

## Sustainability Standards and Their Trade Implications\*

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*Driven by market, consumer preferences and recent climate change discussions, the usage of 'sustainability' standards has over the last decade gained ground worldwide. Sustainability standards are largely voluntary, non-mandatory and an increasingly important component of the green economy. While on the one hand the usage of sustainability standards helps achieve several economic and environment objectives, on the other hand they can potentially act as barriers to trade in particular for small producers. This paper examines the potential trade and commercial aspects of sustainability standards in terms of their diversity, cost of incorporation and interaction with supply chains. It considers the compatibility of sustainability standards with the existing trade architecture of the World Trade Organization, drawing on relevant case law developments. Finally, it recommends the usage of international platforms such as the UNFSS and ITC Standards map, to enable product/service specific information sharing, conformity assessment and business networking.*

**Keywords:** Sustainability, Green Economy, Trade, Standards, WTO

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## 1. Introduction

Since the Rio+20 Conference in 2012, operationalizing the ‘green economy’ is a priority issue for developing and developed countries. Signs of the increasing shift towards a greener economy are becoming more evident. In response to the financial crisis, several countries – developing and developed - implemented strategies to boost activity in green sectors. In fact of the USD 3.3 trillion allocated worldwide to fiscal stimulus over 2008-09, around 16 percent was devoted to green expenditures including renewable energy, energy efficiency, and sustainable transport.<sup>1</sup>

A fundamental component of the green economy is international trade. World merchandise trade in 2015 stood at USD 16.5 trillion and world trade in commercial services at USD 4.7 trillion.<sup>2</sup> Global trade has also expanded substantially with the value of merchandise trade and trade in commercial services in 2015 standing nearly twice as high as in 2005.<sup>3</sup>

The sheer volume of global trade coupled with the high level of economic integration in the world today implies that trade will significantly affect and be affected by the greening of global markets. Given this volume of trade and related growth a shift to the ‘green’ economy is likely to substantially change our patterns of consumption, production and consequently the manner we trade with each other.<sup>4</sup>

From the multilateral trade perspective, this transformation towards greener production involves the use of environmental measures. A key tool is the use of environment related product and process standards (sustainability standards).<sup>5</sup> While, sustainability standards could act as instruments in meeting environment objectives, there is concern particularly amongst small producers as to their potential trade impacts. Further concerns relate to the design, transparency and compatibility of sustainability standards with the global trade framework, in particular the WTO.

The purpose of this paper is to examine the interlinkages between sustainability standards and the trade and commercial sphere. This paper is composed of five parts including a short Introduction and Conclusion. Part two will outline the trade and sustainability interface at the center of which lies the issue of sustainability standards. Part three will consider the trade and commercial implications of the

emergence of sustainability standards, with reference to their cost impacts for producers, their diversity and interactions with global supply chains. Part four will attempt to place the emergence of sustainability standards within the global trade architecture specifically in the context of non-tariff barriers, negotiations on environmental goods and services, government procurement in green products and services, and recent emergence of environment related cases at the WTO. Part five will emphasize the importance of international cooperation in the area of sustainability standards, providing suggestions on structure and functions.

This research has two key observations. First, sustainability standards are gradually becoming a mainstream reality, which will test the meeting point between the trade and environment spheres. This is likely to impact commercially on producers, consumers and trading partners whether they are exporters or importers. Second, there is a need for international co-operation on sustainability standards even at this early stage. This international cooperation in the area of sustainability standards will enable greater congruence between the trade and environment spheres, prevent unnecessary costs, and eventually achieve the true objective of sustainability standards, which is environment preservation.

## **2. The Trade and Sustainability Interface**

### ***A. Understanding the ‘Sustainability Standards’***

Trade provides a key channel for the dissemination of greener outcomes (technologies, products etc.) and economic opportunities for businesses in developing countries. A UNEP report (2013) sets out the enhanced production and trade opportunities generated by opening new export markets for environmental goods and services, increasing trade in certified sustainable products and greening supply chains.<sup>6</sup> Areas of opportunity include a range of diverse sustainable products, and services ranging from organically produced foods, renewable energies, efficient building technologies, smart grids, electric bicycles, etc.

The meeting point of the trade and environment spheres has raised conceptual and design issues with special references to the application of ‘sustainability’ and ‘environmental’ concepts and measures to the trade sphere. Sustainability standards are a good example of a green economy component lying at the heart of

the trade-environment confluence.

The proliferation of sustainability standards at different levels - national, regional, global, by different actors - private sector, government, NGOs - and in a variety of forms - mandatory, voluntary, company codes - has been fast paced.<sup>7</sup> As a significant indicator of the uptake of these standards, it should be noted that there has been a 1,500 percent increase in global ISO 14001 certifications on environmental management awarded between 1999 and 2009.<sup>8</sup> There has also been a substantial increase in certification schemes. The Ecolabel Index indicates that there are currently over 465 sustainability labels in 199 countries covering 25 industrial sectors.<sup>9</sup>

The upsurge in the use of sustainability standards is spurred on by a combination of consumer choices, market responses, government policy and linked innovation. *E.g.*, it is estimated that the number of consumers in the US and the UK who actively seek out green products is roughly 20 percent of the total population and rising. In Germany, this figure has risen to nearly half the population.<sup>10</sup>

From a trade perspective, a conceptual understanding of 'sustainability standards' and their conformity with the existing trade architecture is becoming increasingly important. However, arriving at this conceptual understanding is difficult given the dichotomy in approaches and objectives of the trade sphere driven by national commercial interests and the environment sphere motivated by the achievement of a global public good objective, which transcends national boundaries.

Further, the term 'sustainability standard' is applied to a range of diverse sectors, products or services. This in turn makes cross sectoral identification of 'sustainability characteristics' across a range of sectors a difficult proposition. Identifying common 'sustainability characteristics' would cross diverse sectors and their linked sustainability standards such as an energy efficiency standard in construction, ISO environment management standards in manufacturing, sustainable fishing standard in the fishing sector, and organic standards in agriculture.

In the absence of such a definition, sustainability standards can be considered an environmental requirement, which aims to improve the use of resources and reduce pollution by setting specifications or green criteria for products and production methods.<sup>11</sup>

### ***B. Product or Process based Sustainability Standards?***

A key question in assessing the ‘sustainability’ of a product/service is whether it should be assessed as an end product or as an outcome of its intermediate processes (*e.g.*, energy, transport inputs) and products? The “*product based sustainability standard approach*” [Emphasis added] assesses the sustainability of the end use product or service. *E.g.*, an energy efficient LED bulb, is assessed as ‘sustainable’ owing to its energy saving usage.

However, there have been arguments in favor of “process based sustainability standards approach” based on the concept of Process and Production Methods (“PPMs”).<sup>12</sup> Arguments in favor of a PPM consider this approach to have a greater environmental relevance as it assesses the sustainability of intermediate goods and services.<sup>13</sup> Examples of process based sustainability standards include carbon footprint labels, which display the amount of greenhouse gases a product emits over its life cycle. Carbon footprint labels currently either voluntary or private sector driven, are eliciting greater government interest, as their usage gets more widespread.<sup>14</sup>

The key issue with process based sustainability standards is that they can be effective, only if monitoring of all intermediary inputs and processes can be reliably verified. In the case of “product carbon foot printing” prevalent in the agri-food sector, *e.g.*, we would need to measure sustainability at ever stage of the product’s life cycle, from raw material extraction through the stages of production to processing as well as transportation.<sup>15</sup>

Further, the designing of process based sustainability standards can be complex as a range of components/indicators as well as timelines have to be optimally identified. Incorporation of components/indicators (*E.g.*, raw material sources, energy/transport inputs, waste discharge of final goods) need to be holistically identified and may vary. Further variability can arise from the choice of time period over which the emissions are to be monitored as well as the kind of emissions to be monitored (*i.e.*, land use, animal based, industrial, etc.).

### 3. Commercial and Trade Considerations of Sustainability Standards

Despite the proliferation of sustainability standards, their impact on trade appears to be ambiguous. On the one hand, it is argued that properly implemented sustainability standards can facilitate trade, increase productivity of manufacturing by specifying product characteristics, and favor the transfer of environmental technologies.<sup>16</sup> On the other hand, sustainability standards have raised a certain degree of concern among small producers and LDCs in terms of their potential to act as non-tariff barriers (“NTBs”).

The empirical evidence on the trade/commercial impact of sustainability standards is unclear and tends to focus on firm level data. *E.g.*, a FAO study (2013) assessing the impacts of voluntary sustainability standards on smallholders’ participation in markets found the evidence to be mixed. It indicates that sustainability standards act as both barriers to trade as well as catalysts for enhancing smallholders’ skills and upgrading, which in turn can facilitate their participation in markets.<sup>17</sup> Against this backdrop and set out below, three clear recurrent elements in the proliferation of sustainability standards are the cost of compliance, impact of fragmentation and interaction with globally supply chains.

#### *A. Cost Drivers and Sustainability Standards*

Cost related issues in the context of sustainability standards are a key area of concern in particular for small producers. Higher costs could arise from compliance requirements, which at times can be stringent and/or complex, and the lack of credible information on applicable sustainability standards.

While there is insufficient data to indicate the exact cost impact on producers for incorporating sustainability standards, more generic studies on the cost of incorporating standards indicate a higher cost for incorporation of standards.<sup>18</sup> Bigger/commercial producers more easily absorb compliance costs of sustainability standards as opposed to smaller producers. *E.g.*, compliance costs with the EU supermarkets rules (Eurepgap/Globalgap) appear to be burdensome, especially for small farmers in developing countries.<sup>19</sup>

Conversely, it has been argued that the short-term costs of conforming to sustainability standards, may exacerbate commercial difficulties of some exporters,

but could offer an opportunity to upgrade sustainable production techniques and technologies and gain market access.<sup>20</sup> Jaffee shows how the horticultural industry in Kenya has used changing European regulations as a stimulus to innovation, competitive repositioning, and industrial upgrading.<sup>21</sup> Cael and Dechezlepretre demonstrate how the EU Emissions Trading System increased low carbon innovation among regulated firms by as much as 10 percent.<sup>22</sup> Sustainability standards such as certification can also reduce supply-related costs by increasing the efficiency of resource use and reducing waste.<sup>23</sup> Walmart, *e.g.*, reported to have saved USD 200 million in 2009 as a result of applying sustainability principles to packaging and shipping.<sup>24</sup>

Moreover, there are definite gains linked to the achievement of environment and health objectives through the incorporation of sustainability standards. In a 2005 report, the Network of Heads of European Environment Protection Agencies showed that 51 of 60 studies reviewed by its researchers demonstrated a positive link between responsible environmental management and financial performance.<sup>25</sup> Cleaner environments (water and air) also resulted in savings in health care and pollution clean ups. In the case of the EU, the improved environmental performance decreases the amount of money governments spend on social services.<sup>26</sup>

### ***B. Fragmentation of Sustainability Standards***

The propensity of fragmentation of sustainability standards is high along geographic (international, regional or national sustainability standards), origin (private sector, government or NGOs), product (several standards for a single product), and market ('green conscious' vs. 'cost conscious') lines. The multiplicity of sustainability standards arising out of fragmentation not only increases compliance costs, but also makes assessments and comparison for trade, commerce, tax and competition a complicated process.

Within the global trading system, this fragmentation could lead to the emergence of dual sustainability standards potentially defeating underlying environment objectives. The first set of more stringent sustainability standards corresponding to North-South trade patterns would serve richer 'green conscious' markets. The second set of less stringent sustainability standards would be designed for production to less wealthy 'cost conscious' developing country markets potentially corresponding to South-South trade flows.

*C. The Interaction between Global Supply Chains and Sustainability Standards*  
Sustainability standards are increasingly used in international business.<sup>27</sup> In 2006, Supply Chain Digest listed greening of the supply chain as the most prominent trend in supply chain management with companies in diverse industries such as Starbucks,<sup>28</sup> Kraft,<sup>29</sup> Nestle, Walmart, Coca-Cola following this trend.<sup>30</sup> For the sustainability standard discussion, the greening of the supply chain has several implications for MNCs and small producers operating cross border. To begin with suppliers products/services to MNCs operating in different jurisdiction would have to conform to uniformly applicable sustainability standards.

## **4. Sustainability Standards Interlinkage with the WTO Agreements**

Currently, the position of sustainability standards *vis-à-vis* the global trade framework which reflects traditional patterns of production is not entirely clear. This is the case with several emerging components of the green economy. A good example is that solar panel production has in several countries benefitted in varying degrees from government aid, incentives or subsidy programs. Under the trade regime ‘solar panels’ would be considered a product as any other, requiring conformity to provisions of the WTO Agreements. This in turn may call into question aspects of government subsidies/incentive schemes. Similar ambiguous interlinkages are evident between emerging ‘sustainability standards’ and areas of the WTO Agreements (government procurement, technical barriers to trade) and areas of negotiation (environment goods and services).

### *A. Sustainability Standards as Potential Non-Tariff Barriers to Trade*

Within the WTO framework, the question as to whether a sustainability standard is a non-tariff barriers to trade (“NTBs”), falls within the purview of the WTO Technical Barriers to Trade (“TBT”) Agreement. Between 1995 and mid-2011, around one-fifth of the 317 specific trade concerns raised by the WTO members in the TBT Committee were environment related.<sup>31</sup> There are three points of potential NTB consideration as far as sustainability standards are concerned.



1. Where the sustainability standard is part of a country's national regulation, in which case provisions of the TBT Agreement cover it.

Sustainability standards, incorporated within government regulations fall within the scope of the TBT Agreement. Several provisions of the TBT Agreement, including Articles 2.2, 2.4, 2.5, 5.4 and the Code of Good Practice for the Preparation, Adoption and Application of Standards (hereinafter the Code) are relevant to sustainability standards incorporated into government regulation.

Broadly, Articles 2.2-2.5 of the TBT Agreement set out the conditions for the adoption and application of technical regulations. There are two key points. First, technical regulations should not be more trade restrictive than necessary to fulfill a legitimate objective, of which protection of the environment is considered a legitimate objective.<sup>32</sup> Second, it is necessary to use relevant international standards in the formulation of such technical regulation.<sup>33</sup> Thus, national regulation which incorporates sustainability standards would need to ensure that the regulation is not more trade restrictive than is necessary to fulfill its sustainability objective and incorporate any relevant international standard in existence.

2. Where the sustainability standard is a private standard, not covered by technical regulation but utilized commercially.

Private/voluntary standards, which form the majority of widely utilized sustainability standards, have become a point at issue within the WTO. Discussions on private standards focus on the potential trade restrictive effects of private sustainability standards. *E.g.*, the Latin American group proposed that private standards be permanently monitored to identify whether the measures constitute disguised restrictions to trade.<sup>34</sup>

A further issue relates to whether WTO law should be exported into sustainability standards or whether sustainability standards should be imported into the WTO framework. The import of private standards into the WTO law has been opposed by Saint Vincent and the Grenadines in the WTO SPS Committee on the grounds that they go well beyond international standards.<sup>35</sup> In any event, private sustainability standard setting bodies are likely to fall within the purview of the TBT Code of Good Practice for the Preparation, Adoption and Application of Standards (hereinafter TBT Code of Good Practice). The TBT Code of Good Practice encourages incorporation of international standards, so as to ensure

harmonization.<sup>36</sup>

### 3. International Standards, Need for Conformity of Mandatory and Non-Mandatory Sustainability Standards to International Standards.

The existing WTO framework encourages its members to incorporate relevant international standards. The rationale behind the incorporation of relevant international standards into sustainability standards is to reduce trade costs and complexities arising from varying standards. The TBT Code of Good Practice is open to acceptance by both government and non-government bodies. It sets out principles and processes to be adhered to in the preparation, adoption and application of standards including incorporation of relevant international standards.<sup>37</sup> In the WTO EC-Sardines case, this provision was interpreted to mean international standards should be “used as the principal constituent or fundamental principle for the purpose of enacting the technical regulation.”<sup>38</sup>

#### ***B. The WTO Agreement on Government Procurement***

The public procurement market on an average accounts for 15-20 percent of GDP in both developed and developing countries,<sup>39</sup> providing an ideal springboard for governments endeavor towards greener economies. The usage of sustainability standards in procurement is a rising trend as governments seek to incentivize diffusion of sustainable products and services. Sustainability standards are used as a basis for technical specifications, conformity assessment or ensuring compliance through labels. *E.g.*, the EC identified seven sustainability standards that biofuels used in the EU – whether locally produced or imported – have to comply with if they are to count towards mandatory national renewable energy targets.<sup>40</sup> The trend towards the usage of public procurement in achieving sustainability objectives is reflected in the recently revised WTO Agreement on Government Procurement (“GPA”).<sup>41</sup> It allows procuring entities to use environment parameters in the preparation of technical specification for procurement and the evaluation of procurement bids.<sup>42</sup>

#### ***C. Decisions of the WTO Dispute Settlement Body***

The last five years has seen the increasing usage of the WTO’s Dispute Settlement Body (“DSB”) to settle environment-linked disputes. Noticeable disputes between

2010 and 2013 have included *EC-China Solar Panel*,<sup>43</sup> *US-India Solar Panel*,<sup>44</sup> *Tuna- Dolphin II*,<sup>45</sup> *Japan-Canada (consultations) feed in tariff*,<sup>46</sup> and *China Rare Earths* case.<sup>47</sup> These disputes have questioned a range of environment-linked measures such as subsidies, procurement, local content requirements, export quotas, etc. The increased usage of the WTO's DSB could have the outcome of imposing disciplines on the WTO members via the DSB instead of negotiated consensus based decision. Given the linkages of sustainability standards to the key WTO agreements and the rise in environment-linked cases before the DSB, there is the possibility of sustainability standard linked disputes arising. Two DSB cases stand out in terms of potential lessons for any discussion on sustainability standards. They are *Tuna-Dolphin I and II*,<sup>48</sup> and *EU – Seals Regime*.<sup>49</sup>

## 5. Conclusion and Recommendations

Post Rio+ 20 and COP 21, the drawing together of the trade and environment spheres through the green economy is an inevitable process. A green economy is driven by the demand for, and supply of, environmentally enhancing products and services underpinned by sustainability standards. There are currently in existence a plethora of diverse sustainability standards that could have potential trade impact for small producers and LDCs. We need to have a better understanding of the commercial and trade issues – market access and costs – involved in the incorporation of sustainability standards. Further, how sustainability standards as a key component of the growing green economy fit within the global trade architecture needs to be better understood.

At the national level governments can focus on enabling particularly small scale exporters to meet sustainability standards by identifying and acquiring technologies and building accredited national testing capacity.<sup>51</sup> Regional sustainability standards bodies reflecting relevant international norms could be set up within existing regional institutions such as ASEAN, SADC, CARIFORUM, MERCOSUR. This would serve the dual objectives of regional harmonization and cost efficiency.

**Table 1: Potential Implications for Sustainability Standards discussion in Tuna-Dolphin II and EC-Seals Regime**<sup>50</sup>

Issues	WTO Dispute Settlement Body Finding	Potential Sustainability Standard Implication
Public Mor-als Excep-tion (EC- Seals Regime)	The Appellate Body (AB) accepted animal welfare is an aspect of public morals under GATT Article XX(a), thereby justifying an MFN violation.	In the case of a dispute relating to sustainability standards, possibility of sustainability standards being similarly justified under GATT Article XX environment exception
Labelling (Tuna-Dolphin II)	WTO Panel upheld the US use of ‘dolphin safe’ labelling, without spelling out labelling criteria for GATT compliance	WTO members may evolve their national sustainability standards as long as they do not form barriers to WTO trade commitments
Voluntary standards versus technical regulation (Tuna-Dolphin Case II)	Mexico argued that in order to sell their tuna in the US market, it required a ‘dolphin-safe’ seal of approval, making it a de facto mandatory requirement. AB and Panel concurred US measure was mandatory and constituted a ‘technical regulation’ as it forms part of U.S. law and regulations imposing legally enforceable conditions to be met in order to gain access to ‘dolphin-safe’ label.	<ul style="list-style-type: none"> <li>- blurs distinction between, a vol-untary ‘standard’ and a mandatory ‘technical regulation.’</li> <li>- possibility that any government sanctioned sustainability standard scheme, could constitute a technical regulation including those forming part of public procurement</li> </ul>
‘product characteris-tics’ an es-sential ele-ment of a technical regulation (EU Seals Regime case)	AB did not find EU’s seal regime was a technical regulation within WTO’s TBT Agreement, as it does not lay down ‘product characteristics’ an essential element of a technical regulation. The importation of seal products into the EU depends on factors such as the identity of the hunter, purpose of the hunt, etc. which are not product characteristics. The AB does not address the issue as to whether animal welfare requirements are PPMs.	Similarly, establishing ‘product characteristics’ for sustainability standards is likely to be problematic (organic, energy efficient, sustainable etc.), further complicated by the fact that sustainability standards tend to be a mix of product (e.g. Energy efficient bulbs) and process based standards (e.g. organically farmed salmon (similar to the EC seals regime).
Consensus based ap-proach of international standard body (Tuna-Dolphin Case II)	International standard setting body must be “‘recognized’ with respect to its ‘activities’ in standardization.” and its membership must be “open to the relevant bodies of at least all Members” in accordance with the TBT Committee Decision.	Raises the questions as to whether current sustainability standards setting body qualify as international bodies and who participates in the setting of sustainability standards.

Source: Compiled by the authors

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7. Mandatory standards are incorporated in regulation and enforced by governmental authorities which are required to be complied with. Voluntary standards may be set by NGOs, e.g., GLOBAL G.A.P. (Agriculture), Marine Stewardship Council (forest products), international standard setting bodies such as the ISO, or private sector associations. Company codes are used mostly by larger multinational companies in the process of greening supply chains. E.g., Starbucks or Cadbury Schweppes: Ethical Sourcing Standards
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12. Broadly, process and production methods refer to any activity that is undertaken in the

- process of bringing a good to market. On the trade front, reference to PPMs reflect the desire of some countries to regulate international trade in goods and services on the basis of the inputs utilized in their production. In its broadest sense, PPMs can cover several contentious trade related issues such as child labour, health/safety aspect of new technologies and environmental pollution. For details, see P. JASON, *THE LEGALITY OF PPMs UNDER THE GATT: CHALLENGES AND OPPORTUNITIES FOR SUSTAINABLE TRADE POLICY* (IISD ed., 2008), available at [https://www.iisd.org/pdf/2008/ppms\\_gatt.pdf](https://www.iisd.org/pdf/2008/ppms_gatt.pdf) (last visited on Aug. 8, 2016).
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  41. The revised WTO GPA came into force in April 2014. Newly acceded developing economies include Chinese Taipei, Hong Kong, Israel, and Singapore. Others such as Albania, China, Georgia, Jordan, the Kyrgyz Republic, Moldova, Montenegro, New Zealand, Oman and Ukraine have applied to join. For details, see Revised WTO Agreement on Government Procurement enters into force, WTO News Item (Apr. 7, 2014), available at [https://www.wto.org/english/news\\_e/news14\\_e/gpro\\_07apr14\\_e.htm](https://www.wto.org/english/news_e/news14_e/gpro_07apr14_e.htm) (last visited on Aug. 7, 2016).
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47. *China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, WT/DS433/R (Mar. 26, 2014), available at [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds433\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds433_e.htm) (last visited on Aug. 7, 2016).
48. In the first round of Tuna-Dolphin cases which date back to the 1990s (Tuna-Dolphin I), Mexico successfully challenged a US import ban on tuna. As a result of the GATT Panel ruling, the US withdrew its import embargo on tuna fished using “purse seine nets.” In 2007, the US conservation groups launched and won a lawsuit challenging the use of purse seine nets. Accordingly, no changes were made to government labeling requirements and tuna fished with purse-seine tuna nets continued to be excluded from the ‘dolphin safe’ label. On October 24, 2008, Mexico requested consultations with the US over its rules on “dolphin-safe labeling.” Mexico argued that while it can ‘legally’ import its tuna products into the US, without the label, it cannot sell its products. This in turn Mexico argued violates the non-discrimination principles (national treatment and most-favored national treatment) set forth in the GATT. The second round of Tuna Dolphin cases (Tuna-Dolphin II) consist of the WTO Panel Report, *United States - Measures concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/R (Sept. 15, 2011) and the Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R (May 16, 2012). For details on the Tuna-Dolphin cases, see J. GOMULA, DEVELOPMENTS IN WTO JURISPRUDENCE: THE ASCENT OF THE TBT AGREEMENT? (2012).
49. *European Communities Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R (Nov. 25, 2013) & WT/DS401/AB/R (May 22, 2014), available at [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds400\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm) (last visited on Aug. 8, 2016). The EU Seals regime case arose from complaints by Canada and Norway against a legislative scheme adopted by the EU in 2009 to prohibit the importation and marketing of seal products. Generally, the AB report deals with 3 issues: first, *de facto* discrimination under the GATT 1994 in particular Articles I:1 (Most-Favored Nation)

and III:4 (National Treatment); second animal welfare as an aspect of public morals under GATT Article XX (a); and third, observations on the WTO's TBT Agreement.

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51. *Supra* note 13.