Environmental critics of the GATT-based trade rules have suggested that these and other cases indicate that the trading rules are insensitive to modern concerns about the environment and need to be overhauled in order more clearly to establish the precedence of environmental goals over trade goals. Our reading of this jurisprudence, however, is somewhat different. In our view, these cases suggest the ease with which environmental concerns can be subverted to pursue less noble objectives. The problem, therefore, may not lie in the rules but in their interpretation or abuse. Notes Steve Charnovitz:

> If the "greening" of the GATT means that the Contracting Parties should respect environmental objectives in administering Article XX, then greening is a good idea. But if greening means that the Contracting Parties should subordinate economic goals to ecological imperatives, then greening is a bad idea – for the environment and for the GATT. It is a bad idea for the environment because the GATT does not have the scientific expertise to judge what ecological measures are appropriate. It is a bad idea for the GATT because environmental policy would be too divisive for GATT's current decision-making structure. [27]

While not perfect, the GATT rules, first negotiated in 1947, provide a very solid foundation upon which to develop more detailed and more modern rules. Their genius lies in the fact that they start with an enunciation of some very basic principles which can be summarized as follows. The trade regimes of member states must be:

- non-discriminatory;
- transparent; and
- appropriate to the agreed goal of developing an open, liberal international trading system.

Should any conflict arise among member states in the application of these principles, GATT provides more detailed rules spelling out more specific obligations as well as procedures for the resolution of disputes consonant with these principles.

At least seven GATT provisions can be invoked to address trade-related environmental issues. The first is that the trade measures used by member states must be non-discriminatory. Any trade measure must apply equally to all member states (the most-favoured-nation requirement of article I) and must not discriminate between goods of national origin and imported goods except for those GATT-sanctioned measures – largely tariffs – applied at the border (the national treatment requirement of article III). The requirements of article III are spelled out in much greater detail as regards the use of product standards, including the

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27 Steve Charnovitz, "Exploring the Environmental Exceptions in GATT Article XX," *Journal of World Trade Law*, vol. 25, no. 5 (October, 1991), p. 55. This article provides a detailed and convincing discussion of GATT law and environmental protection. Typical of negative environmental assessments of the GATT is Steven Shrybman, "International Trade and the Environment: An Environmental Assessment of Present GATT Negotiations," *Alternatives*, vol. 17, no. 2 (1990), pp. 20-29.