1. Introduction

_The greatest threat to our planet is the belief that someone else will save it._

1.1 GLOBAL ENVIRONMENTAL CONCERNS AND TRADE: PRODUCT VS. PROCESS

The state of our environment is a global concern. Environmental degradation and climate change affect all and everyone. Some states will suffer more immediate damage and will feel the physical, social and economic consequences sooner through, for instance, rising sea levels threatening the very existence of their land, through floods and hurricanes, through desertification and extreme drought, but it is undeniable that the environmental impact will eventually affect all states in an irreversible manner. It is equally undeniable that human activity has contributed to the current deplorable status, and that common action is of crucial importance to slow down future environmental deterioration. Despite this increasing awareness, setting binding and ambitious commitments internationally has proven to be a very difficult process due to a multiplicity of factors, such as discords on burden-sharing between developed and developing countries, between ‘historic’ emitters and ‘new’ emitters, and disagreement on suitable protective methods, financial mechanisms or appropriate sanctioning of free-riders. International environmental negotiations can be quite frustrating ‘in a world in which fisheries deplete, potable water diminishes, species vanish, the air fouls, the ozone layer thins, and the atmosphere

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1 Robert Swan OBE, the first man in history to walk to both the North and South Poles.

2 See the assessment reports by the Intergovernmental Panel on Climate Change (IPCC) at www.ipcc.ch/publications_and_data/publications_and_data_reports.shtml (IPCC Reports). At the time of publication, the latest series of reports dated from 2014.

3 See IPCC Reports; see also UNFCCC COP 21, Paris Agreement, FCCC/CP/2015/L9, 2015; UN, 2030 Agenda on Sustainable Development, UN Resolution A/RES/70/1 of 25 September 2015.
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In the realm of climate change, after several failed attempts throughout the last decade, a ‘historic’ agreement was signed in Paris in December 2015 by more than 190 states, recognizing the urgent need for international action and ambitious efforts. Nevertheless, it remains to be seen how states will convert and implement these ambitions into concrete deeds. In the absence of a stringent and coordinated international framework regulating the preservation of the environment, countries seek alternatives to promote environmental protection. Unilaterally imposed trade measures may be such an alternative, but can they be used to protect global environmental concerns or concerns located outside the territory of the regulating state?

Much has been written about the relationship between trade and environment, and I will not repeat what has been discussed extensively elsewhere. In summary, trade can have both positive and negative consequences for the environment: it could contribute positively by increasing real income and standards of living, allowing countries to allocate more resources to environmental protection. Trade could also lead to higher standards when powerful states promote a regulatory ‘race to the top’. However, trade may also damage the environment by increasing energy consumption and pollution while accelerating the overuse of natural resources. Trade could arguably lead to a ‘race to the bottom’ with regard

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... to environmental standards and regulatory requirements, as countries would lower their standards to attract trade and foreign investment. Even if the race does not literally reach the bottom, economic integration could create a regulatory dynamic in which standards are set strategically with an eye on the environmental standards in competing jurisdictions, resulting in at least suboptimal standards in some places.

The traditional focus of trade law is on end products and their market impact. From the viewpoint of environmental protection and sustainable development, however, the process through which products are made is as important as the product, if not more important. Environmental trade measures hence do not always regulate the end product, as the environmental concerns might be related more to the production process than the actual end product. Targeting the production process is in line with the ‘polluter pays’ principle, as an established principle of environmental law. The use of trade measures linked to the production process has been a particularly knotty issue of the trade and environment debate, sharply dividing opponents and proponents. In particular, those measures targeting production methods that leave no physical trace in the end product (the so-called ‘non-product-related process and production methods’ or npr-PPMs) have been the subject of much (unresolved) debate. Opponents claim that production is part of the comparative advantage of a state and that trade should only deal with products on the market,

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rather than deal with environmental conditions outside its own borders. This position was also expressed in the unadopted General Agreement on Tariffs and Trade (GATT) reports in the *US – Tuna* cases where GATT panels found that npr-PPMs could not be consistent with World Trade Organization (WTO) law.\(^\text{13}\) A decade later the WTO Appellate Body (AB) took a different approach in *US – Shrimp*.\(^\text{14}\) According to the AB, npr-PPMs could be accepted in principle, as long as the measure complied with the conditions of Article XX GATT, the general exceptions provision. In its report the AB touched upon important elements to consider such as the uni-or multilateral nature of the measure, the coercive effect and the requirement of a nexus between the regulating state and the concern to be protected. Despite these efforts, however, the AB did not outline a systematic approach to assess the acceptability of process and production method measures (PPMs), leaving the discussion unsettled. One particular claim that has remained unresolved relates to the alleged extraterritorial nature of PPMs: states aim at regulating processes that take place outside their jurisdiction and that leave no trace in the end product, with the objective to protect non-trade concerns that are at least partly located outside the territory of the regulating state. Due to the sensitive nature of jurisdictional claims under international law as well as the impact npr-PPMs may have on foreign producers and/or policymakers, these ‘extraterritorial’ measures raise questions on their legality and acceptability under WTO law.

The npr-PPM discussion has often been reduced to a normative ‘good or bad’ discussion, repeating the positions of the GATT panels and the AB. However, this book purports to avoid that well-trodden normative path: its starting point is to enhance legal understanding of npr-PPMs and focus on the question whether these ‘extraterritorial’ PPMs could be accepted under WTO law – and in particular Article XX GATT –, and if so, under which conditions. The objective is to develop a systematic approach to assess their extraterritorial reach, applicable to all types of environmental concerns targeted through trade measures. Npr-PPMs are not likely to be extinguished; if anything, they will be used even more often in the future due to globalization, increased awareness of the urgency of environmental challenges and their global impacts, as well as continuously lagging international negotiations on environmental protection in


different fora. The question to be answered in this book is whether WTO law, as it stands, allows for ‘extraterritorial’ trade measures that aim at protecting transboundary environmental resources? Or does WTO law, and more particularly Article XX GATT, form a stumbling block for states seeking to address global environmental concerns through ‘extraterritorial’ trade measures?

1.2 EXTRATERRITORIALITY AND RELATED ISSUES

This book will focus on the extraterritorial reach of npr-PPMs. Extraterritoriality is closely related to concepts such as unilateralism and sovereignty. As these concepts will be referred to on multiple occasions throughout the book, it is useful to define and distinguish them here in order to delineate the specific scope of the research. Furthermore, the question of addressing environmental concerns through trade measures evokes other questions that will be briefly addressed here: is the WTO the appropriate forum to deal with environmental issues; how to deal with the inequity between powerful markets and minor markets with respect to npr-PPMs? Although related to the main question, these questions require a non-legal analysis that is beyond the scope of this book.

1.2.1 Unilateralism

Extraterritoriality is often equated with unilateral action and while overlapping, both notions need to be distinguished. Within the realm of this book, unilateralism is only a meaningful concept when it relates to situations that are not limited to the territory of the regulating state. In that sense the concept is closely related to extraterritoriality.15 There is no clear definition under international law of what unilateralism entails.16 With regard to PPMs, unilateralism can refer to two things: firstly, trade measures are imposed by the importing or exporting state, and are thus unilaterally imposed measures;17 and secondly, the norm prescribed by

17 The EU is a special case, as the Member States have agreed to a common commercial policy at EU-level. Mutatis mutandis EU measures are for the purpose
the measure can be of a unilateral nature, or can be based on multilateral standards. Principle 12 of the 1992 Rio Declaration, arguably referring to both meanings of unilateralism, states:

unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.\(^\text{18}\)

However, in the absence of international consensus on environmental action – let alone concrete international measures, commitments and enforcement – unilateral action might be the only way forward, as long as it is combined with a continuous effort to reach international agreement.\(^\text{19}\)

Thus, rather than a prohibition on unilateral measures, Principle 12 should be read as a good faith duty to engage in cooperation,\(^\text{20}\) a duty that the AB has also found to be included in the *chapeau* of Article XX GATT in the landmark case *US – Shrimp*.\(^\text{21}\) Environmental trade measures could thus be used in addition to engagements in multilateral processes and institutions, as well as transboundary networks and dialogues among states and non-state actors.\(^\text{22}\) Unilateral action in isolation of multilateral consideration will raise more questions as to the legitimacy of those standards.\(^\text{23}\) One could say that the legality of unilateral measures depends on the extent to which they circumvent the application or adoption of a multilateral alternative.\(^\text{24}\)

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\(^{20}\) Puth (2003), 369.


\(^{24}\) Michael Reisman, ‘Unilateral Action and the Transformation of the World
Unilateral measures should thus be seen as a second-best option that could advance a collective agenda, where the first option of multilateral commitments is inadequate. The reality is that effective, broad membership environmental treaties are difficult to achieve, so unilateralism could provide an incentive to tackle concerns collectively. This has also been called ‘policy-forging’ unilateralism. Unilateral action could form part of a dynamic process of action and reaction, of reassessment and response. Eventually, the level of resistance or acceptance by other states will determine whether the advanced norm may at least partly compensate for the deficiencies in the multilateral system. Furthermore, a trade measure may also address a newly emerging concern that is not yet on the international agenda.

Unilateral action to protect the environment is arguably grounded in a combination of self-interest, superiority and altruism. In order to avoid abuse of power, safeguards are required. It is, for instance, crucial that states adopting unilateral measures base the imposed norm as much as possible on existing international hard or soft law. Non-legal initiatives by civil society and scientific institutions could also be taken into account by regulating states in order to strengthen substantive support for a measure and weaken its unilateral character.

1.2.2 State Sovereignty

The concepts of extraterritoriality and unilateralism are both closely tied to the Westphalian notion of state sovereignty. They are both...
considered controversial because they interfere with the sovereignty of other states. States enjoy full sovereignty over their territory and any exercise of jurisdiction outside of that territory is considered extraterritorial. International law includes a number of principles permitting such extraterritorial jurisdiction, which will be discussed in Chapter 4. Npr-PPMs, targeting production processes outside the territory of the regulating state, are regarded as extraterritorial under the geographically bound Westphalian notion of sovereignty. Nevertheless, consumers may feel strongly about environmental concerns related to production of imported products and may be in favour of stricter environmental requirements conditioning market access. Does it still hold in view of global challenges to require a territorial link between the regulating state and the matter to be regulated? The traditional territorial premise is increasingly challenged in today’s interdependent world in a number of areas, such as jurisdiction of the port state with regard to labour standards on the high seas or pollution from ships outside territorial waters, extraterritoriality in the cyber-world including data protection, and privacy issues for intelligence surveillance, securities regulation, anti-corruption and

31 See e.g. double hull requirements for ships under the US Pollution Act; Maritime Labour Convention 2006.
34 Securities regulation is a branch of financial law that governs transactions in certifications attesting the ownership of stocks. States, especially the US, have attested jurisdiction based on territorial conduct or effects related to a securities transaction. In the landmark judgment Morrison v National Australia Bank, 130 S.Ct. 2869, 2010, the US Supreme Court found that the Exchange Act did not apply extraterritorially, and that a stronger link to the US was required. See e.g. Ryngaert (2015); William S Dodge, ‘Morrison’s Effects Test’ Southwestern Law Review (2011) 40, 687.
anti-bribery legislation, and animal welfare rules. This book does not purport to engage in an in-depth debate on sovereignty, but questions whether the notion of sovereignty is flexible enough to reflect the needs of this particular time. The example of environmental npr-PPMs will inquire whether a looser approach to territorial sovereignty can be adopted by interpreting the law as it stands, in light of current global challenges. The analysis can be relevant to the more general question of what states can do when facing global challenges – which by their very nature are not territorial and cannot be solved by individual (state) actors – particularly when combined with the absence of multilateral consent on the best course of action.

35 US anti-corruption legislation (Foreign Corrupt Practices Act) prescribes anti-bribery rules, applying to all natural and legal persons subject to US laws, as well as all ‘issuers’, which are companies that register securities with the US Securities and Exchange Commission and to any person acting within US territory if there is any connection with the bribery act, for instance routing payment through US bank accounts or sending an email to a US company (FCPA §78dd-l(a) in conjunction with §§78l and 780o(d)). The UK Bribery Act 2010 equally relies on the territoriality and nationality principle for an extraterritorial application. The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions sets legally binding standards for its 41 signatories to criminalize bribery of foreign public officials. The Convention allows for jurisdiction either when a part or the whole conduct occurs within the territory of the state (territoriality principle), or when a national of a state is bribing a foreign official (nationality principle) (Art 4 OECD Convention). A broad interpretation of the territoriality principle does not require an extensive physical connection (see Commentary 25 to the OECD Convention). In that light, it has been argued that any means of interstate commerce such as use of emails, telephone or banking system are sufficient to establish jurisdiction. (Mark Pieth, Lucinda Low and Peter Cullen, The OECD Convention on Bribery: A Commentary (Cambridge University Press 2007) 277.) See also Branislav Hock, ‘Intimations of Global Anti-Bribery Regime and the Effectiveness of Extraterritorial Enforcement: From Free-Riders to Protectionism’ 2014, 2014–009 TILEC Discussion Paper.

36 See e.g. case Zuchtvieh Export GmbH v Stadt Kempen C-424/13, where the question arose whether the EU allows the restriction of an export permit if EU animal welfare standards during transport are not adhered to in third countries, even if those standards are in compliance with the laws of that third country. AG Bot argued for a territorial restriction to EU Regulation 1/2005, but the Court did not address the claims on extraterritoriality. The Court based its reasoning on an arguably faulty interpretation of Article 14 of Regulation 1/2005 and avoided the more systemic issues.

1.2.3 WTO as the Appropriate Forum

The WTO is not an environmental organization, nor the ideal forum to achieve environmental progress. Rather, trade measures are one tool in a preferably larger toolkit for global environmental protection that includes binding environmental agreements. Where binding agreements exist, and where they include enforcement and dispute settlement mechanisms, those approaches should be preferred over trade measures, because of their multilateral, consensual nature. However, where such agreements are lacking the WTO might be an attractive alternative due to the linkages between trade and environment, but also due to the powerful nature of trade measures and the well-functioning WTO Dispute Settlement Body (DSB). As noted in the preamble to the Marrakesh Agreement, one of the objectives of the WTO is sustainable development, which includes environmental protection. Trade measures should in that light be seen as a means to an end. The question is whether adjudicators in trade dispute settlement are equipped to undertake a balancing act between trade interests and environmental interests. Can they ‘objectively weigh incommensurate concerns, such as the value of commercial freedom versus the value of environmental protection, where the litigant governments will likely have different metrics for these values’, \(^{38}\) while not diminishing or adding to the rights and obligations in the WTO treaties?\(^ {39}\)

It is the task of WTO panels to determine whether a measure unduly restricts trade or is of a discriminatory nature. Is a government really intervening to protect the environment (in which case the measure could hold) or is it rather intervening to protect domestic producers (in which case the measure cannot be seen as consistent)? When a measure has been found to infringe a substantive obligation, justification can be sought under the general exception clause of Article XX GATT. As has been shown in the past, however, the conditions prescribed in Article XX do not necessarily help in deciding on issues of systemic importance, such as the extraterritorial reach of trade measures. A structural approach to balance trade and non-trade concerns has not been developed yet. The early GATT panels are perceived to have opted for a rather strict trade-over-non-trade approach. WTO panelists as well as the AB have adopted a relatively cautious approach with regard to non-trade concerns: in the few cases that have come before the AB, the AB limited its decision to the specific facts of the case, avoiding broader interpretations that could be

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\(^{38}\) Charnovitz (2002), 101.

\(^{39}\) See Article 3.2 DSU.
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applicable to the wider set of non-trade concerns. The model proposed in this book is an attempt to develop a systematic and structural approach to assess npr-PPMs under the law as it stands. The suggested interpretation of WTO law will draw inspiration from other fields of law where an extraterritorial application of rules is accepted, such as general international law, international human rights law and competition law. Through different steps, the model offers panelists tools to examine those elements that are essential to a trade analysis, and adopts a more deferential approach to non-trade issues, such as the most appropriate method to address a particular environmental problem.

1.2.4 Powerful Markets

A pertinent concern with regard to the use of npr-PPMs is that only a limited number of countries, namely economically powerful states, will be able to impose their laws extraterritorially in an effective manner. The usefulness of environmental trade measures lies with the power of exclusion. If access to a market is restricted or prohibited for products produced in a manner that is harmful to the environment, then those that seek access to this market will have no choice but to adapt their production process. The more powerful the import market, the stronger the *de facto* coercive effect on producers will be. Can they move export to another market? For many producers, there will be no full alternative to strong markets such as the European Union (EU) or the United States (US).\(^40\) Complying with the rules of another jurisdiction is then the price of trading with that market.\(^41\)

Developing countries fear that PPMs will be used by the major economic powers and will have strong trade restrictive effects on developing countries without any compensation, such as technical or financial assistance.\(^42\) The bulk of the costs resulting from npr-PPMs will be carried by those producing under the lowest standards, as they will likely have to adapt most in order to comply with the higher standards. Developing


\(^{41}\) Bradford (2012), 66.

countries fear that the imposition of environmental, technological and other qualitative standards with high thresholds set by industrialized countries may threaten their market access, and fear that their special position in the WTO, recognized in Part IV of the GATT, will not be taken into account. An assessment of extraterritorial measures should include a good faith obligation on the state imposing the trade measure, which could ideally entail a duty for financial and technical assistance to developing countries where the imposed measures would require costly changes in production processes. The question is then whether this can be required under the GATT and if so, how to operationalize these responsibilities and duties. There are several international mechanisms recognizing the need for developed countries to assist developing countries; however, these merely entail an obligation of conduct and can thus not be enforced.

1.3 OUTLINE OF THE BOOK

Can states, in the absence of binding international environmental agreements, impose trade measures targeting foreign production processes in order to act upon environmental problems located (at least partly) outside the territory of the regulating state? Does the WTO act as a stumbling block for alternative solutions to global environmental challenges?

This book proposes an extraterritoriality decision tree that serves as a systematic approach to assess regulatory npr-PPMs that aim at protecting an environmental problem outside the territory of the regulating state. The decision tree will be embedded within the framework of Article XX GATT as the general exceptions clause, and will guide the analysis of extraterritorial environmental concerns. It answers whether there is a jurisdictional limitation to Article XX GATT, and if so, what that limitation entails. Following the proposed steps will not lead to the infamous slippery slope consisting of an uncontrollable use of unilateral and extraterritorial action: the decision model takes into consideration how the regulating country is affected by the concern at issue as well as the international support (if existing) for the imposed norms. The need to protect the concern at issue is balanced with safeguarding the fundamental

44 See e.g. the Principle of Common but Differentiated Responsibilities as recognized in the UNFCCC, 1992, Arts 3, 4; Kyoto Protocol to the UNFCCC 1997.
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characteristics of the multilateral trading system through the application of several decision criteria.

The book starts with an objective assessment of the WTO legal framework for PPMs, purporting to map and describe the *lex lata* with respect to environmental concerns and npr-PPMs. The purpose of Chapter 2 is to define npr-PPMs, placing them within the broader trade-environment debate. The chapter deals with the question of how PPMs can be challenged under WTO law, and more specifically under the GATT. Chapter 3 examines the extraterritorial nature and reach of npr-PPMs. Extraterritoriality in the context of PPMs can be understood in two ways: firstly, a PPM targets the production process and thus ‘regulates’ activities occurring abroad; secondly, a PPM can aim at protecting a non-trade concern outside the territory of the regulating state. Are both notions problematic, and if so, why? In addition to the jurisdictional scope of the relevant WTO agreements, disputes that have dealt with jurisdiction and/or PPMs are discussed. It is concluded that the WTO agreements are silent on their jurisdictional scope, and no systematic approach to jurisdictional questions has been developed in the case law.

The analysis of WTO law is complemented with a comparative analysis of other fields of law where an extraterritorial application of laws is accepted, which will serve as a basis for the proposed extraterritoriality decision tree for trade measures (Chapter 4). The purpose of the comparative analysis is to distil the legal concept of extraterritoriality in different contexts and to analyse under which circumstances states have been willing to accept extraterritorial jurisdiction. For instance, can a parallel be drawn between economic effects on the market and environmental effects within the regulating state, and if so, can the effects doctrine as applied in competition law in an increasing number of domestic systems be applied to npr-PPMs aiming at the protection of environmental concerns outside the territory of the regulating state? Can the extraterritorial application of regional and international human rights treaties, protecting shared and fundamental values, be relevant to trade measures protecting common environmental concerns? Building upon the lessons learned from other fields of law, an extraterritoriality decision tree is proposed in Chapter 5 within the framework of Article XX GATT. The decision tree takes a normative approach as to how WTO law should be interpreted in light of global environmental challenges. The first considers the concern’s location so as to determine to what extent it has an environmental impact on the regulating state, while the second step of the decision model refers to the international recognition of and support for the prescribed norm. It is not suggested that WTO law needs to be changed, as the current law can be interpreted in such a way as to accommodate extraterritorial
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Some critical observations are made that go beyond the legal framework.

In Chapter 6 the decision tree will be applied to four case studies, starting with the landmark case of US – Shrimp, in order to determine whether this approach would lead to a more satisfying analysis of the contested measure. The model is then applied to EU measures in the field of illegal, unreported and unregulated fishing (IUU fishing); the aviation measures in light of the EU Emissions Trading System (EU ETS); and the Timber Regulation as part of the EU’s Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. The analysis leads to a refinement of the decision model, distinguishing between different types of measures on the basis of their norm-generating objective.

The choice of EU measures in a study on extraterritoriality under WTO law demands a short justification, even if the choice to study the EU is self-explanatory in light of the EU’s trading power. Under international law the EU is a sui generis body of states: neither a sovereign state nor a supranational international organization. Nevertheless, in light of the EU’s exclusive trade competence, for the purpose of this study I consider the EU in its sui generis capacity more closely related to a state than to an international organization. When discussing the extraterritorial application of national laws through international trade measures, this includes the extraterritorial application of EU law to activities occurring outside EU borders. Apart from its trade competence, the EU is also competent to adopt environmental policies. Since the Lisbon Treaty the EU is committed to promoting environmental protection globally through Articles 3(5) and 21(2) of the Treaty on the European Union (TEU).

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45 Article 3 TFEU.
46 Within a WTO context, the EU as well as its Member States are Members, but are only represented by the EU. According to Article XII of the Marrakesh Agreement, the WTO’s membership is not limited to a ‘sovereign entity’ but instead to a ‘state or separate customs territory possessing full autonomy in the conduct of its external commercial relations’.
47 Environment is a shared competence with the Member States, see Article 4 TFEU.
48 Article 3(5) TEU reads: ‘In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter’ (emphasis added). Article 21(2) TEU reads: ‘The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of
Furthermore, Article 11 of the Treaty on the Functioning of European Union (TFEU) prescribes an environmental integration requirement in other EU policies with a view to promoting sustainable development. While this requirement is important with regard to internal EU policy, it is also being applied externally. The EU has increasingly sought to assert itself as a prominent player in global environmental governance by gradually expanding its environmental policy from an internal policy to one with a marked external dimension. The EU has been actively engaged in the development of a number of multilateral environmental agreements (MEAs), as well as through regional and bilateral processes. As will be demonstrated in Chapter 6, the EU has also undertaken unilateral action in order to promote environmental protection.

After having described what I will do in this book, here is what I will not do. With regard to the analysis under WTO law, the focus of the book is on regulatory schemes such as standards and regulations, as opposed to economic incentives such as taxes or subsidies. I will furthermore not engage in a law and economics analysis of the rationale and cost-benefits of PPMs. Neither will I embark on an effectiveness/efficiency analysis of PPMs, or go into the political theory of international relations. The scope of this book is purely legal: are there any legal impediments to the use of npr-PPMs under WTO law? The proposed analytical model can contribute to a more robust assessment of this question than is currently found in the case law or scholarship. With regard to the comparative analysis of how extraterritoriality is dealt with elsewhere, I do not aim to give an exhaustive overview of extraterritoriality in all fields of law but have selected those areas that I deem most relevant to the discussion on international relations, in order to: . . . (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; . . . (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development.’

The extent of this obligation is more of a political choice. See for an interesting overview of opinions and case studies, Elisa Morgera (ed.) The External Environmental Policy of the European Union: EU and International Law Perspectives (Cambridge University Press 2012).

49 Article 11 TFEU reads: ‘Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development.’

50 See for a study on this, Gracia Marin Duran and Elisa Morgera, Environmental Integration in the EU’s External Relations: Beyond Multilateral Dimensions (Hart Publishing 2012).

51 Ibid. 6.
PPMs. With regard to the case studies, I will not assess the effectiveness of the environmental measures, or whether a particular policy is the most appropriate one, as that would require tools and skills that go beyond any legal analysis. I will only apply the legal model to determine whether that type of measure could be accepted under WTO law. I do not deny the importance of the above questions but they are beyond the scope of this book. In order to develop proposals for feasible and effective trade policy, the outcome of the legal analysis must be complemented with findings of economic, political and environmental science analysis.