ANNOTATION

of the dissertation submitted for the degree of Doctor of Philosophy (PhD) by

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on the topic: "Environmental Restrictions in International Trade: Legal Aspects"

within the educational program "8D04201 – International Law"

The relevance of the dissertation research is determined by the fundamental contradiction between the liberalization of international trade and the necessity of environmental protection. According to the World Trade Organization, more than 12,000 environmentally relevant trade measures are currently registered, while international environmental law comprises over 200 multilateral agreements. Despite half a century of scholarly debate, international law still lacks a universally accepted legal definition of the concept of "environmental restrictions in international trade." This terminological uncertainty generates a persistent definitional vacuum, which, in turn, leads to legal instability when assessing the legality of unilateral environmental measures.

The problem is exacerbated by institutional fragmentation: states' approaches to environmental protection and the content of national legislation vary significantly. The WTO, covering approximately 98% of global trade, has become the key forum for reconciling trade and environmental interests. The substantive legal basis for environmental restrictions is provided by Article XX of the GATT 1994; however, the lack of clarity in its interpretation shifts the burden of balancing competing interests to the level of law enforcement. WTO Members are compelled to resort to the dispute settlement mechanism, resulting in numerous legal conflicts (cases DS600, DS592, DS291–293, DS332). Developing countries systematically accuse developed countries, particularly the European Union, of using environmental standards as instruments of "green" protectionism.

The legal nature of modern environmental restrictions is undergoing transformation: developed countries increasingly extend regulatory requirements not only to products but also to their production processes and methods (an extraterritorial approach, as illustrated in case DS600). The empirical scale of the phenomenon is evidenced by the registration of more than 12,000 environmentally relevant trade measures and, for example, the existence of 191 environmental regulatory bodies in the State of California alone. These factors give rise to the phenomenon of "fragmented regulation," which significantly increases transaction costs and legal risks for foreign exporters.

New regulatory initiatives are submitted for consideration to specialized WTO bodies (the Committee on Trade and Environment, the Committee on Sanitary and Phytosanitary Measures, and the Committee on Technical Barriers to Trade). The decisions adopted fall within the category of "soft law"; however, a comprehensive legal analysis of this process remains lacking. The high relevance of the research is also обусловлена the need for a comparative legal analysis of regional regulatory models – the European Union (the most unified model), the Shanghai Cooperation Organisation, and the Eurasian Economic Union.

Particular attention is drawn to the scientific significance of the study, обусловленная the doctrinal gap identified, namely the absence of comprehensive comparative legal research covering both the universal level of the WTO and regional integration projects (EU, SCO, EAEU). This gap objectively constrains the development of effective and coherent models of legal regulation in the field under study.

The purpose of the research is to conduct a comprehensive theoretical and legal analysis of environmental restrictions in international trade, resulting in scientifically grounded recommendations for improving legal regulation in this area.

To achieve this purpose, the study addresses the following tasks, logically structured according to key areas of scholarly analysis:

– to develop a theoretical and legal definition of environmental restrictions in international trade;

– to trace the genesis and identify patterns in the institutionalization of the environmental agenda in international trade;

– to determine the role of multilateral environmental agreements as sources of legal restrictions;

– to analyze environmental exceptions in WTO law through the prism of norm conflicts and the limits of precedent-based interpretation;

– to determine the legal nature of the WTO Committee on Trade and Environment as a “soft law” institution and to establish the limits of its harmonizing influence;

– to identify the conflict between environmental objectives and the principle of non-discrimination within the framework of the WTO TBT Agreement;

– to examine the boundaries of scientific justification of environmental measures under the WTO SPS Agreement;

– to раскрыть the model of the European Union characterized by supranational enforcement and the extraterritorial application of environmental standards;

– to characterize the model of the Shanghai Cooperation Organisation based on “soft law” and consensus;

– to conduct an institutional analysis of the Eurasian Economic Union model, identifying regulatory fragmentation and functional exclusivity.

The object of the research is social relations arising in the process of legal regulation and application of environmental restrictions in international trade.

The subject of the research comprises international and national legal norms governing environmental restrictions in international trade, their application practice, as well as theoretical legal concepts revealing the nature, content, and limits of admissibility of such restrictions in the context of balancing trade and environmental interests.

The theoretical and methodological basis of the study consists of the fundamental provisions of the doctrine of international law in the field of legal regulation of environmental restrictions. The methodological framework includes a combination of general scientific methods (dialectical and systemic-structural) and special legal methods (formal-legal, comparative legal, historical legal, methods of interpretation and doctrinal analysis, as well as forecasting and modeling). The

application of these methods in their systemic unity ensured the comprehensive nature of the research, the reliability of the conclusions obtained, and the validity of the proposed theoretical provisions and practical recommendations.

The scientific novelty of the research lies in the following results.

For the first time in domestic legal scholarship, an original definition of environmental restrictions in international trade has been formulated (imperative non-tariff measures whose dominant justification is environmental protection, and whose legitimacy is shaped through the interaction of trade and environmental law norms, divergence of national standards, and implementation through specific legal instruments). A concept has been developed explaining the definitional vacuum as a consequence of multi-level systemic fragmentation of international law, which made it possible to move from the search for a universal definition to an operational classification approach.

The role of the WTO and its Dispute Settlement Body in shaping case law on environmental disputes has been identified. Based on the analysis of cases (DS291-293, DS332, DS600, DS592), the evolution of the interpretation of Article XX of the GATT 1994 has been revealed, including the two-tier test and the doctrine of "environmental good faith." It is demonstrated for the first time that, in the context of the crisis of the Appellate Body, the law-making function of the DSB becomes a forced mechanism for filling the normative vacuum, generating risks of legal uncertainty.

A comprehensive study of specialized WTO committees (CTE, TBT, SPS) as mechanisms of preventive regulation and "soft" harmonization of environmental restrictions has been conducted. Their institutional role in ensuring transparency, resolving trade disputes, and forming a "common understanding" of the limits of environmental regulation is revealed. It is proven that the effectiveness of these mechanisms is limited by the clash of regulatory philosophies and structural imbalances in the scientific and administrative capacities of developed and developing countries.

A comparative legal analysis of regulatory models of environmental restrictions in the EU, SCO, and EAEU has been carried out. Essential differences have been identified: coercive externalization of standards through "normative hegemony" in the EU; fragmentation of the "green" agenda in the SCO; and a two-level model of technical regulation with a limited supranational component in the EAEU. It is established that the degree of integration and regulatory effectiveness directly correlates with the level of institutionalization of supranational control and enforcement mechanisms.

An original concept of systemic fragmentation has been developed, structured at horizontal (competition between trade and environmental law), vertical (divergence of national standards), and instrumental (diversity of legal forms) levels. On this basis, proposals for improving regulation have been substantiated: development of mechanisms for mutual recognition of standards, intensification of dialogue within the CTE, consideration of the interests of developing countries, as well as recommendations for harmonizing approaches within the EAEU, taking into account the EU experience and the specific features of the post-Soviet space.

The main provisions submitted for defense include:

The author's definition of environmental restrictions in international trade and the concept of systemic fragmentation make it possible to standardize the qualification of environmental restrictions, distinguish them from disguised protectionism, and harmonize legal practice at both the universal and regional levels.

Proposals for improving legal regulation within the Eurasian Economic Union, based on the experience of the European Union, include: strengthening the supervisory functions of the Eurasian Economic Commission with regard to the application of environmentally oriented technical regulations; introducing mandatory annual reporting by Member States on law enforcement practices; institutionalizing preventive dialogue by analogy with the EU Pilot mechanism; and establishing a permanent working group for the pre-trial settlement of disputes arising from the application of Article 29 of the Treaty on the EAEU and relevant technical regulations.

Measures for adapting EAEU Member States to the European Union's carbon border adjustment mechanism include: supplementing the Treaty on the EAEU with a provision establishing the priority of technical regulations over unilateral measures; developing a protocol on the mutual recognition of national emissions trading (quota) systems; introducing a mechanism for voluntary certification of compliance with the Union's environmental requirements; and unifying methodologies for the accounting and verification of greenhouse gas emissions.

The study substantiates the expediency of establishing, within the EAEU framework, a Consultative Committee on Environmental Standards and Scientific Risk Assessment under the Eurasian Economic Commission, tasked with developing scientifically grounded methodologies for assessing environmental risks and the carbon intensity of products, conducting expert review of draft technical regulations, and preparing opinions on disputes related to environmental restrictions.

Recommendations for the Republic of Kazakhstan include initiating, within the EAEU framework, the mutual recognition of carbon units on the basis of Article 299 of the Environmental Code of the Republic of Kazakhstan. These recommendations encompass the creation of a supranational emissions registry (as a pilot project based on Kazakhstan's Emissions Trading System), the harmonization of national permitting procedures with EAEU technical regulations, and the development of unified rules for emissions verification (based on Chapter 9 of the Environmental Code of the Republic of Kazakhstan).

The theoretical significance of the study lies in advancing the theory of international economic and environmental law through the development of the author's concept of systemic fragmentation in the legal regulation of environmental restrictions, the formulation of a definition of environmental restrictions in international trade, and the identification of patterns in the evolution of the case law of the WTO Dispute Settlement Body, including the "doctrine of environmental good faith."

The practical significance of the research is determined by the possibility of applying the findings and recommendations to the improvement of the legal framework of the Eurasian Economic Union (including the establishment of a Consultative Committee on Environmental Standards), in negotiation processes and disputes with third countries (for example, in matters related to the EU Carbon Border Adjustment Mechanism), in the activities of public authorities in the development and justification

of environmental measures, as well as in the educational process in international law and related disciplines.

Relationship of the dissertation research with state programs. The dissertation research was carried out within the framework of the scientific agenda of the Department of International Law of the Faculty of International Relations at Al-Farabi Kazakh National University and corresponds to the priority areas of development of legal science in the Republic of Kazakhstan. The results of the research are aligned with the provisions of the strategic documents of the Republic of Kazakhstan, including the "Kazakhstan–2050" Strategy, the Concept for the Transition of the Republic of Kazakhstan to a "Green Economy," as well as the Environmental Code of the Republic of Kazakhstan (Articles 289, 299, and 128), which establishes the legal foundations of the emissions trading system and the circulation of carbon units.

Furthermore, the dissertation research is consistent with the goals and objectives defined within the framework of the Shanghai Cooperation Organisation, in particular: the Joint Action Plan for the implementation of the SCO "Green Belt" Program for 2024–2026 and the Action Plan for the implementation of the Concept of Cooperation among SCO Member States in the field of environmental protection for 2025-2027.

Approbation of the research results. The main results of the dissertation research, with a total volume of four printed sheets, are reflected in five publications: three articles in journals recommended by the Committee for Quality Assurance in Science and Higher Education of the Ministry of Science and Higher Education of the Republic of Kazakhstan, and two articles in international journals indexed in the Scopus database.

Structure and scope of the dissertation. The total length of the dissertation is 160 pages, comprising an introduction, three chapters encompassing nine sections, a conclusion, and a list of references containing 240 sources; the dissertation also includes eight tables systematizing the analytical material.