

# COMPLIANCE TO THE INTERNATIONAL TRADE RULES: THE CASE OF MALAYSIA'S ENVIRONMENTAL PROTECTION MEASURES

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## ABSTRACT

**Purpose** - An environmental protection measure will have an effect on international trade when it affects the market access of goods and services. The General Agreement on Tariff and Trade (GATT) and the World Trade Organization (WTO), both has the environmental provisions enacted in order to acquire balance between international trading and environmental protection. Therefore, Malaysia, as a member of the WTO, need to abide to the rules of the GATT and the WTO in carrying out trade – related environmental measures. The objectives of this paper are to explore the international trade rules that need to be complied by the government of Malaysia in respect to invoking an environmental protection measure and secondly, to look into the government's compliance to these international trade rules when invoking such measure. This is important as the study will show how far Malaysia could comply with the international trade rules in respect to invoking an environmental protection measure and to find balance between international trade and environmental protection. This could assist Malaysia in producing trade – related environmental measures that can comply with the international trade rules and take into consideration the concern of all parties affected. Meagher (2015) has questioned whether the WTO panels' have the ability to resolve any issues in respect to the balance of domestic policy and trade interests and whether developing countries has struggled in complying with regulatory standards imposed by developed countries due to unfair regulatory convergence. Therefore, here it is believed that it is up the government involved to have a good domestic policy. Elsig (2015) claimed that there are a first order compliance and second order compliance. The first order compliance is in respect to the ability of states to carry out their obligation under the international treaty and whether their national policies and enforcement are in conformity with the agreement. This study could establish Malaysia ability to comply with the international trade rules.

**Methodology** - For this study the international trade rules that need to be complied by the Malaysian government are the environmental provisions in the World Trade Organization (WTO) agreements and the General Agreement on Tariff and Trade (GATT). Malaysia's environmental protection measures which complied with these international trade rules can be found in Malaysia domestic law such as the Plant Quarantine Act 1976, Fisheries Act 1985 and Food Act 1983. The

methodology for this study are by analysing the WTO agreements, the GATT agreement, the domestic laws of Malaysia and the decisions made by the Dispute Settlement Bodies of the WTO in the international dispute cases. Malaysia regulations are analysed in order to find out how far the government have applied the international trade rules and the application of the rules could be learnt by examining the enforcement of the regulations by the respective ministries and local departments in Malaysia.

**Findings-** The aims of the GATT and the WTO environmental provisions has been successfully emulated and embodied in the Malaysian domestic laws. Malaysia has applied the environmental provisions of the GATT and the WTO in their domestic legislations and implemented them accordingly through various ministries and departments. For example, the regulations which are enacted due to Malaysia's obligation under the SPS Agreement are the Plant Quarantine Act 1976, Plant Quarantine Regulations 1981, Food Act 1983 and Food Regulations 1985. These laws are implemented by the Ministry of Agriculture and Agro - Based Industry and the Ministry of Health respectively. In respect to Malaysia commitment to the TBT Agreement, the country has invoked the Standards of Malaysia Act 1996 and the Custom Act 1967. This has been implemented through the Department of Standard Malaysia and the Royal Malaysian Customs Department.

**Significance** - The significance of this study is to recognize Malaysia's effort in dealing with international trade rules especially the GATT and WTO environmental measures. As a member of the WTO, Malaysia has complied with the GATT and WTO rules by applying them in its domestic laws. Malaysia also has tried to comply with the environmental measures taken out by other states however, much more efforts need to be done in respect to this. Malaysia as a developing country should be given more flexibilities to implement the GATT and WTO rules. Further, Malaysia should put in place a good trade regulations that would take into account the effect of trade on the environment and vice versa. This would help the country's plight for a high economic growth.

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

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