A. INTRODUCTION

Maintaining coherence between international trade law, international environmental law and general international law presents a challenge for theory, legal doctrine and state practice. The challenge is particularly evident when analyzing how the international system—and the WTO in particular—can avoid conflicts between the goals of trade liberalization and environment protection. The interpretation of GATT Article XX has begun to play a critical role in defining the relationship between different branches of international law.

GATT Article XX sets out fields of regulation in which WTO members are free to employ trade measures that would otherwise be inconsistent with GATT obligations. This limited freedom to use trade measures can be exercised at the national level or in other international agreements. Article XX thus plays a central role in determining “where decisions should be made . . . for different subjects” (to borrow John Jackson’s phrase) and, as a result, provides a key to understanding how decision-making authority is to be allocated among national governments and international institutions.¹

Chapter 4 provided an overview of GATT and WTO jurisprudence regarding the application of Article XX exceptions to trade