ‘Synthesis Report 2001’, *available at*: https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_TAR_full_report.pdf

⁵¹⁹ M. Hafizul Islam Khan, “Legal and Policy Responses (2013)”, Published by Nomos Verlagsgesellschaft mbH, *available at*: <https://www.jstor.com/stable/j.ctv941vsk.36>

responsibility for the adverse impacts and vulnerabilities of such change in accordance with casual liability.

Nonexistence of the required solution to climate challenge, many environmental activist, NGOs, and individuals are coming before the judiciary to pursue imbursement for harm and destruction ensuing after Climate change and for judicial direction to force those entities to adapt the required moderation and alteration measures.⁵²⁰ An acceptable plan of action is required which will provide the required direction for identifying the entity's response. It will also provide the necessary guidance for determining the responsible entities for such changes. We are wakeful that the interaction of solar radiation and the Earth's atmosphere influences the planet's temperature. The air contains nitrogen and oxygen, as well as many natural greenhouse gases, and the Earth's surface absorbs some of the "sun's energy" while reflecting the rest into space.⁵²¹ The "GHG" devise the essential purpose of catching this contamination in the subordinate coatings of the Earth. Natural actions can similarly basis variations in the climate, e.g. "*volcanic eruptions*" or "*variations in ocean currents*" that modify the dissemination of heat and precipitation. Apart from that, human activities, are also acknowledged as backing to Climate change.⁵²² For example, CO₂ is fairly created because of human activities, "*burning fossil*" fuels, agrarian undertakings and cutting of forest.

Another reason is global warming, the prominent backbone to grave effects upon surroundings, natural vegetation, and fauna. Because of global warming, seasonal patterns will change, resulting in longer and hotter summers, and some species will cannot be able to adapt well to this change and may gradually.⁵²³ As a result, conceptualizing loss and damage is critical for developing the necessary legal and policy frameworks to maintain global sustainability.⁵²⁴

The "Conference on the "Human Environment" held in 'Sweden' in 1972, manifest the commencement of sustainable development. It was first major "United Nations

⁵²⁰ *Ibid*

⁵²¹ UN Environment Programme on Climate change International Legal Regime (2017), Infor MEA, available at: https://lobalpact.informea.org/sites/default/files/documents/PDF%20lessons%20-%20Climate%20Change_0.pdf

⁵²² *Ibid*

⁵²³ *Supra Note 518*

⁵²⁴ *Ibid*

Conference” on the problem of the environment.⁵²⁵ To address environmental difficulties, the Conference established the “*United Nations Environmental Programme*” (UNEP), which is primarily focused on environmental problems and issues. Twenty years later, at the historic “Earth Summit” in ‘Rio de Janeiro’, Brazil in 1992, the UN sought to help governments’ rethink economic development and find ways to stop polluting the planet and depleting its natural resources, resulting in the embracing of “Agenda 21” for development and environmental cooperation among nations.⁵²⁶ The main documents agreed upon at the “Earth Summit” are the “*Convention on Biological Diversity*” binding treaty require nations to take inventories of their “plants” and “wild animals” and safeguard their vanishing class, the “*Convention on Climate change*” (UNFCCC), especially setting a binding targets for emission reduction, and such targets eventually established in an amendment to the ‘UNFCCC’, ‘the Kyoto Protocol’ in 1997, which was superseded by the “Paris Agreement”.⁵²⁷ Further worldwide conferences on the phenomenon of global warming were conducted in year 1980s, and the “United Nation General Assembly” approved that “Climate change” is a common problem for humanity, requiring urgent action by all states. The UNGA⁵²⁸ resolved in 1990 to establish intergovernmental negotiating panel prepared by an “Intergovernmental Negotiating Committee” for an effective ‘convention on climate change’, including suitable obligations and somewhat associated devices.⁵²⁹

The “United Nations Environmental Program” (UNEP) and the “World Meteorological Organization” (WMO) established and co-sponsored the “Intergovernmental Panel on Climate Change” (IPCC) which is composed of over 2000 scientific and technical experts “*from all over the world*” who have gathered scientific data on the reasons of “Climate change”, its potential effects, and potential mitigation strategies.⁵³⁰ The

⁵²⁵ United Nations Conferences: Environment and Sustainable development, *available at*: <https://www.un.org/en/conferences/environment>

⁵²⁶(UNCED) International conference (1992), The Editors of Encyclopedia Britannica (Article), *available at*<https://www.britannica.com/event/United-Nations-Conference-on-Environment-and-Development>

⁵²⁷ *Ibid*

⁵²⁸ Hereinafter the acronym for UNGA shall be used for ‘United Nations General Assembly’

⁵²⁹ReinhardMechler, et.al., “ Loss and Damage from Climate Change- Concepts, Methods and Policy Options (2018)”, Climate Risk Management, Policy and Governance, Published by Springer Nature, Switzerland, *available at*<https://doi.org/10.1007/978-3-319-72026-5>

⁵³⁰ Takayoshi Kato and Jane Ellis, “Communicating progress in national and global (2016)”, pp 47, *available at*: <https://www.oecd-library.org/environment/communicating-progress-in-national-and-global-adaptation-to-climate-change>

negotiation process for the climate change regime has been extremely challenging. Most evolving nations have been applying different commitments, arguing that it was primarily the industrialized nations that add to upsurge in universal heating in the name of economic development.⁵³¹ As a result, it is vital to appreciate the comprehensive agenda for environmental development challenges, as this will assistance to achieve cooperation at global level. As a result, it is crucial to recognize the comprehensive agenda and framework for international action on environmental and development challenges, as this will help shape international cooperation and development policies.

4.2. Earth Summit or Rio Conference

The Rio Conference begins with anthropocentric principles, which state that ‘human lives are at the middle of distresses for justifiable development’. This diminished the ‘save our earth’ mantra employed by environmental activist. The Rio Conference opined that people are supposed to have the task of transferring the globe into an adequate condition for future generations.⁵³² In 1992, many governments attended the “*Conference on “Environment and Development”* (UNCED), often known as “Earth Summit”. Many states were interested in the Rio agenda and urged their governments to join with other nations in making the decision to preserve a healthy world for future generations.⁵³³ Before the ‘Summit’ the “*Conference on Human Environment*” was the largest UN meeting to deal with environmental issues and to recognize the aptitude to reside in healthy environment as a basic right.⁵³⁴

The “United Nations General Assembly” by its resolution decided to conduct the conference held in Sweden in the year 1972 and the object behind the Convention was to create a basic for comprehensive consideration within the UN of the difficulties of the social environs to focus on public and governments opinion in Climate problem.⁵³⁵ The Stockholm Conference contained twenty-six (26) principles in which they started a dialogue between different nations for commercial progress and environment around

⁵³¹ *Ibid*

⁵³² R.K. Kohil, “Environmental Science, Module: 28 Earth Summit- Rio Conference, 1992”, An MHRD Project under the National Mission on Education through ICT (NME-ICT), MHRD, Government of India, *available at*: https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_contents/S000014ER/P0000283/M025375/ET/1512113835mo..

⁵³³ *Ibid*

⁵³⁴ Souradh C. Valson, Everything you need to know about the Stockholm Declaration, November 24, (2020), *available at* <https://blog.ipleaders.in/everything-need-know-stockholm-declaration/>

⁵³⁵ *Ibid*

the world.⁵³⁶ The principles of Stockholm Conference contended that every human kind has the fundamental rights such as freedom, equity, adequate condition of life with dignity and wellbeing. For that nations shall start to create a policy to prevent environment and achieve sustainable development.⁵³⁷

The Stockholm Conference further set out Action Plan on the five subject areas they are human settlement, environmental resource management, pollutants of international significant, training/ education and information and development and environment.⁵³⁸ The said Conference verified as a difficult document on which to reach agreement since it was envisioned to reflect a community of interest among states. Despite the difficulties and differences that emerged, the conference did agree on the basic principle that every nation's responsibility to certify activities within jurisdiction without injury to the environs of any nation's jurisdiction.⁵³⁹ The Conference declared three sets of decisions, first decision was the "Declaration" which contained principles; second decision was the "Action Plan"⁵⁴⁰ comprised numerous recommendations and third decision was a resolutions including prohibition on nuclear weapon tests, international environmental data bank, address action plan for development, and environmental fund.⁵⁴¹

The "Conference" legacy continues and the formation of "Rio Summit" was a milestone which contained fundamental principles for measures and strategies seeing the ecological repercussions of socio-economic development.⁵⁴² The Earth Summit mainly focuses on human beings for sustainable development and opined that⁵⁴³

⁵³⁶ UN Seminar on Environment, 5-16 June 1972, Stockholm, Conferences, Environment and sustainable development, *available at*: <https://www.un.org/en/conferences/environment/stockholm1972>

⁵³⁷ *Supra Note 534*

⁵³⁸ *Supra Note 536*

⁵³⁹ Frank A. Butrico, "A report on the U.N. Conference, June 20-26, (1972)", Vol. 35, No. 1, pp. 26-29, Published by National Environmental Health Association (NEHA), *available at* <https://www.jstor.org/stable/44546038>

⁵⁴⁰ Andreas Grieger, "Only One Earth: Stockholm and the Beginning of Modern Environmental Diplomacy (2012)", Environment & Society Portal, Arcadia, no. 10, *available at* <https://arcadia.ub.uni-muenchen.de/arcadia/article/download/25/28>

⁵⁴¹ *Ibid*

⁵⁴² Michael Keating, "The Earth Summit's Agenda for Change", in the Earth Summit Times, Published by the Centre for Our Common Future, 52, 1201 Geneva, Switzerland, *available at* https://www.iau-hesd.net/sites/default/files/documents/rio_e.pdf

⁵⁴³ UNFCCC, Vol 31, No. 4 (1992), pp. 874-880, Published by International Legal Materials, *available at*: <https://www.jstor.org/stable/20693717>

“All States shall cooperate to conserve, preserve, shield the integrity of the earth’s ecosystem and donate to universal environmental degradation through the value of conjoint but segregated responsibilities”.

The developed countries should take the responsibility to mitigate the global issues issue by providing technological and financial support to developing nations.⁵⁴⁴ Each States shall have appropriate access to information relating to environment including information on environmental activities and participate in decision-making processes and inspire community responsiveness by creation info widely available.⁵⁴⁵

4.2.1. Rio Declaration and Agenda 21

Many useful conventions emerged under the “Convention on “Environment and Development” but none of these represent a legally binding commitment by either industrial or emergent nations and was no progress on a Climate Convention. According to Rio Declaration nations have the freedom to use natural resources inside their borders as stretched as they would not damage the environment of neighboring countries.⁵⁴⁶ Which means the same is collection of principles that establishes privileges and commitments of every States in the arenas of environmental preservation and development. So according to said declaration long term economic growth is only possible if it is connected to environmental conservation.⁵⁴⁷

Another important outcome of the Rio Summit was “Agenda 21” an action plan related to sustainable development which covered many categories comprising societal, pecuniary, and implementation resources for ‘Development Conservation and Management’.⁵⁴⁸ The ‘Agenda 21’ is the document containing three-hundred pages divided into forty chapters further grouped in four sections.⁵⁴⁹ Section one deal with emergent and least developed nations and their social and economic sectors. Second deals with conservation of belongings such as protecting the atmosphere, prevention of

⁵⁴⁴ Bryce Wood, “The Rio Conference (1942)”, Vol. 11, No. 3, pp. 36, Far Eastern Survey, *available at:* <https://www.jstor.org/stable/3022265>

⁵⁴⁵ Edith Brown Weiss, (1992)”, Vol 31, No. 4, pp. 814-817, International Legal Materials, *available at:* <https://www.jstor.org/stable/20693712>

⁵⁴⁶ Lord Ennals, “The Significance (1993)”, Vol. 9, Issue 3, pp. 191-198, *available at:* <https://doi.org/10.1080/07488009308409103>

⁵⁴⁷ *Ibid*

⁵⁴⁸ United Nations, Sustainable Development- Department Affairs, *available at:* <https://sustainabledevelopment.un.org/outcomedocuments/agenda21>

⁵⁴⁹ Anshu Sharma, Agenda 21 (May 29, 2020), YL Cube Foundation, *available at:* <https://ylcube.com/c/blogs/agenda-21/>

deforestation, safeguarding of biotic variety etc.⁵⁵⁰ Last section application of action plan relating to science, technology transfer, and financial aid to emergent nations.

Agenda 21 was adopted and implemented at all sectors although the progress of the “Agenda” has not been successful in meeting the standard of expectations as anticipated in UNCED.⁵⁵¹ While Agenda 21 mainly addressed the critical problem of climate challenges and intended to prepare the world for combat through global harmony and commitment at the highest level on development and environmental cooperation. The first and foremost responsibility implemented upon government for intercontinental collaboration to support and supplement such efforts. The development and environmental objective of “Agenda 21” requires a financial assistance to emergent countries and also strengthening the ability of intercontinental institutions for implementing the said Agenda.⁵⁵² In the Agenda the priority actions were grouped into various categories such as achieving sustainable growth, decision-making in protecting global and regional resources including the atmosphere, oceans, sea etc.⁵⁵³

The ‘Rio Declaration’ was accepted by the ‘United Nations’ during the “*Environment and Development Conference*” aim to reaffirming the ‘Declaration’ of the Conference adopted at ‘Stockholm’.⁵⁵⁴ It adopted a numerous principles for future development which define the obligations and responsibilities of States to preserve the common environment.⁵⁵⁵ Rendering this Declaration long-term pecuniary progression is only possible by achieving sustainable goal for that certain principles were created for sustainable development as every nation has eligible to a vigorous life along with sustainable development.⁵⁵⁶

All States shall cooperate on the task of achieving sustainable development and preserving resources abundant as probable. Even we have few Indian case laws for

⁵⁵⁰ *Supra* Note 548

⁵⁵¹ *Supra* Note 542

⁵⁵² United Nations Sustainable Development, Rio de Janeiro, Brazil, 3 to 14 June 1992- Agenda 21, available at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

⁵⁵³ World Commission (1987), *Our Common Future*, Oxford: available at www.un-documents.net/our-common-future.pdf.

⁵⁵⁴ *Supra* Note 549

⁵⁵⁵ Aishwarya Anand and Rahul Kumar, “Importance of Brundtland Report on Environment: A Legal Analysis”, Vol. 3, Iss 3, SAJMS, available at <https://sajms.com/wp-content/uploads/2016/04/Sustainable-Development-Paper.pdf>.

⁵⁵⁶ The 1992 Impact on policies and judgments, Alexis Foundation Blog, 2015, available at <https://alexis.org.in/the-1992-rio-declaration-on-environment-and-development-impact-on-policies-and-judgement/>

preserving the principle of “Rio Declaration”. Such as “*Vellore Citizen Welfare Forum v/s Union of India*”⁵⁵⁷ the “Hon’ble Supreme Court” used the idea of “sustainable development”. Likewise we have other case laws Indian Council for “*Environmental Legal Action v/s Union of India*”⁵⁵⁸, and “*M.C. Mehta v/s Kamal Nath and Ors*”.⁵⁵⁹ From the above cases we can ascertain the intention of the “Declaration” especially to protect justifiable growth and concentrations on the needs of economic development along with the preservation of environment.⁵⁶⁰

4.3. Multilateral Environmental Treaties: Legal Instruments

Multilateral Environmental Agreements used as a solid mutual solution to potential environment and trade quarrel for instance, trade in hazardous substances may affect environment to avoid both importers and exporters came together to negotiate how such trade may be handled. For example what measures would be taken by nations for environmental protection, what measures would be taken by exporters to help in those efforts and so on. To carry these goals trade measures in environmental agreements used a various incentives that encouraged participation in the MEA to address environmental issues.⁵⁶¹ “Multilateral Environmental Agreements” are charitable obligations between autonomous positions that attempt to dialog the influence and magnitudes of universal and provincial ecological dilapidation. In fact they discourse ecological problems with trans-boundary *effects traditionally domestic environmental* disputes that raised superfluous jurisdictional concerns.⁵⁶²

As we all know proceeding numerous decades, the world shifted its concern for the environs and a swift boost in the quantity of multifaceted ecological covenants entered basically to discourse the problem of climate change.⁵⁶³ Adoption of MEAs is a positive and crucial step towards shielding the environs and achieving sustainable development. International environmental law expertise stated that establishment of environmental agreements is largely neglected by many nations and their unwillingness to enforce the

⁵⁵⁷ AIR 1996 Supreme Court 2715, 1996 (5) SCC 647, 1996 AIR SCW 3399, (1996) 5 COM LJ 40, available at: <https://indiankanoon.org>

⁵⁵⁸ 1996 (3) SCC 212, available at <https://indiankanoon.org> (visited on 10.09.2023)

⁵⁵⁹ (1997) 1 SCC 388, available at <https://indiankanoon.org> (visited on 10.09.2023)

⁵⁶⁰ Supra Note 555

⁵⁶¹ World (WSSD), Johannesburg Summit, available at: <https://sustainabledevelopment.un.org/milestones/wssd>.

⁵⁶² *Ibid*

⁵⁶³ Ashleigh R. Shelver, “The Answer to Enforcing Multilateral Environmental Agreements: (2014)”, Florida, Vol. 26, Iss 3, available at: <https://scholarship.law.ufl.edu/fjil/vol26/iss2/5>

agreements they have entered into.⁵⁶⁴ Moreover, environmentalist contended that MEA are neither complied nor enforced as a consequence increasing in the topics of ecological deprivation continuously.⁵⁶⁵

A big advantage of environmental agreements is their multilateral and voluntary character as to preserve the sovereignty of all nations inside MEAs which is crucial. According to the environmentalist joint actions of MEAs are a crucial way to handle environmental protection by means of the discussion and negotiation process as this form of global collaboration appears to be very efficient instrument to allocate the participants rights and obligation.⁵⁶⁶ Sometimes ineffectiveness of MEAs may result from their voluntary character and free-rider advantages of not signing or rectifying a MEA, for example the “Kyoto Protocol” remained not rectified by the USA.⁵⁶⁷ Multilateral negotiations appear slow and polarized and treaties are destabilized by the drawing and danger of pulling out by some countries.⁵⁶⁸ MEA remain vital at global level but they the new frontier of international environmental regulations.⁵⁶⁹ Global environmental conventions are a significant part among multiple governments’ policies as legally binding with a primary reason and purpose of preventing human impacts on natural resources.⁵⁷⁰

Environmentalism has numerous views on the agreements such as negotiation and treaty-making processes, design and structure of international instruments, characteristics of the ecological complications, and their effectiveness.⁵⁷¹ Basically the parties to these agreements have chosen trade-related measures⁵⁷² to attain their environmental goals

⁵⁶⁴ *Ibid*

⁵⁶⁵ Sean Cumberlege, “Multilateral Environmental Agreements: From Montreal to Kyoto- A theoretical Approach to an Improved Climate Change (2009)”, *Denver Journal & Policy*, Vol. 37, No. 5, *available at* <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1254&context=djilp>

⁵⁶⁶ Christoph Jebberger, “Multilateral Environmental Agreements up to 2050: Are They Sustainable Enough? (2011)”, *Munich- Working Paper No. 98*, *available at*: <https://www.ifo.de/DocDL/IfoWorkingPaper-98.pdf>

⁵⁶⁷ *Ibid*

⁵⁶⁸ Jean-Frederic Morin and Coretin Bialais, “Strengthening Multilateral Environmental Governance through Bilateral Trade Deals (2018)”, *Policy Brief No. 123*, Centre for International Governance Innovation, *available at*: <https://www.jstor.org/stable/resrep17319>.

⁵⁶⁹ *Ibid*

⁵⁷⁰ Achim Steiner and Lee. A. Kimball, “Global (2003)”, published online by Cambridge University Press, *Available at* <https://www.cambridge.org/core/journals/oryx/articles/global-governance-for-the-environment-and-the-role-of-multilateral-environmental-in-conservation/878E4>

⁵⁷¹ *Ibid*

⁵⁷² Chris Wold, “Multilateral Environmental Agreements and the GATT: Conflict and Resolution? (1996)”, Vol. 26, No. 3, pp. 841-921, *Environmental Law*, *available at* <https://www.jstor.org/stable/43266504>

for instance CITES⁵⁷³, “Montreal Protocol”, “Basel Convention”, etc. Similarly, the Basel Convention imposes trade restrictions on the transport of hazardous waste because the trade itself is considered dangerous in that case mostly developing nations are unable to dispose of hazardous waste in an environmentally sound manner.⁵⁷⁴ The Basel Convention obliged three general conditions on member states prior to a shipment of hazardous waste, notification and consent of the importing party, conditions within the exporting country and conditions within the importing country. The Basel Convention permits developed nations to export waste to developing nations and many developing nations found it unacceptable.⁵⁷⁵

The Montreal Protocol which basically imposes trade restrictions on non-parties to attract more parties to stop the creation of ozone diminishing elements such as chlorofluorocarbons (CFCs).⁵⁷⁶ Consequence the Protocol requires parties to stop trade with non-parties both in ozone depleting substances and products containing ozone substances. These provisions of many environmental agreements briefly summarized the conflict with the fundamental rules of GATT and the new WTO codes.⁵⁷⁷ Since, it is the protagonist of environmental treaties specifically to deals with environmental issues at global level to justify trade measures as the legal instruments to compact with Climate challenges. As a result, environmental consultation began at international sphere in the shape of global climate change convention.

4.3.1. “Convention on “International Trade in Endangered Species” 1973 (CITES)

The Convention is multilateral accord specifically to protect trade in rare plants and animals at international level. This mean to manage the global crusade of “wild plants” and “animals”, “alive” or “dead”, “whole” or “parts” thereof in such a method as to be guaranteed that the stresses of global business doesn’t add to the listed species.⁵⁷⁸ Since, many species and their habitats are diminishing at an inconceivable rate due to human

⁵⁷³ Hereinafter the acronym for CITES shall be used for “Convention on International Trade in Endangered Species”.

⁵⁷⁴ *Supra Note 568*

⁵⁷⁵ Fourth ACP-EEC Convention signed at Lome on 15 December 1989, EU Council of the EU Document, pp. 324, *available at* <http://aei.pitt.edu/49090>

⁵⁷⁶ David R. Downes, “The Seeds of Green Trade? (1994)”, Vol. 8, *available at* <https://journals.tulane.edu/index.php/elj/article/download/1881/1728>

⁵⁷⁷ *Ibid*

⁵⁷⁸ David Favre, “Brief Summary of Convention (CITES) (2002)”, Published by Michigan State University College, *available at*: <https://www.animallaw.info/article/brief-summary-convention-on-trade-endangered-speies-cites>

consumption and habitat loss. Nevertheless, the need for species and habitat conservation clashes at times through the necessity for economic development, particularly in those nations where intercontinental trade in wildlife and plants serves as a crucial source of income.⁵⁷⁹ However, since the CITES inception in the year 1973, the purpose of CITES remain troubled but after decades of uncontrolled wildlife trade caused the extinction of various species and threatened many more.⁵⁸⁰

The Convention try to find the equilibrium concerning the needs for conservation and trade of these species by the Parties. Several ideologies and economic interest exist between developed and least developed nations, range states and non-range states, and government and non-governmental organization.⁵⁸¹ These differing interest lead unavoidably to differing views over how CITES should be interpreted and what its main purpose should be. Some view Convention as an international endangered species list, a trade agreement like any other, the world's leading conservation treaty or, as is quite often the case, an endless stream of costly and time-consuming paperwork.⁵⁸² In 1972, the UNCHE echoed the request for regulation by recommending that a supreme consultation should be started to implement a convention to regulate the export, import or shipment of assured classes of "wild animals" and "plants".⁵⁸³ The Convention classified species of vegetation and wildlife by placing them in the lists called appendices. Those 'threatened with extinction' are listed in 'Appendix I' and commercially trade in those species is essentially prohibited, in 'Appendix II' limited commerce is permitted, and 'Appendix III' relates to species keeping pace by a party within its borders which requires the cooperation from other parties in the control of trade.⁵⁸⁴

This categorization system is the center of controversy and disagreement between nations as to how species are classified, when commercial trade should be permitted in some species etc.⁵⁸⁵ Many species are placed and removed from the list (appendix)

⁵⁷⁹ John L. Garrison, "The debate over sustainable use (1994)", Vol. 12, No. 1, *Envtl. L. Rev.*, pp. 301, available at: <https://doi.org/10.58948/0738-6202.1531>

⁵⁸⁰ William C. Burns, "CITES and the Regulation of Flora: A Critical Appraisal (1990)", *Penn State International Law Review*, Vol. 8, No. 2, Article 3, available at: <https://elibrary.law.psu.edu/psilr/vol8/iss2/3>

⁵⁸¹ *Supra Note 572*

⁵⁸² *Supra Note 575*

⁵⁸³ *Supra Note 576*

⁵⁸⁴ Meena Alagappan, "The United States 'Enforcement (1990)", *Northwestern Journal Business*, Vol. 10, Issue 3, available at: <https://scholarlycommons.law.northwestern.edu/njilb>

⁵⁸⁵ *Ibid*

according to the ‘Berne Criteria’, a list of biological and trade factors approved by the first meeting held in Berne, Switzerland. During the (eight sessions) assembly of the nation’s held in Kyoto, Japan, a new resolution was introduced known as “Zimbabwe Resolution”.⁵⁸⁶ The Resolution encouraged sustainable use of wildlife as a viable means of conservation and economic development, challenging the basic principles upon which the Convention was founded.⁵⁸⁷ The “Zimbabwe Resolution” did not obtain wide approval by the Parties, most were either withdrawn by their sponsors in committee or were redrafted into less controversial resolutions. The special committee was created to develop new listing criteria to be accessible on ninth summit of the (COP) to be held on Florida in November 1994.⁵⁸⁸ This comment explores the conflicting views over the intention of the concord such as conflict between trade and justifiable practice of endangered species within the framework.⁵⁸⁹ Given the inability and unwillingness to apply the Concord, sustainable commercial trade of vegetation and wildlife will remain an indefinable goal. The Parties will have few options but to ban the international trade of some species to ensure their survival.⁵⁹⁰

“Objectives of the Convention”

Many nations and NGOs are involved to represent a variety of approaches towards wildlife which replicate their political, religious, and cultural differences from the view that wildlife should be economically exploited.⁵⁹¹

The Convention never mentioned the connections between trade and justifiable growth. The “13th Conferences of the Parties”⁵⁹² (COP13) recommended that the parties has to apply the guidelines and principles for the sustainable use of biodiversity. The Convention ‘Strategic Vision’ accepted by “14th conference of the parties”⁵⁹³ (COP14)

⁵⁸⁶ A Dan Tarlock, “The Endangered Species Act and Western Water Rights (1985)”, *Land & Water Law Review*, Vol. 20, Iss. 1, pp. 1- 30, *available at* https://scholarship.law.uwyo.edu/land_water/vol20/iss1/1

⁵⁸⁷ *Supra Note 583*

⁵⁸⁸ *Supra Note 579*

⁵⁸⁹ Irma S. Russell and George Cameron Coggins, “Beyond Shooting Snaildarters in Porkbarrels: (1982)”, *Faculty Law Review*, Vol. 70, Article, *available at* https://scholarworks.umt.edu/faculty_lawreviews/37/

⁵⁹⁰ *Ibid*

⁵⁹¹ Christine Fuchs, “Convention (CITES)- (2008)”, *German Law Journal*, Vol. 09. No. 11, *available at* <https://doi.org/10/1017/S2071832200000584>

⁵⁹² Thirteen COP held on Bangkok, Thailand, 2- 14 October 2004, *available at*: <https://cites.org/eng/cop/13/doc/index.php>

⁵⁹³ Fourteen Meeting of the COP held on Hague, Netherland, 3- 15 June 2007, *available at*: <https://cites.org/eng/cop/13/doc/index.php>

confirmed that sustainable trade can make a huge contribution to achieve the objectives of biodiversity conservation.⁵⁹⁴ The Convention categorized the species into 'Appendices' to regulate endangered species and protected within any member state which needs the cooperation of additional countries for the protection.⁵⁹⁵ There are around fifty thousand fauna and flora species listed on the CITES appendices such as whales, dolphins, orchids, etc.

The Convention main actions include supervising of implementation within member states and enforcement measures. Though the Convention has not been recognized as an international organization, yet its structure and functioning in many respects resembles those of international organization. In fact it is an association of nations established and based upon a treaty that follows common aims.⁵⁹⁶ The said Convention operates through the issue and control of carry across and ingress permits for itemized classes in three Appendices, they are as follows:-

Appendix I

Lists of threatened species with extinction, trade is strictly prohibited.⁵⁹⁷

Appendix II

Trade is permitted of both wild and artificially prorogated materials provided an appropriate permit is obtained but only those lists species that are least threatened with extinction may become so in future if uncontrolled trade continues.⁵⁹⁸

Appendix III

Trade in species that are expected to threaten locally with extinction by way of commercial exploitation is subject to trade control within certain countries.⁵⁹⁹

The Convention relies on national as well as international bodies to execute its central tasks. The examination of the composition and the function of institutions will further

⁵⁹⁴ Rosalind Reeve, Policing (2002)", The CITES and Compliance, Published by The Royal Institute of International Affairs, UK, Sustainable Development Programme, *available at:* https://api.pageplacedepreview-preview-9781134206940_a23776238/preview-9781134206940_A23776238.pdf

⁵⁹⁵ (CITES), 3 March 1973, Preamble (1), (2), Available at <https://www.cites.org/eng/disc/rect.shtml>

⁵⁹⁶ Rudolf L. Bindschedler, "International Organizations, General Aspects (1995)", (2)(1289), *available at:* https://law.duke.edu/ilrt/int_orgs_2.htm

⁵⁹⁷ CITES-Botanic Garden Conservation News, June 1999, Vol. 3, No. 2, pp. 34-37, *available at:* <https://www.jstor.org/stable/24753838>

⁵⁹⁸ *Supra Note 594*

⁵⁹⁹ *Ibid*

emphasize this composite administrative dimension.⁶⁰⁰ The Convention main decision making body is known as “*Conference of the Parties*” (COP) composed of various government representatives. The main end of COPs is to analyze the divergent issues of climate challenges at global level.⁶⁰¹ Moreover, there is an expert on “Zoological” nomenclature (Animal Committee) and expert on botanical nomenclature (Plant Committee) who is selected by the COP to offer suggestions and guidance to all other bodies⁶⁰² to amend the appendices, cooperate with the “Scientific Authorities”, review of species that are considerably affected by trade, drafted potential resolutions, and perform any other functions assigned to them by the COP.⁶⁰³

Member countries approved their individual rule to create domestic ‘Scientific and Management Authorities’. Since trade is restricted to stringent allocations for different types of creatures and plant etc.⁶⁰⁴ Definite COP tenacity begins instructions and techniques to the “Standing Committee”, which is the key structure for overall plan and functioning route of amenableness measures.⁶⁰⁵ The “Convention Secretariat” has a lively part in assessing state accounts, demanding data from associates about implementation, regularly reporting, and commendations to the ‘Standing Committee’. All activities rotate creation parties’ offer or authorities to device local legislation.⁶⁰⁶

The said annual reports are the solitary resources of observing the level of trade in species listed accordingly to the appendices of the convention. Consequently, execution of national procedures was the great tasks for the said Convention due constant disappointments of gatherings to deliver fixed, sufficient information and to create domestic measures.⁶⁰⁷ “*World Conservation Monitoring Centre*” informed that erstwhile to 1999, 17 nation sat no time put forwarded annual report and 7 nations have

⁶⁰⁰Rudiger Wolfrum and Maurice Mendelson, “Means of ensuring compliance with and enforcement (1999)”, Publisher M. Nijhoff, The Hague Academy of International Law, *available at* <https://www.worldcat.org/title/means-of-ensuing-compliance-with-and-enforcement-of-international-environment>

⁶⁰¹ Elisabeth M. McOmber, “Problems (2002)”, Brooklyn, Vol. 27, Issue 2, *available at* <https://brooklynworks.brookla.edu/bjil/vol27/iss2/10>

⁶⁰² *Supra Note 595*

⁶⁰³ *Ibid*

⁶⁰⁴Cymie Payne, “Introductory note to Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Compliance Procedure (2007)”, International Legal Materials, Vol. 46, No. 6, pp. 1174- 1177, *available at* <https://www.jstor.org/stable/20695775>.

⁶⁰⁵ *Ibid*

⁶⁰⁶*Supra Note 596*

⁶⁰⁷ Jonathan Harwood, World Conservation Monitoring Centre, A Report on Annual Reports, Submitted by the Parties to CITES (1999), *available at* <https://cites.org/sites/default/files/eng/cop/12/doc/E12-22-1A4.pdf>

submitted twenty five percent of the mandatory reports.⁶⁰⁸ It must be well-known that Convention is reflected comparatively good as associated to added “environmental agreements” and highlights possible damages of distribution shares for already listed species from countries.

4.3.1.1. Endangered Species Act, 1973

Retort to CITES, Congress ratifies the “Endangered Species Act”, 1973 (ESA), which places limitations on the importation and exportation of endangered wildlife and its products. Compare to previous federal legislation relating to endangered species conservation, the ESA substantially broadened the scope of trade in endangered wildlife for example it strengthened penalties for offenders.⁶⁰⁹ The Act assigns the management authority and the scientific authority to sanction the permit for trade in wildlife in term of Convention’s rules. The ‘Scientific Authority’ is accountable for investigating wildlife shipments and making the technical determinations necessary to guarantee obedience to Convention.⁶¹⁰ The said Authority’s responsibility includes checking the applications for listed species, evaluating the status of wildlife by trade and making determinations regarding the sufficient housing and care of protected species.⁶¹¹ The Act also contended that the purposes of each authority are to be carried out by the “Fish and Wildlife Service (FWS)” and the “National Marine Fisheries Service”. The two arms of the FWS are the ‘Wildlife Permit Office’ (WPO) and the workplace of the ‘Scientific Authority’ (OSA).⁶¹²

Regardless of the enactment of the ESA and CITES illegal trade persists and this problem is partly determinable to incompetent enforcement of the ESA. For example, the very inadequate staffing of the FWS prevents the agency from conducting inspections on a huge amount of undeclared shipments. In this case deficiency may encourage trade in wildlife illegally around the world. Likewise, another problem is that ESA regulations permit customs officers to clear wildlife shipments if an FWS

⁶⁰⁸ *Ibid*

⁶⁰⁹ *Supra Note 580*

⁶¹⁰ *Supra Note 584*

⁶¹¹ Jay E. Carey, “Improving the Efficacy of CITES by Providing the Proper Incentives to Protect Endangered Species (1999)”, Washington University School of Law, Vol. 77, Issue 4, *available at*https://openscholarship.wustl.edu/law_lawreview/vol77/iss4/8

⁶¹² *Ibid*

representative did not perform inside a reasonable time.⁶¹³ Another deficit in the ESA regulations is that FWS agents and customs officers who are accountable for defrayal wildlife are not required rejecting clearance of shipments, reasonable grounds to believe that said Convention has been violated. Furthermore, a number of flexible exceptions to the Convention's requirements create deficiency in the statutory regime which impedes the enforcement efforts of the FWS.⁶¹⁴ For instance, the ESA contains an undue economic hardship exemption which provides a serious ambiguity in the statutes that dealers exploit.

In addition, specimens are not substance to import and export if they were acquired for personal use.⁶¹⁵ From the sensitivity of the FWS 'Scientific Authority' the more serious difficulty arising ambiguous language in the Convention is the problem of unlawfully classifies traded wildlife. Since no guidelines are provided for verify whether a specimen is readily recognizable as a protected species. In sum, the various structural deficiencies in the statutory framework of the Convention seem to hinder strict CITES enforcement and do not paint a promising picture of administrative success in enforcing the Convention.⁶¹⁶

4.3.2. The Montreal Protocol 1987

The 'United States Department of Energy' published multiple studies drawing concerns about the global temperatures which were increasing rapidly. Even in 1972 the UNCHE brought environmental issues to the forefront and clearly cited that "the significance of worldwide collaboration to effectively reduce, control, prevent, and remove adverse environmental effects."⁶¹⁷ Later on climate change was specifically discussed at the first "World Climate Change Conference" and recognized the key reason of global warming. The "Intergovernmental Panel on Climate Change"⁶¹⁸ expected that global warming can bring radical weather fluctuations and pointed that if unchecked the release of 'greenhouse gas emissions' into the atmosphere. So concerns over global warming a

⁶¹³ John L. Garrison, "The Wildlife and the Debate over Sustainable Use (1994)", *Pace Environmental Law Review*, Vol. 12, Issue 1, available at <https://digitalcommons.pace.edu/pelr/vol12/iss1/12>

⁶¹⁴ *Ibid*

⁶¹⁵ *Supra Note 600*

⁶¹⁶ Gardner M. Brown Jr. and Jason F. Shogren, "Economics of the Endangered Species Act (1998)", Vol. 12, No. 3, pp. 3-12, Published by American Economic Association, available at: <https://www.jstor.org/stable/2647029>

⁶¹⁷ (UNCHE) Swed, June 5-16, 1992, available at: <https://www.un.org/en/conferences/environment/stockholm1972>

⁶¹⁸ IPCC (1988) available at: <https://www.ipcc.ch/about/history/>

second “World Climate Conference” was held in 1990.⁶¹⁹ The conference was specially sponsored by “*World Meteorological Organization*” (WMO) and “*United Nations Environmental Programme*” (UNEP) where it was believed that convention on climate challenge was necessary at global level.⁶²⁰

Later, the WMO issued the international science statement, “human activities and some other possible geophysical consequences”, considering the key object for CFC emissions.⁶²¹ In 1977 the “*United Nations Environmental Programme*” organized an international meeting of experts in Washington, D.C and it was suggested an action plan on the “Ozone Layer” to synchronize further research on the reduction and formation of the “Coordinating Committee” to undertake annual research review to be published. Later the UNEP recognized an ad-hoc working group to expand a “Global Framework” and met at the “Vienna Convention” and assessment was done under the sponsorship of the global agreement. Moreover, attempts to consent specific controls on ozone-depleting substances but did not succeed until 1987 as opinion of many different nations scientific uncertainties was the reasons for ozone depletion.⁶²² So to tackle the ozone layer issue the “Protocol” was created and framed out the principles, initiated lots of international activities reflected by dozens of meetings that led up to the said protocol in the year 1987.⁶²³

Objectives of the “Montreal Protocol”

UNEP in year 1987 commenced intergovernmental negotiations to protect the stratospheric ozone layer which was signed by twenty states along with the ‘European Community’⁶²⁴ which started the framework for the transnational public known as “Montreal Protocol”. The parties acknowledged the harmful impact posed by ozone

⁶¹⁹ Climate, Information Unit for Conventions (IUC), United Nations Environment Programme, available at: <https://unfccc.int/cop3/fccc/climate/fact17.htm>

⁶²⁰ Aaron Ezroj, “Climate Change and International Norms (2011)”, Vol. 27, No. 1, pp. 69-101, published by Florida State University College of Law, available at: <https://www.jstor.org/stable/42861156>.

⁶²¹ US Department of Transportation, “Climate Impact Assessment Program: Environmental Impacts of Supersonic Flight: Biological and Climate Effects of Aircraft Emissions in the Stratosphere (1975)”, US Department of Transportation, Washington, DC, available at: <https://sedac.ciesin.columbia.edu/mva/lamcc.tg/TGsec2-1.html>.

⁶²² *Ibid*

⁶²³ United Environment Programme, Ozone Secretariat, Handbook, available at <https://ozone.unep.org/treaties/vienna-convention>

⁶²⁴ Depleting the Ozone Layer (2021), Department of Climate Change, Energy, the Environment and Water, Australian Government, Available at <https://www.dcceew.gov.au/environment/protection/ozone/montreal-protocol>

depletion and focused on action by managing scientific and research data.⁶²⁵ The Protocol considered a successful agreement as it sets out a mandatory period for elimination of ozone substances with scientific and technological advancement. The Protocol sets a binding obligation for both advanced and emergent nations for all ozone depleting substances.⁶²⁶ The depleting issue was legitimized by the successive ‘Montreal Protocol’, consist a body of regulations whose purpose was to control, reduce, and eventually eliminate the growing list of ozone layers depleting substances.⁶²⁷ Much of the success enjoyed by the ‘Montreal Protocol’ can be accredited to the interpretations and move towards utilized by the parties towards fundamental international environmental law principles when they developed their solution strategy.⁶²⁸ The scientific uncertainty regarding the serious effects of ozone substances played a chief character in creating the precautionary response. In that event “Montreal Protocol” became the first true international approach towards a global environmental danger.⁶²⁹

The Protocol is a milestone agreement that has successfully reduced the emissions of ozone depleting substances which contribute to the radioactive forcing of climate change. The climate protection mission had already attained by the “Protocol” by handling the reduction target releases of additional “fluorocarbon” fumes and applying substitute fumes with lesser global warming potentials.⁶³⁰ The “European Community” supported very different regulations as compare the “United States” required with both sides unconvinced that either approach would have a meaningful impact.⁶³¹

The Protocol also illustrated the precautionary principle because it was planned to decrease worldwide production of ozone substances before alternatives were readily

⁶²⁵ Bryan A. Green, “Lessons from the Montreal Protocol: Guidance for the next International Climate Change Agreement (2009)”, Vol. 39, No. 1, pp. 253-383, *Environmental Law*, available at: <https://www.jstor.org/stable/43266831>

⁶²⁶ *Supra Note 110*

⁶²⁷ Daniel G. McCabe, “Resolving Conflicts between Multilateral Environmental Agreements: Montreal and Kyoto Protocols (2007)”, 18 *FORDHAM ENVTL. L. REV.* 433, 437, available at: <https://law.bepress.com/expresso/eps/1945/>

⁶²⁸ *Ibid*

⁶²⁹ *Supra Note 616*

⁶³⁰ Guss J.M. Velders and Stephen O. Andersen et al., “The Importance of Protecting Climate (2007)”, Vol. 14, No. 12, pp. 4814-4819, available at: <https://www.jstor.org/stable/25427101>

⁶³¹ *Ibid*

available and when the demand for products containing ODSs was increasing.⁶³² The Protocol recognized first and second generations of ozone substances for example halons, chlorofluorocarbons (CFCs), Carbon tetrachloride etc. The USA amended the ‘Clean Air Act in 1990’ to provide a legislative framework for ensuring the targets identified by the Protocol.⁶³³ The industrialized nations such as United States, Canada, and Mexico announced to introduce policy options in year 2009 to regulate and potentially mitigate HFC production included:⁶³⁴

“Policies like binding technological and performance standards, financial incentives to ease emissions, import or consumption, destructions or substitute’s voluntary agreements with industry and non-binding best practice standards”.

The Protocol was a revolutionary international legal and environmental agreement as it successfully reduces the global production, consumption and emission of ODSs. It also help to spread ozone-safe technology around the world recognized the fundamental role played by the Protocol which can effectively support the other international treaties also.⁶³⁵

4.3.3. The Basel Convention 1989

In 1970 and 1980 there was a radical increase in sustainable awareness due to harmful influence of Climate change in human health. So the developed nations started to enact regulations on the harmful waste management and disposal. In a struggle to seek cheaper option elsewhere the industrialized countries had started to dump their harmful waste into Africa and Eastern Europe nations which impacts on human’s health.⁶³⁶ The growing threat caused by the trans-boundary movement of harmful waste finally led to

⁶³²M.J. Molina and F.S. Rowland, “Stratospheric Sink for Chlorofluoromethanes: Chlorine Atom Catalysed Destruction Of Ozone (1974)”, 49 NATURE 810, available at: <https://www.nature.com/articles/249810aO>

⁶³³ The Montreal Protocol Climate Change, October 2009, Environmental and Energy Study Institute, available at: https://www.eesi.org/files/100609_montreal_brief.pdf

⁶³⁴Supra Note 632

⁶³⁵ Multilateral- (with annex). Concluded at Montreal on 16th September 1987, Vol. 152, I- 26369, United Nations- Treaty Series 1989, available at: <https://treaties.un.org/doc/publication/unts/volume%201522/volume-152-i-26369-english.pdf>

⁶³⁶Saheed Matemilola and Hammed Adeniyi Salami, “Basel Hazardous Wastes (Basel Convention) 2020”, Department, Published Springer Nature Switzerland AG 2020, available at: https://www.researchgate.net/publication/344224151_Basel_Declaration_On_the_Control_of_Hazardous_Waste.

the creation of the “Basel Convention” of the “*Control of Transboundary Movement of Hazardous Waste*” and its clearance in March 1989 by the UNEP.⁶³⁷

During the 70s and 80s, an increasing awareness of hazardous waste led to a proliferation of legislation relating to waste disposal in the domestic legal system of developed countries. The resulting decrease in the availability of disposal sites and increase in disposal cost led to an expansion in disseminates of unsafe leftover to nations in the emerging domain which lacked stringent controls on waste disposal.⁶³⁸ Numeral of disasters highlighted the threat of growing trade, which led to a public protest and international movement by various environmental NGOs to ban the trade in hazardous waste. As a consequence the Convention was concluded and treaty aimed to regulate trade in hazardous waste began in the year 1987 and signed the Convention by 35 States in the City of Basel, Switzerland.⁶³⁹ Since then the Convention was try to settle the opposing view of those countries which favored a full prohibition on trade in ‘hazardous waste’ and those which opposed such a ban. Most developing nations along with European Union and a coalition of Environmental NGOs contended that this was the only means by which to guarantee that the industrial states dealt with its own waste rather than using the developing nations as a discarding area for their particular profits.⁶⁴⁰ While differing a prohibition on trade were the bulk of “Non-European” industrialized nations, beside with a minor amount of emergent countries. The Convention realized a negotiation amongst these two by variable moderately than barring trade in harmful waste.⁶⁴¹

The high profile case was eight thousand tons of toxic wastes leaked and exportation in Nigeria and among other nations without the prior approval of the nations.⁶⁴² Originally the belief of Convention was to find out the conflicting views between two countries i.e. supported a comprehensive prohibition of trans-boundary trade and those which

⁶³⁷ *Ibid*

⁶³⁸ Daniel Jaffe, “The International effort to control Waste: The Basel and Bamako Convention (1995)”, *ILSA Journal of International & Comparative Law*, Vol. 2: 123, available at: <https://nsuworks.nova.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1015&context=ilsajournal/>

⁶³⁹ Adeola F, “Environmental Injustice and Human Rights Abuse: the States, MNCs, and Repression of Minority Groups in the World System (2001)”, *Human Ecology Review*, Vol. 30, No. 50, Available at <https://www.humanecologyreview.org/pastissues/her81/81adeola.pdf>.

⁶⁴⁰ *Supra Note 627*

⁶⁴¹ *Ibid*

⁶⁴² Valentina O. Okaru, “Basel Convention: (1993), Vol. 4, No. 2, *Fordham Environmental Law Review Report*, Available at <https://ir.lawnet.fordham.edu/viewcontent.cgi?referer=&httpsredir=1&article=1351&context=elr>

hold the “no ban” view.⁶⁴³ Many countries have shared the view for the prohibition of disposal waste locally rather than shipping them to developing nations which often require the capacity to manage them.⁶⁴⁴

In contrast, many non-EU industrial countries associated with a few developing nation such as “India” and “Pakistan” to oppose the ban of toxic waste. So the Convention chose to standardize the trade rather than implementing total ban in hazardous trade.⁶⁴⁵ Issues of guideline in trade of hazardous wastes have been on top of global environmental agenda recognized by the “Governing Council” of “United Nations Environmental Programs” (UNEP) on November 1981.⁶⁴⁶ So the chief purpose was to achieve targets including minimization of the hazardous wastes generated; restraint trade in toxic wastes; and encouragement of “Environmentally Sound Management” (ESM) of hazardous waste.⁶⁴⁷

Objectives of the Basel Convention

To achieve the aim several ban are designed to make sure that harmful waste are not imported to any state that are not members to the Concord or a country in where ingress of dangerous leftover is banned or prohibited. For example “Article 4(5)”⁶⁴⁸, totally prohibits hazardous wastes trade between the convention’s party and non-party.⁶⁴⁹ Though, the Convention was sometime given a space to go into bilateral and multilateral agreement on waste management on the basis of the “Environmental Sound Management” principles. The said provision is ingrained in “Article 4(9)”⁶⁵⁰ where the Convention has permitted the trans-boundary trade of harmful waste under some conditions.⁶⁵¹

Before the said Convention waste was directed by the international principle of “good neighborhood”.⁶⁵² The said principle holds that states must administered a movement of

⁶⁴³ *Ibid*

⁶⁴⁴ *Supra Note 639*

⁶⁴⁵ *Supra Note 625*

⁶⁴⁶ *Ibid*

⁶⁴⁷ *Supra Note 644*

⁶⁴⁸ Article 4(5) of the Basel Convention.

⁶⁴⁹ Katharina Kummer Peiry, “Basel trans-boundary (2010), United Nations Audiovisual Library of International Law, *available at* https://legal.un.org/avl/pdf/ha/bcctmhwd/bcctmhwd_e.pdf.

⁶⁵⁰ Article 4(9) of the Basel Convention- Parties shall take due care.

⁶⁵¹ *Supra Note 632*

⁶⁵² Ifeoma Onyerikam, “Achieving Compliance with (2007)”, *available at*: <https://ssrn.com/abstract=984067>

harmful waste inside their control to confirm that those activities do not hamper the resources of other states. The principle is very board, unspecific and before the Convention, there was practically no enforcement mechanism for its violation.⁶⁵³ Even though the principle became customary international law, due to the obscurity of enforcing it, a dedicated international instrument for dealing with the sensitive issue of hazardous waste became essential.⁶⁵⁴ To maintain the flimsy balance of justice between industrialized nations and African nations, the “Basel Convention” was established. Despite furious objections by many developed countries, the Convention was accepted with an overwhelming majority of the developing and under-developed nations in the year 1992 upon the deposit of the twentieth instrument of accession.⁶⁵⁵

In 2009 the “Chemical Abstract Service”⁶⁵⁶ (CAS) pronounced the unique substance entries to its Registry, since chemicals are used everywhere from controlling disease to increasing agricultural and industrial productivity, but along with the benefits often come unwanted effects. For certain categories of chemical substances there is proof or substantial evidence of their harsh and unfavorable effects for humans and the environment.⁶⁵⁷ Persistent organic pollutants and other hazardous chemicals are released during the practice of pesticides and herbicides in agriculture. In that case developed nations place strict national laws regarding trade, production, and use and discarding of harmful chemicals.⁶⁵⁸ However unindustrialized countries are slow in adopting management laws of chemicals because lack of administrative, technological and financial capacity to develop, execute and impose such laws.⁶⁵⁹

Global action (Environmentally Sound Management) in hazardous waste has set out a few objectives after the identification of threat to environment.⁶⁶⁰ The Convention total

⁶⁵³ *Ibid*

⁶⁵⁴ Els Reynaers, “The Transboundary Movement of Hazardous Waste a comparative analysis, LLM Theses and Essays, School of Law, University of Georgia, *available at*: https://digitalcommons.law.uga.edu/stu_llm/290

⁶⁵⁵ *Ibid*

⁶⁵⁶ Chemical Abstract Service (CAS) is a division Society and sources of chemical information. *available at* :<https://www.cas.org/about/cas-history>

⁶⁵⁷ Sotiria Koloutsou- Vakakis and InduChinta, “Multilateral Environmental Agreements for Wastes and Chemical: 40 years of Global Negotiations (2011)”, published by ACS, *available at*: <https://pubs.acs.org/10.1021/es101373n>

⁶⁵⁸ Pamela S. Chasek and Downie D.L *etal.*, “Global Environmental Politics (2017)”, 7th Edition, *available at*: <https://digitalcommons.fairfield.edu/politics-books/16>

⁶⁵⁹ *Ibid*

⁶⁶⁰ Muthu S. Sundram, “Basel (1997)”, Vol. 9, Issue. 1, Pace International Law Review, *available at*: <https://core.ac.uk/download/pdf/46711864.pdf>

prohibited trade in harmful leftover among members to the Concord and reinforces the supreme true if any party to it forbid the ingress of unsafe waste.⁶⁶¹ In command to attain the objectives of minimizing trade the Convention has allowed the crusade of waste only where the national of transfer doesn't have the capacity in term of technology and suitable disposal sites, or required by the importing state as raw materials for recycling or recovery industries.⁶⁶²

Where international trade of hazardous waste takes place the foundation must be on the "Prior Informed Consent" (PIC) conducted in compliance with the philosophies of ESM. Giving to the PIC procedure the exporting nation necessity apprise the capable consultant the type of the waste being transported through notification.⁶⁶³ The importing state must respond to the notification or give consent to the waste with or without conditions or in few circumstances they refused for further information.⁶⁶⁴

In 1994⁶⁶⁵ Parties implemented a decision to instantly prohibited trade in hazardous waste between industrialized countries and developing countries.⁶⁶⁶ Consequently, during the COP3 the proposal was accepted by the parties and agreed to amendment the Concord which came to known as the "Ban Amendment" or "the Ban".⁶⁶⁷ In 2009 only sixty five nations has rectified the "Ban" and the most of the non-rectified states are the major producers of harmful waste.⁶⁶⁸

Since every States has the autonomous right to manage events organized inside its zone so State may restrict or forbid trade in harmful wastes.⁶⁶⁹ Moreover, the rules are only

⁶⁶¹ Alan Andrews, "Beyond the ban- Can the Basel Convention adequately safeguard the interest of the world's poor in the international trade of hazardous waste? (2009)", vol. 5/2, pp. 167, Law, Environment and Development Journal, *available at*: <https://www.lead-journal.org/content/09167.pdf>.

⁶⁶² Francis O. Adeola, "Environmental (2001)", Vol. 8. No. 1, pp. 39-59, Published by Society for Human Ecology, *available at*: <https://www.jstor.org/stable/24707236>

⁶⁶³ *Ibid*

⁶⁶⁴ *Supra Note 642*

⁶⁶⁵ Second COP held on Geneva, Switzerland from 20 March to 25 March, 1994.

⁶⁶⁶ Jonathan Krueger, "The Basel Convention and the International Trade in Hazardous Wastes (2001)", Edition 1st, Yearbook of international Cooperation 2001-02, *available at* <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315067124-5/basel-convention-international-trade-hazardous-waste>

⁶⁶⁷ *Ibid*

⁶⁶⁸ Lisa Widawsky, "In my backyard: How enabling hazardous waste trade to developing nations can improve the Basel Conventions ability to achieve environmental justice (2008)", Vol. 38, No. 2, pp. 577-625, Published by Lewis & Clark Law School, Environmental Law, *available at*: <https://www.jstor.org/stable/43267210>

⁶⁶⁹ Katharina Kummer, "The International regulation of Transboundary traffic in hazardous wastes: The 1989 Basel Convention (1992)", Vol. 41, No. 3, pp. 530-562, The Quarterly, *available at*: <https://www.jstor.org/stable/760546>

concerned with the movement of harmful activities under their own jurisdiction without affecting the domain of other States. The Amendment does not provide much regulation created by the transfer of toxic substances which comprise a potential source of pollution from the State of generation into the zone of further nations.⁶⁷⁰ Numeral of legal mechanisms establish under the “Ban Amendment” was not legally binding. Since the movement of (harmful) litters are not restricted to certain boundaries but habitually take place at global scale from protection of marine to coastal regions etc.⁶⁷¹

The issue of harmful waste did not obtain much attention at global level until the 1980s, when it was occupied up by the “European Community” and the OECD. In 1982 the Council of UNEP authorized the group of experts to expand guidelines to assist states to develop non-binding instruments for management of waste effectively.⁶⁷² The Convention is collective treaty for the supervision of harmful waste after following reports of illegal movement of wastes from industrialized nations to African nations.⁶⁷³

Some developing countries contended that trade in wastes only require the “Consent” to trade across border therefore shipment of wastes still increased.⁶⁷⁴ Environmental NGOs for example ‘Greenpeace’ have also examined and publicized a staggering number of environmental dangerous waste activities.⁶⁷⁵ As hazardous sludge illegally dumped in under-developed country (African) leaches into the soil and contaminates the groundwater⁶⁷⁶ which in turn pollutes the corps that is transported across the international borders for consumption. So the approach was taken by the Convention to manage hazardous waste by establishing uniform international obligations and standards.⁶⁷⁷

⁶⁷⁰ Catherine Redgwell, “Sustainable Development of National Energy Resources: What has International Law got to do with it? (2017)”, Vol. 8: 1, AFE Bablola University: J. of Sust. Dev. Law & Policy, Sustainable Development of National Energy Resources, *available at*: <https://dx.doi.org/10.4314/jsdlp.v8il.16>

⁶⁷¹ Lynton Keith Caldwell, “International Environmental Policy (1990)”, 4th Edition, pp. 68, Duke University Press, *available at*: <https://www.dukepress.edu/international-environmental-policy>

⁶⁷² *Ibid*

⁶⁷³ *Supra Note 654*

⁶⁷⁴ *Supra Note 652*

⁶⁷⁵ Greenpeace and BAN websites, Greenpeace Toxics Campaign *available at* <https://www.greenpeace.org/TOXICS> and Basel Action Network (BAN) *available at*: <http://www.ban.org>

⁶⁷⁶ Sejal Choksi, “The 1999 Protocol on Liability and Compensation (2001)”, Vol. 28, Issue. 2, Article 13, Ecological Law Quarterly, *available at*: <https://scholarship.law.berkeley.edu/elq/vol28/iss2/13>

⁶⁷⁷ General Public Policy Issues: new Protocol Sets Liability & Compensation Scheme in Europe for Transboundary Shipment & Disposal of Hazardous Waste (2000), *available at*: https://www.emi.org/public_policy/general_eu_waste_protocol.htm

4.3.3.1. The Bamako Convention

African nations has describe hazardous waste “*a crime against African people*”, who dumped their wastes without the prior consent for that they need technical expertise and administrative capabilities to monitor, detect or handle hazardous waste as they are vulnerable to illegal dumping.⁶⁷⁸ For instance in 1955, fifteen thousand tons (15,000) of toxic ashes were found in Guinea. Besides their lack of skill and experience, the developing African countries have other problems dealing with waste also. So due to all these factors the ‘Organization of African Unity’ (OAU) implemented the “Bamako Convention” on the importation of hazardous waste into African nations and control the management of ‘Hazardous Wastes’.⁶⁷⁹ Since the main end of the OAU was the “Basel Convention” disappointment on the exportation of waste, although OAU represented them at the “*Basel Convention*” and signed the documents. The Basel Convention makes an effort to address OAU concern by encouraging technological transfers.⁶⁸⁰

Moreover, the Basel Convention allowed bilateral, multilateral, regional or economic integration unit agreements which ban the import of all wastes defined to be hazardous. The provision under the “Basel Convention” gave the OAU the chance to resolve their problem by entering into more rigid accord demonstrated by the “Bamako Convention”.⁶⁸¹ The Bamako Convention applies to all harmful trashes limited in “Annex I” of the documents like the item listed as any discarded items to be harmful by the local regulation of either the national of import or export is also measured harmful beneath the “Bamako Convention”. Also any waste which has a quality contained in “Annex II” is hazardous for the said Convention’s purposes.⁶⁸²

The “Bamako Convention” also inflict various general obligations upon the parties to take the suitable measures to guarantee that no dangerous left over arrive African nations from a Non-contracting party. So the Convention placed the duty to observe

⁶⁷⁸ Dire Tladi, “The Quest to ban hazardous waste import into Africa: first Bamako and now Basel (2000)”, *The Comparative and International Law Journal of Southern Africa*, Vol. 33, No. 2, pp. 210-226, Published by Institute of Foreign and Comparative Law, *available at* <https://www.jsto.org/stable/23251151>

⁶⁷⁹ *Ibid*

⁶⁸⁰ Theodore Waugh, “Where Do We Go From Here: Legal Controls and Future Strategies for Addressing the Transportation of Hazardous Wastes Across International Borders (1999)”, *Fordham Environmental Law Review*, Vol. 11, No. 2, Article 2, Available at <https://ir.lawnet.fordham.edu/elr>

⁶⁸¹ *Ibid*

⁶⁸² *Supra Note 662*

their respective waterways to ensure that no dumping occurs in any waters, including seas. However, the “Bamako Convention” has some elements that any nations cause damage due to violation of the Convention’s principles can be penalized any monetary sanction that a tier of fact determines.⁶⁸³ Another distinctive aspect was it does not allow any substances to be discharged into the air which causes harm. The only difference between was the Bamako Convention forbids harmful wastes from being imported into African nations only. Therefore, the OAU undeniably felt that prohibited imports of harmful discarded items were the solitary method to keep the African surroundings safe and healthy.⁶⁸⁴

The both Convention played a major role towards remedying the problems associated with trade in hazardous waste despites of many faults which may prevent either of them from being effective. The “Basel Convention” defines hazardous waste that fall into listed class of wastes in “Annex I” defined by the import and export states.⁶⁸⁵ In respect of certain hazardous substances, the Convention manages to categorize numerous specific items but the Concord miscarries to point out exactly how far elements are essentials to occur in directive for the discarded to be measured as harmful. Besides to these shortcomings for a waste to be hazardous it has to meet one of the above cited qualities and must also display a characteristic listed in Annex III.⁶⁸⁶ Beyond altered elucidations of the harmful waste the Concord do not deal with the waste mixed together with recyclable material. For example, a German company was excused from the relevant German law concerning hazardous waste disposal when it lawfully mixed wood chips with hazardous waste to create a burn material.⁶⁸⁷ The Convention identified that many African nations do not have the necessary technological expertise to manage such harmful waste. Further, the Convention contented that if the Parties are in conflict with any jurisdictional disputes among themselves than the Parties can approach the ‘International Court of Justice’.⁶⁸⁸ As a consequence trade in harmful

⁶⁸³ *Supra* Note 661

⁶⁸⁴ *Supra* Note 682

⁶⁸⁵ *Supra* Note 658

⁶⁸⁶ *Supra* Note 660

⁶⁸⁷ David P. Hackett, “An Assessment of the Basel Convention (1990)”, Vol. 5, Issue 2, *available at* <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1583&context=auilr>

⁶⁸⁸ *Ibid*

substances will be complex but both of the Conventions have proved that the task is not impossible either.

4.4. Foundation of Climate Accords: “United Nations Framework Convention on Climate Change”

During “Earth Summit” Parties were agreed to ratify a few documents *inter alia* was the launch of UN “*Framework convention on climate change*” (UNFCCC). Many nations endorsed the treaty to fight against the numerous influence of “Climate change” and limiting the global temperature and coping with their impacts.⁶⁸⁹ The main purpose was to alleviate GHG absorptions level that would avoid human-induced interference in the climate system.⁶⁹⁰ It sets out the commitments in “Article 4” for the signatory nation as climate change will affect biodiversity in many ways for example species will respond differently to climate change because of differences in competitive abilities, migration rates etc. Many species may diaper firm enough to retain up with projected climate change.⁶⁹¹ Further, alterations in the qualified timing of seasonal events during the yearly cycle may have strong negative impacts for many species especially migratory ones.

In addition, the UNFCCC’ subsidiary bodies met and various workshops were held to implement their goals in zones such as agriculture, energy resources by sharing technology, and programs help to combat the impacts caused by energy production, transportation, etc.⁶⁹² Even the UNFCCC introduces five main programs of the convention; Planning, coordination and Emerging Issues; Implementation; Science and Technology; Intergovernmental and Conference Affairs; and Information, Outreach and Administration Services. These programs work to further develop the commitments of individual nations to lessening climate change impacts.⁶⁹³ There are also links to resources such as greenhouse inventory database within this tables include an analysis of each country’s greenhouse emission by gas, sources and year. The Convention listed

⁶⁸⁹ Koko Warner, “Enhancing Adaptation Option and Managing Human Mobility Climate Change: Role (2008)”, Vol. 47, No. 1, pp. 122-124, International Legal Materials, *available at*: <https://www.jstor.org/stable/20695790>

⁶⁹⁰ The UNFCCC (1999), Vol. 3, No. 2, pp. 44-45, Botanic Gardens Conservation News, *available at*: <https://www.jstor.org/stable/24753842>

⁶⁹¹ *Supra Note 670*

⁶⁹² Lindsey A. Greene, “EHPnet: UNFCCC (2000)”, Vol. 108, No. 8, pp. A353, published by the National Institute of Environmental Health Sciences, *available at* <https://www.jstor.org/stable/3434711>

⁶⁹³ S. Anbalagan, “A Historical study on the Reports of UNFCCC (2011), Vol. 72, PART-II, pp. 1519, published by Indian History Congress, *available at* <https://www.jstor.org/stable/44145786>

the participating countries in two designations; the “Annex I” and “Annex II Parties”.⁶⁹⁴ The first “Parties” includes wealthy countries and the European states with economy in transition. These nations are committed to adopt policies to achieve their targets (reduce GHGs emissions) by 2000 and submit their GHGs reports regularly.⁶⁹⁵ Another achievement was the reporting framework which provides information on GHGs and encourages reporting of data from the Parties.⁶⁹⁶ The data provides essential inputs to scientists in predicting whether climate change pose a significant risk and helped the environmental groups to identify the challenges to reducing emissions.⁶⁹⁷

4.4.1. Objective of the Climate Convention

The UNFCCC was opened for signatures during the “Earth Summit” in ‘Rio de Janeiro’, together with the “Convention on Biological Diversity”, the “Convention to Combat Desertification” to set a non-binding forest management guidelines.⁶⁹⁸ The Convention was structure to describe its architecture and procedures to achieve its ultimate goal. The Convention thus adopted the protocol strategy in which the institutional mechanism is established under the Convention to create a mechanism to transact with the issues of climate challenges.⁶⁹⁹

The least-common-denominator political will in 1990s included only a non-binding goal of stabilizing emissions by 2000.⁷⁰⁰ The accepted baseline was chosen because GHG inventories were available in several countries. The nonbinding target, however, benefited some countries that significantly reduced their emissions just after 1990, and disadvantages others whose emissions had declined just before 1990 and risen again just after Japan’s economic bubble burst in 1988.⁷⁰¹

⁶⁹⁴ *Ibid*

⁶⁹⁵ Jana von Stein, “The International Law Climate Change: ratification (2008)”, *The Journal of Conflict Resolution*, Vol. 52, No. 2, pp. 243-268, International Organizations Count, *available at* <https://www.jstor.org/stable/27638605>

⁶⁹⁶ (UNFCCC), National Atmospheric Emissions Inventory, *available at* <https://naei.beis.gov.uk>

⁶⁹⁷ Marinn Carlson and Annie Petsonk, “United Nations Framework Convention on Climate Change Conference of the Parties: Decisions adopted by the first session (Berline) (1995)”. Vol. 34, No. 6, pp. 1671-1710, *International Legal Materials*, *available at* <https://www.jstor.org/stable/20698515>

⁶⁹⁸ Kenneth W. Abbott, “The Change”, (2012), *available at* <https://dx.doi.org/10.2139/ssrn.1813198>

⁶⁹⁹ Radoslav S. Dimitrov, “The Paris Agreement on Climate Change: Behind Closed Doors”, *Global Environmental politics*, Vol. 16, issue 3, pp. 1-11 (2016), *available at*: <https://direct.mit.edu>

⁷⁰⁰ J.T. Houghton and G.J. Jenkins, et.al., “Climate Change: The IPCC Scientific Assessment”, Work Group I, IPCC Cambridge University Press (1990), *available at*: <https://archive.ipcc>

⁷⁰¹ Jutta Brunne and Charlotte Streck, “The UNFCCC as a negotiation forum: towards common but more differentiated responsibilities”, *Climate Policy, Taylor & Francis Journals*, Vol. 13, No. 5, pp. 589-607 (2013), *available at*: <https://doi.org/10.1080/14693062.2013.822661>

The Convention's ultimate purpose was to “*alleviate GHGs level*” within a time period adequate to allow ecosystem to adapt naturally so that it doesn't hamper on sustainability and economic development should be continue in eco-friendly manner.⁷⁰² So the onus is on industrial nations remain the real emitters of greenhouse gas emission and have its place to the OECD nations.⁷⁰³ They included twelve nations with ‘economy in transition’ this means the “Annex I” countries has to report regularly on their climate policies and measures and submit their annual reports periodically.⁷⁰⁴

The leading portion of emission has devised in the advanced nations so the Convention has adopted the doctrines of parity and sustainability and calls both the nations to cooperate under the principles of joint but distinguished duties with their respective capabilities.⁷⁰⁵ The principles shall consider the most vulnerable country⁷⁰⁶ so that they outlines some specific mandatory commitments applicable to developed nations listed in “Annexes I” mentioned under “Article 4 Para 1” of the Convention.⁷⁰⁷ Further, general commitments were also included to all Parties with respect to their national planning, environmental technologies, policies, and development of targeted data archives. The “Annex I” countries are committed to provide financial aid such as loans, allowance to developing countries to fight against the influence of Climate challenge specified under “Article 12 Para 1”.⁷⁰⁸ Each Party should follow the principles with their respective capabilities.⁷⁰⁹ Each policies and measures created under the global climate accord should follow by both countries “Annex I” and “II” and dedicated towards the principle according to their liabilities and capabilities.⁷¹⁰

⁷⁰² United Nation Climate Change, available at <https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change>

⁷⁰³ Hereinafter the acronym OECD shall be used for “Organization for Economic Cooperation and Development”.

⁷⁰⁴ Hee-Eun Kim, “Background: international Legal Framework for Climate Change (2011)”, pp. 21-32, available at <https://www.jstor.org/stable/j.ctv941r23.6>

⁷⁰⁵ *Ibid*

⁷⁰⁶ Laurence Boisson de Chazournes, “UNFCCC (1992)”, Audio visual Library of International Law, available at: <https://legal.un.org>

⁷⁰⁷ Article 4 Para 1- undertake equity available at: https://unfccc.int/sites/default/files/englisg_paris_agreement.pdf.

⁷⁰⁸ Article 12 Paragraph 1, available at https://unfccc.int/sites/default/files/englisg_paris_agreement.pdf.

⁷⁰⁹ Ali Mehdi, “*Climate change and Biodiversity: India's perspective and legal framework (2010)*”, Vol. 52, No. 34, Special Issue Environmental Law, pp. 343-365, published by: Indian Law Institute, Journal of the Indian Law Institute, available at: <https://www.jstor.org/stable/45148528>

⁷¹⁰ Koko Warner, “Enhancing Adaptation Option and Managing Human Mobility Climate Change: Role (2013)”, Climate Change: International Law and Global Governance: Volume II: Policy, Diplomacy and Governance in a Changing Environment, pp. 761-784 (24 pages), available at: <https://www.jstor.org/stable/j.ctv941vsk.32>

The advanced nation and further nations included in “Annex I-II” commend themselves the following commitments like establishment of procedures against moderation of climate issues by limiting GHGs emissions level.⁷¹¹ Such parties could execute such guidelines cooperatively with further members and assist developing countries to achieve the target sets underneath the Convention. In order to endorse progress every Party shall communicate and will be appraised by the “*Conference of the Parties*” (CoP) in its First sitting occasionally (Article 12).⁷¹² To accomplish the commitments Parties will coordinate among themselves and identify the relevant instruments and policies that encourage activities which help to eliminate the level of artificial emissions of gases.⁷¹³

4.5. “Conference of the Parties” (COP) to Climate Challenges

The UNFCCC came into force and ratified by one hundred and ninety seven (197) countries and the concord are called “Conference of the Parties”.⁷¹⁴ The COP is ‘decision-making body’ where all States are represented to review their commitments and submitted reports to achieve their obligation under the Convention.⁷¹⁵ Since the “Rio Summit” and the UNFCCC, the COP has assembled every year to determine the ambition and responsibilities of the parties.⁷¹⁶ A primary focus is on expediting the embracing of clean energy sources to drastically reduce Greenhouse Gas Emission and emphasizing the handover of funds for Climate accomplishment from industrialized nation to economically disadvantaged nations. Besides, COP examine into specific subjects such as “health”, “finance”, “nature” etc. providing a comprehensive exploration of the complex aspect influencing climate action.⁷¹⁷

The COP raises the danger of Climate issue and contented that the world will not be able to satisfactorily confront the crisis without the initiatives taken by the “private

⁷¹¹ Elizabeth Seymour Smith, “*Climate Change in Women, Peace and Security National Action Plans*”, Research Report, SIPRI Insight, No. 2020/7 June 2020, available at: <https://www.jstor/stable/resrep25311>

⁷¹² *Ibid*

⁷¹³ Kristie L. Ebi, Ian Burton, “*Dangerous Anthropogenic Climate Change from the Perspective of Adaptation*”, Book Chapter Governance, 2013, pp. 713-738 (26 pages), available at <https://www.jstor.org/stable/j.ctv941vsk.30>

⁷¹⁴ *Ibid*

⁷¹⁵ (COP), UK 2021 in partnership with Italy, United Nation Development Programme, available at <https://www.undp.org>

⁷¹⁶ What is COP by Good Energy (2003), Posted in: Climate change Environment, available at <https://www.goodenergy.co.uk>

⁷¹⁷ UN (COP), available at: https://unfccc.int_process_bodies_supreme-bodies

sector”, “civil society”, “industry” and “individuals”.⁷¹⁸ This means climate change experts and influencers should come together to share their views and solutions at panel discussions. The COP contributes to legal obligation to fulfill their commitments within a time framed.⁷¹⁹ So they regularly hold a discussion with the consent of states such as formally amending the treaty instruments or concluding new treaties under the framework convention.⁷²⁰ In fact the COP discussion requires a mandatory consent of all Parties for creating another set of conversation between the representatives of COPs.⁷²¹

The COP also passes resolutions without consent of Parties instead they require only consensus or simple majority to bind all gatherings to the treaty. The consent is a major force in international treaty for example some of it has direct effect on the parties fundamental obligations i.e. external obligations⁷²² and another consent activity is internal for example influences the parties to vote at the COP meeting. In observation of the above we can say that the goal of the conferences is to review advancement prepared by associates of the climate convention to limit the impact of GHGs at global level.⁷²³

There are lots of different organizations involved in COP which includes representatives of all nations that are signatories to the UNFCCC. The “Conference of the Parties” assess the effects of measures (policy) initiated by Parties to limit climate change impacts.⁷²⁴ The “Conference of the Parties” also serve as the “*Meeting of the Kyoto Protocol*” (CMP)⁷²⁵ was held and included one hundred and ninety-two (192) countries to the “Kyoto Protocol”. This treaty commits its signatories to reduce or limit GHGs emissions according to individual targets and the agreements under the Protocol

⁷¹⁸ Rules of procedures for meeting, *available at*: <https://www.cbd.int>

⁷¹⁹ Robin R. Churchill and Geir Ulfstein, “Autonomous (2000)”, Vol. 94, Issue. 4, pp. 623- 659, *American Journal of International Law*, *available at*: <https://doi.org/10.2307/2589775>

⁷²⁰ Jutta Brunnee, “*Europe, Global Climate Regime: All together now? (2008)*”, Vol. 24, No. 1, pp. 1-43, Published by Florida State University College of Law, *available at* <https://www.jstor.org/stable/42842956>

⁷²¹ *Supra Note 693*

⁷²² *Supra Note 695*

⁷²³ Bryce Blegen, “International Cooperation in Protection of Atmospheric Ozone: (1988)”, Vol. 16, Number. 2, Article 9, *Denver Journal & Policy*, *available at* <https://digitalcommons.du.edu>

⁷²⁴ *Supra Note 697*

⁷²⁵ Hereinafter the acronym CMP shall be used for “Conferences of the parties serving as the meeting of the Parties to the Kyoto Protocol”.

are legally binding.⁷²⁶ The CMP⁷²⁷ meeting also takes place at COP in 2015 in which one hundred and ninety-six (196) nations adopted the “Paris Agreement” to edge universal heating. The COPs main aim was to review the pledges in terms of worldwide Climate accord (UNFCCC) to limit climate impact and the targets of each nation to reduce their emissions.⁷²⁸

4.5.1. Berlin Mandate (COP1-1995)

Under the global climate convention developed nations promise to take measures to control their emission levels by 2000. The “Berlin Mandate” established a suitable action plan to strengthen developed nation’s obligations through the “Kyoto Protocol” commitments.⁷²⁹ The first conference (COP-1) agreed to work towards a more stringent GHGs emission reduction policy in the post 2000 era.⁷³⁰ Subsequently rigorous and challenging dialogues, Parties agreed a command for negotiation of other legal instruments to supplement the FCCC⁷³¹ with an intention to negotiate the implementation of legal instruments by (COP-3) “Kyoto Protocol”.⁷³²

The ‘Parties Decision’ not to provides a fresh pledges for emergent nations but it must reiterate prevailing list, alleviation and broadcasting duties and endure to implement those commitments.⁷³³ Another “Decision of the Parties” was to create a trial stage for combined application schemes between global climate accord Parties. Combined execution scheme involved venture by one nation in discharges lessening prospects in extra often developing nation wherever decreases can be available at lesser peripheral rate. The Verdict offers that no member can right universal acclaim below the (FCCC)

⁷²⁶ What is COP?, Meteorological Office, Government agency, United Kingdom’s national weather service, available at <https://www.metoffice.gov.uk>

⁷²⁷ Hereinafter the acronym CMA shall be used for serving “as the meeting of the parties to the Paris Agreement”.

⁷²⁸ Brendan P. McGiven, “*Conference: Kyoto Protocol (1998)*”, International Legal Materials, Vol. 37, No. 1, pp. 22-43, available at <https://www.jstor.org/stable/20698760>

⁷²⁹ Berlin Mandate, Dictionary of Environment and Conservation, Oxford Reference, available at <https://www.oxfordreference.com>

⁷³⁰ Ad Hoc Group begins to address contentious Berlin Mandate, Inside EPA’s Clean Air Report, Vol. 6, No. 18, 1995, pp. 27-28, published by Inside Washington Publishers, available at <https://www.jstor.org/stable/45191884>

⁷³¹ Hereinafter the acronym FCCC shall be used for “Framework Convention on Climate Change”.

⁷³² Marinn Carlson and Annie Petsonk, “United Nations (Berlin)”, International Legal Materials, Vol. 34, No. 6 (November 1995), pp. 1671-1710 (40 pages), published by Cambridge University Press, available at

⁷³³ First Conference of the Parties, Linkages- A multimedia resources for environment and developing policy makers, International Institute for Sustainable Development, Earth Negotiation Bulletin website, available at <https://enb.iisd.org>

for discharges declines attained through the preliminary stage.⁷³⁴ But, the Result exposed the prospect that acclims might be completed existing for pole model stage releases discounts. The members also approved Verdicts forming a Perpetual Secretariat resolving on monetary preparations and two subordinate review groups. Between the accountabilities of these organizations is the grounding of mutually an enumerated improvement testimony on skill assignment events and valuation of hypothetically convertible technologies.⁷³⁵

The Parties agreed that new commitments were important to achieve the emission target so they established the “Ad hoc Group” on the “Berlin mandate” (AGBM) to draft another legal instrument.⁷³⁶ The “Berlin Mandate” supports governments to establish binding targets to reduce GHGs emission to all Parties. A number of proposals were on the table including one by the “Association of Small Island States” (ASIS) for a 20% cut in CO₂ and European Union cuts of 7.5% and 15% in a basket of gases including⁷³⁷ CO₂, CH₄ and N₂O etc. After much negotiation the utmost significant consequences from the said Conference were the decisions on ‘adequate of commitments’ and ‘joint implementation’ mechanism.⁷³⁸

While the Mandate keeps a number of doors open it nevertheless codifies one important principle. The other important outcome was the agreement on joint implementation which refers to the means whereby one country can fulfill its obligations by helping to reduce GHGs emissions, enhance carbon sinks or preserve reservoirs in another nation.⁷³⁹ Joint implementation generated much heat and attracted considerable attention during the Berlin Conference regarding international environmental agenda for amount of years. In Berlin Conference, Parties agreed to generate a “pilot phase” joint implementation. It is accepted that joint implementation activities can help to fulfill some of the “Annex I” Parties commitments by transfer of technologies more

⁷³⁴ *Ibid*

⁷³⁵ A brief History of the Climate Change Convention, Information Unit for Conventions (IUC), United Nations Environment Programme, available at <https://unfccc.int>

⁷³⁶ Bo Kjellen, “*Reflections on the Berlin Mandate*”, publication dated May, 2014, European Capacity Building Initiative, available at <https://ecbi.org>

⁷³⁷ Sebastian Oberthur and Hermann E. Ott, “*The Berlin Mandate and the AGBM Process (1999)*”, published by Springer, Berlin, Heidelberg, available at https://doi.org/10.1007/978-3-03925-0_4

⁷³⁸ Irving M. Mintzer and J. Amber Leonard, “*Negotiating Climate Change: The Inside Story of the Rio Convention (1994)*”, Cambridge Studies in Energy and the Environment, published, UK, available at <https://libcat.iitd.ac.in>

⁷³⁹ Ian H. Rowlands, “*The Climate Change Negotiations: Berlin and Beyond (1995)*”, The Journal of Environment & Development, Vol. 4, No. 2, pp. 145-163, published by Sage Publications, Inc, available at <https://www.jstor.org/stable/44319134>

generally. Many developing nations has wanted to keep the commitment that is proclaimed in the FCCC separate from joint implementation for they feared that joint implementation would displace other forms of development assistance.⁷⁴⁰

A “*Natural Resources Defense Council*” (NRDC)⁷⁴¹ stated that the conference discussion was focused on the analysis and assessment of the possibility of post-2000 emission reduction and ‘not much was accomplished along these lines’. The NRDC opined that analysis of the emission reduction policies is mandatory to move forward smoothly.⁷⁴² Many industries worried that certain emission reduction plans still on the table such as AOSIS⁷⁴³ which serve industrialized nations to economic strain. The COP which functions within the mandate of the legal basis of FCCC is the higher body of the Convention.⁷⁴⁴ The “Berlin Mandate” analysis the possible methods for “Annex I Parties” which might add to restraining and decreasing discharges by augmenting drops and pools of GHG.⁷⁴⁵

The AGBM requested few inputs for the Second meeting of the Conference so parties were encouraged to make such submissions to arrange a thematic index to enable the thoughtfulness of these inputs.⁷⁴⁶ Notably, obligation under COP1 are merely relevant to “Annex I” (developed nations) despite universal participation.⁷⁴⁷ Under these Commitment Parties has to submit their national determined contribution report for limiting anthropogenic emissions with an aim of launching a coordinated effort and such report would be theme to review which describes expected teamwork to formulate financial aid to developing nations.⁷⁴⁸ Since, the COP1 gained less support owing to nonexistence of universal participation but appreciated as the first step towards the global climate action.

⁷⁴⁰ *Supra Note 706*

⁷⁴¹ NRDC works to safeguard the earth its people, its plants and animals and the natural systems on which all life depends, *available at* <https://www.nrdc.org>

⁷⁴² Ad Hoc Group begins to address contentious Berlin Mandate, Inside EPA’s Clean Air Report, Vol. 6, No. 18, 1995, pp. 27-28, published by Inside Washington, *available at* <https://www.jstor.org/stable/45191884>

⁷⁴³ Hereinafter the acronym AOSIS shall be used for Association.

⁷⁴⁴ Saumya Kalia, “*Who gets to host s COP and does it matter? Explained*”, March 14, 2024, The Hindu, *available at* <https://www.thehindu.com-Ci-Tech-Environment>

⁷⁴⁵ Report on its First Session, held at Berlin from 28th March to 7th April 1995, Ministry of Foreign Affairs of Japan, *available at* <https://www.mofa.go.jp>

⁷⁴⁶ First Session, Berlin, 28th March- 7th April, 1995, *available at* <https://unfccc.int>

⁷⁴⁷ S. Pacala and R.Socolow, “Stabilization Technologies”, Vol. 305 Science, Towards s Hydrogen Economy Review (2004), *available at* <https://cmi.princeton.edu>

⁷⁴⁸ Chapter 9 A Better Climate, Transforming Markets: A Development Bank. A History of the EBRD, Vol. 2, 2021, pp. 337-400 (64 pages), *available at* <https://www.jstor.org/stable/10.7829/j.ctv209xmx.d.15>

4.5.2. The Kyoto Protocol (COP3-1997)

In 1992 the UNFCCC was ratified at the “Earth Summit” in response to greenhouse gases (GHGs) which trapped heat within the Earth’s atmosphere causing global warming. The main end was to stabilize GHGs by using the precautionary principle prevents the ecological and socio-economic effects of Climate change.⁷⁴⁹ The “Kyoto Protocol” “Annex B” nations includes all nation listed under “Annex I” (original OECD members) who committed themselves to embrace domestic strategies that edge GHGs emissions.⁷⁵⁰

With regard to various emissions’ target the “European Union” (EU) proposed a uniform target which raised an apprehension among industrial nations such as Australia, Canada etc.⁷⁵¹ The protocol set a targets to decrease emissions level by industrial nations according to their liabilities and capabilities, e.g. the “European Union” (8%), the “United States” (7%) and “Canada” and “Japan” (6%), and “Australia”, “Iceland” and “Norway” have been endorsed to upsurge their emissions.⁷⁵² The Protocol’s detailed production decrease aims are not supported by any requirements for confirming obedience with these targets.⁷⁵³ Additionally, the procedure port unresolved the resources for calculating acquiescence and simply requested suggestions from the IPCC⁷⁵⁴ and SBSTA⁷⁵⁵, the concluding verdict concerning obedience principles will take by the COP only. The “United State” claimed on the decrease of emissions that descends can be a best resources of attainment its reduction target that naturally cut off or remove harmful gases such as forest areas which eliminate atmospheric carbon.⁷⁵⁶ Under “Article 3(3)”⁷⁵⁷ the Procedure permit

⁷⁴⁹ Jon C. Lovett, “1997 Kyoto Protocol”, *Journal of African Law*, Vol. 49, No. 1 (2005), pp. 94-96, available at <https://www.jstor.org/stable/27607935>

⁷⁵⁰ Chen Gang, “*The Logic of Collective Action*”, *The Chinese Journal of International Politics*, Vol. 1, No. 4 (2007), pp. 525-557, published by Oxford University Press, available at <https://www.jstor.org/stable/48615649>

⁷⁵¹ Anastasia Telesetsky, “*The Kyoto Protocol*”, *Ecology Law Quarterly*, Vol. 26, No. 4 (1999), pp. 797-813, available at <https://www.jstor.org/stable/24113942>

⁷⁵² *Supra Note 713*

⁷⁵³ *Supra Note 750*

⁷⁵⁴ IPCC-Intergovernmental regularly release comprehensive assessment reports that synthesise scientific literature comprises three working groups’ assessments focusing on physical science, climate adaptation and mitigation actions, available at www.iasparliament.com

⁷⁵⁵ SBSTA- COP through the provisions, available at <https://unfccc.int/bodies-subsidiary-bodies-sbsta>

⁷⁵⁶ Rob Coppock, “*Implementing the Kyoto Protocol*”, *Issues in Science and Technology*, Vol. 14, No. 3 pp. 66-74, (1998) published by Arizona State University, available at <https://www.jstor.org/stable/43313869>

⁷⁵⁷ Article 3 (3) - The Parties should take precautionary measures to anticipate, prevent or and mitigation its adverse effects. available at <https://unfccc.int-resource-doc-convkp-kng>

for the enclosure of afforestation and replanting actions as carbon descends. Later the practice of drops released diminutions signifies ambiguity as opponent's letter that drops can be tarnished retroactively for the initial newcomer age.⁷⁵⁸

The "European Union" efficaciously suggested a load distribution structure recognized as bubbling under "Article 4".⁷⁵⁹ The Scheme permits a cluster of countries to cooperatively accomplish the obligations under "Article 3". According to the Scheme the individual members can split the 8% discharges decrease pledge between themselves so that positive associates can create substantial decrease in GHGs emissions.⁷⁶⁰ I.e. if France's treaty with the "European Union" necessitates that it decrease its discharges by 5% but it flourishes solitary in sinking discharges by 4%, then the "European Union" as a complete will miscarry to see its 8% aim and the "Union states" would then be approved under the "Protocol". Besides, the "Protocol" most controversial aspect was market-based apparatuses to accomplish obedience with releases lessening targets.⁷⁶¹ Traditional regulation frequently utilizes a 'command and control' approach which means regulations tolerable releases or established contamination controller equipment values as per the requirement of industries. The said approach provides slightly inducement for advance and might miscarry to inspire contamination decreases that go outside regulatory standards.⁷⁶² For instance tradable discharge license scheme under which diligences accept and retail 'right to pollute', so that foundations with extraordinary discharge resistor prices can escape luxurious retrofits.⁷⁶³ With regard to that there was major controversy adjoining the general outcome of market-based transaction structures for decreasing GHGs releases. Approximately censors opined that generating a bazaar for carbon discharges decrease may prove terrible since the enormous figure of carbon causes creates observing unmanageable and no intercontinental controlling structure subsists to control discharge transaction.⁷⁶⁴ As a consequence developing nations have articulated

⁷⁵⁸ *Supra Note 756*

⁷⁵⁹ Article 4- other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable in meeting costs of adaptation to those adverse effects. *available at* <https://unfccc.int-Zimbabwe-convention-text-art04>

⁷⁶⁰ William H. Lash, "The Kyoto Climate Change treaty", Vol. 37 pp 43-48, 2000, *available at* <https://link.springer.com-Society>

⁷⁶¹ Peter G.G. Davies, "Global Protocol", 47, No. 2 (1998), pp. 446-461, published, *available at* <https://www.jstor.org/stable/761350>

⁷⁶² *Supra Note 760*

⁷⁶³ *Supra Note 761*

⁷⁶⁴ *Supra Note 761*

apprehension that bazaar devices would approval advanced nations thus upholding universal financial imbalances. With regard to these concerns developing nations were included three flexibility mechanisms such as Joint implementation (Article 6); mechanism for clean development (Article 12); and emissions trading (Article 17).⁷⁶⁵

I. Clean Development Mechanism

The concept was first proposed by Brazil in 1997 under which “Annex I” nations default to fulfill the binding targets would contribute a fund to facilitate technological transfer to developing countries.⁷⁶⁶ Later in COP-3 “Annex I” countries presented the theory of “*Clean Development Mechanism*” as a counter proposal to the “*Clean Development Fund*” defined under the “Protocol”. The features of the “Protocol” were to condense GHGs level and to encourage emergent nations to provide their contribution as a result formation of mechanism known as CDM.⁷⁶⁷ The aims of the CDM is to assist “Annex- I” nation to decrease discharge and to support “Non-Annex I” nations in accomplishing justifiable growth.⁷⁶⁸

The Protocol further defines (Article 12) the important condition of additionality for certified emission reduction (CER) under the Mechanism. The ‘additionality condition’ referred as the barriers such as technical, institutional, economic to prevent the parties’ to fulfill their reduction target during the implementation of CDM project to assist the nations.⁷⁶⁹ The project started by joint agreement between “*Annex I and Non-Annex*” approved by the “*Designated National Authority*” (DNA) whose sole responsibility was to manage the project in the host nation.⁷⁷⁰ Further, an adaption levied on all CDM projects in order to finance the “UNFCCC Adaptation Fund” for non-Annex I countries.⁷⁷¹ The Mechanism was created to accomplish the twin goals of reduction GHGs emissions and to attained sustainable development (SD) especially in emergent

⁷⁶⁵*Ibid*

⁷⁶⁶ AR4 Climate Change 2007: Synthesis Report, IPCC, *available at* <https://www.ipcc.ch-report>

⁷⁶⁷ VikasKhare and Prashant Baredar, “*The Role of CDM*”, Tidal Energy Assessment and Economics, 2019, *available at* <https://www.sciencedirect.com-topics-joint-implement>

⁷⁶⁸ K. Millock, “Introduction: The Organization of the Clean Development Mechanism”, Energy, Chapter and Articles, Encyclopedia of Energy, Natural Resources, and Environmental Economics, 2013, *available at* <https://www.sciencedirect.com-topics-joint-implementation>

⁷⁶⁹ Hitomi Kimura and AnchaSrinivasan., *et.al.*, “*Chapter 4 Clean Development Mechanism*”, Asian Aspiration for Climate Regime Beyond 2012: Energy Security and Developmental Needs Clean Development Mechanism Adaptation to Climate Change, Institute for Global Environmental Strategies, Nov. 1, 2006, pp. 35-52, *available at* <https://www.jstor.org/stable/resrep00841.10>

⁷⁷⁰ *Ibid*

⁷⁷¹ *Supra Note 768*

nations. There is strong concern that many projects in the region without any sustainable development benefits are getting registered and the implementation of SD criteria has been slack.⁷⁷² The eventual measures of success for CDM will be its contribution to reduction the growth of GHGs emissions and promoting sustainable development in emergent nations. Insofar the objective of reduction emission is concerned several technical, technological and financial barriers prerequisite to be overcome.

II. Joint Implementation

The “Article 6”⁷⁷³ embodied the idea of “Joint Implementation” (JI) of the emission reduction obligation of the Protocol. The mechanism allows nations to exchange of “*emission reduction units*” (ERUs) between two nations by funding projects in other nations that have similar obligations i.e. target to reduce emissions. It allows “Annex I” countries to also handover or obtain discharged credentials consequential from ventures and events employed by other “Annex I” nations.⁷⁷⁴ The accord records two variability of (JI) schemes those that decrease “anthropogenic” discharges at the root and others that decrease “anthropogenic” discharges. During the first COP joint implementation project has existed functioning in experimental stage but nobody of the (JI) plans was appropriate for “*emission reduction units*”.⁷⁷⁵ The mechanism suffered from many problems like lack of authentication and obedience procedures. Under COP1 the trial database of (JI) has been working on *ad hoc* foundation and unsure about certain discharges decrease entities assigned under the joint implementation.⁷⁷⁶ If Parties fulfill all the requirements to acquire reduction units it may further verify from funding project countries. After the funding Party issue the appropriate amount of “*emission reduction units*” the requirements has to be fulfill through the verification process under the supervisory committee (JISC).⁷⁷⁷

⁷⁷² Clare Breidenich and Daniel Magraw., *et.al*, Vol. 92, No. 2, 1998, pp. 315-331, The American published, available at <https://www.jstor.org/stable/2998044>

⁷⁷³ Article 6- Through the JI mechanism, a country with an emission-reduction limitation emission-reduction (or emission removal. available at <https://unfccc.int-resources-docs-publications>

⁷⁷⁴ Tim Forsyth, “*Flexible Mechanisms of Climate Technology Transfer*”, The Journal of Environment & Development (1999), available at <https://www.researchgate.net-Technology-Transfer>

⁷⁷⁵ *Ibid*

⁷⁷⁶ Joint Implementation, Process and meeting, The Kyoto Protocol, Mechanisms United Nations Climate Change, available at <https://unfccc.int-the-kyoto-protocol-mechanisms>

⁷⁷⁷ *Ibid*

Joint Implementation gives industrial countries some flexible space to meet their target under the “Kyoto Protocol”.⁷⁷⁸ The mechanisms are bendable meaning they enable flexibility in the commitments as JI primary aim to exchange target units between two nations to achieve their target. This fact supports with UNFCCC commitment that industrialized Parties has more responsibility than emerging nation.⁷⁷⁹ Since the environmental justification of the JI mechanism similar to other offset mechanism rests on the observation that harmful greenhouse gases effect on climate as they mix uniformly in the atmosphere. Offset projects may have other consequences than the reduction of GHGs emissions and some of their impact may be very local such as social co-benefits to local communities or local ecological improvements.⁷⁸⁰

4.5.3. Paris Agreement (COP21- 2015)

The “Paris Summit” 2015 officially referred as “21st Conference of Parties” (COP-21) held in Paris. The Agreement was a legally binding climate treaty adopted and endorsed by one hundred ninety-six (196) country Parties.⁷⁸¹ The foremost purpose was to hold the global temperature by limiting the above pre-industrial levels. The chief cause for the formation was non-compliance of the “Kyoto Protocol” commitment by the Parties and failure to reduce GHG emission by the industrialized nations.⁷⁸² Many countries alleged to reduce temperature to 1.5 degree Celsius because the “*Intergovernmental Panel on Climate Change*” pointed out that crossing the global temperature level was the risk far more severe than “droughts”, “heat waves”, and rainfall etc.⁷⁸³ According to “Article 15”⁷⁸⁴ a mechanism should be implemented under the provision to the Agreement consists of an expert-group known as the “Ad Hoc Working Group” who developed modalities and procedures.⁷⁸⁵ The Paris Agreement emphasizes different functions of the committee to create assurance that any modalities and procedures

⁷⁷⁸ United Nations Climate Change, Joint Implementation, *available at* <https://cdm.unfccc.int/factsheets-docs-JIFacts>

⁷⁷⁹ Igor Shishlov, Valentina Bellassen, *et.al.*, “*Joint Implementation: A Frontier Mechanism within the Borders of an emissions Cap*”, Climate Report, CDC Climate Research, February 2012, *available at* www.i4ce.org/wp-content/uploads

⁷⁸⁰ *Ibid*

⁷⁸¹ Anthony H.F.LI, “*Hopes of limiting Global Warming?*”, China Perspective, No. 1 (105) 2016, pp. 49-54, published by French Centre, *available at* <https://www.jstor.org/stable/44091098>

⁷⁸² *Ibid*

⁷⁸³ Countries of Paris Agreement- Paris Climate Agreement 2015, process and meeting, United Nations Climate Change, *available at* <https://www.unfccc.int/paris.agreement>

⁷⁸⁴ Article 15- Established a mechanism to facilitate implementation of and promote compliance with the provisions if this Agreements, *available at* <https://www.cambridge.org-core-books-debating-climate-law>

⁷⁸⁵ *Ibid* 190 (Countries of Paris Agreement- Paris Climate Agreement 2015)

settled by the “Ad Hoc Working Group” will effectively fulfill the functions like implementation of individual commitments under the Agreement.

In fact, the compliance aspect of any agreement only applies to the provisions that set out legally binding obligations requiring Parties to take or refrain from taking specific actions. For example, the committee ensures that Parties must meet their duties under the “Agreement” identified as “*Nationally Determined Contribution*” (NDCs) to mitigate climate challenges.⁷⁸⁶ The “Agreement” do not force Parties to fulfill the NDCs as they only required pursuing some measures which are not legally binding to Parties.⁷⁸⁷ The Agreement gratifies Parties to succumb an (NDC) each (five) years but do not specify whether the fresh (NDCs) must refresh a 5 (five) or ten (10) year period.⁷⁸⁸

The “Agreement” pursues to discourse this matter via systematic informs of (NDCs) also known as “Cycle” in which Parties have to submit their NDCs report in every 5 (five) year and separately succeeding inform of (NDCs) is anticipated to produce party’s possible action plan.⁷⁸⁹ Before that the “UNFCCC” and the “Kyoto Protocol” contain numerous regulating provisions with other legal regimes for example, the treaties delimit their scope by only covering the GHGs. The Agreement further suggested that before implementing any policies each Party need to take their commitments under appropriate environmental agreements.⁷⁹⁰

Under “Article 4” the emission mitigation of the “Agreement” established the binding commitments to all Parties and maintains (NDC) report periodically to attain the obligations.⁷⁹¹ Conferring to the mitigation commitment each developed nations must take the extra lead while emergent nations must endure applying their mitigation efforts.

⁷⁸⁶ Achala Abeysinghe and Subhi Barakat, “*The Paris Agreement: Option for an effective compliance and implementation mechanism*”, 1 November, 2016, 24 pages, available at <https://www.jstor.org/stable/resrep02659>

⁷⁸⁷ Ralph Bodle and Lena Donat .et.al., “*The Paris Agreement: analysis, Assessment and Outlook*”, Carbon & Climate Law Review, Vol. 10, No. 1, 2016, pp. 5-22, The Paris Agreement: Rebooting Climate Cooperation, available at <https://www.jstor.org/stable/43860128>

⁷⁸⁸ Keshab Chandra Ratha, “Paris Climate Deal, Indian Journal of Asian Affairs, Vol. 32, No. ½, 2019, pp. 67-90, published by Manju Jain, available at <https://www.jstor.org/stable/26902686>

⁷⁸⁹ Sebastian Duyck, “*The Paris Climate Agreement in a Changing Climate*”, Yearbook of International Environmental Law, Vol. 26, 2015, pp. 3-45, published on 17th October 2017, available at <https://academic.oup.com-article-doi>

⁷⁹⁰ Harron van Asselt and Stefan Bobner, “*The Shape of Things to Come: Global Climate Governance after Paris*”, Carbon & Climate Law Review, Vol. 10, No. 1, The Paris Agreement: Rebooting Climate Cooperation (2016), pp. 46-61, available at: <https://www.jsto.org/stable/43860131>

⁷⁹¹ Joanna Diane Caytas, “*The COP 21 Negotiations: One Step Forward, Two Steps Back*”, Consilience, No. 19 (2018), pp. 1-16, available at <https://www.jstor.org/stable/26427709>

The “Agreement” also emphasis sinks and reservoirs (Article 5) of GHGs and established adaptation efforts through support and cooperation at global level as a result formation of “National Adaptation Plan”.⁷⁹²

4.5.4. Marrakesh (COP22-2016)

The annual climate conference to the UNFCCC held in Marrakech, Morocco also known as COP22 and the 12th session of the CMP. The agreement marks a major spiraling plug to create a new mechanism to ensure accountability and promote climate change action.⁷⁹³ The Convention successfully demonstrates the intensified actions under “Paris Agreement” which are on the process for constructive strength of multilateral cooperation on climate challenge.⁷⁹⁴ The Agreement objective was to implement the “Paris Agreement” obligation and the progress of specific measures within the Parties.

The Agreement has made a progress within the sphere of Climate act including climate subsidize to sustenance the developing nations through funding.⁷⁹⁵ Another climate action was “Adaptation Fund” in which the industrialized countries committed themselves to help the weakest partners to survive with Climate Change impact. So many Parties announced new assistances to the Fund e.g. the “European Union” started to sustenance the African continent to fight against climate challenge by promoting renewable energies.⁷⁹⁶ Leaders at COP 22 recommend that technological advancements like “*Mission Innovation*” will help to move us forward by accelerating the awareness for clean energy to address climate issues.⁷⁹⁷ The Convention further recognized the financial mechanism review is mandatory for smooth functioning and adaptation of the updated guidelines for review of mechanism.⁷⁹⁸ The result of COP 22 was execution of the “Paris Agreement” and fixed a target for developing a rulebook based on simplicity

⁷⁹² Jaron Browne and Tom Goldtooth, “*Paris Agreement is “Dangerous Distraction”*”, *Race, Poverty & the Environment*, Vol. 21, No. 1, Power in Place (2016), pp. 92-95, available at <https://www.jstor.org/stable/44783052>

⁷⁹³ Matthew Vespa, “Climate Change 2001: Kyoto at Bonn and Marrakech”, *Ecology Law Quarterly*, Vol. 29, No. 2 (2002), pp. 395-420, available at <https://www.jstor.org/stable/24114263>

⁷⁹⁴ 22nd Session November 7- 18, 2016, Marrakech, Morocco, COP 22, Center for Climate and Energy Solutions, available at <https://www.c2es.org-content>

⁷⁹⁵ Vijeta Rattani, COP 22, as it turned out, published 20th November, 2016, Down to Earth, available at <https://www.downtoearth.org.in-blog-climate-change>

⁷⁹⁶ A. Ghezloun and A. Saidane., *et.al.*, “*The Paris Agreement*”, Vol. 11, 2017, pp. 10-16, available at <https://doi.org/10.1016/j.egypro.2017.07.040>

⁷⁹⁷ *Ibid*

⁷⁹⁸ Summary Report, 7- 18 November 2016, Earth Negotiation Bulletin, Vol. 12, available at <https://enb.iisd.org>

and liability. The Parties sanctioned the “Marrakech Action Proclamation” towards a new climate action and reaffirms their commitments.⁷⁹⁹

4.5.5. Bonn (COP23- 2017)

The Convention (COP23) focused on finalizing the implementation guidelines of the “Paris Agreement” and working towards finalizing the pre-2020 action on adaptation and mitigation. The Convention emphasized the Paris Agreement “Rule Book” which means how countries⁸⁰⁰ should communicate their efforts with respect to alleviation and reworking, climate finance, capacity building, and collective efforts will be reviewed and assessed against the goals established in the “Paris Agreement”.⁸⁰¹

During the COP23 the main agenda was the adaptation of action plan included in locally gritty involvement and more elaborate guidance on communications and modalities for the recognition of developing countries adaptation efforts.⁸⁰² Another significant portion of discussion was legal framework for NDCs on the information provided to facilitate the transparency of emergent nation’s contribution.⁸⁰³

Many remaining issues were progressed in COP23 like the decision for the “Adaptation Fund” created under the “Kyoto Protocol” and the issue of “Loss and Damage” were also introduced.⁸⁰⁴ But, ultimately, there was no real outcome since many climate vulnerable countries was hoping to get permanent support for their adaptation programs to mitigate loss and damages. The COP23 agreed to request for a transnational professional dialogue that will address climate change-related losses and damage at the next inter-sessional meeting.⁸⁰⁵

⁷⁹⁹ Implementing the Paris Agreement- Issues at stake COP 22 Climate Change Conference in Marrakech (2016), Directorate General for Internal Policies, Environment, Public Health and Food Safety, *available at* <https://www.europarl.europa.eu-STUD-2016>

⁸⁰⁰ Achala C Abeysinghe and Brook M R Dambacher et.al., “Action, ambition, investment: what success at COP 23 looks like for LDCs, issued on October 2017, available at: <https://jstor.org/stable/resrep02649>

⁸⁰¹ N Hultman, “The decision”, (2017), PlanetPolicy, Brookings, *available at* <https://www.brookings.edu-articles>

⁸⁰² Vera Kunzel and Laura Schafer, et.al., “Loss and Damage at COP23: Looking at Small Island Developing States”, Policy Report (2017), *available at* <https://www.germanwatch.org>

⁸⁰³ S De and T Datta, et.al., Variability of Indian monsoon and its rainfall forecasting, An International Journal (2005), *available at* <https://www.iacs.res.in>

⁸⁰⁴ Joeri Rogelj and Michel den Elzen, et.al., 2 degree Celsius, National Library of Medicine (2016), *available at* <https://pubmed.ncbi.nlm.nih.gov>

⁸⁰⁵ Zhili Wang and Lei Lin, et.al., Scenario dependence of future changes in climate extremes under 1.5 degree Celsius and 2 degree Celsius global warming, Scientific Reports (2017), *available at* <https://www.ncbi.nlm.nih.gov>

4.5.6. Glasgow, Scotland UNFCCC 2021 (COP26)

The COP26 international climate conference held in Glasgow, Scotland in 2021 with an intention to secure global net zero by mid-century and keep a maximum of 1.5 C degrees of warming within reach by reducing unabated coal usage and to sustain emerging nations financially in acclimatizing to the effects and building resilience.⁸⁰⁶ As the fragment of decision the nations agreed to reaffirm the “Paris Agreement” goal of limiting the worldwide normal temperature and chasing labors to limit it to (1.5 degree) Celsius.⁸⁰⁷ They opined that social actions have instigated about (1.1 degree) Celsius of warming that influences are now sensed in all area of the nation.⁸⁰⁸

The Pact has initiated various ways to diminish the GHGs discharges that reason Climate change Pact requested the parties to reinforce their productions drop aims by submitting a new or updated nationwide resolute input (NDC) which contained emission reduction targets.⁸⁰⁹ Despite there are few impediments remained between projected global emissions, so to close this gap the Pact request nations to revisit their targets and urged every nation who are major emitters must be anticipated to review their 2030 commitments.⁸¹⁰

Further, the Pact⁸¹¹ urged every country to communicate long-term strategies to achieve net-zero target and support their NDCs and other actions for the coming decade.⁸¹² The Pact extends the long-term strategies and request every countries a synthesis report about them as it provides a key maker of national action and important for assessing progress towards the objectives of “Paris Agreement”. In order to encourage long-term

⁸⁰⁶Taryanfransen, Katie Ross and Janal Srouji, 5 Ways the Glasgow Climate Pact Aims, March 10, 2022, *available at* <https://www.wri.org>

⁸⁰⁷ The essentials of the Glasgow Pact (COP26) 2021, Green Facts, 25 January 2022, *available at* <https://www.greenfacts.org>

⁸⁰⁸ Chloe Farand, The breakdown: Published on 15/11/2021, Climate Home News, *available at* <https://www.climatechangenews.com>

⁸⁰⁹ Dominic Carver, What were the outcomes of COP26?, published 27 January, 2022 *available at* <https://commonlibrary.parliament.uk-insight>

⁸¹⁰ Fiona Harvey, What are the key points of Glasgow Climate pact?, 14 November 2021, The Guardian, *available at* <https://www.theguardian.com>

⁸¹¹ COP26: What's in the Glasgow Climate Pact? 14 Nov 2021, Aljazeera, *available at* <https://www.aljazeera.com>

⁸¹² Olivia Lai, Explainer: What is the Glasgow Climate Pact?, Nov 15th 2021, EARTH ORG, *available at* <https://earth.org>

strategy the Pact has urged countries to develop and submit their reviewed strategies and update them over time.⁸¹³

The Pact recommended every country to develop their strategies and invite other countries to update them regularly. Besides, the Pact has also added few procedures such as the work program is basically to scale up mitigation and implementation throughout the 2020s.⁸¹⁴ On second process they create an annual high-level ministerial round table where they discuss the technical key program. In third process the Pact recommended to construct report yearly by each Party that examines their NDCs to edge the hotness by 1.5 degree Celsius.⁸¹⁵

Further, the Pact requires all countries to stress the significance of safeguarding, conserving, and restoring ecosystems to light the “Paris Agreement” commitment. The main end was to accelerate efforts made by all Parties to accomplish their goals by 2030 by supporting the “*Paris commitments*” with a goal to net-zero.⁸¹⁶ The Pact also vowed to increase money to assist impoverished countries in dealing with climate change impacts. Yet, some forecasters claimed that certain African and Latin American countries felt the Pact did not make enough progress.⁸¹⁷

Since developing nations are well equipped and have less money to pay for new infrastructure and technologies. They sought grants, loans, and private investments to help with attempts to adapt and reduce its effects, particularly coastal fortifications to defend against flooding, which require immediate financial assistance to adapt to changing conditions. Some impoverished countries continue to rely on “fossil fuels” to adapt, they require assistance such as loans and subsidies to changeover from “fossil fuels” to “renewable energy” sources.⁸¹⁸

⁸¹³ Key takeaways from COP26, COP26 Reflections there is no planet, December 23, 2021, WIPO GREEN, available at <https://www3.wipo.int>

⁸¹⁴ COP/CMA/CMP/SBATA/SBI Joint Plenary, Glasgow Climate Conference, Umbrella Group Opening Statement, 31st October, 2021, available at: <https://www4.unfccc.int/sites/SubmissionsStaging/Document>

⁸¹⁵ UNFCCC: Key topics and outcomes of COP26 (Glasgow, Nov. 2021), 23-24 February (2022), available at <https://unosd.un.org/sites/unosd.un.org/files>

⁸¹⁶ Supra Note 381 (COP/CMA/CMP)

⁸¹⁷ Climate Action COP26: Together for our planet, United Nations, available at: <https://www.un.org/climatechange/cop26>

⁸¹⁸ COP26UK (2021), Sustainability Report, available at <https://www.unfccc.int/resource/COP26-Sustainability-Report>

4.5.7. “Conference on Climate Change” (COP-28) 2023

The Conference (COP28) was the largest ever climate meeting with over eighty thousand accredited delegates, up from forty-nine thousands the previous year, with twenty-five thousand of them representing government teams. The gathering is meant for nations to decide on strategies to minimize universal temperature rise and to acclimatize the repercussions of climate change.⁸¹⁹ So the conference obligate all signatory nations to transition away from carbon-based energy sources to achieve net zero by 2050.⁸²⁰

The United Nations released the first two-year efforts to slow down climate change known as the ‘global stocktake’, in September 2023. In “global stocktake” countries decided to speed up action by providing vulnerable countries with financial support and urged every nation to shift from the fossil fuels to renewable source of energy.⁸²¹ The ‘global-stocktake’ which includes all of the elements that were subject to debate and now be utilized by nations to create more robust climate action plans 2025. The “global stocktake” acknowledges the scientific evidence that the Parties are unable to fulfill their “Paris Agreement” targets.⁸²²

This historic agreement follows on a landmark decision made a year ago at COP27 when governments agreed to establish a fund to assist disadvantaged countries and people currently suffering the negative effects of climate change.⁸²³ The establishment of new fund especially for “*Loss and Damage*” conducted with pledge of USD 661 million especially to vulnerable nations.⁸²⁴ Much progress was made for “*Loss and Damage*” in collaboration with “*Project Services*” and “*Disaster Risk Reduction*” to

⁸¹⁹ Mark Poynting, ‘What is COP28 in Dubai and why is it important?’, Climate and environment researcher, BBC News, 13th December 2023, available at: <https://www.bbc.com/news/science-environment-67143989>

⁸²⁰ Ibid

⁸²¹ United Nations Climate Change, COP 28 Dubai, COP28 delivers historic consensus in Dubai to accelerate climate action, 13th December 2023, available at: <https://www.cop28.com/en/news/2023/12/COP28-delivers-historic>

⁸²² UN Climate Talks, COP28: Key outcomes agreed at the UN climate talks in Dubai, Carbon Brief, 13th December 2023, available at: <https://www.carbonbrief.org/cop28-key-outcomes-agreed-at-the-un-climate-talks-in-dubai>

⁸²³ UN Climate Change Conference- United Arab Emirates, UNFCCC, 12th January 2024, available at: <https://unfccc.int-cop28>

⁸²⁴ 2013 UN Climate Change Conference (UNFCCC COP 28), SDG Knowledge Hub, IISD, 12th December 2023, available at: <https://sdg.iisd.org-events-2023-un-climate-change>

poor nations who are added vulnerable to the negative consequences by accelerating the provisions of technical support.⁸²⁵

A significant advancement was reached as they decided to establish the framework of “*Global Goal on Adaptation*” (GGA) which reflects a worldwide consensus on adaptation targets.⁸²⁶ The efforts are extra challenging to measure than GHG emission reduction and highly specific to the places and regions in which they are implemented. The GGA seek policies at all stages and coordinate with capacity-building, and technology to meet these goal.⁸²⁷ Six nations pledged additional funds during COP28, brining the overall number of commitments from USD 11 billion to USD 12.8 billion. More contributions are anticipated which boosts the “*Green Climate Fund’s*” (GCFs) second replenishment.⁸²⁸ At COP28, eight donor states made fresh pledges to the “*Adaptation Fund*” totaling to approximately USD 188 million.⁸²⁹

The ‘global stocktake’ highlights the necessity of replacing the multilateral finance through grants and creation of new sources of funding to provide momentary support.⁸³⁰ The main agenda was establishing ‘new measures with collective goal in climate finance’ for 2024 that takes poor nations’ priorities into consideration during COP28. Further the objective was to construct a new climate action strategy that must be created and presented by early 2025 with a starting position of approximately USD 100 billion annually.⁸³¹

The outcome of COP28 was an unparalleled acknowledgement and incentive for integrating initiatives to tackle climate and biodiversity emergencies. These, along with pollution, comprise the ‘triple planetary crisis’ the primary interconnected environmental problems that humanity is currently confronting.⁸³² By early 2025, governments must have stronger climate action plan which must take ecosystems,

⁸²⁵ Sara Schonhardt and Charlie Cooper E&E News, Your Guide to the COP28 Climate Meeting in Dubai, SCIAM, December 1, 2023, *available at* <https://www.scientificamerican.com/article/your-guide-to-cop28>

⁸²⁶ Chen Ly, COP28: When is the climate summit being held in Dubai?, New Scientist, 22 November 2023, *available at* <https://www.newscientist.com/article/2404057-cop28-when-is-the-climate>

⁸²⁷ *Ibid*

⁸²⁸ *Supra Note 768*

⁸²⁹ COP28 in 2023, Emirates News Agency-Wam, November 11, 2021, *available at* <https://wam.ae/article-hszdir6-united-arab-emirates>

⁸³⁰ UNFCCC, Global Stocktake, *available at* <https://unfccc.int-topic-global-stocktake>

⁸³¹ UN, Why the Global Stocktake is Important for Climate Action this Decade, *available at* <https://unfccc.int-topics-why-the-global-stocktake-is-important-for-climate-action>

⁸³² *Supra Note 316*

biodiversity, and carbon storage like forest into account.⁸³³ By safeguarding ‘terrestrial and marine ecosystems the decision emphasizes ‘the importance of conserving, protecting and restoring ecosystems towards achieving the “Paris Agreement” goal’. Accordingly the Parties made a commitment in term of UNFCCC to strengthen the action plan before 2030.⁸³⁴

The ‘global stocktake’ decision also acknowledged the need for nature-based solutions, emphasizing that biodiversity and the regular domain are essential to prevent global warming and protect vulnerable populations from the harmful effects of climate change.⁸³⁵ The conference also made several announcements to condense discharges and boost resilience in certain sectors. For example, USD 1 billion was mobilized for climate change solution and signed the UAE “Climate and Health Declaration”.⁸³⁶ The Declaration helps States to take action to safeguard populations and health from the effects such as infectious disease transmission and intense heat stress. Under the COP28 the Parties are urged to sign the “*UAE Declaration on Sustainable Agriculture*”, and “*Resilient Food Systems*” to increase the ambition on food system alteration inside their domestic Climate plans.⁸³⁷ Additionally, they committed to financing commitments totaling USD 2.6 billion for climate-food innovation and regenerative agriculture.⁸³⁸

Enhanced transparency framework debates at COP28 set the stage for a new phase of the “Paris Agreement” commitments. The Parties utilize numerous tools developed by UN “Climate Change” that were demonstrate and tested during COP28.⁸³⁹ The Parties also decided that Azerbaijan will host COP 29 in 2024 and Brazil would host COP 30 in 2025 to set a fresh climate commitment targets.⁸⁴⁰

The government of Sikkim, a small state in India, took the initiative to have a prominent place at the India Pavilion during COP28, highlighting India’s leadership in combating

⁸³³Dipanita Nath, COP28: What is Global Stocktake- The Indian Express, December 6, 2023, *available at*<https://indianexpress.com-Explained-climate>

⁸³⁴ *Ibid*

⁸³⁵ What is the Global Stocktake?, Grantham Research Institute Environment, 29 November, 2023, *available at*<https://www.ise.ac.uk-granthaminstitute-explainers>

⁸³⁶ *Ibid*

⁸³⁷James Henderson, Fossil fuels?, Oxford Institute for Energy Studies (2024), *available at*<https://www.jstor.org/stable/resrep57064>

⁸³⁸ *Ibid*

⁸³⁹ Romy Chevallier and Hannah Sack, et.al., ‘Africa’s COP28’, South African Institute of International Affairs (2023), *available at*<https://www.jstor.org/stable/resrep55042>

⁸⁴⁰ Sean Rai-Roche and Chilla Fenning, et.al., ‘Building Briefing Paper (2024), *available at* <https://www.jstor.org/stable/resrep59641>

environmental issues (climate change) and providing a novel strategy for addressing one of the planet's most pressing concerns i.e. climate change challenges.⁸⁴¹ The initiatives known as “*Mero Rukh Mero Santati*” finds its inspiration in the deep meaning that the number 108 which stands for worldwide wholeness and completion, has acquired a potent new significance. Sikkim pledges to plant one tree for each infant under this program.⁸⁴² Beyond its spiritual foundations, MRMS⁸⁴³ offers a practical and forward-thinking step towards India's “Net-Zero” objective.⁸⁴⁴ Beyond mere symbolism, this program actively involves local people in afforestation, honors conservation achievements, and offers financial incentives to protect trees by offsetting possible revenue losses from other land uses. MRMS embodies the notion of intergenerational equality and works to improve “States of Sikkim's” environmental legacy for future generations.⁸⁴⁵ The MRMS initiative has registered almost three thousand infants in its first year, indicating an enthusiastic response.



⁸⁴¹ Sikkim's 'Mero Rukh Mero Santati' Initiative Selected for COP28 in Dubai, North-East Today, 10th November 2023, available at <https://www.northeasttoday.in-2023/11/10-sikkims-mero-ruk-mero-santati>

⁸⁴² *Ibid*

⁸⁴³ Hereinafter the acronym MRMS shall be used for Mero Rukh Mero Santati.

⁸⁴⁴ Sikkim takes center stage at COP28 with 'Mero Rukh Mero Santati' initiative, India Today NE, 2 December (2023), available at <https://www.indiatodayne.in-sikkim>

⁸⁴⁵ *Ibid*

CHAPTER-5

CLIMATE CHANGE RELATED TRADE ISSUES IN THE CONTEXT OF INTERNATIONAL TRADING SYSTEM

5.1. Introduction

Climate change has highlighted the importance of balancing developmental and environmental challenges around the world. As negotiations over the impending of the international climate regime stall and countries struggle to strike a balance, international law, particularly international dispute resolution, might be capable to provide some insight.⁸⁴⁶ International environmental law requires every nation to guarantee that their activities do not damage the sustainability of other states outside their jurisdiction. This theory was used in a 1935 arbitration to strike a compromise between cross-border pollution damage in one country and industrial development rights in another. Against this background, climate change litigation has been filed in domestic courts and international tribunals in the “European Union” and twenty-seven countries.⁸⁴⁷

Climate change can cause undesirable impression on trade patterns, ranging from extreme weather events that destroy transportation infrastructure and agricultural production to reduced food availability and difficulties faced by economies that rely heavily on high-carbon exports like steel and cement.⁸⁴⁸ Agricultural commerce is projected to be most strongly exaggerated by Climate change since agricultural activities are sensitive to temperature and weather patterns.

Likewise, global trade has an enormous effect on the climate. Trade openness, for instance, can decrease environmental strain by promoting investment in green sectors and the embracing of clean technologies.⁸⁴⁹ The character of trading system in the climate issue receives moderate emphasis. Trade agreements, in turn, might assist

⁸⁴⁶ Dan Ciuriak and Harsha Singh, “Mega-Regionals and the Regulations of Trade: Implications for Industrial Policy”, (2015), *available at* <https://ssrn.com/abstract=2576887>

⁸⁴⁷ Jiangfeng Li, “Climate change litigation”, Vol. 37, No. 2, *VELJ* (2019), *available at* <https://www.jstor.org/stables/26742667> (last visited on May 29, 2024)

⁸⁴⁸ Trade law and Climate Change, Centre for Climate Engagement, Hughes Hall, University of Cambridge, *available at* <https://climatehughes.org-Law>

⁸⁴⁹ Jeremias Mate Balogh and Tamas Mizik, “Trade- Climate Nexus: A Systematic Review of the Literature”, *Current Issues in Natural Resources and Environmental Economies* (2021), *available at* <https://doi.org/10.3390/economies9030099>

countries in reaching climate targets by lowering tariffs, standardizing environmental standards, and eliminating distorting fossil fuel subsidies.⁸⁵⁰

Preceding numerous ages, a lot of interest in the function of transnational Courts and Tribunals due to the intensification of litigation as solitary of the primary tactics in the battle against climate change and the ongoing insufficiency of global climate action. The dispute resolution system (DSS) is one of the transnational courts and committees leading this growing interest under the WTO.⁸⁵¹ For the past thirty years, the multifaceted exchange structure has been dominated by a discussion about commerce and the environment, with the DSS at its center.⁸⁵²

The bulk of trade and environmental disputes lacked a focus on climate change or environmental protection. Currently there are no established frameworks to determine whether court or tribunals is suitable for climate litigation.⁸⁵³ Most environmentalists opined that climate litigation and dispute settlements reveal that several factors affect whether a court should hear a particular case before making adjudication. These factors include authority or mandate, subject-matter expertise, enforcement strategies and compliance records. Using the DSS⁸⁵⁴ for international climate action has significant consequences for fighting climate issues through legal means.⁸⁵⁵

Climate change is a difficult and multidimensional marvel that energies far prevailing legal boundaries.⁸⁵⁶ Climate litigation in major international courts with high compliance rates is crucial for aligning rules. Climate litigation is a new phenomenon that has no commonly agreed definitions whether the dispute settlement mechanism could be a better place for climate and trade litigation. Basically trade related climate

⁸⁵⁰ Maria Victoria LOTTICI, Carlos GALPERIN and Julia HOPPSTOCK, “Green Trade Protectionism: Countries”, Vol. 02. No. 02, Chinese Journal of Urban and Environmental Studies (2014), *available at* <https://doi.org/10.1142/S234574811450016X>

⁸⁵¹ Ivano Alogna and Christina Bakker et.al., “Climate Change Litigation Global Perspectives” British Institute of International and Comparative Law (2021), *available at* <https://www.biicl.org>

⁸⁵² Nilmini Silva-Send, “Climate Change Disputes: National Energy Policies and International Trade Liability”, *San Diego Journal of Climate and Energy Law* Vol.4 (2013), *available at* <https://digital.sandiego.edu>

⁸⁵³ Atenburb, Tilman, “Industrial cases”, Discussion Paper. No. 4/2011, *available at* <https://www.idos-reserach-development>

⁸⁵⁴ Hereinafter the acronym DSS shall be used for Dispute Settlement System

⁸⁵⁵ Benjamin K. Sovacool, “Cobenefits Studies”, Working Paper No. 502 (2016), *available at* <https://www.adb.org>

⁸⁵⁶ Jisum Kim, “Global System”, (2009), *available at* <https://cup.columbia.edu>

dispute arise when a fundamental principle of trading system strengthen or weakening the climate measures.⁸⁵⁷

As per the IPCC open trade policies can impact GHG emissions whereas mitigation programs can impact international trade flows. In fact various trade initiatives can assist countries in mitigating climate challenges.⁸⁵⁸ Several parties to the “Paris Agreement” included these trade measures in their “National Determined Contribution” as a renewable subsidies, boarder carbon adjustments (BCAs), import bans, standard and labeling schemes, etc. The WTO “Environmental Databases” (EDB) specifies that additional associates are submitting notices on Climate change associated trade policies.⁸⁵⁹ In 2020, WTO countries submitted many environment-related notifications, totaling approximately 1391 trade measures.

The bulk of these measures included technical norms or specifications, import licenses, import bans or prohibition, export licenses, non-monetary support, and grants and direct payments. These initiatives aim to address several environmental including air pollution reductions, energy efficiency, conservation, and the advertising of “renewable energy”.⁸⁶⁰ Liberalizing trade in carbon-intensive products like fuels, metals, fertilizers, and cement, as well as imposing “tariffs” and “non-tariff” obstacles on renewable energy technologies, can either contribute to or hinder efforts to discourse Climate change. Trade regulations and managing these two trade policies are crucial to combating climate change.⁸⁶¹ They may hinder climate action by limiting Government’s capability to apply climate-friendly trade measures and or encouraging the adoption of trade-promoting, climate-unfriendly policy measures.⁸⁶²

Trade rules can promote climate action by encouraging the adoption of climate-unfriendly ones. These possibilities enable us to envisage at least three scenarios for trade-related climate change disputes. First disputes against climate-unfriendly trade

⁸⁵⁷Aaditya Mattoo an Arvind Subramanian, “Reconciling Climate Change and Trade Policy”, In GREENPRINT: A new Approach to Cooperation on Climate Change, pp.91-114 (2013), *available at* <https://www.jstor.org/stable/resrep29757.9>

⁸⁵⁸ IPCC, *available at* https://sdgs.un.org-IPCC_AR6_WGIII_FullReport

⁸⁵⁹Purnamita Dasgupta and Nisha Taneja, “Trade, Technology Transfer and Climate Change”, *Economic and Political Weekly* Vol. 45, No. 3, pp. 31-34 (2010), *available at* <https://www.jstor.org/stable/25664012>

⁸⁶⁰ WTO, Environmental Database, 2020, *available at* <http://edb.wto.org>

⁸⁶¹ *Supra Note 857*

⁸⁶² *Supra Note 859*

measures in which the adoption of trade-restrictive measure is contradict with trade principles. Second if climate-friendly trade measures are not adequately implemented.⁸⁶³ Third, a dispute can be files against climate-unfriendly trade policies. Such conflicts often involve complaints made against the trading members that implement climate-unfriendly trade policies such as fossil fuel subsidies.⁸⁶⁴

Such cases are initiated by individuals or civil organization against governments. Climate litigation might involve a lawsuit against the trading members for implementing climate-unfriendly measures. Such claims never file before the dispute mechanism owing to absence of rules that inflict a straight compulsion to discourse Climate challenge. Such situation is complicated to find the proper lawful points to contest the trade-related climate action.⁸⁶⁵

Trade and environmental issues in the multifaceted exchange structure sometimes involve challenges to new environmental laws and policies that are deemed incompatible with multilateral trade agreements.⁸⁶⁶ Such as the disputes i.e. “US- Tuna to the US- Gasoline” and the “US- Shrimp” involve claims against the environment-and-climate-friendly trade measures. In these disputes the complainants claimed the inconsistency of fundamental trade principles with environmental measures.⁸⁶⁷

5.2. Interface: Trade Provisions and Multilateral Environmental Agreements

The boundary between commerce and environment has been typically analyzed in the effect of trade policy by environmental measures and vice versa. There are few questions raised between two regimes i.e. trade liberalization leads to environmental degradation or more strict environmental policy leads to an injurious consequence on free trade.⁸⁶⁸

⁸⁶³ Ann Harrison and Andres Rodriguez-Clare, “Trade, Foreign Investment, and Industrial Policy developing Countries”, Vol.5, pp. 4039-4214 (2010), *available at* <https://www.aeaweb.org>

⁸⁶⁴ Mary Amity and Jozef Konings, “Trade Evidence from Indonesia”, *American Economic Review*, Vol. 95, No.5, pp. 1611-1638 (2007), *available at* <https://www.aeaweb.org>

⁸⁶⁵ Aaron Sayne, “Climate Change Adaptation and Conflict in Nigeria”, Special Report, United States Institute of Peace (2011), *available at* <https://www.jstor.org/stable/resrep12197>

⁸⁶⁶ Kheira Tarif, “Climate Evidence”, Research report, SIPRI Insight on Peace and Security, No. 2022/3 (2022), *available at* <https://www.jstor.org/stable/resrep39819>

⁸⁶⁷ *Ibid*

⁸⁶⁸ Aparna Sawhney, “WYO-related matters in Trade and Environment: Relationship between WTO Rules and MEAs (2004)”, Working Paper No. 133, *available at* <https://icrier.org/pdf/wp133.pdf>

The effect of commerce on environment is subdivided into three categories such as product positive effects in nature as trade liberalization expands the market for goods produced in environmental services like resources saving technology.⁸⁶⁹ Second, structural effect of trade is the trade-induced change in the industrial compositions and consumption depends on the pollution intensity.⁸⁷⁰ The adverse environmental effect of trade can take place only in the existence of market and regulatory failure which furthermore is the source of the problem when governmental measures aimed to encourage certain economic activities.⁸⁷¹ E.g. in the incident of supports for chemical used in agriculture that can lead to excessive extraction of ground water or overuse of chemical pesticides resulting in drop in the water table and chemical runoff.

According to WTO Report⁸⁷² trade is the core root of environmental degradation and the most environmental problem result from polluting production processes, certain kinds of consumption and the disposal of waste products.⁸⁷³ Moreover, an expansion of trade can possibly produce negative environmental effects if countries lack environmental measure that helps to achieve its environmental values. As a result environmental policies create problems not just in the trade segment but through every facet of a country's economic life.⁸⁷⁴

The aspect of the trade-environment interface mainly raise the question of competitiveness in international commerce where different environmental policies across nations led to the emergence of pollution havens in developing nations. Coordination of ecological principles is only appropriate for universal or worldwide contamination complications and it has been extensively acknowledged that global collaboration at the global level are necessary to protect global concern.⁸⁷⁵ There are about hundred international environmental agreements existing today and some of these contain trade measures. However, not all the international MEAs are multilateral in the

⁸⁶⁹ *Ibid*

⁸⁷⁰ William J. Davey, "The Quest (2008)", pp. 101-127, *available at* https://link.springer.com/chapter/10.1007/978-3-211-69379-7_4

⁸⁷¹ *Ibid* 41 (William J. Davey,

⁸⁷² World Trade Report 2022, Climate change and international trade, *available at* https://www.wto.org/english/tratop_envir_e/envt_intro_e.htm

⁸⁷³ Gabrielle Marceau, "Conflict (2001)", Vol 35, Issue 6, pp.1081-1131, *available at* <https://kluwerlawonline.com/journalarticle/Journal+of+world+Trade/35.6/384808>

⁸⁷⁴ *Ibid*

⁸⁷⁵ GATT (1994), PC/SCTE/M/2, *available at* www.wto.org/gatt_docs/English/SULPDF/91800117.pdf

true sense of the term since several environmental initiatives are regional in nature.⁸⁷⁶ MEAs have developed over the years as a cooperative means of protecting and conserving environmental resources or controlling for pollution that are transboundary or global in nature. Since MEAs are based on international consensus as they provide the paramount method of coordinating policy action to tackle global and transboundary environmental problems cooperatively.⁸⁷⁷

The two aspects are significant in the relationship among (MEAs) and (WTO) rules firstly; trade provisions in (MEAs) which are in contradict with the fundamental principles of GATT/WTO. Trade ban are allow in the GATT/WTO only under the common exclusion clause of Article XX.⁸⁷⁸ Secondly, trade requirements in some (MEAs) discriminate between “Parties and Non-Parties” and the implementation of those provisions could result in conflict with the GATT/WTO principle of unconditional “Most Favored Nation Treatment” (Article I) in case all (WTO) associates are not Parties to an MEA.⁸⁷⁹

The emerging interface between environment and trade measures is due to trade provisions as an enforcement mechanism for environmental policies and the issue of pressure on trade provisions created by environmental regulation across nations. Under GATT/WTO member nations are entitled to ban imports of hazardous or toxic substances on health and safety grounds. It was opined that “Article XX” is the exceptions to primary commitments validate some of environmental treaties.⁸⁸⁰ Instead, GATT/WTO have rejected arguments that environmental measures were not ‘necessary to defend “human”, “animal” or “plant life” or “health” under “Article XX (b)” or primarily aim to conservation a natural resources under “Article XX (g)”’.⁸⁸¹ In addition, many problems arise because environmental treaties use sustainable standards to define when an activity is permitted or not. For instance, “Convention on Endangered Species”

⁸⁷⁶ *Ibid*

⁸⁷⁷ Sebastien Duyck, “MRV NGOs (2014)”, *Carbon & Climate Law Review*, Vol. 8, No. 3, pp. 175-187, available at <https://www.jstor.org/stable/24324311>

⁸⁷⁸ *Ibid*

⁸⁷⁹ *Ibid*

⁸⁸⁰ John Whalley, “The Interface between Environmental and Trade Policies (1991)”, *The Economic Journal*, Vol. 101, No. 405, pp. 180-189, available at <https://doi.org/10.2307/2233810>

⁸⁸¹ *Supra Note 877*

(CITES) categories the lists of species so that parties cannot trade specimens from endangered populations.⁸⁸²

Trade measures have inclined to convert extra refined over time with improved empathetic of monetary and ecological issues as the chief significance to accomplish the sustainable development.⁸⁸³ In fact, the trade actions are reformulation of global commerce system which is used to forbid or confine trade in merchandises that might move the environs or the “human”, “animals”, “plants” etc.⁸⁸⁴ Trade measures fulfill many functions such as encourage nations to ratify environmental agreement and alleviate complications with emission leakage by the contributors’ country also.⁸⁸⁵ In term of protection trade actions must be cast-off to attain environmental goals without unnecessary restrictions or discriminatory in nature.⁸⁸⁶

Moreover, there can be a distinction among precise and non-specific trade actions for instance precise actions are openly defined in (MEAs) and obligatory on all parties.⁸⁸⁷ Whereas, non-specific measures can be applied by the members as an instrument to achieve the purposes of (MEA) but not binding on parties. I.e. the “Montreal Protocol” comprises exact trade actions as prohibited of trade i.e. merchandises measured by the “Protocol” with non-parties.⁸⁸⁸ However, many nations has commenced non-specific measures such as marking necessities or duties, for achieving the Protocol’s obligations. Trade measures generate inconsistency with trade rules as environmental treaty sometimes imposes constraint of trade with definite merchandises or countries.⁸⁸⁹ The part of trade methods in the environmental treaty is great but several of these are unharmonious with trade instructions. For this reason, trade liberalization must be established in corresponding with processes which reinforce green supremacy within

⁸⁸² Francesca Romanin Jacur, “Harnessing Foreign Investment to Promote Environmental Protection, Incentives and Safeguards (2013)”, Cambridge University, Vol. 29, Issu 3, pp.470, *available at* https://assets.cambridge.org/97811070/30770/frontmatter/9781107030770_frontmatter.pdf

⁸⁸³ *Ibid*

⁸⁸⁴ Eric Neumayer, “Trade Measures (2000)”, London School of Economics and Political Science (LSE), Vol. 5, No. 3, pp. 1-24, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=248528

⁸⁸⁵ *Ibid*

⁸⁸⁶ *Ibid*

⁸⁸⁷ *Supra Note 882*

⁸⁸⁸ Alexis Loannidis and Andreas Papandreus, et.al., “International Environmental Agreements: a Literature Review (2000)”, Cahiers de recherch , GREEN, *available at* <https://ideas.repec.org/p/ivl/lagrcr/0008.html>

⁸⁸⁹ *Supra Note 887*

(MEAs).⁸⁹⁰ Sometimes the environmental treaty limits trade which violate the “Most Favored Nation Treatment” (Article 1) of GATT/WTO. If these limitations yield the procedure of “import” or “export” prohibitions, “export” credentials or entrée limits, then they infringe the “Elimination of Quantitative Restriction” (Article XI) of GATT/WTO. If nations under (MEAs) guidelines relate diverse duties for imported merchandises than for local merchandises, then they infringe the code of “National Treatment” (Article III) of GATT/WTO.⁸⁹¹

International environmental treaty contained trade measures which violate one of more fundamental principles of trading system although trade methods are in inactive clash with trade guidelines and ethics. Another difficult relationship between two regimes is the claim of trade procedures alongside non-signatory nations but in the similar period with WTO members.⁸⁹² These nations by not passing (MEAs) didn’t approve the alterations of their responsibility beneath the (WTO), which brought complexities in the trade affairs with the participant nations. Some of the (MEAs) like “*Montreal Protocol*” and “*Convention on Trade in Endangered Species*” (CITES)” don’t classify any nations and these permits them to devise all the marketable benefits as associate countries.⁸⁹³ Trade methods in environmental treaty have developed extra regularly, trade events are the solitary curate implementation measures of (MEAs) provisions.⁸⁹⁴ Trade system managed by solitary universal institutions (WTO), though the ecological utilities are blow out amongst insufficient categories of units, typically, resolutions and treaties. Two regimes take progressed unconventionally so once clashes ascend superior encumbrance is agreed to trade necessities which mean that commerce conquers over environment.⁸⁹⁵

⁸⁹⁰ *Supra Note 888*

⁸⁹¹ TeshagerWorku Dagne, “The Debate on Environmentally Motivated Unilateral Trade- Measures Organisation: The Way Forward (2010)”, Vol. 9, Iss 3, Washington University Global Studies Law Review, available at https://openscholarship.wustl.edu/law_globalstudies/vol9/iss3/3

⁸⁹² *Ibid*

⁸⁹³ (1999), Environment and Trade- A Handbook, Second Edition, available at <https://www.oas.org/dsd/tool-kit/Documentos/MOdulell/Multilateral%0Environmental%0Agreements.pdf>

⁸⁹⁴ *Supra Note 891*

⁸⁹⁵ *Supra Note 893*

5.2.1. Inclusion of “Green Industrial Policy” (GIPs)

Governments are implementing green industrial policies to encourage “renewable energy” and limit exports of particular minerals due to political limitations, causing a significant shift in commerce and the environment. Although economically distorting, these measures have enormous economic and environmental benefits.⁸⁹⁶ So the industrial policy strategies vary depending upon the sector and actors involved but they draw on a basic set of policy tools. Industrial policy set out the major instruments such as targeting renewable energy sectors directly or quasi-environmental policies to advantage key high-tech industries.⁸⁹⁷

The purpose of “Green Industrial Policy” is to promote the production of ‘green goods’ that have superior environmental performance compared to competitors for example electric automobiles, renewable electricity generation equipment, and bio-fuels etc. directly address environmental problems.⁸⁹⁸ They frequently violate WTO standards, resulting in escalating confrontations between trading partners. It raises the question of the repercussions for the selection of medium for the harsh conflicts concerning trade and environmental field.⁸⁹⁹

No doubt the clashes concerning intercontinental trade and ecological defense are always on the upsurge since major trading powers are forcefully challenging environmental accords in the designation of trade at global level.⁹⁰⁰ Green industrial is a strategic government program that aims to accelerate the growth of green sectors by transition to a low-carbon economy.⁹⁰¹ Natural scientist opined that proper action must be taken to reduce GHGs emissions in command to ease the influence of Climate change. Social scientists contend that reducing climate change requires governmental action and governance reform.⁹⁰² Governments employ green industrial policy to

⁸⁹⁶ Aaron Cosbey, “Green Industrial Policy and the World Trade System”, Issue Brief ENTWINED (2013), *available at* <https://www.iisd.org>

⁸⁹⁷ *Ibid*

⁸⁹⁸ Matthias Krause and Friedrich Kaufmann, “Industrial Policy in Mozambique”, Discussion Paper German Development Institute (2011), *available at* <https://www.files.ethz>

⁸⁹⁹ *Supra Note 896*

⁹⁰⁰ Scott Lincicome and Huan Zhu, “Questioning Industrial Policy”, Why Government Manufacturing Plans Are Ineffective and Unnecessary (2021), *available at* <https://www.cato.org>

⁹⁰¹ Jonathan Woetzel and Shanghai Anu Madgavkar, “ Outperformers: High-Growth Emerging Economies and the Companies that Propel Them”, MCKINSEY GLOBAL INSTITUTE (2018), *available at* <https://www.mckinsey.com>

⁹⁰² *Ibid*

address the environmental consequences and promote long-term economic, institutional, and technical development that hinders sustainable investment.⁹⁰³

It further addresses the unwillingness of industry to invest in environmental development, and assists present governments in shaping future climate policy. Green industrial policy provides prospects for the transition to renewable energy and a low-carbon economy.⁹⁰⁴ The major difficulty for climate policy is owing to shortage of public support yet industrial policy provides benefits that encourage sustainability.⁹⁰⁵

“World Bank” (2013), states, “Green Industrial Policy” tools aim to achieve environmental advantages by targeting specific sectors of economic production. A green industrial policy aims to implement structural reforms to address environmental challenges and promote a circular economy.⁹⁰⁶ Green industrial policy goes beyond traditional industrial policy approaches. This approach has broader objectives and uses a variety of policy tools, including environmental ones. Some green industrial policies are likely to breach WTO obligations.⁹⁰⁷ This means if a green industrial policy measures is seeking the exception under “Article XX” of the GATT, the target of the “Green” measures will not be contradict with the environmental criteria. Simultaneously, the elements of measures hunt to encourage industrial development will also necessity to be justifies as environmental in nature under the “Article XX” of the GATT. Measures that favor the domestic green sector should have an environmental justification.⁹⁰⁸

In the proximate period, the environment should employ foreign-manufactured goods and services (environmental-friendly) rather than those produced more effectively by competitors. Measures that favor the domestic green sector should have an environmental justification.⁹⁰⁹ Many governments implement numerous industrial

⁹⁰³ *Supra Note 900*

⁹⁰⁴Pranab K. Bardhan, “On Optimum Subsidy to a Learning Industry: An Aspect Infant-Industry Protection”, *International Economic Review*, Vol. 12, No. 1, pp. 54-70 (1971), *available at* <https://doi.org/10.23072525496>

⁹⁰⁵ *Ibid*

⁹⁰⁶ *Ibid*

⁹⁰⁷ James E. Rauch, “A note on the optimum subsidy to a learning industry”, *Journal of Development Economics*, Vol 38, Issue 1, pp. 233-243 (1992), *available at* [https://doi.org/10.1016/0304-3878\(92\)90028-8](https://doi.org/10.1016/0304-3878(92)90028-8)

⁹⁰⁸ *Ibid*

⁹⁰⁹ *Supra Note 898*

policies which produced various outcomes such as regulations, subsidies, R&D, local content requirements, feed-in-tariffs, tax credits, and renewable portfolio standards.⁹¹⁰

The major goals of the green industrial policy are to attain energy transitions with the intervention of government and towards low carbon economy. Green industrial policy can provide environmental benefits such as reducing GHGs emissions, promote green trade, and transition towards renewable source of energy.⁹¹¹ Green industrial policy reduces GHG emissions and protects the environment, which in turn protects human, and animals (endangered species). Besides, many developed countries have adopted industrial strategies which are in conflict with trade rules.⁹¹²

For instance in 2021 the US challenged China with respect to China's transfer restraints on rare earth minerals. Later on in 2021 the U.S imposed a tariff on Chinese solar panel which denounced Chinese manufactures for unfairly dumping their goods. China in return attacked U.S. states by imposed rebates for installations of renewable energy.⁹¹³ Further in 2012 China filed a complaint against the European feed-in-tariffs for violation WTO fundamental rules. These cases are the example of growing conflict between two regimes in order to embracing green industrial strategies.⁹¹⁴ Disputes between the two is not new as in the mid- 1990s when the US imposed environmental conditions on ingresses of "tuna and shrimp", and rising nations fruitfully faced these guidelines as prohibited below intercontinental trade law.⁹¹⁵

This means that mutually industrialized and unindustrialized governments are adopting green industrial strategies, which sometimes contradict with trade disciplines. Similarly, in 1994 issue arose in "US- Gasoline" as the "United States" "Environmental Protection Agency (ESP)" issued the Gasoline Rule, to reduce vehicle emissions of toxic air pollutants and ozone-forming volatile organic compounds.⁹¹⁶ According to the Rule, gasoline has to fulfill the 'cleanliness' requirements sold within US.

⁹¹⁰ *Supra Note 907*

⁹¹¹ Johannes Schwarzer, "Industrial Policy for a Green Economy", Trade Investment & Climate Change, (2013), available at <https://www.iisd.org>

⁹¹² *Ibid*

⁹¹³ Patricia Succar, "The LDC's—Argument", Vol. 28, Issue 2, pp. 521-534 (1987), available at <https://ideas.repec.org>

⁹¹⁴ *Ibid*

⁹¹⁵ UNEP, Towards a Green Economy: Pathways Poverty Eradication, Geneva: (2011), available at <https://sustainabledevelopment.un.org>

⁹¹⁶ *Ibid*

Consequently, all these cases involved a loss for environmental sustainability and came to realize that disputes between two regimes will remain continue.⁹¹⁷

There are many instruments employed as component of green policy which covers the commonly used policies that have legal trade implications. First instrument is “Research and Development” (R&D) to generate green industrial technologies; it is an essential instrument for GIP. The “United States Geological Survey” (USGS), a scientific organization under the “US-government”, is an illustration of green research and development.⁹¹⁸ The “USGS” and “R&D Program”, aim to tackle the complex concerns related with Climate change funded by “US-government”. The Canadian federal government’s “Program of Energy Research and Development” serves as another example.⁹¹⁹ The collaboration between federal departments and the commercial sector, foreign organizations, and local governments is encouraged by the federal government. The aims of the Canadian program are to establish a sustainable energy future, just like the American program does.⁹²⁰

Second, producers are required under “Local Content Requirements” (LCRs) to get a minimum percentage of commodities, labor, and services from local sources during the manufacturing process. The “Green Energy and Economy Act 2009” were signed in Canada and included criteria for local content. Its goals was to increase the production and practice of “renewable energy”, encourage to save energy and generate new green jobs.⁹²¹ For renewable electricity generators the Act required that generators’ content must be built in Ontario, Canada. It significantly increased employment, reduced GHGs emissions, and broadened Ontario’s renewable energy sector. In response to challenges from Europe and Japan over the requirements, the WTO declared that Ontario had to take LCRs out of the Act.⁹²² Support for green innovation creates a conflict and negative

⁹¹⁷ *Supra Note 913*

⁹¹⁸ Claudia Ghisetti and Federico Pontoni, ‘Investigating Policy and R&D effects on environmental innovation: A meta-analysis’, *Ecological Economics*, Elsevier, Vol. 118(C), pp. 57-66 (2015), *available at* <https://doi.org/10.1016/j.ecolecon.2015.07.009>

⁹¹⁹ Philippe Aghipon and Roand Benabou, ‘Environmental Preferences and Technological Choices: Is Market Competition Clean or Dirty’, *American Economic Review: Insight*, Vol. 5, No. 1, pp. 1-20 (2023), *available at* <https://doi.org/10.1257/aeri.20210014>

⁹²⁰ *Ibid*

⁹²¹ Karl Aiginger and Dan Rodrik, ‘Rebirth of Industrial Policy an Agenda for the Twenty-First Century’ *Journal of Industry*, Vol. 20, pp. 189-207 (2020), *available at* <https://link.springer.com-article>

⁹²² Morgan Bazilian and Victoria Cuming, ‘Local-content rules for renewable projects don’t always work’, *Energy Strategy Reviews* (2020), *available at* <https://doi.org/10.1016/j.esr.2020.100569>

implications globally as many nations who had previously employed LCRs successful discovered remained illegal under WTO rules.

Third, regulations known as feed-in-tariffs, provide long-term financial support for the “renewable energy” production. Feed-in-tariffs has several designed policy such as provides a fixed price for renewable which is typically more expensive than the going rate for non-renewable energy.⁹²³ For example, Germany’s FIT has received worldwide approval because it transformed Germany into a renewable leader.⁹²⁴

Fourth, a domestic industry that depends on a resource, export restrictions involve preventing the resources from being exported including tax or extra tariff are used.⁹²⁵

Fifth, mandates for renewable energy demand that business or consumers generate or sell a specific quantity of energy derived from renewable sources.⁹²⁶ Small-scale enterprises and private individuals in Australia are encouraged “renewable energy” kit, i.e. rooftop solar panels, through the Small-scale Renewable Energy Scheme. For electricity subsidies eligibility at least 12.75 percent of the power they supply must be renewable.⁹²⁷

Sixth, is “*Green Public Procurement*” (GPP) occurs when government obtain sustainable and environmental friendly goods. The regulations promote the purchase of environmentally friendly products by the public sector, including electric cars, renewable energy sources, recycled paper, energy-efficient computers, and green cleaning services.⁹²⁸ These regulations stimulate green innovation by creating sustainable growth and increase the sales of eco-industries (environmental friendly). The illustration of GPP is food and catering in the “United Kingdom” it outlines a vision for certain goals and objectives and promotes sustainability.⁹²⁹

⁹²³ Hubert Schmitz, ‘Rent Management-The Heart of Green Industrial Policy’, *New Political Economy*, Vol. 20, No. 6, pp. 812-831 (2015), available at <https://doi.org/10.1080/13563467.2015.1079170>

⁹²⁴ *Supra Note 921*

⁹²⁵ Nicolo Barbieri and Alberto Marzucchi, ‘Knowledge sources and impacts on subsequent inventions: Do green technologies differ from non-green ones’, *Research Policy*, Vol. 49, No. 2 (2020), available at <https://doi:10.1016/j.respol.2019.103901>

⁹²⁶ Reda Cherif and Fuad Hasanov, ‘The Policy’, IMF Working Paper, March 26th, 2019, available at <https://www.imf.org-Publications-Issues-2019/03/26>

⁹²⁷ *Ibid*

⁹²⁸ Daron Acemoglu and Ufuk Akcigit, ‘Transition to Clean Technology’, Vol. 124, No. 1 (2016), available at <https://economics.mit.edu/files/11668>

⁹²⁹ *Supra Note 926*

“Green industrial policy” is a strategic government program to uphold the progress and expansion of low carbon economy. GIP is required because green sectors confront significant costs and risks in the market economy. They require support from industrial strategy until they can be commercially successful.⁹³⁰ The green industries can help in achieving sustainable and responsible future by prioritizing resource efficiency, and eco-friendly practices which benefits the human society and planet at large.⁹³¹ So States use green policies to discourse the commercial and ecological difficulties of Climate change at global level.

5.3. Trade Measures and Climate Change Policy

De-carbonizing the international market require a diverse set of climate initiatives. Industries should adopt more energy-efficient production methods. Consumers should switch to energy-efficient refrigerators, and light bulbs. Transportation options and automotive fuel efficiency must evolve to decrease GHG emissions.⁹³² Climate Change treaties require all countries to take measures to moderate Climate change, taking into accounts differentiated responsibilities, development concerns, and national circumstances. Developed countries have specific obligations to reduce GHG emissions.⁹³³ Although climate policies are not officially addressed in trade agreements, they may impact trade flows if national policies impact economic factors such as manufacturers, industrial sectors, or consumers.

If trading member believes a policy of another member violates one or more trade principles, they can challenge it in an institution known as ‘dispute settlement system’ (DSS) for legally enforceable decisions.⁹³⁴ Regarding Climate change, the WTO panels imply that trade rules provide some flexible policy for national decision-makers to implement environmental measures depending upon that climate action will be formulated and implemented without contradicting the trade principles. So we must

⁹³⁰ Larry Karp and Megan Stevenson, ‘Green Industrial Policy: trade and Theory’, (012), *available at* <https://www.enterprise-development.org-uploads>

⁹³¹ *Ibid*

⁹³² Christine Batruch, “Climate change and sustainability in the energy sector”, *The Journal of World*, Vol.10, No. 5, pp. 444-463, *available at* <https://www.researchgate.net>

⁹³³ Filipe Duarte Santos and Paulo Lopes Ferreira et.al., “The Climate Change Challenge: Barriers and Solutions to Deliver a Paris Solution”, MDPI, Vol. 10, No. 5 (2022), *available at* <https://www.mdpi.com>

⁹³⁴ Kati Kulovesi, “International Trade Disputes on Renewable Energy: Testing Ground for the supportiveness of WTO Law and Climate Change Law”, *Review of European*, Vol. 23 , No. 3, pp. 342-353 (2014), *available at* <https://www.researchgate.net>

understand that many sorts of claims and legal difficulties may arise in climate litigation is due to inconsistency of norms.⁹³⁵

WTO members created a clear relationship concerning justifiable growth and trade liberalization to guarantee that market opening is consistent with environment and social goals. Furthermore, the group decide to follow a sustainable development path by initiating multilateral trade and environmental negotiations. Moreover, the WTO activity provides platform for discussion between commerce and climate challenges.⁹³⁶ Under the negotiations trade members are working to eradicate trade blockades that can benefit the environment. Facilitating access to products and amenities develop energy efficiency, reduce GHGs emissions, conservation of air quality, water, soil, and natural resources.⁹³⁷

Coherence between policies and regimes is crucial when considering the intercontinental trading structure. Trade has an influence on global emissions trends in today's interconnected globe. Trade regulations are important for the spread of climate friendly technologies. Considerably, impact of tougher climate action through national determined contributions will necessitate a substantial revision of domestic laws and regulations which may have a considerable impact on commerce.⁹³⁸ Moreover, instead of implementing their respective national determined contribution countries may adopt direct trade policies, including removing or reducing tariffs on ecological merchandises and amenities, developing technical specifications for low-carbon products, etc. Additionally, trade-related climate efforts may conflicts with the conditions and guidelines of intercontinental trade covenants. Climate policymakers are worried that World Trade Organization laws may impede their capacity to adopt effective domestic climate policies.⁹³⁹

Efforts are taken by the 'UNFCCC' and the Parties to strengthen international climate change cooperation to highlight the difficult of Climate challenges. While addressing the problem UNFCCC has implement climate policy which sometime contradicts with

⁹³⁵ *Supra Note 933*

⁹³⁶ A.M. Solntsev, "Climate Change: International Legal Dimension", *Moscow* Vol. 106, No. 1, pp. 60-78 (2018), available at <https://doi.org/10.24833/0869-0049-2018-1-60-78>

⁹³⁷ *Ibid*

⁹³⁸ Bradly J. Condon, "Climate change and Unresolved Issues in WTO", Vol. 12, issue 4, pp. 895-926 (2009), available at <https://doi.org/10.1093/jiel/jgp033>

⁹³⁹ *Supra Note 936*

trade provisions.⁹⁴⁰ To avoid this “Article 3.5” of the UNFCCC provides that ‘the parties create a supportive system that promotes sustainable growth and development’, especially in under developed countries to handle climate change issues more effectively. But Climate change events would not victimize in contradiction of or impede international trade’.⁹⁴¹

Further, “Article 3.5” was included to confirm that climate change act engaged by the UNFCCC should be consistent with the GATT/ WTO while implementing the climate conventions. Since the adaptation of the multifaceted ecological treaties, policymakers have considered about the climate change objectives and must be compatible with free trade rules. This implicit that Climate policy must be justified within its scope and smeared in a style that shouldn’t be ‘arbitrary, unjustifiable or a camouflaged constraint on trade’.⁹⁴² In this situation, the WTO “Dispute Settlement Panel” opined that climate and trade case, which confirmed that there should be a substantial linking amid Climate change actions and trade.

The WTO “*Appellate Body*” determined that every nation should rationally adopted comparable regulations to avoid the conflict between two regimes.⁹⁴³ Even there are few environmental cases such as the “Shrimp/ Turtle” dispute where Asian countries challenged US restrictions on “Shrimp” entries from nations that failed to safeguard sea turtles from drowning in shrimp nets in the similar manner as US shrimpers.⁹⁴⁴ In the case, the Appellate Body ruled that discrimination occurs when countries with similar conditions are treated differently and when the regulatory program does not consider the conditions in the exporting countries. Under “Article 3” of the Convention (UNFCCC) Parties should be guided founded on the value of equity and responsibilities to safeguard the environs for current and future generations.⁹⁴⁵

⁹⁴⁰ Scott Barrett, “Environment and Statecraft: the strategy of environmental treaty-making”, Oxford (2003), *available at* <https://archive.org>

⁹⁴¹ Heleen de Coninck and Richard Lorch et.al., “The Way Forward in International Climate Policy: Key Issues and New Ideas 2014, *available at* <https://cdkn.org>

⁹⁴² Calor Jaeger, “Green Growth and Climate Policy”, *available at* <https://cdkn.org>

⁹⁴³ William Nordhaus, “Climate Clubs: Overcoming Free-riding in International Climate Policy”, *American Economics Review*, Vol. 105, Issue. 4, pp. 1339-1370 (2015), *available at* <https://dx.doi.org/10.1257/aer.15000001>

⁹⁴⁴ *Supra Note 938*

⁹⁴⁵ *Supra Note 942*

Many countries started implementing climate strategies as the legal framework between the shared territories by two regimes. Although these international legal frameworks have changed in recent years remained relatively independent. A key concern is whether trade and commerce expansion can be balanced to prevent disastrous anthropogenic climate change.⁹⁴⁶ Unsurprisingly, there are various perspectives on this fundamental problem. In 2010 “World People’s Conference” and the “Rights of Mother Earth” in Bolivia⁹⁴⁷ identified capitalism as the root cause of “climate change” and arguing:

“The capitalist system favors competitions, progress, and unlimited growth. The current production and consumption system prioritizes profit over all other considerations, including water, the earth, biodiversity, justice, ethics, people’s rights, and life itself”.

As a result, climate change is progressively affecting worldwide and from a legal standpoint, these trends high spot the prominence of interaction between two regimes. In 2007 “Fourth Assessment Report” by IPCC has an important influence on international climate policy as it opined that increasing GHG concentration impacts climate change rapidly.⁹⁴⁸ The IPCC identifies few promising climate change mitigation policies such as regulations and standards for emissions levels, tradable permit for hazardous substances (toxic, inflammable, poisonous etc), incentives for technological advances, voluntarily actions by corporations, local governments, and regional authorities, and so on.⁹⁴⁹

The IPCC’s lack of reference to the WTO or international trade law highlights the disconnection between climate challenges and trade. However, WTO researchers have recognized potential contradictions between two regimes.⁹⁵⁰ The WTO law highlights several potential climate policies such as policies may include trade bans, subsidies compulsory licensing, and other measures to relax intellectual property rights for

⁹⁴⁶ Andrew Pfluger, “Why the Montreal Protocol is Not a Template for Multilateral Environmental Agreement: An Examination of Why China and India Ratified”, *Middle States Geographer*, Vol. 43, pp. 96-103 (2010), available at <https://msaag.aag.org>

⁹⁴⁷ World Peoples’ Conference Defense of Life, Tiquipaya- Bolivia, Ministerio of Relaciones Exteriores (2015), available at <https://www.cancilleria.gob.bo>

⁹⁴⁸ Courtney Lindwall, “IPCC Climate Change Reports: Why They Matter to Everyone on the Planet, NRDC (2023), available at <https://www.nrdc.org>

⁹⁴⁹ *Supra Note 946*

⁹⁵⁰ *Supra Note 948*

environmental-friendly technologies.⁹⁵¹ The legal evaluation of policies and initiatives on the list will be heavily influenced by their detailed design and compliance with WTO standards. In added common expressions, one might conceive of clauses. This debate concerns non UNFCCC climate policies or initiatives that are crucial to achieving the Convention's goal of preventing severe anthropogenic climate change (Article 2).⁹⁵² Since the Convention contains a clear obligations for industrialized nations to reduce GHGs but doesn't comprise any binding details on how this would be realized. According to the Convention each 'Annex I' nations shall implement or further elaborate policies in accord with its national circumstances.⁹⁵³

As we all know both regimes are two different realms that unavoidably interact with each others. Climate change treaties (UNFCCC and the "Paris Agreement") constitute the legal framework within the associate countries to set emission and adopt climate mitigation measures to triumph the global target of limiting the average temperature.⁹⁵⁴ So this legal framework provides nation free to decide any measures they will adopt to fulfill their emission targets. Though, international trade verifies implementation of such measures which potentially impacts international trade, even such measures is primarily aimed at tackling climate challenges. The climate related measures devises possibility to tackle the emissions of gases are progressively being implemented under the "Kyoto Protocol" where "Annex I" nations has an obligation to reduce GHGs emission by choosing any specific measures to encounter the commitment.⁹⁵⁵

The "UNFCCC" and the "Kyoto Protocol" are grounded upon the value of "*common but differentiate responsibility mechanism*" (CDR) regarding the allocation of GHG emissions reduction obligations between different nations.⁹⁵⁶ Even it was enshrined in "Principle 7" of the "Rio Declaration" the principle acknowledge that developed nations bear a responsibility in order to pursuit a sustainable development. This

⁹⁵¹ *Ibid*

⁹⁵² Barbara Eggers, "The Precautionary Principle In WTO Law", Dissertation ZurErlangung des Doktorgrades des Fachbereich Rechtswissenschaft der Universitat Hamburg (2001), *available at*<https://d-nb.info>

⁹⁵³ Supra Note 45 (Heleen de Coninck)

⁹⁵⁴ UNFCCC, Report of the forum implementation of Text, Sharm el-Sheikh Implementation Plan, *available at*<https://unfccc.int>

⁹⁵⁵ Rana Elkahwagy and Vandana Gyanchandani, et.al., "UNFCCC Nationally Determined Contributions: Climate Change and Trade" Center for Trade and Economic Integration (CTEI) Working Paper No. 2017-02, *available at* <https://dx.doi.org/10.1239/ssrn.2919692>

⁹⁵⁶ *Ibid*

principle includes in the guiding obligation of the “UNFCCC” to defend the weather scheme for current and impending groups on the root of equity.⁹⁵⁷

Further in 2015 the “Paris Agreement” eliminated the distinction between “Annex I and II” countries and let each State party define their own targets which marked a significant changed in the applicability of differentiated responsibility principle, and potentially creates a particular regime for climate change-related trade measures. According to this Agreement each country is free to choose both its emission reduction target and the measures it will adopt to meet its “Nationally Determined Contribution” (NDC).⁹⁵⁸ Under the said Agreement associates are obligatory to communicate their targets; revisit their targets every year, and renounce from lowering their target at each revision. The adoption of actions plan on climate and climate friendly technologies, products, which incorporated trade-related measures, has become quite common in nationally determined contribution i.e. targets, policies, and measures for reducing emissions.⁹⁵⁹ For example, Japan has adopted tax for Climate change alleviation and applies taxes as trade measure; European Union adopted Carbon Adjustment Mechanism and applies market based mechanism as trade measures, etc.

The “United Nations Agenda for Sustainable Development” identified trade measures as significant tool to support sustainable goal and enhanced to greener and more resilient economy.⁹⁶⁰ Even the IPCC has similar opinion and stated that policy instruments can support mitigation action by regulations, taxes and tradable permits etc. This means trade related measures can contribute to nations to accelerate the development, deployment of technologies, and adoption of policies towards low-emission energy system and deployment of environmental friendly products.⁹⁶¹

The international trade legislation prioritizes sustainable development and environmental preservation by implementing trade measures that comply with WTO standards.⁹⁶² The “*Preamble*” to the 1995 “Marrakesh Agreement” established the

⁹⁵⁷ Tracey Epps and Andrew Green, “Reconciling Trade and Climate How the WTO Can Help Address Climate Change” Edward Elgar Pub (2011), *available at* <https://discovered.ed.ac.uk>

⁹⁵⁸ Hanna Fekete and Takeshi Kuramochi, et.al., “A replication”, (2021), *available at* <https://doi.org/10.1016/j.rser.2020.110602>

⁹⁵⁹ *Supra Note 957*

⁹⁶⁰ Anna Hoppe and Ben Hinder, et.al., “Three Delivered?”, Annual Review of Environment and Resources, Vol. 48 (2023), *available at* <https://doi.org/10.1146/annurev-environ-112321-103821>

⁹⁶¹ *Ibid*

⁹⁶² *Supra Note 960*

“World Trade Organization” to liberalized free trade and optimizes use of assets for justifiable growth. The agreement also emphasizes the protection of environment and improving the means to do so by their respective needs.⁹⁶³

Trade-related measures can be divided into Tariff and Non-tariff measures. The Non-tariff measures (NTMs)⁹⁶⁴ contain a diversity of trade control instruments including license, quotas, price controls, financial measures, and technical rules. These measures are often adopted for environmental purposes.⁹⁶⁵ The IPCC identifies the prominence of technical regulations for mitigation action including energy efficiency, consumer information, fuel standards, and low emission industrial materials. Technical regulations generally set requirements that producers and retailers must comply with to sell certain products on a given market. As such, they can be use to support the adoption of energy-efficient technologies and the consumption of low-carbon products by domestic consumers.⁹⁶⁶

WTO legislation requires members to follow specific norms and requirements when establishing and implementing trade measures to prevent unwarranted restrictions and discriminatory practices. Likewise, climate law recognizes the prominence of reducing unjustifiable trade distortions through climate action.⁹⁶⁷ E.g. the UNFCCC stated that:

“Measures taken to discourse Climate change must not establish a resource of indiscriminate or untenable discernment or disguised restriction at global market”.

Even “Article 2.3” of the Protocol requires “Annex I” Parties ‘to implement policies in such a way that it should not affect intercontinental trade and ecological policies of other Parties’.⁹⁶⁸ Numerous climate actions related trade measures in the form of non-tariffs has been adopted by countries with regulatory objectives such as low-carbon

⁹⁶³ Susanne Droge and Harro Van Asselt, “Mobilising Trade Policy for Climate Action under the Paris Agreement”, SWP Research Paper, (2018), available at <https://www.swp-berlin.org>

⁹⁶⁴ Hereinafter the acronym NTMs shall be used for Non-Tariff Measures

⁹⁶⁵ H. Geller and P. Harrington, et.al., “Policies for increasing energy efficiency: Third years of experience in OECD countries”, Environmental Science, Economics, Political Science, 1 March 2006, available at <https://doi:10.1016/J.ENPOL.2005.11.010>

⁹⁶⁶ *Supra Note 963*

⁹⁶⁷ Richard Baron and Julia Reinaud, “Sectoral Approaches: To Greenhouse Gas Mitigation”, Exploring Issues for Heavy Industry, OECD/IEA, (2007), available at <https://www.osti.gov/etdeweb/servlets/purl/21605361>

⁹⁶⁸ *Supra Note 965*

traded goods, energy efficiency appliances, sustainable forest management, and reliability of “renewable energy” manufacture equipment.⁹⁶⁹

Any trade measures designed properly are not prohibited under the trading rules UNFCCC but designed in such a way that are sufficiently address to the issues of climate change without violating the trade principles.⁹⁷⁰ The UNFCCC suggested that Parties may use both unilateral and bilateral measure to mitigate climate challenges. Climate policy may also be used to protect the interest of “domestic industries” especially for heavily traded items such as fossil fuels and energy-intensive manufacturing.⁹⁷¹ To avoid this, “Article 3.5” of the UNFCCC states that:⁹⁷²

“The Parties should promote ‘international economic system’ that would lead to sustainable growth and development especially in emergent Parties, and enabling them to address the difficult of Climate change. Actions engaged to battle Climate change comprising individual ones, must not begin assets of capricious or indefensible discernment or a camouflaged constraint on global trade”.

The “Article 3.5” was included to ensure that trade measures are engaged by the Parties which are consistent with the GATT/WTO. After the espousal of the climate convention policymakers have contemplated about what kind of trade measures a Party might out in place to implement climate change objectives.⁹⁷³ For example, “American Clean Energy and Security Act” passed by the United State legislation for climate is unilateral trade measures. This means the Act allows the US to determine if another country’s emission-reduction efforts are ‘equitable’ in comparison to its own. This determination may contradict globally agreed burden sharing and important UNFCCC concepts, such as common but differentiated responsibility.⁹⁷⁴

⁹⁶⁹ *Supra Note 967*

⁹⁷⁰ Kati Kulovesi, “Climate Change and Trade: Two International Legal Regimes”, University of Eastern Finland Legal Studies Research Paper, No. 6 (2012), *available at* <http://ssrn.com/abstract=2159194>

⁹⁷¹ Farid Farrokhi and Ahmad Lakshkaripour, “Can Trade Policy Mitigate Climate Change?” 2024, *available at* https://alashkar.pages.iu.edu/Farrokhi_Lashkaripour_2024

⁹⁷² UNFC on Climate Change, *available at* <https://unfccc.int-zimbab-conven-text-art03>

⁹⁷³ Michael Hertel, “Climate-Change-Related Trade Measures and Article XX: Defining Discrimination in Light Responsibilities”, *Journal of World Trade*, Vol. 45, No. 3, pp. 653-678 (2011), *available at* https://www.researchgate.net/publication/292521542_Climate-Change

⁹⁷⁴ Fabio C. Morisini, “Trade Agreements”, Vol. 42, pp. 713 (2010), *available at* <https://ssrn.co/abstract=2547309>

Policymakers in industrialized countries recognized the limitation of trade policies imposed by climate convention need to avoid discrimination or restrictions on international trade. Proponents of trade measures aim to fit their instruments and policies with trade rules which provide valuable advice on interpreting WTO rules.⁹⁷⁵ The “American Clean Energy and Security Act” allow the US to differentiate between identical items based on the exporting country’s climate policy. These actions are discriminatory and violate WTO regulations prohibiting discrimination based on place of origin for similar products. For qualifying environmentally related exception under the trade regulation requires that the procedures be justified within the ambit of policy objectives, it must then be justified as being applied a method that is not ‘arbitrary, unjustifiable or a camouflaged constraint on trade’.⁹⁷⁶

Further, governments also initiate some measures to help them to accomplish their goals under the “Paris Agreements” and implemented the measures known as ‘climate response measures’. All these measures can have a trade component, which consists of two parts; either they devise an influence on trade in other goods or services, or they are actually trade measures include like import and export duties, tariffs, prohibition, taxes, fees, technical regulation.⁹⁷⁷ Even certain climate mitigation strategies were deemed the most promising by the IPCC such as, regulation and standards for emission levels targets, taxes, tradable permits, financial incentives, and research and deployment of technological advances.⁹⁷⁸ So government has adapted these in some forms or another but till now government has adopted various measures.

Renewable Energy Subsidies

A government allocated a financial contribution or benefits to its domestic industries that enables a particular sector to grow with lower production costs and increase its competitiveness is known as a subsidy. It can be direct contributions to a funding mechanism, loan guarantees, tax credits or other fiscal incentives, and other general

⁹⁷⁵ J D Werksman and WRI, et.al., “Competitiveness, Leakage and Comparability: Disciplining the use of Trade Measures Under A Post- 2012 Climate Agreement”, Discussion Paper, World resources Institute (2008), *available at* <https://pdf.wri.org>

⁹⁷⁶ *Supra Note 973*

⁹⁷⁷ Bert Metz, “Climate Change 2007: Fourth Panel on Climate Change”, Cambridge University Press, (2007), *available at* <https://is.muni.cz/publication/761181/en/Climate-change-007>

⁹⁷⁸ Chalottee Streck and Paul keenlyside, et.al., “The Paris Agreement: A Beginning”, Journal for European Environmental & Planning Law (2016), *available at* https://brill.com/view/jppurnals/jeep/13/1/article-p3_2.xml

infrastructure, etc.⁹⁷⁹ Renewable energy subsidies known as “Feed-in-tariff” (FIT) is the most popular measures taken by governments. The “Renewable Energy Network’s 2021” “Global Status Report” (REN 21) states that FIT programs continue to account for the majority of Renewable Energy subsidies.⁹⁸⁰

Carbon Pricing, Boarder carbon adjustment (BCAs) and Emissions Trading

According to “*Intergovernmental Panel on Climate Change*” the most effective strategies to slow down Climate change impacts is by setting a price for emissions. Boarder carbon adjustments are trade-related policy tools designed to balance out variations in trade partners’ climate policy demands.⁹⁸¹ The “Director-General” of the WTO recognized that ‘the problem of WTO compatibility of boarder tax adjustments is difficult and cannot be answered in general terms’.⁹⁸² They viewed by some as a kind of green protectionism. Carbon pricing is efficient instrument to mitigate climate challenges but sometimes trade rules can indirectly hamper the international cooperation over climate action. Further, it can be supplementary successful as compare to other used instruments to address climate challenge but it could be more complex to administer and face legal challenges by the Parties.⁹⁸³

Bio-fuel Introductions

Alternative prevalent approach for dropping greenhouse gas emission is to promote bio-fuels. These strategies are the complex link between WTO policies and climate change-related initiatives is the trade difficulties surrounding bio-fuels. They are linked to further environmental issues including de-forestation and biodiversity loss.⁹⁸⁴ The primary issue is that agricultural land, particularly in developing nations, will be exploited to produce bio-fuel for export rather than to feed the local population. Bio-

⁹⁷⁹ Renewable Subsidies: Balancing Economy Netherlands and beyond- power Technology, *available at*<https://www.power-tehnology.com/analysis/renewable-subsidies-balancing-economy-and-the-environment-in-the-netherlands-and-beyond->

⁹⁸⁰ RENEWABLES 2021 GLOBAL STATUS REPORT, *available at*https://www.ren21.net-GSR2021_Full_Report

⁹⁸¹ Michael A. Mehling and Harron Van Asselt, et.al., “Designing Boarder Carbon Adjustments for Enhanced Climate Action”, Cambridge University Press, Vol 113, No, 3, pp. 433-481 (2019), *available at* <https://doi:10.1017/ajil.2019.22>

⁹⁸² *Ibid*

⁹⁸³ Michael keen and Ian Perry, et.al., ‘Boarder Carbon Adjustments: Rationale, Design and Impact, IMF Working Paper, Fiscal Affairs Department (2021), *available at*<https://www.img.org-wpiea2021239-print-pdf>

⁹⁸⁴ GarbaMalumfashi, ‘Procurement (2009), *available at*<https://doi.10.1017/CBO9780511757396.018>

fuels create trade-related concerns, including customs categorization, technical standards, and tariff reductions.⁹⁸⁵ Trade law consider numerous government initiatives to promote bio-fuel production and usage, including tax breaks, regulatory exemptions, subsidies, and government procurement preferences.

The above illustrated sample displays that mutually regimes shared the same territory which is interrelated. The UNFCCC further projected this “in Article 3.5” which states that:⁹⁸⁶

“The Parties should cooperate to promote a helpful and open global commercial scheme that would lead to justifiable commercial progress and improvement in all Parties, emergent Parties, to discourse the difficulties of Climate change. Methods taken to battle Climate change must not establish a means of capricious or unwarrantable discernment or camouflaged constraint on global trade”,

The climate convention refused to prescribe specific policies for climate issues is core obstacles in the affiliation amongst trade and climate regime. It has stood reasoned that if the UNFCCC specifically recommended climate policies, than those policies would be more justified under WTO rules. Since each country sets its own national determined contributions, so it will be impossible to achieve any specificity.⁹⁸⁷ Also the universal legitimate position of NDC relevance is unclear under trade rule which creates conflicts between two regimes. It has been contented that unilateral adoption of climate-related trade restrictions would amount to discriminate and not justified under GATTs “Article XX” and the UNFCCC principle i.e. joint but distinguished duty.⁹⁸⁸ It has been proposed that the “common but distinguished duty principle” and the central norm of WTO may conflict, the principle’s impact in the GATT “Article XX chapeau” unclear.⁹⁸⁹ The UNFCCC contains no specific trade sanctions nor does the WTO have

⁹⁸⁵ *Ibid*

⁹⁸⁶ Michael Hertel, ‘Climate-change –related responsibilities’, Kluwer Academic Publishers (2011), available at <https://hdl.handle.net/1885/54848>

⁹⁸⁷ Sarah Davidson Ladly, ‘Boarder carbon adjustment, responsibilities’, Vol 12, Issue 1, pp. 63-84 (2012), available at <https://hdl.handle.net/10.1007/s10784-011-9153-y>.

⁹⁸⁸ Joachim Monkelbaan, ‘Governance for the Sustainable Development Goals, Springer (2019), available at <https://link.springer.com/10.1007/978-981-13-0475-0>

⁹⁸⁹ *Supra Note 987*

any environmental agreement. Yet, both regimes and commitments made by country under both regimes are entwined.

5.3.1. Climate Related Trade Dispute

In general, the WTO directions and the Climate treaties are mutually supportive to each other for improving the welfare of humankind through greater economic efficiency. The trade related measures included in the climate treaties address market failure, for instance, by giving out subsidies in GHGs emitting sectors, and hence removing trade restriction. In relationship with trade, the universal Climate concord and the “Kyoto Protocol” both specifically discourse the problem of Climate challenge.⁹⁹⁰ According to global climate convention Parties must promote an open international economic system and refrain from discrimination or restriction international trade provisions. Even the Kyoto opined that the Parties should implement measures in such a manner that they minimize the effects without hampering the trade fundamental principles. Since trade rules facilitate implementation of trade-related Climate measures by ensuring that measures for fight against the influences of Climate alteration and to achieve sustainable development.⁹⁹¹

The main objectives of (UN) Framework Climate Convention is to avoid hazardous “anthropogenic” Climate change which were rectified by major emitters of GHGs such as Canada, China, US and pledged to take into their mutual but dissimilar responsibilities,⁹⁹² articulate and apply agendas to alleviate Climate challenges. The Annex Party has dedicated to approve local rules to edge “anthropogenic” GHG releases and improve GHG drops in order to target to coming back to year 1990 levels.⁹⁹³ The emergent countries (Non-Annex-I) application of their duties rest on the (Annex I parties) commitments to sponsor and transmission technologies. To achieve their obligations all associates necessarily apply mitigation policies in relationships of

⁹⁹⁰ Tariq Banuri, “Sustainable development and climate change”, Newsletter of the IUCN Commission on Policy (CEESP), Issue no.4 (1999), *available at* <https://portals.iucn.org-Policy-Matters-issue-4>

⁹⁹¹ Cinnamon Pinon Carlarne, “the Kyoto Protocol & the WTO: Reconciling Tensions between Free Trade & Environmental Objectives”, *COLO. J. INT’L ENVTL. L & POL’Y*, Vol. 17, No. 1 (2006), *available at* <https://ssrn.com/abstract=1678665>

⁹⁹² FCC/INFORMAL/84: GE. 05-62220 (E) 200705, United Nations 1992, *available at* <https://unfccc.int-docs-convention>

⁹⁹³ Status of UNFCCC, *available at* <https://unfccc.int-process-and-meeting-status-of-ratification-of-the-convention>

the principle i.e. ‘supportive international economic system’, ensuring that measures that doesn’t favor or restrict international trade.⁹⁹⁴

This provision aligns the (UNFCCC) through the WTO’s non-discriminatory standards. The practical implementation of this provision is to reduce the traditional energy (fossil fuels) and GHGs emissions which requires further development. The UNFCCC requires all countries to take independent action which might devour *de facto* biased consequence on trade guidelines. The UNFCCC’s Preamble doesn’t highlight the impacts of “non-compliance”, though Preamble denotes to the “No-harm” Principle.⁹⁹⁵ Likewise, the “Kyoto Protocol” requires (Annex I) parties to decrease their complete production of gas at minimum five percent below in the commitments period. Beneath this structure, “Japan” devoted to a six percent reduction of GHG, and “Canada” middling six percent lessening below years 1990 levels.⁹⁹⁶ To encounter their Protocol obligation the (Annex I) “Parties must implement measures listed non-exhaustively” in (Article 2), such as:-

“Enhancement of energy usefulness in significant areas of the domestic economy; elevation, progress and augmented practice of, novel and renewable methods of energy; and processes to edge and decrease discharges of GHG in the vehicle.”

So in accordance to these measures under “Article 2” all Parties should formulate, implement, and publish updated methods to alleviate Climate challenges.⁹⁹⁷

Since, the “Kyoto Protocol”, espouse methods on energy adeptness to alleviate Climate challenges but such actions shake approximately all areas of the native, provincial, state and universal economy. For instance, China (Non Annex I) States didn’t obligate to reckon GHG reduction commitment or expected to attain 1990 levels, but the state accommodated to implement and formulated Climate change alleviation actions with reference to “energy”, “transport” and “industry”, etc.⁹⁹⁸ So China’s climate regime

⁹⁹⁴ *Supra* Note 975

⁹⁹⁵ Anita M. Halvorssen, “UNFCCC, WTO- Brewing Conflicts or Are They Mutually Supportive”, *Denv. J. Int’l L. & Pol’y*, Vol. 36, No. 3 (2007), available at <https://igitalcommons.du.edu/djilp>

⁹⁹⁶ Kyoto Protocol Targets for the first commitment period, UNITED NATIONS CLIMATE CHANGE, available at https://unfccc.int/kyoto_protocol/items/3145.php

⁹⁹⁷ *Supra* Note 995

⁹⁹⁸ The Global Revival of Industrial Policy: Picking Winners, Saving Losers, the *ECONOMIST*, Aug. 5, 2010, available at <https://www.economist.com/node/16741043>

commitments seem to be less burdensome, primarily due to procedure constraints, compared to other “Annex I” nations. The Climate change duties for the “US” as an (Annex I) Party, and “China” as a (non-Annex I) Party, seem to be similar.⁹⁹⁹ The (UNFCCC) doesn’t have method to report the profits of climate-related rules with trade and developmental goals. For all nations, a lesser “carbon” prospect entails swapping traditional energy to minus “carbon” concentrated energy and for these foremost progressive alterations requires large investment by administration involvement done by commercial instrument such as subsidies.¹⁰⁰⁰

There are many unresolved issues related with national renewable energy and Climate guidelines before the (WTO) quarrel determination. In 1999, “EU” and “US” represented by “Ford” and “Daimler Chrysler” exposed (WTO) deed counter to “Japan’s” “Top Runner Program”, which was updated in reaction to “Kyoto Protocol” responsibilities. The “Top Runner Program” sets standards for energy resources efficiency in many products such as medium-weight automobiles.¹⁰⁰¹ It is the utmost universally effective in reducing fuel imports, mitigating climate, and ensuring cost-effectiveness etc. The “Mitsubishi Motors” manufactured the most fuel-efficient and low-carbon vehicles, whereas ninety percent of middle- load ingresses were of “EU” and “US” origin, meet Mitsubishi’s efficiency criteria, certain period or expression forfeits. The “EU” and “US” claimed that this degree was pointlessly trade restrictive and discriminatory under the “Technical barriers of Trade”.¹⁰⁰²

Next objection was acknowledged in 2010 from Japan claimed that Ontario’s (Canada) subsidy program concerning to internal matter under the “Feed-in-Tariff Program” (FIT).¹⁰⁰³ Japan argued the measure was inconsistency with GATT (Article III) (National treatment) violated by treat imported renewable energy equipment unfairly compared to similar products from Ontario.¹⁰⁰⁴ Japan claimed that measures are core

⁹⁹⁹ *Ibid*

¹⁰⁰⁰ *Supra Note 996*

¹⁰⁰¹ Eric Martinot and Li Junfeng, “Renewable Energy Policy Update for China”, Renewable Energy Information on Markets, Policy, Investment, (2010), *available at* <https://w.renewableenergyworld.com/rea/news/article/2010/07/renewable-energy-policy-update-for-china>

¹⁰⁰² Nilmini Silva-Send, “Climate change Disputes Liability”, University of San Diego (2013), *available at* <https://digital.sandiego.edu/cgi-viewcontent>

¹⁰⁰³ Feed-in-Tariff Program is a series of policies taken to provide a long-term financial incentive for generation of renewable energy, *available at* <https://www.citizen.org/wp-content/uploads>

¹⁰⁰⁴ Canada-Measures Relating to the Feed-in-Tariff Program, World Trade Organization, *available at* https://www.wto.org/english/tratop_e/dispu_e/ds426_e.htm

numerical rules demanding the use of Ontario-sourced technology in renewable energy producing facilities. Japan claimed that protecting Ontario's production of such equipment violates GATT's non-discrimination provisions. Japan argued that I protect the Ontario's invention of such apparatus, which contradicts GATT's non-discrimination rules. Additional suspected that the quantity is a barred subsidy, as it provides benefit grounded on the usage of native goods over imported ones.¹⁰⁰⁵

Third, compliant was brought by (US) in 2010 in contradiction of (Chinese) "wind energy" grants founded on a protest by the "United Steelworkers" (USW) for action. The complainant alleged that (Chinese) "wind energy" subsidy have violate the (US) Steel production and related productions by relocating (US)"wind industry" module transfers to (China) by six to seven percent and to the (EU) by thirty percent.¹⁰⁰⁶ For "solar cells" and "panels", such grants are suspected to devise the universal rate to drip by forty percent. (China) to succeed thirty-four percent market shares in the (EU) and displaced the (US) portion of export to the (EU) to only thirty-seven percent. Further, the subsidies have shifted its production of panel makers from (US) to (China) in 2009 and 2010, foremost to domestic pecuniary damages in (US).¹⁰⁰⁷

5.3.1.1. Renewable Energy Subsidies¹⁰⁰⁸

The Canadian-Renewable Energy dispute concerns a Feed-in-Tariff Program and "Green Energy Act" implemented by the province of Canada. This program offered a guaranteed, preferential rate to private households and commercial producers that generated solar photovoltaic and "wind energy" and feed it into the grid. Diversifying Ontario's energy source mix and cutting greenhouse gas emission by substituting coal-cased power generation were among the goals.¹⁰⁰⁹ The program also aimed to encourage local investment in the advancement of renewable energy technologies. To profit commencing the scheme, electricity suppliers had to comply with 'minimum

¹⁰⁰⁵ *Ibid*

¹⁰⁰⁶ United Steelworker's Section 301 Petition Demonstrates China's green Technology Practices Violate WTO Rules, UNITED STEELWORKERS, *available at* <https://assets.usw.org-release-misc-section-301>

¹⁰⁰⁷ How does China's 12th Five Year Plan World Resources Institute, Grist, March 8th, 2011, *available at* <https://grist.org-climate-policy-2011-03-07>

¹⁰⁰⁸ WT/DS426, *available at* https://www.wto.org-dispu_e-ds426_e(visited on 4.5.2023)

¹⁰⁰⁹ ReicNeumayer, "The WTO and the Environment"(2004), *available at* <https://ssrn.com/abstract=608263>

required domestic content levels' when designing and constructing solar PV or wind power electricity generating facilities.¹⁰¹⁰

The complainant's nations opined that the FIT measures violated and inconsistent with the Canada's obligations and violate the WTO rules, Article III of GATT¹⁰¹¹, "Article 2.1" of the "Trade-Related Investment Measures Agreement"¹⁰¹², and "Article 3.1(b)"¹⁰¹³ and "Article 3.2"¹⁰¹⁴ of the "Subsidies" and "Countervailing Measures Agreement". Further, Japan and European Union demanded that the FIT Program's local gratified desires unfairly favor imported domestic goods violated the GATT principles and Trade-related investment measures agreements requirements regarding 'national treatment'.¹⁰¹⁵

Both the experts and Appellate Body concluded that the measures did not fall within the purview of "Article III" when it came to the infringement of the "national treatment" obligation. Appeal forum further concluded that the merchandise of overseas source that was allegedly discriminated against to be eligible for this exception, it had to be in a reasonable affiliation with the products that the government purchased. The Appellate Body claimed that no direct competition should be between these two products.¹⁰¹⁶ Consequently, it concluded that discrimination on the origin of foreign-generation equipment was not derogatory. The Panel's intermediate finding the methods in question were laws, regulations, or requirements governing governmental agencies' procurement of electricity inside the sense of GATT fundamental principles was overturned by the Appeal forum, and the expert's other intermediate findings were deemed moot and had no legal significance.¹⁰¹⁷

¹⁰¹⁰ Carolyn Fischer, "Canada-Renewable Energy: Implication for WTO Law on Green and Not-So-Green Subsidies", Resources for the Future, Oct 13th, 2014, *available at* <https://www.resources.org-common-resources-canada>

¹⁰¹¹ GATT Article III- in a manner that protects domestic production, *available at* https://www.wto.org-res_e-gatt_ai_2-art3(visited on 4.5.2023)

¹⁰¹² TRIM Article 2.1- *available at* https://www.wto.org-docs_e-legal_e-18-trim_e(visited on 4.5.2023)

¹⁰¹³ SCMA Article 3.1(b)- *available at* https://www.wto.org-docs_e-legal_e-24-scm(visited on 4.5.2023)

¹⁰¹⁴ SCAM Article 3.2-, *available at* https://www.wto.org-docs_e-legal_e-24-scm(visited on 4.5.2023)

¹⁰¹⁵ WT/DS426- Canada-Measures Relating to the Feed-in-Tariff Program", WTO dispute settlement case-Launched by the EU, *available at* <https://policy.trade.ec.europa-eu-to-dispute-settlement>(visited on 4.5.2023)

¹⁰¹⁶ *Ibid*

¹⁰¹⁷ Canada loses WTO appeal over Ontario's green energy program, CBC News, May 6th, 2013, *available at* <https://www.cbc.ca-news-business-canada-losses-wto>

When the case against Canada was initially presented before the dispute panel Japan and EU clearly won the case. Since they argued that Ontario program was violating different trade regulations by imposing a minimum required level of domestic content which were inconsistency with the aspects of TRIMS and forbids subsidies that depend on domestic over imported goods.¹⁰¹⁸ Crucially, the third argument discovered that FIT is widely used renewable energy policy measures globally is a subsidy itself.¹⁰¹⁹ Despite losing the case Canada was not defeated on this third point because neither the experts nor the Appellate Body was able to determine whether FIT contract qualifies as a subsidy.¹⁰²⁰

Scholars have criticized their decision as the conflict gave the “Appellate Body” a chance to provide direction and clarify the subject of subsidies, which it avoided because the renewable energy support measures and the SCM Agreement, which does not, in its current form, contain environmental exceptions or allow for considering the underlying policy objective of the subsidy.¹⁰²¹ Some academics disagreed with the decision, arguing that the Panel could have properly used fact-finding power granted under “Article 13” to determine whether the benefit were existed under “Article 1.1 (b)” of “Subsidies and Countervailing Measures”.¹⁰²² The “Appellate Body” did offer a few useful insights into possible relationships concerning trade and Climate measures. For example, they clarified the applicable exception under “Article III” and “Article 8 (a)” of GATT by stating that both obligations refer to the discriminatory and the same treatment with both must exist in command to use the exception.¹⁰²³

5.3.1.2. India “Solar Cells” and “Modules”¹⁰²⁴

The “Jawaharlal Nehru National Solar Mission” (JSM) primary goal was to achieve energy security and support ecologically sustainable national progress in India. By

¹⁰¹⁸ Marie Wilke, “Feed-in-Tariffs Review”, ICTSD, Issue. 4 (2011), *available at* https://www.files.ethz.ch-isn-fits_wilke

¹⁰¹⁹ *Ibid*

¹⁰²⁰ Alexandre Genest, “The Canada- FIT Case and the WTO Subsidies Agreements: Filed Fact-Findings, Needless Complexity, and missed Judicial Economy”, University of Ottawa and Leiden Law School, Vol. 10, Issue 2 (014), *available at* <https://www.canlii.org-2014CanLIIDocs110>

¹⁰²¹ Luca Rubini, “The Subsidies”, Journal of World Trade, pp. 153-194 (2016), *available at* <https://www.semanticscholar.org-paper>

¹⁰²² *Ibid*

¹⁰²³ Kati Kulovesi, “International Trade Disputes on Renewable Energy: Testing Ground for WTO Law and Climate Change Law”, Vol 23, Issue 3, pp. 342-33 (2014), *available at* <https://doi.org/10.1111/reel.12092>

¹⁰²⁴ DS456: India-, *available at* https://www.wto.org-dispu_e-cases_e-ds456_e

2022, it aimed to produce 100,000 MW solar power capacities so Indian government committed to buy power at reasonable price, with twenty-five years guarantee, from solar energy producers and selling it to downstream distribution utilities, which then resale it to final customers.¹⁰²⁵ To achieve this solar energy producers had to impose obligatory local content standards on the energy they generated and modules made in India. Later on, the “United States” argued that ‘*local content*’ measures conflicted with “Article III” of the (GATT) “; Article 2.1” of “Trade Related Investment Measures Agreement” (TRIMs) and “Article 3.1 (b), 3.2, 5(c), 6.3(a) and (c), and 25” of the “Subsidies and Countervailing Measures Agreement” (SCMs).¹⁰²⁶

The “experts and the Appellate Body” determined that India’s “Domestic” contained requirement measures were in conflict with non-WTO discrimination obligation under “Article III 4 and 2.1”. This issue of incompatibility with (GATT) “Article III 4” and TRIMs “Article 2.1”, which deals with national treatment obligations, was raised.¹⁰²⁷ Further, the UN appearing as the complainant State, claimed that Article III: “4 and 2.1” of the “*Trade Related Investment Measures*” Agreement were not followed by India’ DCR measures. The “*domestic content requirement*” measures followed by the Indian Solar mission violated “Article III (4)” as per the United States, which aims at reducing international protectionism. In its defense, India argued that as the DCR measures would fall under Article III 8(b) derogation, they did not violate (GATT) Article III 4.¹⁰²⁸

The panel first identified India’s native gratified requests for solar PVs trade-related measures for investment before reaching the conclusion. Following previous case (Canada- FIT- Renewable Energy), the panel declared, if the measures were local content they must be ‘trade-related’ because such criteria always promote domestic products over imported. Further, it agreed that the native gratified obligation measure fall below the category of trade-related investment measures as defined under “*Trade Related Investment Measures*” in “*Paragraph 1(a) of the “Illustrative List”*”.¹⁰²⁹ It

¹⁰²⁵ D. Ravi Kanth, “India’s appeal against WTO solar ruling rejected”, 16th Sep, 2016, available at <https://www.livemint.com-industry>

¹⁰²⁶ *Ibid*

¹⁰²⁷ Duy Vu, ‘Reasons not to exit? arbitration’, European Journal of Law and Economics, Vol 47, pp. 291-319 (019), available at <https://link.springer.com-article>

¹⁰²⁸ *Ibid*

¹⁰²⁹ Sayenko Kharenko, ‘WTO Case Summary. India- Solar Cells’, Mondaq, 10 October, 2016, available at <https://www.mondaq.com-renewables-wto-case-summary>

eventually emerged that the local requirement measures violated India's obligations under *TRIMs Agreement* and serve 'less favorable treatment' because they required 'the purchased products of domestic origin or domestic source' as defined by the *TRIMs* which were also 'mandatory or enforceable' under Indian law.¹⁰³⁰ The Panel opined that Indian government procurement exception in "Article III 8(a)" does not discriminate solar PV and modules under the DCR measures.¹⁰³¹

According to India "Article XX (d)" justify the DCR measures since they ensure that every States has to comply with 'laws or regulation' that mandate it to take sustainable action. India used the climate convention's principles to defend itself under this exception and argued that "a duty of every nation to alleviate Climate impact by using adequate supply of clean energy (renewable) at reasonable prices."¹⁰³² The Panel of "*International Court of Justice*" found that neither the climate convention nor the mainstream of the instruments that India had mentioned qualified as 'laws or regulations' under "Article XX (d)" or as such, under the DCR, 'secure compliance' was not required. They found that only domestic laws and not international treaties were included by the definition of 'laws or regulations'.¹⁰³³ The "Appellate Body" opined that international agreements could merely be deliberated to constitute 'laws or regulations' if they 'incorporate, or have 'direct effect', within a Member's domestic legal system. The Panel rejected the justification under "Article XX (d)" concluded that international treaties has no direct impact on India. They opined that India did not provided sufficient proof to sustenance the challenged measures in accordance with "Article XX (d)".¹⁰³⁴

Whether the trade dispute settlement procedure is beneficial to mitigate climate challenges is still up for debate in both situations. There are few cases that do not give enough room for a conclusive statement on this issue. Some environmentalist claimed that negative results of the "Canada-Renewable Energy" and "Canada-Feed-in-Tariff" cases cannot be interpreted as a victory for renewable energy because the policy's local content measures protected domestic producers and penalized importers in a

¹⁰³⁰ *Supra* Note 1023

¹⁰³¹ *Supra* Note 1029

¹⁰³² Solar Panel Dispute at WTO, India & US at loggerhead on the solar panel dispute, 3rd April, 016, available at https://www.civildaily.com_story_solar-panel-dispute-at-wto

¹⁰³³ India-, Apelles Submission To The United States of America, My 10, 2016, available at <https://ustr.gov-default-files-enforcement>

¹⁰³⁴ *Ibid*

protectionist way. Moreover, in the “India-Solar Cell” case the WTO Member explicitly mention its international climate obligation to defend a trade principles infringement. Unfortunately, the WTO experts rejected this argument and concluded that mitigation climate challenges are incompatible with the WTO principles.

5.4. Harmonizing of “Trade and Climate Regime”

“Trade and Climate Change” systems keep operating at the global level despite growing worldwide knowledge that laws, regulations, and policies intended to address Climate change could perform as barricades to worldwide trade.¹⁰³⁵ The WTO is in charge of creating trade-related rules and structures, while the global climate convention (UNFCCC) negotiates emission reduction responsibilities upon their Parties. Consequently, the creation of several international standards make international trade bit complex and fight against climate challenge are less determined.¹⁰³⁶ For instance, different requirements for importation of technologies, efficiency standards, trade requirements, and trade procedures are slowing down the accessibility of environmental technologies which emerging nations want to alleviate the climate challenges. Meanwhile, industrial countries have adopted unilateral measures like the ‘food mile’ policy and alternative energy programs, are currently endangered the importation of goods produced in emergent countries.¹⁰³⁷ The result is overlap and conflict with trade obligations with climate emission reductions action.

The world community serious issues confronting humanity is changing the pattern of climate and its impacts. It almost impact on every aspect of human endeavor such as international trade, is the maximum susceptible to the Climate change effects. There are two categories of consequences on trade i.e. direct and indirect effects.¹⁰³⁸ Firstly effect in global economic activity due to extreme temperatures, drought, flooding, diseases, water scarcity and rising food prices, among others.¹⁰³⁹ The second impacts

¹⁰³⁵Giorgos Kallis and Vasilis Kostakis, ‘Research on Degrowth’. Annual Review of Environment and Resources, Vol. 43, pp. 291-316 (2018), *available at* <https://dx.doi.org/10.1146/annurev-environ-102017-025941>

¹⁰³⁶ R. Baron, ‘Sectoral Approaches to GHG Mitigation. Scenarios for integration’, Environment Directorate, Energy Agency IEA Paris France, (2006), *available at* <https://www.oecd.org/env/cc/aixg>

¹⁰³⁷ *Supra Note 1035*

¹⁰³⁸Damilola S. Olawuyi, ‘Harmonizing Integration’, (2014), *available at* <https://doi:10.1515/ldr-2014-0023>

¹⁰³⁹ J. Hansen, ‘Defusing the global warming time bomb’, Sci Amer., Vol. 290, No. 3, pp. 68-77 (2004), *available at* <https://pubs.giss.nasa.gov-abs>

refer the policies, laws, and other initiatives intended to battle the concerns of climate may function as trade barriers.¹⁰⁴⁰ To address the issues governments can implement a variety of pecuniary and regulatory strategies such as laws governing energy efficiency, taxing greenhouse gas emissions, imposing ‘carbon taxes’ on import and exports, and switching to alternative energy sources.¹⁰⁴¹

Such complex measures have indirect impacts on international trade especially to developing countries. For instance, Nigeria supplies crude oil directly to America which was extracted from underground.¹⁰⁴² In an effort to lower its level of GHGs emission States of America supported measures to lower its imports for fossil fuels and transition to alternative energy sources like ethanol fuel. Such a shift may result in a phenomenal drop in Nigeria’s income and economic growth which lead to job losses, more poverty, and a general slowdown in growth.¹⁰⁴³ So there is a concern that climate mitigation runs a thoughtful danger of inciting a wave of protectionist policies. For example, Nigeria would be pressured to impose greater carbon taxes on US Multinational Corporation, retaliatory carbon levies on US imports, and distinct energy efficiency requirements for imported technology and goods. These illustrations show the global intersections between commerce and climate change challenges.¹⁰⁴⁴

5.4.1. Construct the Gap between two Regimes

There is growing awareness on a universal rule that both the regime’s policy interacts and need to be mutually beneficial in command to avoid unexpected consequences. Given the complex relationships that exist between two regimes a definite level of normative harmonization and integration is required to avoid divergence and overlap.¹⁰⁴⁵ The responses to climate challenges must be coordinated to prevent unforeseen consequences for global trade so they must create their policies logically without conflicting each other’s principles.¹⁰⁴⁶

¹⁰⁴⁰ *Ibid*

¹⁰⁴¹ *Supra Note 1038*

¹⁰⁴² F&D, December 2008, available at <https://www.imf.org/fandd>

¹⁰⁴³ Richard Baron, ‘Sectoral Approaches to GHG Mitigation: Scenarios for Integration’, Environment Directorate International Energy Agency, COM/ENV/EPOC/IEA/SLT (2006), available at <https://iea.blob.core.windows.net/assets-Sectoral>

¹⁰⁴⁴ *Supra Note 1035*

¹⁰⁴⁵ Report on, A6-0409/2007, available at <https://www.europari.europa.eu/doceo-documents> (visited on 2.3.2024)

¹⁰⁴⁶ *Ibid*

This strategy would include creating a balance platform for the cross-intersection of both regimes, as well as accounting for the institutional features of these linkages. After the potential clashes between two regimes the question is how to resolve them so that they can work in harmony.¹⁰⁴⁷ Several scholars have proposed remedies in this field. Some deals with substantive, while others deal with procedural issues in the administrative institution of both regimes. Besides, many scholars have proposed logical analysis such as examine the existing mechanism of both regimes as well as reformed or innovative recommendations.¹⁰⁴⁸

A straightforward method of determining whether trade measures that are in dispute or support the GHG emission limits are comply with trade principles is to take a case-by-case approach. Besides, using the waiver found in “Marrakesh Agreement” “Article IX.3” is most widely used solutions for balancing both regimes. According to the Agreement the WTO “Ministerial Conference” has the authority to waive a legal obligation imposed on members in extraordinary situations.¹⁰⁴⁹ To address the growing climate change emergency, trade law can be vitalized through the employment of ‘waiver’ tool which would release nations that use trade-restrictive policies to meet their carbon targets from some WTO responsibilities.¹⁰⁵⁰ If waiver is properly designed states might be competent to differentiate between carbon generated products during the practice of production. This differentiation tariffs, quotas, prohibitions, or subsidies on import. The move would need to meet a consensus definition of ‘climate response measures’ without limitation on global trade in order to give legal clarity.¹⁰⁵¹

Another suggestion is to describe the legal scope of trade-related climate actions by amending the WTO accords. This would facilitate the process “Appellate Body” determines a quantity is eligible for any of the exclusions provided by the applicable WTO agreements or not. Likewise, adopting an authorized interpretation of specific

¹⁰⁴⁷ Report on (2008), *available at* https://www.wto.org-english-res_e-booksp_e-trade (visited on 2.3.2024)

¹⁰⁴⁸ Ibid 206

¹⁰⁴⁹ Demila de Elemo, WTO Dispute Settlement and its Impact on Climate Change Related Issues’, May 31st, 2022, *available at* <https://www.researchgate.net-wto>

¹⁰⁵⁰ Eric Neumayer, ‘The WTO and the environment’ its bleak’, Global Environmental Politics, Vol. 4, No. 3, pp. 1-8 (2004), *available at* <https://eprints.ise.ac.uk>

¹⁰⁵¹ Jutta Brunnee, ‘The UNFCCC as a negotiation forum: towards common but more differentiated responsibilities’, Climate Policy, Vol. 13, Issue, 5, (2013), *available at* <https://doi.org/10.1080/14693062.2013.822661>

trade Agreement clauses is another recommendation.¹⁰⁵² Trade members could agree that certain actions taken to achieve NDCs or pursue climate change objectives are compliant with specific WTO Agreement provisions through a consensus-building interpretation. Such interpretation may be adopted under the “Article IX.2” of the “Marrakesh Agreement”.¹⁰⁵³ For an interpretation to be considered authoritative, three-fourths majority vote is needed for Climate change processes a lot of the trade Agreement sections are open to interpretation.¹⁰⁵⁴ In this situation, this option could help to clarify the law in such circumstances. Unlike an amendment, an authoritative interpretation cannot create new laws or impose new obligations.¹⁰⁵⁵ Consequently, the legal certainty that amendments offer cannot be achieved with this approach.

As stated in “Article IX.1” of the “Marrakesh Agreement”, WTO Members may decide to establish a temporary peace provision. Members shall agree not to pursue legal action on the matter addressed by the clause through the trade dispute mechanism. A peace clause or a moratorium would allow members to temporarily violate certain WTO regulations pertaining to climate change.¹⁰⁵⁶ One important illustration is the interim peace “*Climate Strategies clause*”, which was decided upon by a ministerial decision and permits developing nations to offer subsidies under public stockholding programs without conflicting any legal provisions in the WTO’s dispute resolution process.¹⁰⁵⁷

Other recommendations proposed by several scholars are innovative suggestions such as revisit the concept of ‘like’ products. The concept of ‘likeness’ of products goes to the heart of WTO jurisprudence. Cases such as EC- Asbestos¹⁰⁵⁸ and Japan- tax on alcoholic beverages show that the physical characteristics, nature, and quality of the products; their intended use; the tastes and habits of consumers regarding the products;

¹⁰⁵² Kyle. W. Danish, ‘An Overview of the International Regime Addressing Climate Change’, WCL Journal & Law Reviews, SDLP, Vol. 7, Issue. 2 (2007), *available at* <https://digitalcommons.wcl.american.edu-vol7-iss2>

¹⁰⁵³ Marrakesh Agreement Article IX.2- Available at <https://investmentpolicy.unctad.org-download>

¹⁰⁵⁴ *Supra Note 1052*

¹⁰⁵⁵ William J. Davey, ‘The challenges’, Research output: Contribution to Journal, Vol. 17, Issue, 3, pp 679-700 (2014), *available at* <https://doi.org/10.1093/jiel/jgu031>

¹⁰⁵⁶ Kevin P. Gallagher, ‘Economic Globalization and the Environment’, Annual Review of Environment and Resources, Vol 34, pp 279-304 (2009), *available at* <https://www.annualreviews.org-content-journals-an>

¹⁰⁵⁷ Tracey Epps and Andrew green, ‘Reconciling trade and Change’, (2010), *available at* <https://www.e-elgar.com-shop-gbp-reconciling-trade-and-climate>

¹⁰⁵⁸ European Communities- Measures Affecting Asbestos and Asbestos – Containing Products (WT/DS135), *available at* https://www.wto.org-dispu_e-cases_e-ds135_e

and the charge cataloging of the merchandises are the criteria for likeness.¹⁰⁵⁹ Nevertheless, the process or materials used in the production have not been taken into consideration for determining “likeness”. The determinations of two products are not ‘like products’ based on the amounts of carbon used while making them unprecedented.¹⁰⁶⁰ It’s legitimate to have concern that this kind of similarity interpretation influence prime to a cascade of meanings that risk both regimes. It is recommended that both regimes work together to create a conjoint global measurement for decisive the quantity of low-carbon utilized in the product in command to discourse this issues.¹⁰⁶¹

Under ‘Annex 4’¹⁰⁶² of the trade agreement countries negotiated a pluri-lateral accord that would allow space for climate policies that are implemented and consistent with basic WTO principles.¹⁰⁶³ To lower tariffs and non-tariff barriers on trade using climate-friendly technologies presents a significant chance for both regimes to work together; such as settlement had stayed vowed by the “Doha” talks and discussed about the biogas production tanks, photovoltaic cells, hydropower turbines, and others.¹⁰⁶⁴

The trade dispute settlement mechanism have required the technical knowledge to address climate-related issues is another major recommendation, as it help to determine particular policy efficiently to lowers greenhouse gas emissions. Legal changes won’t be necessary for this because dispute mechanism “Appendix 4”¹⁰⁶⁵ and “Article 13”¹⁰⁶⁶ already give the panels’ sufficient discretion to approach for information and technical advice as long as the pertinent guidelines are followed.¹⁰⁶⁷ The “Article 13” of the dispute mechanism gives a panel nearly unfettered admittance to info and guidance on any topic such as sociological, linguistic, economic, and technical fields. Panels have

¹⁰⁵⁹ Robert E. Hudec, ‘Like Product’: (1994), *available at* https://www.ivr.uzh.ch-archives-iel-1-text_1

¹⁰⁶⁰ *Ibid*

¹⁰⁶¹ *Ibid*

¹⁰⁶² Annex 4 consists of two plurilateral agreements, this are binding only to “WTO” Member. *available at* <https://guides.ii.georgetown.edu-c.php>

¹⁰⁶³ *Supra Note 1057*

¹⁰⁶⁴ *Supra Note 1059*

¹⁰⁶⁵ Expert Review Group. *available at* https://www.wto.org-tratop_e-dispute_e-dsu_e

¹⁰⁶⁶ Article 13- Right to seek information. *available at* https://https://www.wto.org-tratop_e-dispute_e-dsu_e

¹⁰⁶⁷ Xavier Philipee, ‘The five years after its implementation’, University of Western Cape and of Aix-en-Provence: French Embassy in South Africa, Law, Democracy & Development, *available at* <https://www.saflii.org-journals-LDD-d.pdf>

previously sought expert input from other international organizations; therefore utilizing the UNFCCC's expertise is not unrealistic.¹⁰⁶⁸

Furthermore, harmonization can be strengthening through using existing forums under trade and climate convention. The legitimacy of each regime and making greater use for evaluating the consequences of one regime for the other could improve mutual understanding between two regimes.¹⁰⁶⁹ This might be the "Trade Policy Review Mechanism"¹⁰⁷⁰ and "Committee on Trade and Environment".¹⁰⁷¹ The UNFCCC includes "Subsidiary Body" on "Scientific and Technological Advise"¹⁰⁷² to strengthen and understand both regimes, including objectives, principles, and legal requirements.¹⁰⁷³

The WTO's principal tool for promoting such a relational interaction is the WTO "Committee" on "Trade and Environment", which has broad remit of brining environmental concerns into the WTO sphere and inviting other organizations such as the OECD¹⁰⁷⁴ to trade-environmental dialogue. To promote such a role, the CTE has taken a 'conciliatory' approach concerning trade and the environment, which is entirely formed by the idea of sustainable development.¹⁰⁷⁵ To promote sustainable development the CTE taking into concerns related to different asymmetries of trade Members and deal with environmental co-related concerns.¹⁰⁷⁶ The CTE was standing forum dedicated to dialogue between governments on trade provisions and environment policies upon trade. Further, it has a broad-based mandate; identifying the rapport amid

¹⁰⁶⁸ *Ibid*

¹⁰⁶⁹ The WTO's negotiating function: Towards plurilaterals and new trade challenges', European Parliamentary Research Service (2024), available at <https://www.europarl.europa.eu-etudues-BRIEF>

¹⁰⁷⁰ Peer review mechanism, with its mandate set out Annex 3 to the "Marrakesh Agreement" (WTO Agreement). Available at https://www.wto.org-english-tratio_e-tpm_e

¹⁰⁷¹ The standing forum dedicated to dialogue between governments on the impact of trade policies on the environment and of environment policies on trade. Available at https://www.wto.org-tratop_-envir_e-envir_e

¹⁰⁷² COP on matters of science, technology and methodology. Available at <https://unfccc.int-bodies-subsidiary-bodies-sbsta>

¹⁰⁷³ *Supra Note 1069*

¹⁰⁷⁴ Hereinafter the acronym OECD shall be used for "Organization for Economic Cooperation and Development"

¹⁰⁷⁵ Kasturi Das and Harro van Asselt, 'Making the International Trade System Work for Climate Change: Assessing the Option', Climate Strategies project (2018), available at <https://climatestrategies.org-uploads-2018/07>

¹⁰⁷⁶ Richard G. Taras of sky, 'The Difference?', Max Planck UNYB 3 (1999), available at https://www.mpil.pdf2-mpunyb_tarasofsky_3

trade and environmental procedures in demand to promote supportable expansion and making suitable recommendations to the multi dimensional transaction structure are.¹⁰⁷⁷

The Committee comprises all WTO members, observers from intergovernmental organizations i.e. ITC, OECD and UNCTAD, and reports to the (WTO's) General Council. This characteristic of the CTE's collaboration with other international organizations represent a contemporary development in international law that has been altered by global governance, which entails different subjects and agents working together to better solidify specific legal protection.¹⁰⁷⁸ Since 1996, the CTE has convened three times per year, and it has frequently hosted information sessions with the secretariats of MEAs to expand its members' awareness of the connection concerning MEAs and WTO rules.

All WTO multilateral agreements include language relating to environmental protection, either generally or specifically. One such example is "Article XX"¹⁰⁷⁹ of GATT in which letters 'b' and 'g' refers to necessary measures involving to the safeguarding of natural resources, human, animal, and plants.¹⁰⁸⁰ This means the negotiations launched by the CTE would be discussed the issues related to commerce and environmental sustainability under "Article XX". In these session members have negotiated associations concerning trade and environmental agreement as well as market access for ecological merchandises and services.¹⁰⁸¹ Some special session has been held on business and environs and they have spelled what has been so termed a dialogue of sources for harmonizing both regimes. So there is the possibility of achieving harmony between two regimes and it may be possible through a mutual coordination. A discourse of cradles would be the simultaneous, coherent, harmonious, and coordinated coexistence of legal sources.

The dialogue would be identified as a dialogue of coherence, coordination and complementary. The dialogue is confirmed when treaties relate to one other, resulting

¹⁰⁷⁷Margaret A. Young, 'Regime Interaction in International Law', Cambridge University Press (2012), available at <https://doi.org/10.1017/CB0980511862403>

¹⁰⁷⁸ *Ibid*

¹⁰⁷⁹ Article XX- General Exception- 'b', available at https://www.wto.org-res_e-gatt_ai_e-art20_e

¹⁰⁸⁰ Daron Acemoglu and Philippe Aghion, et.al., 'Climate Ga Revolution', (2003), available at <https://economics.mit.edu-site-default-files>

¹⁰⁸¹ *Ibid*

in mutual understanding of their contents.¹⁰⁸² The complementarily dialogue has existed since it became possible to apply norms and principles from different regimes that complement one another.¹⁰⁸³ It indicates that one should determine the initial ethics and apply them after using an interpretative method besides the said theory was also used during the enforceability of rules that might be applicable to relational interaction.¹⁰⁸⁴

The correlation between Climate and trade is complex and multidimensional. However, the argument often relies on oversimplifications and misconceptions. Much of the present debate is based on two false assumptions; trade certainly contributes to climate standard and regulations hinder governments from enacting strong climate policies.¹⁰⁸⁵ The false notion is that commerce contributes to climate change which needs to limit imports in favor of manufacturing and using goods and services locally. In reality, international trade has diverse impacts which contribute to GHG emissions by producing, transporting, distributing, and consuming traded items.¹⁰⁸⁶ Additionally, trade stimulates economic activity and income, which leads to increasing emissions.

Trade helps reduce emissions of GHGs in numerous ways including offers low-carbon goods and services at cheaper prices. Increased income from trade can raise environmental awareness and leads to restrictions, encouraging the use of environmental-friendly technologies in production processes.¹⁰⁸⁷ Trade can facilitate the adoption of environmental innovations and give firms the chance to increase their profitability by incorporating such innovations into their operations. This increases the incentives for businesses to keep developing, disseminating, and incorporating environmental technologies. In addition, trade in cleaner energy can help developing

¹⁰⁸² UN trade & development, 2nd February, 2024, *available at* <https://unctad.org-meeting-10th-trade-policy-dialogue>

¹⁰⁸³ Report on the Environmental goods Trade Policy Dialogue, Investment (CTI), Market Access Group (MAG), pp. 21, July 2023, *available at* <https://www.apec.org-publications-2023/07-report>

¹⁰⁸⁴ *Ibid*

¹⁰⁸⁵ Nicole A. Mathys and Jaime de Melo, 'Trade and Climate Change: The Challenges Ahead', Foundation Pour Les Etudes Et Researchers Sur Le Development International, Working Paper, Development Policies (2010), *available at* <https://ferdi.fr-ferdi-p14-trade-climate-chnallenges>

¹⁰⁸⁶ Muthukumara Mani, 'Creating incentives for clean technology trade, transfer, and diffusion: The role of non-distorting policies' Thinking Ahead on International Trade (TAIT)- 2nd Conference Climate Change, Trade and Competitiveness Issues for the WTO, Economic Integration, Geneva (2010), *available at* <https://www.graduateinstitute.ch/ctei>

¹⁰⁸⁷ *Ibid*

nations, particularly those with abundant renewable energy sources, leverage their comparative advantage and subsidize to the low-carbon transition.¹⁰⁸⁸

However, trade ensures permanent positive side on Climate change deed. Understanding economic possibilities and troubles as well as being able to manage climate risks are necessary for building action plan to combat climate risks.¹⁰⁸⁹ Strategies for adapting climate change must incorporate trade regulations and measures to make supply networks more resilient to disruptions brought on by the environment. Similarly, appropriate and comprehensive energy and climate policies are needed to encourage producers, and consumers to consider climate risks when making decisions, leading them to opt to reduce their GHG emissions.¹⁰⁹⁰

Another misleading assumption is that trade prevents governments from creating climate policies to fight against climate issues.¹⁰⁹¹ In reality the WTO contributes to the effective and efficient implementation of trade-related climate policy, even though the word ‘climate change’ has not used in WTO agreements. The trade regulations apply taxes, tariffs to support measures, and other instruments that are important for climate policies into effect.¹⁰⁹² The UNFCCC states that measures to fight against climate challenges should not discriminate or restrict international trade.¹⁰⁹³

Simultaneously, trade regime supports policy that promotes positive cross-border spillover effects while fighting against the climate issues. For example, adopting climate measures in one country can help spread environmental technologies to another country. Trade rules also prevent measures that produce trade conflicts, economic and welfare losses for other nations and hamper climate actions.¹⁰⁹⁴ The WTO committees offer a unique setting for associates to address mitigation and adaptation initiatives for trade implications. The WTO transparency methods include notice requirements for

¹⁰⁸⁸ Hakan Nordstrom, ‘The Microcosm of Climate Change Negotiations: What Can the World Learn from the European Union?’, ICTSD SERIES ON Climate Change Architecture Programme, Issue Paper No. 1 (2009), available at https://www.files.ethz.ch-isn-web_nordstrom

¹⁰⁸⁹ *Ibid*

¹⁰⁹⁰ *Supra Note 1085*

¹⁰⁹¹ Mustafa H. Babiker, ‘Climate Leakage’, pp. 421-445 (2005), available at <https://doi.org/10.1016/j.jinteco.2004.003>

¹⁰⁹² Joseph E. Aldy and William A. Pizer, ‘The Competitiveness Impacts of Climate Change Mitigation Policies,’ National Bureau of Economic Research, Working Paper 17705 (2011), available at <https://nber.org/papers/w17705>

¹⁰⁹³ *Supra Note 1091*

¹⁰⁹⁴ Christoph Bohringer and Knut Einar Rosendahl, et al., ‘Unilateral Problem?’, The Energy Journal, Vol. 35, No. 4, pp. 97-100 (2014), available at <https://www.jstor.org/stable/24695028>

trade measures and periodic policy reviews and provide information about climate-related trade measures.¹⁰⁹⁵ The WTO provides technical support and capacity-building such as “Aid for Trade” to encourage investment in low-carbon and climate-resilient trade infrastructures.

Trade rules play a key part in alleviation and alteration action, the trade can further advance environmental and sustainability efforts. This includes improving information-sharing and transparency in trade-related climate policies and addressing trade barriers for green products. The WTO might be a suitable platform to explore environmental green products, facilitating access and spread of climate innovations. Lastly, trade and climate harmonization would be achieved by mutual support while implementing policies and highlights the positive impact of trade regulations can promote a fair transition from traditional energy to a low-carbon economy.

¹⁰⁹⁵ *Ibid*

CHAPTER-6

CONCLUSION AND SUGGESTIONS

6.1. Conclusion

The correlation concerning “Trade” and “Climate Change” is complex, varied, and sprouting briskly regardless of its stretched history. The connection amid two regimes is complex, encompassing both of these policies.¹⁰⁹⁶ The connection occurs in several ways, with straight and ancillary device as well as determined by geographical, institutional, socio-economic and technological conditions.

Trade and climate policies don't work in an empty environment. In demand to minimize negative influence, counting on trade, environment, and pecuniary influences on further parties, measures taken to alleviate Climate change should not be implemented as contradictory or illogical discrimination on intercontinental trade according to the UNFCCC.¹⁰⁹⁷ At the similar period, the (WTO) structure subsidizes to the combat against climate change by associate strategies that generate or enlarge affirmative cross-border spillover effects; for illustration, Climate actions espoused in one nation might enable the dissemination of environmentally friendly know-how to other countries.¹⁰⁹⁸ Trade regulations also help in limiting the application of measures that may result in trade disputes, lower incomes and welfare benefits for other nations, and eventually weaken initiatives to battle Climate change.¹⁰⁹⁹

In addition to (WTO) clearness mechanism, such as announcement necessities for trade dealings and intermittent trade strategy analyses for (WTO) associates, which afford evidence around climate-related trade measures, the (WTO) has committees that offer a special meeting for associates to debate their struggles to alleviate Climate change.¹¹⁰⁰ The (WTO) can, however, do more to advance work on environmental and

¹⁰⁹⁶Rajeevr Kaur and Puneeta Pandey, ‘Air Pollution in Indian Cities: A Brief Review’, Vol. 3 (2021), available at <https://doi.org/10.3389/frsc2021.705131>

¹⁰⁹⁷E Somanthan and RohiniSomanatha, ‘Climate Change: Challenges Facing India’s Poor’, Economic & Political Weekly, Vol. 44, No. 31 (2009), available at <https://www.jstor.org/stable/25663391>

¹⁰⁹⁸K N Ninan, ‘Climate Change and Rural Poverty Levels in India’, Economic & Political Weekly, Vol. 54, Issue No. 2 (2019) available at <https://www.epw.in-journal-2019-2-special-articles>

¹⁰⁹⁹*Supra Note 1096*

¹¹⁰⁰Irene Dankelman, ‘Climate change: Learning from gender analysis and women’s experiences of organizing for sustainable development’, *Gender & Development*, Vol. 10, No. 2, pp. 21-29 (2002) available at <https://doi.org/10.1080/13552070215899>

sustainability issues, even though trade regulations are crucial for alleviating and acclimatizing to Climate change. This includes lowering trade barriers for environmental friendly products and increase information sharing and transparency in policies.¹¹⁰¹ Under such circumstances, the enduring (WTO) wits on trade and environmental sustainability, on improving “fossil fuel” aids could yield results that are both innovative and practical.¹¹⁰²

The assumption about trade is that it limits their member nations from implementing aspiring Climate strategies. Notwithstanding the deficiency of the term ‘climate change’ in trade agreements, the organization effectively promotes trade-related climate measures to discourse the problem. The WTO rules apply to many trade-related instruments including taxes, tariffs, assistance measures, and regulations which are used to implement climate policy.

More efforts are needed to assist low-income and vulnerable countries in familiarizing to Climate change policy discussion platforms, such as (WTO) “*Committee on “Trade and Environment”*”, can help members share knowledge and expertise to build effective climate adaptation strategies. Aids for trade programs, including expanded integrated frameworks, standards, and trade development facilities, can support climate change adaptation in developing and least-developed nations by mobilizing money and building trade-related capacities.

The Convention platform where discussion regarding trade and climate policies with participants discussing how to support sustainable development. The conversations and information sharing encompass topics relevant to the low-carbon transition, including environmental taxation, labeling, sustainable natural resources management, etc. The Committees is a forum for multilateral environmental treaties and other institutions such as “*International Civil Aviation Organization*” to offer support to (WTO) members on their trade-related environmental efforts.

Trading system is to support the alteration to a “*low-carbon economy*” through concrete steps. Many environmental initiatives were structured and created to integrated trade in

¹¹⁰¹Climate Change and Gendered Vulnerabilities: Accounting for Women and Patriarchal Systems in Climate Governance Policy’, *Economic & Political Weekly*ENGAGE (2020), available at <https://www.epw.in/engage/article/climate-change-and-gendered-vulnerabilities>

¹¹⁰²Ibid

addressing climate challenges and environmental degradation. Participants were discuss and opined that “trade-related climate measures” can be a best initiative to climate goals and commitments, while remaining consistency with (WTO) fundamental rules.

Decarbonization provides new trading opportunities for many economies, including developing countries. However, a low-carbon transition may require additional policies to assist affected regions and vulnerable group, such as micro, small, and medium enterprises, in decarbonizing and adjusting production and consumption patterns smoothly.¹¹⁰³ For that international cooperation is essential to achieve a “*low-carbon economy*”. WTO can help to achieve effective climate policies by promoting transparency and facilitating policy dialogue. International collaboration on climate mitigation is crucial for achieving a low-carbon transition.¹¹⁰⁴ The WTO can further contribute to amplification the linkages between two regimes’ objectives by advancing solutions for trade-related climate action. The WTO rules help members achieve their climate goals by reducing barriers and promoting successful trade-related climate initiatives.¹¹⁰⁵

Boarder tariffs should prioritize analytic reliability, validation, fairness, and transparency to eliminate unfair advantages from GHG externalities. These tariffs should be based on differences in effective GHG prices, allowing nations greater flexibility in implementing climate change policies.¹¹⁰⁶ Tariffs should be based on the unabated GHGs from imported products, multiplied by an agreed-upon global collective charge of carbon. Such as boarder carbon adjustment methodology that rewards producers for reducing GHG emissions both domestically and internationally would make it difficult to use charges as a trade barrier.¹¹⁰⁷

Many nations had taken major commitments in its pursuit of universal Climate change by participated the “Kyoto Protocol” in year 2005. The international treaty linked to the Climate change conference, obliged its parties to establish binding emissions targets.

¹¹⁰³ Colette Simonne Heefner, ‘The Asbestos- Now is the time’, Lund University (2019), *available at* <https://lup.lub.lu.se-student-papers-record-files>

¹¹⁰⁴ Dr Usha Tandon, ‘Climate Change: Law, Policy and Governance’, Eastern Book Company, Lucknow (2016), *available at* <https://www.ompublishations.in-product-books>

¹¹⁰⁵ *Supra Note 1103*

¹¹⁰⁶ *Supra Note 1104*

¹¹⁰⁷ *Ibid*

The treaty enable countries to achieve their targets through national measures and include extrude mechanism such as international emissions trading, clean mechanism, and joint implementation. Even the UNFCCC recognized that Climate change is a global issues demanding collective global response which is stated in the preamble of the UNFCCC:

“Acknowledge that the universal character of Climate Change calls for the broadest conceivable collaboration by every countries for effective international response, in compliance with their belief on conjoint but separate duties and personal skills.

“Recalling also that Countries have the responsibilities to protect their jurisdiction and do not hamper or damage the environs of other nations or zones outside their national jurisdictions.”

Besides the efforts engaged by the (WTO), “Climate change” can become very big concern and threat to the survival of humankind, animals, and planets. It is clearly expressed by IPCC fifth calculation informs that Climate change is “anthropogenic” such as industrial countries release fumes chiefly “carbon dioxide”, “CFC”, “methane” and “nitrous oxide” that sluggish the leakage of ultraviolet energy from the external of the globe into space.¹¹⁰⁸ So the “*mitigation and adaptation*” is a solution for climate challenge and help to decrease the effects.¹¹⁰⁹ So there was an adaptation mechanism which is not adequate to decrease the effects since it is not answer nonetheless it safeguards in endurance of “Climate change” effects and it entail enormous sum of money.¹¹¹⁰ So there requires mitigation policies, legislation, and guidelines including removing carbon storage in agriculture soils, reducing carbon emissions, decarbonizing energy inputs, using “bio-organic farming”, transitioning to “renewable energy”, and increasing bio-efficiency.¹¹¹¹

¹¹⁰⁸ IPCC Fourth 2007:, *available*

at https://www.ipcc.ch/site/assets/uploads/2018/03/ar4_wg2_full_report.pdf

¹¹⁰⁹ *Ibid*

¹¹¹⁰ Kerstin Nibleus and Rickard Lundin, “Climate change and Mitigation”, Vol 39, pp. 11-17 (2010), available on <https://doi.org/10.1007/s13280-010-0058-8>

¹¹¹¹ Georgia Destouni and Harry Frank, “Renewable Energy”, Vol 39, pp. 18-21 (2010), available at <https://doi.org/10.1007/s13280-010-0059-7>

The IPCC fourth report 2007 defined the reworking and alleviation activities which contribute to reduce of GHG releases such as investment in fresh energy structure in evolving states and up gradation in industrialized nations policy that encourage energy security.¹¹¹² In transport sectors there are many mitigation options, on other hand their consequence may be neutralized by development in the segment which are challenges with numerous barricades such as consumers inclinations and deficiency in strategy frameworks.¹¹¹³ Agricultural industries can brand a noteworthy impact at small price to aggregate *biomass* feed-stocks for drive use such as “methane” and “nitrous oxide” discharges in around farming systems.¹¹¹⁴ Forest related mitigation can decrease discharges from bases and upsurge carbon dioxide as minimum (50%) of the aggregate can be accomplished by sinking discharges from deforestation.¹¹¹⁵

Nearby are numerous techniques of mitigation for example reducing GHG concentration in “atmosphere”, generating “carbon sinks”, “emission cut”, “agriculture”, “forest conservation”, “climate finance”, etc. Since Climate change is “anthropogenic” this can only be eliminated by reducing in GHG concentration in atmosphere.¹¹¹⁶ It can be conceivable if we pick “Green Energy” that is “renewable energy” and by forming “carbon sink” can also contribute in reducing the GHG level energy effective tools, using bio-fuels in place of “fossil fuels” can assistance in dropping GHG.¹¹¹⁷ Likewise, “carbon sink” is the alleviating measures to fascinate the CO₂ in a large scale as it acted like a sponge to infuse up the “carbon compounds” which played a key character in universal Climate change.¹¹¹⁸ The example of “carbon sinks” are “fossil fuels” “deposits”, the air, the earth elements present in “rocks” and “residues”, etc.¹¹¹⁹

Financial assistance to developing nations for alleviation of Climate change by adopting of technological transfer is also played a crucial role in alleviating Climate

¹¹¹²*Supra No 1108*

¹¹¹³Benjamin K. Savacool and Michael H. Dworkin, “Global Energy Justice: Problem, Principles, and Practices”, *available at* <https://assets.cambridge.org>.

¹¹¹⁴*Ibid*

¹¹¹⁵*Supra Note 1113*

¹¹¹⁶LavanyaRajamani, “Differential Treatment in International Environmental Law”, *available at* <https://global.oup.com-academic-product-differential>

¹¹¹⁷*Ibid*

¹¹¹⁸Clarisse Frass-Ehrfeld, “Renewable Energy Sources: a chance to combat climate change”, Wolters Kluwer Law & Business, Kluwer Law International (2009), *available at* <https://law-stone.wolterskluwer.com-products-renewable>

¹¹¹⁹*Ibid*

change. Financial support can be provided through pecuniary device of Climate change convention (UNFCCC); the instrument of “Kyoto Protocol” and “Paris Agreement”.¹¹²⁰ The “Paris Agreement” reaffirmed the obligation of (Annex I) parties in “Article 9”, “10” and “11” to sustainance the emerging nations to construct uncontaminated and green technological development for climate mitigation by providing the monetary contrivance including green climate fund.¹¹²¹ Further, the agreement strengthens international cooperation on green technological development and started capacity building in developing countries through institutional arrangements.¹¹²²

Adaptation measure can also effectively decrease the destructive influence of “Climate change” this means many option and opportunities existed for nations to adapt by each national and intercontinental. The “Climate Change Conference” explicitly referred adaptation in “Article 4”¹¹²³ and made a several negotiations in respect to the alteration measures.¹¹²⁴ The (UNFCCC) provides that: -

*“All parties have to frame, device, circulate, and frequently apprise appropriate reports where regional programmers provides methods to smooth and acceptable adaptation mechanism to climate change”.*¹¹²⁵

Further, the IPCC has distinguished the numerous kinds of alteration measures such as reworking beforehand effects are observed is referred as proactive or anticipatory adaptation.¹¹²⁶ Planned adaptation is a conscious policy decision made to address changing conditions and reach a desired action.¹¹²⁷

¹¹²⁰Erkki J. Hollo, and Kati Kulovesiet, al., “Climate change and the law”, Springer Link (2013), *available at* <https://lawcat.berteley.edu-record>

¹¹²¹Nishikant Gupta and Arabinda Mishra et.al., “Interstate Cooperation in Indian Himalayan Region”, *Economic & Political Weekly*, Vol. 53, Issue No. 12 (2018), *available at* <https://www.epw.in-journal-2018/12-perspective>

¹¹²²*Ibid*

¹¹²³Article 4- “The Parties shall tale full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology”, *available at* <https://unfccc.int-constituted-bodies-Idc-main-page>

¹¹²⁴Veena Srinivasan, ‘Climate Adaptation in the Water Sector in India’, in Navroz K. Dubash (ed.), Oxford University Press (2019), *available at* <https://doi.org/10.1093/oso/9780199498734/003/0027>

¹¹²⁵United Nations Framework Convention on Climate Change, *available at* <https://unfccc.int-docs-convkp-conveng>

¹¹²⁶Adaptation and resilience-UNFCCC, *available at* <https://unfccc.inr-topics-the-big-picture-introduction>

¹¹²⁷Richard J.T. Klein and Robest J. Nicholls et.al., ‘Technological Zones’, Vol. 17, pp. 531-5463 (2001) *available at* <https://www.jstor.jstor.org/stable/4300206>

While in numerous procedures of alleviation “renewable energy” is the paramount as it cannot damage regular environs and Climate and one the greatest feasible election which resolve certainly not be drained and pollution free.¹¹²⁸ Since it has both pros and cons, e.g. it is “carbon” free and resolve in alleviating simultaneously it necessitate substantial venture which is excessively expensive. Though it will support to alleviate Climate challenges but it doesn’t not disturb the environment.¹¹²⁹ For example many hydro power project caused dislocation of many people as stated in Indian Court case i.e. *Narmada Bachao Andola*¹¹³⁰ in which numerous Indian environmentalist has argued that:-

*“Generous choice of creating sustainable power and replacing it by “thermal” rule might not, be paramount choice. Maybe “thermal power plant” might not relocate as countless relations as a hydro plans might nonetheless contamination produced by the “thermal plant” and the contrary result on the neighborhood might be remote bigger that the troublesomeness produced in acclimatizing the ousters of reservoir”.*¹¹³¹

As coal has unfavorable effect on climate so there are sufficient reasons to aspect for “renewable energy” which will offer safe energy source and decrease requirement on bring in “oil” and “gas” for vigor which is more harmful for climate.¹¹³² The significance of “renewable energy” as “fossil fuels” are limited as they will not be accessible in coming to encounter the demand “renewable energy” is secured and limitless in environment; it aid to alleviate Climate change as it is environs friendly, it will substitute “fuels” in “power generation”, etc.¹¹³³ Even in documentary film directed by Davis Guggenheim on the title “*A Inconvenient Truth*” campaigned to educate citizens about the universal heating and to learn how “renewable energy” can aid to

¹¹²⁸Mustafa Balat, ‘Usage of Energy Sources and Environmental Problems’, *Energy Exploration & Exploitation*, Vol. 23, No. 2, pp. 141-168 (2005) available at <https://journals.sagepub.com-doi-pdf>

¹¹²⁹Pulak Das and H.S. Kushwaha, ‘CBM: A Clean Energy Option for India’, *Asian Pacific Journal of Social Science* (2011), available at: <https://www.researchgate.net-pub;ocation-26777392>

¹¹³⁰ AIR 2000 10 SCC 664, available at <https://indiankanoon.org-doc>

¹¹³¹K S Kavi Kumar, ‘Climate change studies in Indian Agriculture’, *Economic & Political Weekly*, Vol. 42, Issue No. 45-46 (2007), available at: <https://www.epw.in-journal-commentary>

¹¹³²Sanjay K Sinha, ‘Environment Law Climate Change’, SBS Publication & Distribution Pvt. Ltd (2010), available at: <https://www.meripustak.com-Environment-Law-Change-Change>

¹¹³³Siobhan McInerney-Lankford, ‘Climate Change and Human Rights: An Introduction to Legal Issues’, *Harvard Environmental Law Review*, Vol. 33 (2011), available at: <https://journal.law.harvard.edu-sites-2019/07>

alleviate the climate problem. United States Vice President Al Gore outlines the film by saying:¹¹³⁴

“Each one of us is a cause of global warming, but each one of us can make choices to change that with the things we buy, the electricity we use, the cars we drive, we can make choices to limit our “carbon emissions to zero”. The resolutions are within us, we have to devour the willpower to bring it into reality. We have everything which is required to decrease “carbon emissions” by using “renewable resource”.

So every nation has to enact or design a proper regulatory domestic rule for “renewable energy” and existing laws must be altered more cautiously with concern of ecological safeguard and justifiable growth.

The impacts of ‘climate change’ is a universal issue for which many conferences had been implemented such as “Stockholm Declaration”; “Intergovernmental Panel on Climate Change”; “The Rio Earth Summit”; “The UNFCCC”; “The Kyoto Protocol”; “The Paris Agreement”, etc. The “NASA” in the year 1988 claimed that the unfamiliar hotness of fresh periods stood not a usual incidence however a straight consequence of social activities.¹¹³⁵ The Kyoto Protocol also took an initiative to manage the global emission by reducing GHG gas by enforcing commitments to Parties for example European Union committed to reduce its release by 8%.¹¹³⁶ This means every nation wants international legislation to extravagance the air as shared natural resources. The code of impartial employment is lacking to report weather issues starting the angle of every states who shared same resources.¹¹³⁷ Alternative intention for the necessity of separate climate legislation is atmosphere under which we all are survived as a universal harmony. For example, the ‘Vienna Convention’ established since the influence of “ozone layer” which distinct that zone as the coating of the *atmospheric* “ozone layer” in the similar way, minus denoting whether it is beyond the great oceans or terrestrial

¹¹³⁴An Inconvenient Truth, Policy & Practice, Issue 6, available at: <https://www.developmenteducationreview.com-issue-6>

¹¹³⁵Mridula Ramesh, ‘The Climate Solution: India’s’, Hachette India, 2018 available at <https://www.goodreads.com-book-show-4010115>

¹¹³⁶*Supra Note 1131*

¹¹³⁷Robin Churchill, ‘International Law and global climate change’, Graham & Trotman, pp. 147-163 (1991) available at <https://discovery.dundee.ac.uk-publications-international>

territory.¹¹³⁸ It isn't lawfully separate region however drops partly inside regions of every domestic power, and partially interested in parts of mutual stuff. This means, the "ozone layer" should be viewed as a shared domain, irrespective of who has control above the no-fly-zone it occupies.¹¹³⁹ The utmost imperative purpose for want of climate legislation is resources which is common heritage exploited by mankind but no states has the autonomous exact as it is exposed for all nations to utilize without discrimination. Now the reimbursements must be pooled by those states who unable to exploited, such resources entail around method of regulation globally in command to governor to sharing of mistreatment privileges and benefits.¹¹⁴⁰

6.2. Findings of the study:

- ❖ The interdependence of the two regimes necessitates consideration by governments and policymakers in both areas. Both regimes' legal instruments emphasize the necessity of avoiding discriminatory trade measures or hidden restrictions on international trade. Choosing the right technical approach is critical for addressing climate change, as trade rules can limit or promote domestic action.
- ❖ Trade does not always automatically impact in fighting climate challenges. Understanding economic possibilities and difficulties and predicting, assessing, and managing climate risks are necessary for building economic and trade rigidity to Climate change.
- ❖ Climate change regulations aim to restrict the world average temperature increase. They are a valuable instrument designed for decreasing GHG discharges and may be more politically acceptable than other alternatives.
- ❖ Climate adaption measures should include trade policy to strengthen supply chains against disruptions. Effective climate and energy policies are necessary to incentivize producers and consumers to consider climate risks and restrict or compensate for GHG emissions.

¹¹³⁸Vienna Convention is a multilateral environmental agreement signed in 1985 that provided frameworks Available at <https://ozone.unep.org-treaties-vienna-convention>

¹¹³⁹Alan Barreca and Karen Clay et.al., 'Adapting Remarkable Decline in the US Temperature-Morality Relationship over the Twentieth Century', Journal of Political Economy, Vol. 124, No. 1 (2016), available at <https://www.journals.uchicago.edu>-doi

¹¹⁴⁰ *Ibid*

- ❖ International trade plays a crucial role by helping the nations' government to establish the effective mitigation measures. The "Intergovernmental Panel on Climate Change" emphasizes that trade regulations can encourage and facilitate the implementation of climate mitigation actions, and policies.
- ❖ Commerce plays a pivotal part in reducing GHG emissions by emphasizing "low-carbon goods", "services", and "technologies" more affordable. Trade openness can enhance wealth, raise environmental consciousness, and lead to stricter laws, encouraging the use of environmental technologies in production processes.
- ❖ Trade may spread environmental innovations and increase revenues for enterprises that integrate them into production process, motivating them to continue developing and implementing environmental technologies.
- ❖ Trade in cleaner energy can help developing nations, particularly those who have plentiful "renewable source of energy", leverage their comparative advantage and add to the low-carbon transition.
- ❖ By assisting in the prevention, mitigation, preparation of climate risks, and recovery from climatic disasters, trade can similarly aid nations to defend themselves against the repercussions of climate change.
- ❖ Trade can also support food security by assisting nations in adjusting to changes in agricultural productivity brought on by long-term climatic shifts. Trade also promotes easier access to technologies that decrease rough expenses and economic repercussion in climate change.
- ❖ Although lowering greenhouse GHGs is essential as it is already causing significant impacts on the environment, people, and global economy. Trade, together with other policies and international cooperation can help to mitigate the disastrous influence of climate change on food stuff and economic resilience, etc.
- ❖ Increased economic growth can subsequently support and prepare materials for crucial adaptation to climate challenge including infrastructure investment made with climate resilience.
- ❖ Adaptation mechanism to climate change is costly but trade can provide countries (developing) with a comparative advantage by importing what they can't produce and exporting excess production.

- ❖ Climate action (policy) must be reformed carefully and should not contradict with trade fundamental principles by following core objectives such as negotiations, implemented through international talks, and all parties should negotiate inclusively to implement the reform.

Resultantly:

Trade introduce sustainable policy by supporting environmental friendly products, implementing green industrial policies, low-carbon products, negotiation and discussion under the standing forum created by trade regime. Hence, it is *disproved* that trade norms are barriers to the acceptance of environmental measures for alleviation of Climate challenges.

6.3. Suggestions

If climate treaties or agreements are to more flourish without hampering the trade rules there should be separate climate legislation with more enforceable instruments, tools, norms and legal mechanism. The Apex Court of India has linked the right against climate change to “Article 21 and 14”opined that a clean and stable environment is fundamental right to life and equality guaranteed by the Indian Constitution. This means climate change impacted in many factors of human life which are the part of “Right to Health” (Article 21 of Indian Constitution) such as vector-borne diseases, air pollution, flooding, and storms, etc. So the inabilities of many states to adapt climate policy violate the “Natural” right to health”.

The environs and social rights are interconnected so its violation can be resonate in several realm including right to life, health, water, foods, nature, etc. Many treaties or agreements recognized the requirement for effective mechanism to survive with the adverse effect of climate change. Still, no separate umbrella legislations pacts through the fiery issue of climate challenges.

The separate legislation broadly means acts, decrees or policies that are effectively implement by states as an instruments or mechanism to combat climate challenges. Further, these instruments addresses issues that fall under the purview of Climate change alleviation danger supervision and adaptation. So these laws and policies can

pertain across various areas like “agriculture”, “transportation”, “renewable energy”, “low carbon product trade”, “environmental friendly products”, etc.

Some environmentalist has argued that climate enforceable norms or policy can be direct and indirect. The direct norms enforceable to confront Climate change in some way or in any way. Whereas indirect climate norms include measures that contribute to government’s climate response instruments/ mechanism. Likewise, action plan was outlined during the “Paris Agreement” known as “Nationally Determined Contribution” (NDC) targets to reduce GHG emission and adapting policies as well as measures. The NDC will review the government’s action plan to meet the Agreement’s commitment made under the UNFCCC but the action plan were not adequate to confirm the domestic policies as NDC were not legally binding. In command to legally bind the commitments the nation legislation coupled with the political accountability to implement policies in well-placed and fill the gap in countries NDCs.

To achieve objectives the instruments can be broadly classified into enforceable norms and procedures. Such as regulation that enforce sets of standards that require some actors to adopt certain prohibition for example ban on fossil fuel. Government may introduce certain subsidies to achieve sustainable solution by using tools like climate finance to developing nations. Investment was made where economic incentives are inadequate to accomplish their targets for example natural based solution and restoration of eco-system, etc. Further, information tools to raise awareness of climate issues and increase transparency so that citizens are informed of the effect of specific policies and government intervention to design measures to boost institution’s ability to handle the climate challenges. The institutions comprise the existing bodies, development of new strategies or plan, cooperation of international actors, sub-national levels of governments.

While framing the climate policies it should be passed by the government rather than related to political ideology. Policy should be clearly define goals and provide pathways to create a detailed climate actions. Further, climate policy should base on the UNFCCC “Article 3.5”.¹¹⁴¹

¹¹⁴¹Article 3.5 of UNFCCC, *available at*:<https://unfccc.int-application-pdf-convention-on-climate-change>(visited on 2.6.2024)

Hence a need for separate legislation to govern climate challenges because it is a system-level problem which requires cooperation, and laws can be an influential tool to change social norms. Climate policies can help to reduce GHG concentration level as well as support for climate action. Thus, it is indispensable to frame a proper legal enforcement that only focused on Climate change alleviation, assessment, and adaption mechanism.

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