

**MACQUARIE UNIVERSITY**  
**DIVISION OF LAW**  
**STUDY GUIDE**

<b>Year and Semester:</b>	<b>2008, First Semester, X1</b>
<b>Unit Code &amp; Unit Name:</b>	<b>LAW 816/852 Trade and Environment Law</b>
<b>Credit points:</b>	<b>LAW 816 – 6 credit points</b> <b>LAW 852 – 4 credit points</b>
<b>Unit Convenor:</b>	<b>Professor Michael Jeffery QC</b>

Students in this unit should read this study guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult the teaching staff in the unit.

**1. ABOUT THIS UNIT**

**Unit description**

The issues of trade and environment linkage are very complex and evolve in a dynamic manner involving various states and other actors. The linkage between trade and the environment has assumed and will continue to assume paramount significance at both national and international policy making levels. International reports and policy documents have pointed out the vital links between the natural environment and trade-induced economic growth and their impacts on sustainable development. However, the difference of opinions on strategies for achieving sustainable development has contributed to the existing North-South tensions in the debates over the trade-environment interface at the World Trade Organization.

This unit critically examines the inter-relationship between trade-induced economic growth and the environment and their impact on the global quest for sustainable development. It particularly focuses on the interests and concerns of developing countries on this pressing issue.

This unit examines the ways in which trade and environment issues are addressed in a variety of international legal instruments, ranging from the United Nations, through to global and regional free trade agreements. It provides an overview of international institutions, policies and instruments such as the UN, GATT, the WTO, NAFTA, the World Bank and the IMF as they relate to environmental issues. It also, where appropriate, compares the achievements of one legal instrument in the area of trade and the environment, with the achievements of other legal instruments.

In addition, the unit explores specific aspects of both trade and environment law including the goal of sustainable development with reference to leading cases and commentary. This unit further considers the state of trade law as it relates to the environment in the context of Australia.

## 2. TEACHING STAFF

Professor Michael Jeffery QC (Convenor)  
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Please make appointments for consultations.

## 3. CLASS TIMES AND SCHEDULE

THIS UNIT WILL BE TAUGHT AS BOTH AN EXTERNAL UNIT AND AN INTERNAL UNIT IN SEMESTER 1, 2008.

**PLEASE NOTE: ALL INTERNATIONAL STUDENTS MUST ENROL AS INTERNAL STUDENTS TO COMPLY WITH VISA REQUIREMENTS.**

**This Unit will be delivered to Internal and External students by intensive teaching sessions.**

### **INTERNAL STUDENTS - WEEKLY CLASSES – (Introductory seminars)**

Internal students will be required to attend seminar classes **on the specific dates listed below** to be held on Mondays from 11.00 am to 1.00 pm (Room W5C 301) and Fridays 11.00 am to 1.00 pm (Room W5C 301). Students must attend at least 80% of classes. Attendance is mandatory to complete this unit. Internal students will thereafter be required to attend the three-day on campus session held for external students on 30 April, 1 May and 2 May 2008. Internal students **MUST** attend classes on the following dates for introductory seminars.

Monday, 25 February – 11.00 am – 1.00 pm  
Friday, 7 March – 11.00 am – 1.00 pm  
Monday, 10 March – 11.00 am – 1.00 pm  
Friday, 14 March – 11.00 am – 1.00 pm

You **MUST** also attend the on campus session from 9.00 am to 5.00 pm to be held over three days on 30 April, 1 May and 2 May 2008.

### **EXTERNAL STUDENTS**

The on campus session for external students will be held over three days on 30 April, 1 May and 2 May, 2008 from 9.00 am till 5.00 pm. You will be notified as to the

location of the on campus sessions on the Blackboard CE6 (formerly WebCT) site for this Unit.

The On-Campus Session is **COMPULSORY** for all internal and external students.

Students **MUST** attend on **all** three days.

Externally enrolled students **may** also attend the introductory seminars for internally enrolled students on the specific dates and times listed above if they wish, however these are not compulsory.

There will be no iletures for this course.

**All students participating in the on-campus session must sign in between 8:30 – 8:50am with the Centre for Open Education (COE) in Building X5B first thing on Wednesday, 30 April 2008 and ALL students should check with COE for the room location for the on-campus session. Attendance at these sessions is compulsory. Attendance and participation at both morning and afternoon sessions of the three days is worth 10% of assessment.**

#### **4. RECOMMENDED TEXTS AND/OR MATERIALS**

##### **PRESCRIBED**

No textbook is prescribed for this course apart from these course readings. The prescribed course readings for the Unit will be uploaded on the WebCT/Blackboard site, available on the Library's data base or internet links to the readings will be provided. A list of these prescribed readings linked to the topics set out later in this study guide will be available on the WebCT/Blackboard site prior to the commencement of classes. Students must download and read the prescribed materials. Additional resource references may also be provided.

##### **RECOMMENDED**

In addition to the set readings there are a range of textbooks, journal articles and other material available from the university library which you may find useful or if you wish to do some extra reading on a particular topic. The following list is not exhaustive and a search of the library catalogue may reveal other useful texts. The library call number for each text is also shown where available.

Please note that in consulting these texts they should be read carefully because subsequent developments in international law may mean the text no longer reflects international law.

For students new to the study of law

- Chisholm and Nettheim, *Understanding Law: An introduction to Australia's Legal System* (2007) Butterworths (KU68 .C48 2007)

## **RECOMMENDED BOOKS**

Tussie, Diana (ed), *Environment and International Trade Negotiations: Developing Country Stakes*. Call number: HF1413 .E58/2000.

Perez, Oren, *Ecological Sensitivity and Global Pluralism: Rethinking the Trade and Environment Debate*. Call number: HF1385.P47.

Goldsmith, E, Mander, J (eds) *The Case Against the Global Economy* Call Number HD 75.6.C376/2001.

Elliot, Lorraine, *The Global Politics of the Environment*. Call number: GE170.E47/1998.

Craig, DG, Robinson, NA Koh Kheng Lian (eds), *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources*, Volume 1 & 2, Asian Development Bank, Manilla 2002 (Hardcover and CD ROM Version).

Hunter, David, *International Environmental Law and Policy*. Call number: K3585.3 .H86/2002.

Simon SC Tay and Daniel C Esty (eds) *Asian Dragons and Green Trade: Environment, Economics and International law*. Call number: HF1591.A86.

Steinberg, Richard H, *The Greening of Trade Law: International Trade Organizations and Environmental issues*. Call number: [K3943 .G74/2001](#).

Uimonen, Peter, *Environmental Issues in the New World Trading System: Development and Prospects*. Call number: HF1379.U36/1996.

Sampson, GP and Chambers, WB, *Trade, Environment, and the Millenium*. Call number: HF1379.T723/1999.

Fijalkowski, Agata & Cameron, James (eds), *Trade and the Environment: Bridging the Gap*. Call number: HF1379 .T7185.

Pearson, Charles S, *Economics and the Global Environment*. Call number: HD75.6 .P438/2000.

Anderson Sarah (ed), *Views from the South: the Effects of Globalization and the WTO on Third World countries*. Call number: HF1413.V53/2000.

Petersmann, Ernst-Ulrich, *GATT/WTO Dispute Settlement System: International Law, International Organizations, and Dispute Settlement*. Call number: K4600.P48/1997.

Kym Anderson and Richard Blackhurst (ed) *The Greening of World Trade Issues*. Call number: [HF1379 .G74/1992](#).

- Cameron, James, *Improving Compliance with International Environmental Law*.  
Call number: [K3585.4 .C35](#).
- Sands, Philippe, *Greening International Law*. Call number: [K3585.6 .G74](#).
- Sand, Peter H, *Transnational Environmental Law: Lessons in Global Change*.  
Call number: K3585 .S26/1999.
- Brack, Duncan, Royal Institute of International Affairs (Great Britain),  
Proceedings of the Royal Institute of International Affairs Conference, 1997.  
Call number: HF1379.R69 1997.
- Walker, Gordon & Chen, Jianfu, *Balancing Act: Law, Policy and Politics in  
Globalisation and Global Trade*. Call number: K12.A933 Vol 21, 2004.
- T Anderson, C Folke and S Nystrom, *Trading with the Environment*, Earthscan  
Publications Ltd, London, 1995.
- Marian AL Miller, *The Third World in Global Environmental Politics*, Open  
University Press, Buckingham, 1995.
- G Brundtland (et al), *Our Common Future*, WCED, Oxford University Press,  
London, 1987. Call number: HD75.6 .O97/1990.
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## **TOPIC 1: INTRODUCTION, HISTORICAL AND INSTITUTIONAL CONTEXT**

### **RECOMMENDED READINGS:**

World Commission on Environment and Development, “From One Earth to One World — An Overview by the World Commission on Environment and Development,” in WCED, *Our Common Future*, 1987, pp1-23, in Donna Craig , Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources – Volume I*. Asian Development Bank, (2002), 90.

Hunter D, Salzman J and Zaelke D, “Principles and Concepts in International Environmental Law,” Chapter in *International Environmental Law and Policy*, New York, Foundation Press 1998, pp319-326, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources – Volume I*. Asian Development Bank, (2002), 127.

OECD Work Programme on Trade and Environment, “Environmental Principles and Concepts”, OCDE/GD(95)124. Paris, (1995).

French, Duncan, "Developing States and International Environmental Law: The Importance of Differentiated Responsibility", (2000) Vol 49: 35 *International and Comparative Law Quarterly*.

Gregory F Maggio, 'Inter/intra-generational Equity: Current Applications under International Law for Promoting the Sustainable Development of Natural Resources' (1997) 4 *Buffalo Environmental Law Journal*.

Candice Stevens, 'Interpreting the Polluter Pays Principle in the Trade and Environment Context' (1994) 27:3 *Cornell International Law Journal*.

Candice Stevens, 'The OECD Guiding Principle Revisited' (1993) 23:2 *Environmental Law*.

Dwivedi, OP, "Towards a Global Environmental Policy", *India's Environmental Policies, Programmes, and Stewardship* New York: St Martin's Press, 1997, 149.

J Cameron, 'The Precautionary Principle' in GP Sampson and B Chambers (eds) *Trade, Environment and the Millennium*, The United Nations University, Tokyo, 1999.

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## **TOPIC 2: ESTABLISHING THE LINKAGE: THE TRADE AND ENVIRONMENT INTERFACE**

### **RECOMMENDED READINGS:**

G Brundtland (et al), *Our Common Future*, WCED, Oxford University Press, London, 1987, at 4.

Bhagwati Jagdish, 'On thinking Clearly about the Linkage between Trade and the Environment' (2000) 5:4 *Environment and Development Economics*.

PAG van Bergeijk, 'International Trade and the Environmental Challenge', (1991) 25: 6 *Journal of World Trade*.

Lavanya Rajamani, *Developing Country Resistance to Linking Trade and Environment: the Perceptions of Inequity and the Politics of Autonomy*, Global and Environment Trade Study: North-South Series, No 1, Aug. 2000, <[www.gets.org/gets/library](http://www.gets.org/gets/library)>.

Kamal Nath, 'Trade, Environment and Sustainable Development', in V Jha, G Hewison and M Underhill (eds), *Trade, Environment and Sustainable Development: A South Asian Perspective*, Macmillan, London, 1997.

M Shahin, 'Developing Country Perspective', in D Brack, (ed), *Trade and Environment: Conflict or Compatibility?* Earthscan/Royal Institute of International Affairs, London, 1998.

George, Clive and Kirkpatrick, Colin, "Trade and Development: Assessing the Impact of Trade Liberalisation on Sustainable Development", (2004) 38(3) *Journal of World Trade*, pp441-469.

Shawkat Alam and M Rafiqul Islam, 'The Trade-Environment Interface: Issues Lurking Behind the North South Tensions' (2005) 2 *Macquarie Journal of International and Comparative Environmental Law*, 121.

George, Clive and Kirkpatrick, Colin, " Trade and Development: Assessing the Impact of Trade Liberalisation on Sustainable Development", (2004) 38(3) *Journal of World Trade*, pp441-469.

Shue, Henry, "Global Environment and International Inequality", (1999) 75:3 *International Affairs*, pp531-545.

Gandhi, Samir R, "Regulating the Use of Voluntary Environmental Standards Within the World Trade Organization Legal Regime: Making a Case for Developing Countries", (2005) 39(5) *Journal of World Trade*, pp855-880.

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### **TOPIC 3: THE UNITED NATIONS APPROACH TO TRADE, THE ENVIRONMENT, AND SUSTAINABLE DEVELOPMENT**

#### **RECOMMENDED READINGS:**

Lorraine Elliot, *The Global Politics of the Environment*, Macmillan Press Ltd, London, 1998.

M Pallamaerts, 'International Environmental Law from Stockholm to Rio: Back to the future?' in P Sands (ed) *Greening International Law*, Earthscan Publications, London, 1993.

PS Thacher, 'Multilateral Cooperation and Global Change' (1991) 44:2 *Journal of International Affairs*.

Ashok Khosla, 'The Road from Rio to Johannesburg'. The Fifth Millennium Paper, *UNED Forum*, 30 April 2001.

Peter Doran, 'The UN Commission on Sustainable Development' (1996) 5:1 *Environmental Politics*.

Rodrigo J Prudencio, 'Why UNCED Failed on Trade and Environment' (1993) 2:2 *Journal of Environment and Development*.

Luigi Campiglio, *The Environment after Rio: International Law and Economics*, M Nijhoff, London, 1994.

Hunter, David, "International Institutions and Non-State Actors", *International Environmental Law and Policy*. New York: Foundation Press, (1998), 386.

Mensah, Chris K, "The Role of Developing Countries", *The Environment After Rio*. Library call number GE170.E57/94.

Momtaz, Djamchid, "The United Nations and the Protection of the Environment: from Stockholm to Rio de Janeiro", (1996) Vol15, No 3/4 *Political Geography*, pp261-271.

Imber, Mark, "The Environment and the United Nations", in John Vogler, Mark F Imber, *The Environment and International Relations: Theories and Processes*. Routledge, (1995), 12.

Birnie P, 'Environmental Protection and Development' (1995) 20 *Melbourne Univ Law Review* 66.

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## **TOPIC 4: GATT/WTO APPROACHES TO TRADE, THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

### **RECOMMENDED READINGS:**

Joshi, Manoj, "Are Eco-labels consistent with World Trade Organisation Agreements?", (2004) 38(1) *Journal of World Trade*, pp69-92.

Thomas, Chantal, "Trade Related Labour and Environment Agreements", (2002) *Journal of International Economics Law*, pp791-819.

Charles Arden Clarke, 'The General Agreement on Tariffs and Trade, Environmental Protection and Sustainable Development' *A WWF Discussion Paper*, June 1991.

Maghda Shahin, *From Marrakesh to Singapore: The WTO and Developing Countries*, Third World Network Penang, Malaysia, 1996.

South Centre, *The Uruguay Round and the South: A Critical Analysis*, South Centre, Geneva, 1995.

K Anderson and J Drake-Brockman, 'The World Trade Organization and the Environment' in Boer Fowler and Gunningham (eds), *Environmental Outlook: Law and Policy*, No 2, Federation Press, Sydney, 1996.

Vinod Rege, 'GATT Law and Environment-Related Issues Affecting the Trade of Developing Countries' (1994) 28:3 *Journal of World Trade*.

William J Snape III and Naomi B Lefkovitz, 'Searching for GATT's Environmental Miranda: Are Process Standards Getting Due Process?' (1994) 27 *Cornell International Law Journal*.

Ward, Halina, "Trade and Environment in the Round - And After", (1994) 6:2 *Journal of Environmental Law* 263.

Alam, Shawkat, "Trade, the Environment, and the World Trade Organisation: A Developing Country Perspective on WTO Agreements Concerning Standards, Regulations, and Non-Tariff Barriers to Trade", (2006) 3 *The New Zealand Year Book of International Law* 1-16.

Mayeda, Graham, "Developing Disharmony? The SPS and the TBT Agreements and the Impact of Harmonising on Developing Countries", (2004) 7(4) *Journal of International Economic Law*, pp737-764.

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## **TOPIC 5: WTO AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)**

### **RECOMMENDED READINGS:**

Carrizosa, Santiago, Stephen B Brush, Brian D Wright, and Patrick E McGuire (eds) 2004. *Accessing Biodiversity and Sharing the Benefits: Lessons from Implementation of the Convention on Biological Diversity*. IUCN, Gland, Switzerland and Cambridge, UK. xiv+316 pp.

Lakshmikumaran, Malathi & Phillips, Prashant, "Patenting of Biotechnological Innovations", *Asian Biotechnology and Development Review Vol 7 No 2*, March (2005).

Cottier, Thomas, and Panizzon, Marion, "Legal Perspectives on Traditional Knowledge: The Case for Intellectual Property Protection". (2004) 7(2) *Journal of International Economic Law*, 371-400.

Bodansky, Daniel, M, "International Law and the Protection of Biological Diversity", (1995) 28 *Vand J Transnat'l L* 623.

Walker, Simon (2001) *The TRIPS Agreement, Sustainable Development and the Public Interest: Discussion Paper*. IUCN, Gland, Switzerland and Cambridge, UK and CIEL, Geneva, Switzerland.

Ruiz, Manuel, “The International Debate on Traditional Knowledge as Prior Art in the Patent System: Issues and Options for Developing Countries”. Centre for International Environmental Law (CIEL), (2002).

Primo Braga, Carlos A & Fink Carsten, “Reforming Intellectual Property Rights Regimes: Challenges for Developing Countries”, (1998) *Journal of International Economic Law*, pp537-554.

E Su, ‘The Winners and the Losers: The Agreement on Trade Related Aspects of Intellectual Property Rights and its Effects on Developing Countries’ (Fall 2000) *23 Houston Journal of International Law*.

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## **TOPIC 6: THE GATT/WTO DISPUTE SETTLEMENT MECHANISM AND THE ENVIRONMENT**

### **RECOMMENDED READINGS:**

DJ Black, ‘International Trade v Environmental Protection: The Case of the US Embargo on Mexican Tuna’, (1992) 24:1 *Law and Policy in International Business*.

Tanaka, Maki, “Bridging the Gap between Northern NGOs and Southern Sovereigns in the Trade-Environment Debate: The Pursuit of Democratic Dispute Settlements in the WTO under the Rio Principles”, [2003] Vol 30:113 *Ecology Law Quarterly*.

Knox, John H, “The Judicial Resolution of Conflicts between Trade and the Environment”, (2004) 28 *Harv Envtl L Rev* 1.

*United States - Restrictions on Imports of Tuna: Report of the Panel*, GATT BISD 39<sup>th</sup> Supp 155 (1993).

*United States – Restrictions on Imports of Tuna (II): Report of the Panel*, GATT Doc. DS29/R (May 20, 1994), 33 *ILM* 839 (1994).

*United States – Prohibition of Shrimps and Certain Shrimp Products*, WTO Doc. WT/DS58/AB/R (98-000) (12 October 1998).

*United States – Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DSS/AB/R (20 May 1996), 35 *ILM* 603 (1996).

Klabbers, Jan, "Jurisprudence in International Trade Law – *Article XX of GATT*", (1992) 26:2 *Journal of World Trade* 63-94.

Petersmann EU, 'International Trade and International Environmental Law – Prevention and Settlement of International Environmental Disputes in GATT' (1993) 27:1 *J World Trade* 43.

Wofford, Carrie, "A Greener Future at the WTO: The Refinement of WTO Jurisprudence on Environmental Exceptions to GATT", (2000) 24 *Harv Envt L Rev* 563.

Kingsbury, Benedict, "The Tuna-Dolphin Controversy, The World Trade Organisation, and the Liberal Project to Reconceptualise International Law", (1994) Vol 5. *Yearbook of International Environmental Law* 1.

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## **TOPIC 7: THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)**

### **RECOMMENDED READINGS:**

Vega-Ca'novas, Gustavo, "NAFTA and the Environment", (2001-2002) 30 *Denv J Int'l L & Pol'y* 55.

Steinberg RH, 'Trade-Environment Negotiations in the EU, NAFTA, and WTO: Regional Trajectories of Rule Development' (1997) 91 *Am J Int'l L* 231.

Moreno, S, "Free Trade and the Environment: The NAFTA, the NAAEC, and Implications for the Future", (1999) 12 *TUL Envtl LJ* 405.

Reid A, "NAFTA & the Environmental Side Agreement: Fusing Economic Development with Ecological Responsibility", (1994) 31 *San Diego L Rev* 1025.

Fox, Annette B, "Environment and Trade: The NAFTA Case", (1995) 110:1 *Political Science Quarterly* 49.

Charnovitz S, "The North American Free Trade Agreement: Green Law or Green Spin", (1994) 26:1 *Law and Policy in International Business* 1-77.

Kublicki, Nicolas, "The Greening of Free Trade: NAFTA, Mexican Environmental Law, and Debt Exchanges for Mexican Environmental Infrastructure Development", (1994) 19 *Colum J Envtl L* 59.

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## **TOPIC 8: INTERNATIONAL FINANCIAL INSTITUTIONS AND THE ENVIRONMENT**

### **RECOMMENDED READINGS:**

Jacob D Werksman, 'Greening Bretton Woods' in John Kirkby, Phil O'Keefe and Lloyd Timberlake (eds), *The Earthscan Reader in Sustainable Development*, Earthscan Publications, London, 1995.

(2001), extract from the Global Environment Facility's Internet Website: <http://www.gefweb.org/>, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources – Volume II*. Asian Development Bank, (2002), 895.

Di Leva, Charles E, "International Environmental Law and Development," *The Georgetown International Environmental Review*, Vol 10, Issue 2, Winter 1998, pp501–549, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources – Volume II*. Asian Development Bank, (2002), 897.

Hunter D, Salzman J and Zaelke D, "Environmental Protection and International Finance". *International Environmental Law and Policy* New York: Foundation Press (2002), 1474.

Sanders, Jeremy J, "The World Bank and the IMF: Fostering Growth in the Global Market", Winter, (2000) 9 *Currents Int'l Trade LJ* 37.

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## **TOPIC 9: TRADE-ENVIRONMENTAL LINKAGE IN MULTILATERAL ENVIRONMENTAL AGREEMENTS**

### **RECOMMENDED READINGS:**

Zaelke, Durwood, Kaniaru, Donald, Kruzikova, E (eds), *Making Laws Work: Environmental Compliance and Sustainable Development Vol 1* (London: Cameron May, 2005).

Chiedu Osakwe, 'Finding New Packages of Acceptable Combinations of Trade and Positive Measures to Improve The Effectiveness of MEAs: A General Framework' in Agata Fijalkowski and James Cameron (eds) *Trade and the Environment: Bridging the Gap*, Cameron May Ltd, 1998.

OECD, *Trade Measures in Multilateral Environmental Agreements: Synthesis Report of Three Case Studies* COM/ENV/TD (98)127/FINAL, OECD, 1999. Website <http://www.oecd.org/ech/docs/envi.htm>.

OECD, *‘Experience with The Use of Trade Measures In The Convention On International Trade In Endangered Species of Wild Fauna And Flora (CITES)’ OCDE/GD (97) 106*, OECD 1997. Website <http://www.oecd.org/ech/tradedoc.htm/>

OECD, ‘Trade Measures in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal’, COM/ENV/TD(97)41/FINAL. Website <http://www1.oecd.org/ech/docs/envi.htm>.

M Cusack, ‘International Law and the Transboundary Shipment of Hazardous Waste to the Third World: Will the Basel Convention Make a Difference? (1990) *5 Am U J Int’l & Policy*, 393, 420-422.

Rene Vossenaar and Veena Jha, ‘Implementation of MEAs at the National Level and The Use of Trade and Non Trade Measures: Results of Developing Country Case Studies’, in Agata Fijalkowski and James Cameron (eds) *Trade and the Environment: Bridging the Gap*, Cameron May Ltd., 1998.

Belinda Anderson, ‘Unilateral Trade Measures and Environmental Protection Policy’ (1993) 66 *Temple Law Review*.

Kobayashi M, “The Enforcement of CITES,” in Nomura Y and Sakumoto N (eds), *Environmental Law and Policy in Asia: Issues of Enforcement*, Institute of Developing Economies, Japan, 1997, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources – Volume I*. Asian Development Bank, (2002), 519.

Beckman R, “The Basel Convention,” summary of outline presented at *IUCN/APCEL/UNEP Training the Trainers Course on Capacity Building for Environmental Legal Education*, Singapore, 1997, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources – Volume I*. Asian Development Bank, (2002), 451-455.

Voon, Tania, “Sizing up the WTO: Trade-Environment Conflict and the Kyoto Protocol”, (2000) Vol 10:1 *J Transnational Law and Policy*.

Miller M, “The Ozone Layer Protection Regime,” in *The Third World in Global Environmental Politics*, Lynne Reinner Boulder Publications, 1995, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources – Volume II*. Asian Development Bank, (2002), 727.

Barratt Brown E, “Building a Monitoring and Compliance Regime under the Montreal Protocol,” 1991, *Yale Journal of International Law*, pp519–570, in

Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources* – Volume II. Asian Development Bank, (2002), 747.

Yoshida O, “Soft Enforcement of Treaties: The Montreal Protocol’s Noncompliance Procedure and the Functions of Internal International Institutions,” 10 *Colorado Journal of International Environmental Law and Policy*, Winter, 1999, p95–141, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources* – Volume II. Asian Development Bank, (2002), 761.

Solow SP, “The Big Chill: How Federal Agencies Are Working Together to Stop CFC Smuggling,” 1997 *National Enforcement Journal*, Vol 12, No 5, pp9–14, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources* – Volume II. Asian Development Bank, (2002), 775.

Tarasofsky, Richard G, “Ensuring Compatibility between Multilateral Environmental Agreements and GATT/WTO”, (1996) *7 Year Book of International Environmental Law* 53.

Barrett, Scott, “The Credibility of Trade Sanctions in International Environmental Agreements”, in Fredricksson, G (ed), *Trade, Global Policy, and the Environment*. World Bank Discussion Paper No 402, World Bank, Washington DC, (1999), 161.

Lin, Sun and Bullen, Sally, “Trade Provisions in Multilateral Environmental Agreements”. Kurukulasuriya, Lal (ed), *UNEP’s New Way Forward: Environmental Law and Sustainable Development*. UNEP, (1995), 35.

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## **TOPIC 10: TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT: THE WAY(S) FORWARD**

### **RECOMMENDED READINGS:**

United Nations Conference on Trade and Development, *A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations*, United Nations, New York, 2000.

Daniel C Esty, ‘Bridging the Trade-Environment Divide’ (2001) 15:3 *Journal of Economic Perspectives*.

Lavanya Rajamani, 'Developing Country Resistance to Linking Trade and Environment: the Perceptions of Inequity and the Politics of Autonomy', *Global and Environment Trade Study: North-South Series*, No 1, August 2000, [www.gets.org/gets/library](http://www.gets.org/gets/library).

Miller, Marian AL, "Global Environmental Politics and Sustainable Development", *Third World in Global Environmental Politics*. Buckingham: Open University Press (1995),143.

Runnalls, David, "What the North Must Do?", in Simon SC Tay and Daniel C Esty (eds) *Asian Dragons and Green Trade: Environment, Economics and International law*. Singapore: Times Academic Press, (1996), 169.

Koh, T, " North-South Relation: Conflict and Cooperation", in *The Quest for World Order: Perspectives of a Pragmatic Idealist*, The Institute of Policy Studies, Times Academic Press, 1997, pp58-63, in Donna Craig, Koh Kheng-Lian and Nicholas Robinson, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources – Volume I*. Asian Development Bank, (2002), 407.

Subedi, Surya P, "The Road From Doha: The Issues in the Development Round of the WTO and the Future of International Trade", April (2003) Vol 52 *International and Comparative Law Quarterly*, pp425-446.

Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO: the Real World of International Trade Negotiations*, Zed Books, London, 2003.

Sanjay, Kumar & Chowdhury, Nupur, "Trade and Environment in the WTO: Negotiating Options for Developing Countries". Research and Information Systems for Developing Countries, (2005). Accessed at [www.ris.org.in](http://www.ris.org.in).

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## 5. UNIT WEB PAGE

- Study Guides and information on this unit can be found at: <http://www.law.mq.edu.au/html.postgraduate/studyguides.htm>
- There is also a Blackboard CE6 (formerly WebCT) site for this Unit. This also contains the Study Guide but will also provide access to the prescribed course readings and additional materials such as PowerPoint slides, tutorial questions, quizzes, web links and further readings. This is accessible at <http://learn.mq.edu.au>. When students enrol in this Unit they are automatically granted access to the web site. If you have technical problems please follow the instructions on the web site. But if you still cannot log into the site, then please contact the Unit Convenor. **This will be the primary source of course materials for students enrolled in this Unit** and they should ensure they log in and check the site at least once a week.

## 6. LEARNING OBJECTIVES

At the end of this course, students should have developed an understanding of:

- (a) the theoretical concepts underlying the interface between trade and environment;
- (b) legal approaches to the establishment of global and regional trading regimes;
- (c) international law and institutions which relate to both trade and the environment;
- (d) international law and institutions which apply to the protection and conservation of environmental values;
- (e) Australian approaches to trade and environmental issues;
- (f) Students will also have an understanding of emerging international environmental issues and gaps in the global environmental governance as the result of the predominance given to trade.

## 7. GENERIC SKILLS

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop students' generic skills in a range of areas. In this course students develop their skills in the following areas:

- *Communication skills;*
- *Critical analysis skills;*
- *Problem solving skills;*
- *Interdisciplinary skills;*
- *Legal research skills;*
- *Creative thinking skills.*

## 8. TEACHING AND LEARNING STRATEGY

The Unit will be taught by way of interactive seminars which will provide students with an overview of the policy and applicable legal framework in each of the topic areas to be covered. The seminars for all students both internal and external will involve a mini lecture followed by a range of class activities. These activities could include tutorial question group discussion, legal problem workshops, quizzes, or case studies. Students will be expected to have read and prepared for each class and participate in the activities.

## 9. ASSESSMENT

### LAW 816

Assignment 1	30%	(3000 words)	<b>Due 5.00 pm 14 April, 2008</b>
Research Essay	60%	(6,500 words)	<b>Due 5.00 pm 6 June, 2008</b>
Class participation	10%		

## **External: LAW 852**

Assignment 1	40%	(3,000 words)	<b>Due 5.00 pm 14 April, 2008</b>
Research Essay	50%	(4,000 words)	<b>Due 5.00 pm 6 June, 2008</b>
Class participation	10%		

*Students are advised to read carefully the information set out below, and ensure that they understand the rules and requirements relating to assessment, as they will be strictly enforced.*

### **Assignment 1**

All students are required to answer the following question:

**The Convention on Biological Diversity (CBD) raises a multitude of issues involving sovereignty, North/South relations, trade, access and benefit sharing to mention a few. Discuss the relationship among intellectual property rights, TRIPS and the CBD and indicate how these issues might be addressed in future trade negotiations.**

Critically discuss the issues involved. Your answer should demonstrate your understanding of the conventions/agreements involved and the competing concepts and approaches which appear problematic.

In preparing the assignment students are expected to undertake research beyond the course readings listed.

### **Research Essay**

Choose any topic relevant to LAW816/852 Trade and Environment Law. **Discuss the issues and relevant legal framework.** Make it clear what jurisdiction(s) and environmental laws, treaties and policies that you will be discussing. Major emphasis should be placed on a critique of this framework. The critique should also suggest measures to:

- (i) improve relevant laws, treaties and policies; **and**
- (ii) harmonise trade and environment concerns.

Kindly submit a one page outline of your research topic for approval before proceeding.

### **Class participation**

As assessment for this unit also includes class participation students should ensure they have completed the required reading for that week before each class, and be prepared to discuss this material in class. Students will not be awarded class participation just for attending class. The following non-exhaustive criteria list will be used to assess your class participation:

- The level of preparedness for each seminar/on campus session gauged by your responses to questions and answers and opinions offered throughout each class.
- The level of analysis you display in class.
- Your ability to answer questions put directly to you in class.
- Your ability to make an educated and legally feasible argument in class.
- The way in which you engage in a constructive way with other students and the Convenor in the class.
- The quality NOT quantity of your work in class.

Please note that the onus to participate in class is on you not on the Convenor. In other words, it is not the job of the Convenor to engage you in discussion so that you may avail yourself of the class participation assessment.

### **Submission of Assignments**

Students should ensure that their tutor's name and their tutorial group are provided on the first (cover) page of every assignment. Assignments should be typed – double spaced and in point 12 font. All pages must be firmly stapled or pinned together. The cover sheet attached to the rear of this study guide should be completed and attached to the front of your assignment.

**External assignments sent by Australia Post, or by courier must be dispatched by the due date. The cover of the assignment should be date stamped by the post office before dispatch by mail.**

Internal students should hand their papers directly to the course convenor. His office is W3A 444. Postgraduate students may put the assignment in the postgraduate box outside room W3A 341. **Do not** push assignments under your tutor's door or post them in your tutor's pigeon hole in the Law Division's mail room. These methods of delivery are *not* secure.

**Students are required to email an additional copy of assignments to the Course Convenor. This overcomes any issues in relation to submission date and time and also operates as a back copy of students' work.** Students should always make and retain a backup copy of all pieces of work submitted. It is University policy to place upon the students the onus of producing a copy of work which goes astray.

### **Word Length**

Word length of assignments should be indicated. Word limits should be adhered to. The word length indicated for the assignments is exclusive of footnotes and Bibliography. The word limit should not be exceeded by more than 10%. Excessively long assignments will be penalised.

Both the Assignment and the Research Essay should be typed double spaced in 12 point times new roman or arial font.

## **Citations/Footnotes/Bibliography**

All assignments must be footnoted and have a comprehensive Bibliography. Students should use a proper legal citation method in all their written work. Citation of footnotes and references should follow the format set out in the Australian Guide to Legal Citation. Copies of this guide can be downloaded from the University of Melbourne Web site <http://mulr.law.unimelb.edu.au/aglc.asp> or can be purchased from the Co-op Bookshop.

For a model, look at any issue of the *Macquarie Journal of International and Comparative Environmental Law* which is available in the library and online at <http://www.law.mq.edu.au/html/MqJICEL/about.htm>.

## **Late Submission**

Illness or serious misadventure may be sufficient excuse, preventing submission on time, but complete details must be notified to tutors, *in writing, before the due date*, and be supported by medical certificate or other appropriate documentation. Pressure of work is generally *not* an acceptable ground for delay.

If an extension of time is granted by a tutor, then the assignment must be submitted within this time. An excuse is good for one assignment only; there can be no chain effect.

In cases where illness or misadventure is likely to affect more than one assignment, students are advised to apply for a withdrawal (W) grade. After the end of the eighth week, a case must be made out for withdrawal without penalty. Your tutor must be separately notified in writing.

Applications for special consideration due to illness etc should be lodged with the Student Enquiry Service. Information on procedures and required forms etc are available from the university web site:

<http://www.student.mq.edu.au/ses/cstudents.htm>

It is possible to fail the course on penalties.

***Note: The current Divisional policy on penalties for lateness is 10% up to 7 days; 20% up to 14 days; work submitted later than 14 days need not be accepted.***

## **Failure to Submit Work or Attend Classes**

It should be noted that University regulations require that all classes, assignments and compulsory On-Campus Sessions be satisfactorily attended and completed. Non-completion of any piece of work or non-attendance at a compulsory On-Campus Session for external students or less than 80% of classes for internal students without sufficient excuse will result in an F grade.

## **10. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES**

Many fundamental questions and issues will be raised and the consideration of various issues, debates, perspectives and readings are what is important. There is rarely a “right” answer to these fundamental questions. We expect that you will have a good understanding of the legal framework, clear issue identification, ability to apply the law to a variety of factual situations and good analytical and critical skills.

## **11. PLAGIARISM**

The University defines plagiarism in its rules: “Plagiarism involves using the work of another person and presenting it as one’s own.” Plagiarism is a serious breach of the University’s rules and carries significant penalties. You must read the University’s policies and procedures on plagiarism. These can be found in the *Handbook of Postgraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism/>

The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism, and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee.

Macquarie University holds a licence to the plagiarism detection software, turnitin®. This software may be used at the discretion of the Convenor, and electronically compares your work to that of your classmates, previous students from Macquarie and other universities, material available on the Internet, and both freely available and subscription-based electronic journals. You can read more about turnitin® at [www.copyright.mq.edu.au/plag.html](http://www.copyright.mq.edu.au/plag.html).

## **12. UNIVERSITY POLICY ON GRADING**

The University requires all Divisions to adhere to a policy relating to the distribution of grades across high distinction, distinction, credit and pass grades. This means that on occasion a student’s raw mark for a unit (ie, the total of their marks for each assessment item) may not be the same as that which they receive on their transcript. This is because the total raw mark may be scaled up or down so that the grades of all students in each unit sit within the distribution bands set down by the University. The policy does not require that any number of students are to be failed in any unit.

### **13. CLASS SCHEDULE FOR INTERNAL INTRODUCTORY CLASSES**

#### **INTRODUCTION**

**Class 1 (Monday: 25 February)**

Introduction to the Unit and explanation of assessment and course structure.

**Class 2 (Friday: 7 March)**

Introduction to actors, institutions and principle issues in trade and environment law.

#### **CONCEPTS AND APPROACHES**

**Class 3 (Monday: 10 March)**

Introduction to key concepts.

**Class 4 (Friday: 14 March)**

Legal approaches to trade and environment law.

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