1. INTRODUCTION

The trade-environment debate is very much alive in the World Trade Organization.\(^1\) The trade-environment debate entails two different opinions. Proponents of trade liberalization are of the opinion that free trade is necessary to stimulate economic growth and they therefore fear that trade measures aimed at the protection of the environment may act as trade barriers. Environmentalists view trade measures as an important mechanism, which can ensure the promotion of the protection of the environment. The divide between environmentalists and proponents of trade liberalization is to an extent mirrored in the divide between North and South. Southern countries fear that trade measures will be used for protectionist measures. Southern countries are of the opinion that the Northern countries have had the chance to acquire economic growth without paying attention to environmental matters in the process. It is therefore fair that Southern countries enjoy the same privileges. The Northern countries on the other hand are investing resources in environmental protection as to ensure stricter environmental standards. Northern countries furthermore fear that these investments will place them at a competitive disadvantage in relation to Southern countries, which do not make the same environmental investments. The implementation of sustainable development can contribute to the solving of the trade-environment debate between the North and South.\(^2\) It is


\(^2\) W Scholtz, *The Relationship between the Environment and Trade in the WTO: Prolonging the Conflict between North and South*, TO BE PUBLISHED and W Scholtz,
necessary to address the developmental nature of sustainable development in this regard. The extension of technical assistance, especially in relation to environmental technology must be promoted.\(^3\) The provision of environmental technology can promote international harmonisation in relation to product standards. This will ensure that the effort of the North in relation to stricter environmental standards will not be in vain as the acquisition of technology implies that countries of the South may facilitate economic growth on the basis of environmental technology.

The transfer of technology between the North and South seems to be a possible approach to address the trade-environment debate, but this suggestion clearly refers to interstate activities. The holders of the patents\(^5\) to technologies such as environmental technologies are mostly private multinational corporations, which are located in the North.\(^5\) A transfer of technology will accordingly involve corporations that possess intellectual property rights relating to the technology in question. These corporations will therefore mostly be required permission by companies in the South to utilize the relevant technologies, which raises questions regarding intellectual property rights.

It is accordingly important to investigate the effect of the Agreement on Trade-Related Aspects of Intellectual Property Rights in relation to the transfer of, especially environmental technology.\(^6\) The TRIPS Agreement is a comprehensive international instrument on intellectual property rights, which establishes minimum standards regarding *inter alia* industrial designs,\(^7\) patents,\(^8\) and the protection of undisclosed information.\(^9\) The TRIPS Agreement makes it

\(^3\) See for instance WT/GWT/M/8, 5 July 2004.
\(^4\) Article 27 of the TRIPS Agreement determines patentability. In general patentability relates to new technical inventions, which has an inventive phase and is commercially exploitable. See also T. Brühl & M.E. Kulessa, *Patent Protection, Biotechnology and Globalisation The TRIPS Agreement and its Implications for the Developing Countries*, INEF REPORT GERHARD-MERCATOR-UNIVERSITÄT GESAMTHOCHSCHULE, Duisburg, 1998, p. 6 and *Communication from Switzerland, WT/GWT/M/7*, par. 15.
\(^7\) Part II, Section 4 of the TRIPS Agreement.
\(^8\) Part II, Section 5 of the TRIPS Agreement.
\(^9\) Part II, Section 7 of the TRIPS Agreement. Other areas which are covered in Part II include: Copyright and related rights (section 1), trademarks (section 2), geographical