CHAPTER 3
THE ROLE OF CORE GATT OBLIGATIONS

A. INTRODUCTION

The key GATT obligations that are typically contravened in trade and environment disputes are national treatment (Article III), most-favored-nation (MFN) treatment (Article I) and the general rule against quantitative restrictions (Article XI). Non-discrimination is a fundamental principle underlying the GATT, and other WTO agreements. GATT rules are concerned primarily with limiting the extent to which countries may discriminate between domestic products and imports, between imports from different countries and between goods sold in the domestic market and those exported. Thus, if environmental measures do not discriminate between countries or between domestic and imported goods, they are less likely to violate the GATT.

B. NON-DISCRIMINATION

This part considers the application of the principle of non-discrimination to environmental measures in the GATT. I first examine the most-favored-nation and national treatment rules. I then discusses how the term “like products” may restrict the range of environmental goals that may be pursued using trade measures.

1. Most-Favored-Nation and National Treatment

Two key subsidiary principles flow from the principle of non-discrimination. The “most-favored-nation” rule prohibits discrimination among nations who are party to the trade agreement. GATT Article I:1 states the MFN principle as follows:

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and
charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

However, there are exceptions to this rule. For example, pursuant to GATT Article XXIV, this rule does not prevent the formation of free trade areas, which by their very nature, grant privileges to their members that are not extended to non-members.

The “national treatment” rule prohibits discrimination between domestic and imported goods that favors the former to the detriment of the latter. The relevant portions of GATT Article III states the national treatment principle as follows:

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded