

# Synergising Trade and Climate Talks

How Can the WTO and UNFCCC Learn From Each Other?

Leslie Debornes

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# Table of Contents

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Table of Contents .....	3
Acronyms .....	4
Executive Summary .....	6
<b>1. Introduction .....</b>	<b>8</b>
1.1 An overview of the UNFCCC.....	8
1.2 An overview of the WTO .....	11
<b>2. Issues dealt by both organizations .....</b>	<b>15</b>
2.1 Trade .....	15
2.2 Environment & Climate Change .....	20
2.3 Agriculture .....	25
<b>3. Lessons learnt and Way forward .....</b>	<b>29</b>
3.1 Differentiation .....	29
3.2 Stakeholders' involvement.....	33
<b>Conclusion .....</b>	<b>36</b>

# Acronyms

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AAP	Analytical and Assessment Phase
AoA	Agreement on Agriculture
AW-LCA	Ad Hoc Working Group on Long-term Cooperative Action
AWG-KP	Ad Hoc Working Group for the Kyoto Protocol
BCA	Border Carbon Adjustments
CBOPR	Committee on Balance of Payments Restrictions
CBDR–RC	Common but Differentiated Responsibilities and Respective Capabilities
CDM	Clean Development Mechanism
CF&A	Committee on Budget, Finance and Administration
COP	Conference Of Parties
CTD	Committee on Trade and Development
CTE	Committee on Trade and Environment
DSU	Dispute Settlement Understanding
EGA	Environmental Goods Agreement
ERU	Emission Reduction Unit
ET	Emissions Trading
ETS	Emissions Trading System
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GC	General Council
GDP	Gross Domestic Product
GEF	Global Environment Facility

GHG	Greenhouse Gas
IMF	International Monetary Fund
INC/FCCC	Intergovernmental Negotiating Committee for a Framework Convention on Climate Change
IPCC	Intergovernmental Panel on Climate Change
IPR	Intellectual Property
ITO	International Trade Organization
JI	Joint Implementation
LDC	Least Developed Country
MC	Ministerial Conference
MFN	Most Favoured Nation
MTA	Multilateral Trade Agreement
NDC	Nationally Determined Contributions
NSA	Non-State Actor
ODI	Overseas Development Institute
PSI	Private Sector Initiative
SDG	Sustainable Development Goals
S&DT	Special and Differential Treatment
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
TBT	The Committee on Technical Barriers to Trade
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TPRM	Trade Policy Review Mechanism
UNFCCC	United Nations Framework Convention on Climate Change
WTO	World Trade Organization

# Executive Summary

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Whilst the United Nations Framework Convention on Climate Change (UNFCCC) and the World Trade Organization (WTO) are two distinct international organizations with their own mandates, objectives and ways of functioning, it happens that they are dealing with some common issues of concern, including: trade, environment/climate change and agriculture, among others.

The United Nations Framework Convention on Climate Change, giving birth to the UNFCCC itself in 1992, mentioned trade in its article 3 “Principles”. Trade per se is also mentioned once in the Kyoto Protocol, in its article 2.3.<sup>1</sup> UNFCCC members recognize that the fight against climate change should not negatively impact trade relations between countries. Trade is more considered by UNFCCC members as a tool to achieve their mitigation objectives. For example, the Kyoto Protocol established flexible market mechanisms, which are based on the trade of emissions permits, creating what is known as the carbon market. The three market mechanisms are Clean Development Mechanism (CDM), Joint implementation (JI) and Emissions Trading (ET).

In 2015, UNFCCC members went beyond the Kyoto Protocol and adopted the Paris Climate Agreement. The agreement aims to strengthen the ability of countries to deal with the impacts of climate change. To reach the ambitious goal of keeping a global temperature rise well below 2 degrees Celsius, appropriate financial flows, a new technology framework and an enhanced capacity building framework will have to be put in place, thus supporting action by developing

countries and the most vulnerable countries, in line with their own national objectives.

Keeping in mind the country members of WTO and UNFCCC are nearly the same, there are several domains where climate actions decided in Bonn might be supported, or else hindered, by what their WTO counterparts are discussing in Geneva, e.g: (i) Market mechanisms & Emissions trading; (ii) implementation of NDCs (Nationally Determined Contributions); and (iii) Technology transfer mechanisms.

Sustainable development and protection and preservation of the environment are among the fundamental goals of the WTO. They are enshrined in the Marrakesh Agreement of 1994, which established the WTO, and complement the WTO’s objective to reduce trade barriers and eliminate discriminatory treatment in international trade relations. In Marrakesh, ministers also signed a specific “Decision on Trade and Environment” and called for the creation of the Committee on Trade and Environment (CTE). It is the standing forum dedicated to dialogue between governments on the impact of trade policies on the environment, and of environment policies on trade. The CTE is open to the entire WTO membership, with some international organizations as observers.

While there is no specific agreement dealing with the environment, and the issue of *climate change*, per se, is not part of the WTO's ongoing work programme, under WTO rules members can adopt trade-related measures aimed at protecting the environment provided a number of conditions

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<sup>1</sup> UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, United Nations, 1992. Retrieved from. <https://unfccc.int/resource/docs/convkp/kpeng.pdf>



to avoid the misuse of such measures for protectionist ends are fulfilled.

While cooperation is already taking place between the WTO and the UNFCCC, as UNFCCC representatives participate in meetings of the regular WTO CTE and as ad hoc observer to the CTE in Special Session, while the WTO secretariat attends UNFCCC Conference of Parties (COP) meetings; there are areas in which both organizations might adopt supportive positions, including in agriculture.

UNFCCC and WTO have also been facing some similar challenges in their operations. Two important challenges relate to: i) issues related to differences among members due to their different level of development and capacities that is at the heart of the concept of special and differential treatment for developing countries, and ii) involvement of non-state stakeholders in their negotiations and day-to-day processes. The way each organization has (tried to) tackle these challenges can have lessons for the other in being more inclusive and taking more coherent actions/decisions.

Regarding the application of a key UNFCCC principle of « common but differentiated responsibilities and respective capacities (CBDR-RC) », and perhaps realising the futility of *a priori* defining “respective capabilities”, UNFCCC negotiators adopted a more pragmatic approach. In the UNFCCC negotiations starting from Durban in 2011, members have allowed countries to individually determine their “contribution” to addressing GHG emissions. In 2015, 196 Parties agreed to undertake Nationally Determined Contributions (NDCs) as part of their commitment to align their economic development with the goal of sustainable development. A similar pragmatic approach may be needed at the WTO where the

discussions/negotiations regarding the special and differential treatment (S&DT) for developing and least-developed countries have been stuck for years now.

WTO members established a legal basis for consultation and cooperation with NGOs, back in 1995, recognising “the role NGOs can play to increase the awareness of the public in respect of WTO activities” and agreed “to improve transparency and develop communication with NGOs” by giving the WTO Secretariat the authority to establish direct contacts with NGOs. NGOs can be accredited to take part in Ministerial Conferences and attend public hearings of some dispute settlement proceedings.<sup>2</sup> But they cannot be granted permanent observer status to NGOs and their access to WTO documents remains constrained. On the other hand, the UNFCCC is said to have relatively generous rules for the non-state actors (NSAs) concerning access to documentation, making statements, submission of written input and consultations with the presiding officers and the Executive Secretary. Some important and relevant initiatives in this regard include: the Marrakesh Partnership for Global Climate Action that was launched in 2016, and the Talanoa Dialogue which was held in Katowice, Poland on January 2018

Climate and trade negotiators should be more aware of what their counterparts are doing, and interact more, to develop holistic international approaches that contribute to sustainable development of their countries. Finally, WTO and UNFCCC should find ways to function in a more coherent manner to contribute to the achievement of Sustainable Development Goals (SDGs) – the universally agreed framework for poverty eradication, inclusive growth and sustainable development.

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<sup>2</sup> NGOs and the WTO, WTO, 2019. Retrieved from. [https://www.wto.org/english/forums\\_e/ngo\\_e/ngo\\_e.htm](https://www.wto.org/english/forums_e/ngo_e/ngo_e.htm)

## SECTION 1

# Introduction

## 1.1 An overview of the UNFCCC

### Introduction and Mandate

The UNFCCC also known as the 'Earth Summit' is an international environment treaty which came into force on March 21, 1994.<sup>3</sup> The objective of this treaty was to stabilize greenhouse gas concentrations in the atmosphere so that deteriorations associated with climate changes could be contained.<sup>4</sup> In pursuit of this objective, the UNFCCC works towards establishing a broad framework covering principles, general obligations, basic institutional arrangements including collective decisions by the Conference Of Parties (COP) to reach to an agreement of certain decisions.<sup>5</sup>

The Secretariat, also known as UNFCCC, is charged with dispensing duties towards realization of the treaty's objectives and supporting the overall operations of the Convention<sup>6</sup>. It was established in 1992 when countries adopted the UNFCCC treaty.<sup>7</sup> The

Secretariat aims to gain consensus through meetings and discussion of various strategies.<sup>8</sup>

The Berlin Mandate was an agreement made in April 1995 between signatories to the UNFCCC.<sup>9</sup> It called on governments to establish specific, legally-binding targets and timetables for reducing developed country emissions of greenhouse gases.<sup>10</sup> The COP 1 meeting in Berlin between March 28 and April 7, 1995 decided that a process should be established for countries to take appropriate action well beyond 2000 to reduce greenhouse gas emissions (GHG).<sup>11</sup>

At Berlin, Parties agreed to develop a "comprehensive menu of actions" over a two year Analytical and Assessment Phase (AAP), so that each countries could choose policy options (environmental and economic) which was compatible for it to address the original goal of the Convention i.e to stabilize GHG emissions by Annex 1 countries at 1990 levels by 2000.<sup>12</sup> It also called for legally binding standards and emissions limits to be set by international law.<sup>13</sup> Thus far, the COP meetings have discussed a range of issues dealing with the human impact on climate and environment.<sup>14</sup>

<sup>3</sup> Environment and Ecology, UNFCCC, 2019. Retrieved from. <http://environment-ecology.com/climate-change/599-united-nations-framework-convention-on-climate-change.html>

<sup>4</sup> UNFCCC, Science Daily. Retrieved from. [https://www.sciencedaily.com/terms/united\\_nations\\_framework\\_convention\\_on\\_climate\\_change.htm](https://www.sciencedaily.com/terms/united_nations_framework_convention_on_climate_change.htm)

<sup>5</sup> Climate Get the Big Picture, UNFCCC. Retrieved from. <https://unfccc.int/resource/bigpicture/>

<sup>6</sup> Environment and Ecology, UNFCCC. Retrieved from. <http://environment-ecology.com/climate-change/599-united-nations-framework-convention-on-climate-change.html>

<sup>7</sup> About the Secretariat, UNFCCC, 2019. Retrieved from. <https://unfccc.int/about-us/about-the-secretariat>

<sup>8</sup> Environment and Ecology, UNFCCC. Retrieved from. <http://environment-ecology.com/climate-change/599-united-nations-framework-convention-on-climate-change.html>

<sup>9</sup> Berlin Mandate, Encyclopedia.Com, 2008. Retrieved from. <https://www.encyclopedia.com/environment/energy-government-and-defense-magazines/berlin-mandate>

<sup>10</sup> A Brief History of the Climate Change Convention, UNFCCC, 2000. Retrieved from.

<http://unfccc.int/cop3/fccc/info/backgrod.htm>

<sup>11</sup> Berlin Mandate (Global Warming), What When How. Retrieved from. <http://what-when-how.com/global-warming/berlin-mandate-global-warming/>

<sup>12</sup> Mani, Rama, United Nations Framework Convention on Climate Change COP-1: The Berlin Mandate, India Water Portal, 2009.

Retrieved from. <https://www.indiawaterportal.org/articles/united-nations-framework-convention-climate-change-cop-1-berlin-mandate>

<sup>13</sup> Berlin Mandate (Global Warming), What When How. Retrieved from. <http://what-when-how.com/global-warming/berlin-mandate-global-warming/>

<sup>14</sup> COP, Climate Policy Observer. Retrieved from. <http://climateobserver.org/open-and-shut/carbon-emissions/>



## History

Since the 1970s, there started to emerge a collective global concern about global warming and an A-increasing concentration of carbon dioxide in the atmosphere.<sup>15</sup> This led to the establishment of the Intergovernmental Panel on Climate Change (IPCC) in 1988 where it was given the responsibility to assess the existing state and knowledge of the climate system and climate change and the possible response strategies which can be undertaken to deal with this. The IPCC was created to provide policymakers with regular scientific assessments on climate change, its implications and potential future risks, as well as to put forward adaptation and mitigation options.

A series of intergovernmental conferences focusing on climate change started to take place in the late 1980s and early 1990s with the Second World Climate Conference calling for a framework treaty on climate change. The final declaration although not specifying any international targets for emission reduction had a number of principles later included in the Climate Change Convention.

In December 1990, the UN General Assembly approved the start of treaty negotiations. The Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC) met for five sessions between February 1991 and May 1992. The Convention was adopted in New York on 9 May 1992 and signed by 154 States. It set up a system through which governments could provide information on their national greenhouse gas emissions and climate change strategies so that this information

could be used to review the overall progress of the Convention. In this Convention, developed countries agreed to promote transfer of technologies and funding towards the developing countries so that the latter can respond to climate change vulnerabilities. The Convention entered into force on 21st March 1994 and at present consists of 170 Parties.<sup>16</sup>

## Structure and Functioning of UNFCCC

In structure and content, the UNFCCC is styled as a framework convention, like the Vienna Convention for the Protection of the Ozone Layer and the Convention.<sup>17</sup> Under the UNFCCC, all parties are required to submit national GHG inventories and particularly, developed countries are required to submit detailed descriptions of mitigation policies and potential impact of these policies on greenhouse gas (GHG) emissions. The data collected through the UNFCCC helps in contributing towards development of scientific understanding of climate change problem and countries tend to consult UNFCCC's reports in order to come to a major consensus in international agreements. The UNFCCC has provided an institutional framework for Parties to conduct negotiations and to facilitate their adoption of protocols and agreements related to the Convention's mandate.<sup>18</sup>

The main functions of the secretariat of the UNFCCC are to make practical arrangements for sessions of the Convention bodies, to assist Parties in implementing their commitments, to provide support to on-going negotiations and to coordinate with the secretariats of other relevant international bodies, notably the Global

<sup>15</sup> A Brief History of the Climate Change Convention, UNFCCC. 2000. Retrieved from.

<http://unfccc.int/cop3/fccc/info/backgrod.htm>

<sup>16</sup> Ibid.

<sup>17</sup> Kuh, K.F, Encyclopaedia of the Anthropocene, Science Direct, 2018. Retrieved from.

<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/united-nations-framework-convention-on-climate-change>

<sup>18</sup> Ibid.

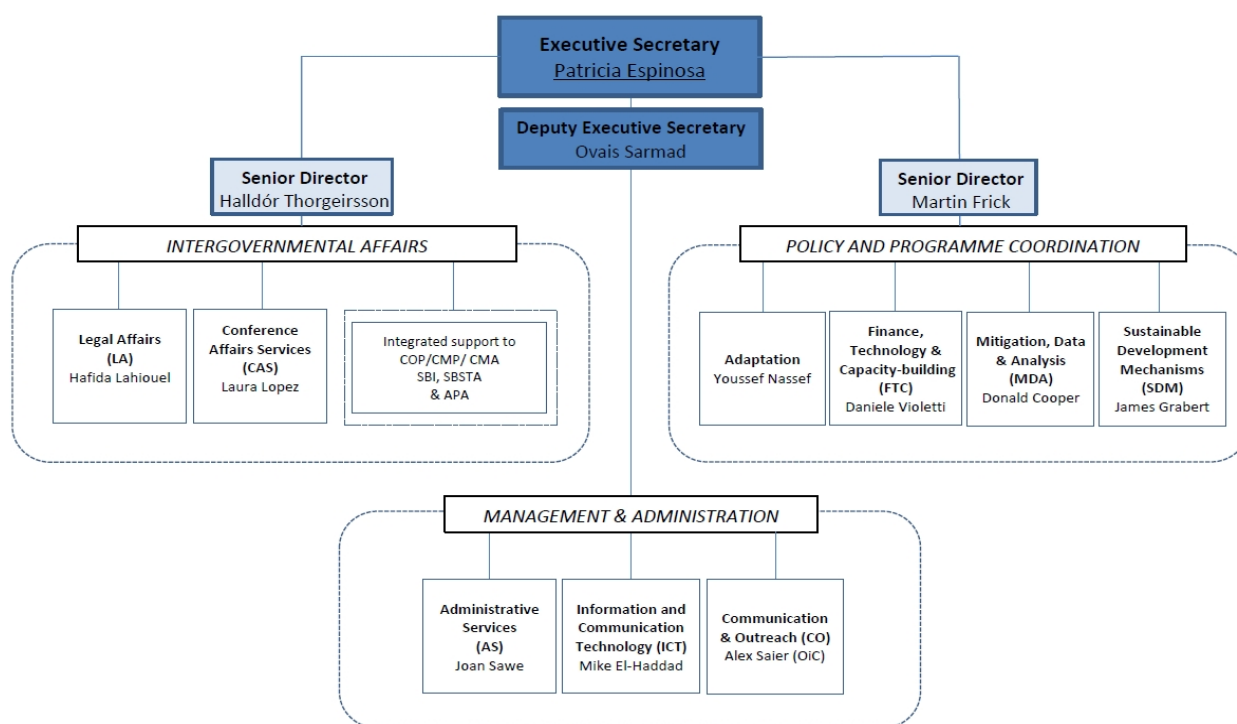
Environment Facility (GEF) and other UN agencies (UNDP, UNEP and the World Bank), the Intergovernmental Panel on Climate Change (IPCC), etc.<sup>19</sup>

The secretariat organizes and supports between two and four negotiating sessions each year with the largest and most important being the Conference of the Parties which is held annually in different locations around the globe. The secretariat organizes annual sessions of the so-called subsidiary bodies as well as a large number of meetings and workshops throughout the year. The secretariat also supports the Marrakesh Partnership for Global Climate Action to bring a

multi-stakeholder action towards combating the vulnerabilities of climate change and its consequences. The secretariat also strives to keep all stakeholders informed about different actions pertaining to climate change through a variety of communications products, including social media.<sup>20</sup>

It also provides technical expertise and assists in the analysis and review of climate change information reported by Parties and also maintains the registry for Nationally Determined Contributions (NDC) established under the Paris Climate Agreement.<sup>21</sup>

### UNFCCC Secretariat Structure



Source: Secretariat Structure. Retrieved from. <https://unfccc.int/about-us/what-is-the-unfccc-secretariat/secretariat-structure>

<sup>19</sup> UNFCCC, European Environment Agency, 2009. Retrieved from. <https://www.eea.europa.eu/data-and-maps/data-providers-and-partners/united-nations-framework-convention-on-climate-change>

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

## 1.2 An overview of the WTO

### Introduction and Mandate

The World Trade Organization also known as WTO is an international organization which deals with the global rules of trade so that international trade flow can be conducted in a smooth and predictable manner.<sup>22</sup> It provides a global platform for discussions on international trade rules, existing system and how it can be improved for a greater inclusion of and participation by the developing and developed countries. WTO aims at reducing obstacles to international trade so that a level playing field can be ensured for all which is conducive towards creating economic growth and development.<sup>23</sup> It provides a legal and institutional framework for the implementation and monitoring of negotiated agreements and also has as a dispute settlement mechanism to aid in the interpretation and application of agreements.<sup>24</sup>

The WTO has 164 members since 29th July 2016.<sup>25</sup> There are some 140 international organisations that have observer status in WTO bodies.<sup>26</sup> The WTO also participates as observer in the work of several international organizations and maintains working relations with almost 200 international organisations in different spheres of activities ranging from statistics, research,

standard-setting, and technical assistance and training.<sup>27</sup>

The main functions of WTO are related with trade negotiations and the enforcement of negotiated multilateral trade rules. Focus is particularly given in four particular areas<sup>28</sup>: (i) Assisting developing and transition economies; (ii) Specialized help for export promotion: the International Trade Centre; (iii) Cooperation in global economic policy-making; (iv) Routine notification when members introduce new trade measures or alter old ones.

The WTO mandate calls for the member countries to exercise coherence in global economic policy-making through close cooperation between the WTO, World Bank and International Monetary Fund.<sup>29</sup> A Ministerial Declaration was adopted at the Marrakesh Ministerial Conference in April 1994 to emphasize this objective.<sup>30</sup> It aimed for the WTO to “strengthen the world economy and lead to more trade, investment, employment and income growth throughout the world” and achieve it in a “in a new era of global economic cooperation”.<sup>31</sup>

### History

In 1944, the Bretton Woods Conference, which laid the foundations for the International Monetary Fund and the World Bank, had aimed for the establishment of an International Trade Organization (ITO). Together these three

<sup>22</sup> WTO In Brief, WTO, 2019. Retrieved from. [https://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm)

<sup>23</sup> Overview, WTO, 2019. Retrieved from. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)

<sup>24</sup> Ibid.

<sup>25</sup> Members and Observers, WTO. Retrieved from. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)

<sup>26</sup> The WTO and other organizations, WTO, 2019. Retrieved from. [https://www.wto.org/english/thewto\\_e/coher\\_e/coher\\_e.htm#mandate](https://www.wto.org/english/thewto_e/coher_e/coher_e.htm#mandate)

<sup>27</sup> Ibid.

<sup>28</sup> Special Policies, WTO, 2019. Retrieved from. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org5_e.htm)

<sup>29</sup> The WTO and other organizations, WTO, 2019. Retrieved from. [https://www.wto.org/english/thewto\\_e/coher\\_e/coher\\_e.htm#mandate](https://www.wto.org/english/thewto_e/coher_e/coher_e.htm#mandate)

<sup>30</sup> Special Policies, WTO, 2019. Retrieved from. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org5_e.htm)

<sup>31</sup> Marrakesh Declaration of 15 April 1994, WTO, 2019. Retrieved from. [https://www.wto.org/english/docs\\_e/legal\\_e/marrakesh\\_decl\\_e.htm](https://www.wto.org/english/docs_e/legal_e/marrakesh_decl_e.htm)

institutions were envisioned to act as the pillars of global trade and finance. However, ITO never came into force due to the failure of the US Senate in ratifying the Havana Charter.<sup>32</sup>

At that time, negotiations were being conducted on a multilateral scale for reciprocal reductions in tariff barriers which resulted in the signing of the General Agreement on Tariffs and Trade (GATT) on November 30, 1947.<sup>33</sup> Since 1948, the GATT provided the rules for the global trading system and used to mainly dealt with trade in goods.<sup>34</sup> It had led around eight rounds of multilateral trade negotiations.<sup>35</sup>

However since the 1980s as issues in global trade and business became increasingly complicated and inter-connected, there arose a need for an institution to address many of the new global trading challenges that were arising.<sup>36</sup> It gave birth to the Uruguay Round, conducted from 1987 to 1994, culminating in the Marrakesh

Agreement, which established the World Trade Organization (WTO).<sup>37</sup> A remarkable feature of the Uruguay Round was that it paved the way for the further liberalisation of international trade with a shift taking place from the negotiations approach to a more institutional format.<sup>38</sup> The WTO as an organization sought to incorporate the principles of the GATT and provides a durable institutional framework for implementing and extending these principles.<sup>39</sup> As time went by, the WTO and its agreements now started to cover areas such as trade in services, traded inventions, creations, intellectual property etc.<sup>40</sup>

## Structure and Functions of the WTO

The organisational structure of the WTO is outlined in the Chart below.<sup>41</sup>

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<sup>32</sup>From the GATT to the WTO: A Brief Overview, International Trade Law Research Guide, 2018. Retrieved from.

<https://guides.ll.georgetown.edu/c.php?g=363556&p=4108235>

<sup>33</sup> Ibid.

<sup>34</sup> About the WTO: A brief history, World Trade Organization 2014 Report, P 16, 2014. Retrieved from.

[https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/anrep14\\_chap3\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep14_chap3_e.pdf)

<sup>35</sup> From the GATT to the WTO: A Brief Overview, International Trade Law Research Guide, 2018. Retrieved from.

<https://guides.ll.georgetown.edu/c.php?g=363556&p=4108235>

<sup>36</sup> The World Trade Organization: Definition, History, Purpose & Members, Study.Com, Retrieved from.

<https://study.com/academy/lesson/the-world-trade-organization-definition-history-purpose-members.html>

<sup>37</sup> From the GATT to the WTO: A Brief Overview, International Trade Law Research Guide, 2018. Retrieved from.

<https://guides.ll.georgetown.edu/c.php?g=363556&p=4108235>

<sup>38</sup> Chand, Smriti, WTO: The World Trade Organisation: Features, Structures, Objective and Function of the WTO, Your Article Library. Retrieved from.

<http://www.yourarticlelibrary.com/trade-2/wto-the-world-trade-organisation-features-structures-objective-and-function-of-the-wto/26274>

<sup>39</sup> From the GATT to the WTO: A Brief Overview, International Trade Law Research Guide, 2018. Retrieved from.

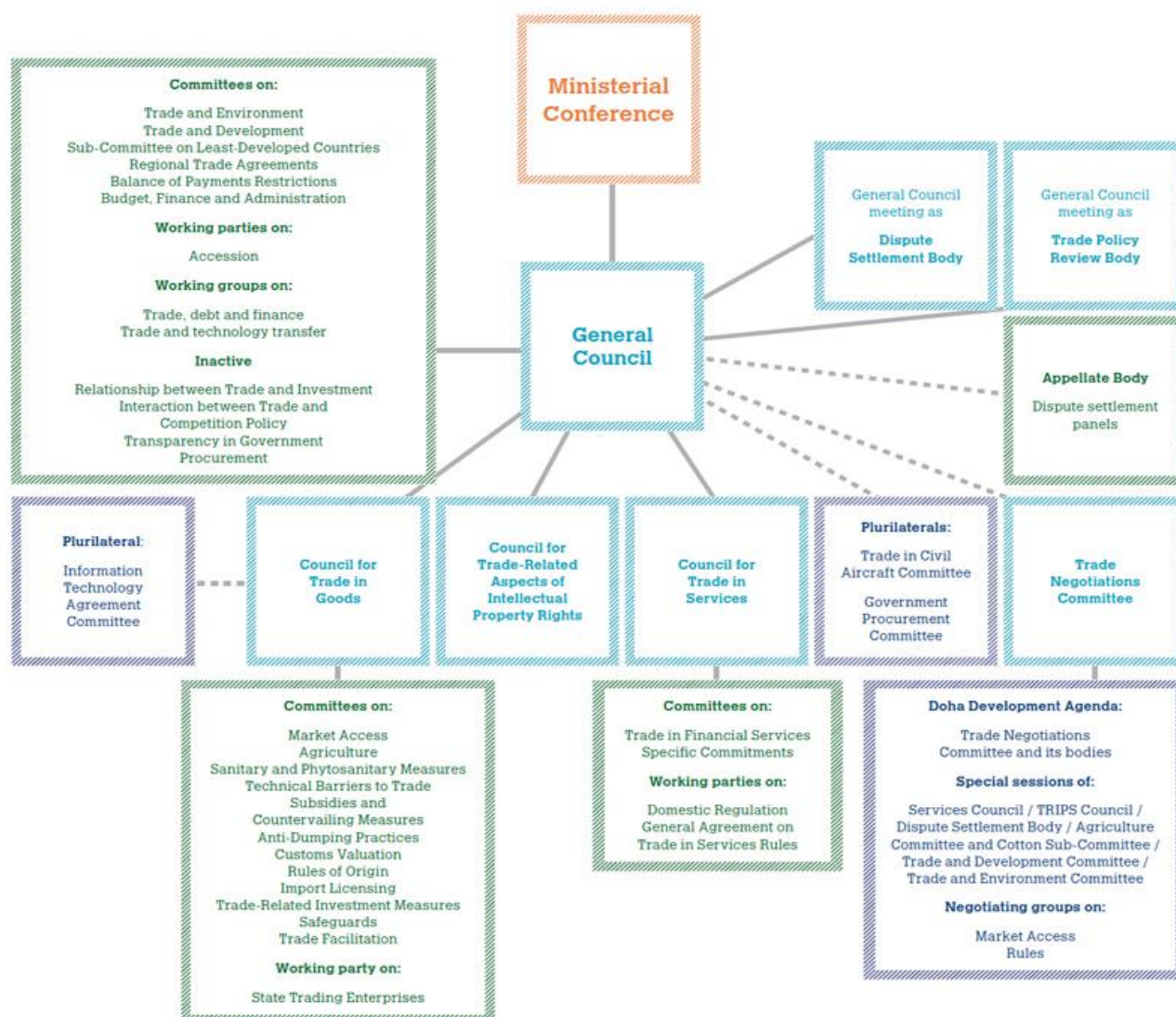
<https://guides.ll.georgetown.edu/c.php?g=363556&p=4108235>

<sup>40</sup> About the WTO: A brief history, World Trade Organization 2014 Report, P 16. Retrieved from.

[https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/anrep14\\_chap3\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep14_chap3_e.pdf)

<sup>41</sup> Chand, Smriti, WTO: The World Trade Organisation: Features, Structures, Objective and Function of the WTO, Your Article Library. Retrieved from.

<http://www.yourarticlelibrary.com/trade-2/wto-the-world-trade-organisation-features-structures-objective-and-function-of-the-wto/26274>



Source: WTO Organization Chart. Retrieved from. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org2_e.htm)

The Ministerial Conference (MC) is at the top of the structural organisation of the WTO and is the supreme governing body which takes all the ultimate decisions. It constitutes of representatives (usually Ministers of Trade) from all the Member Countries.<sup>42</sup>

The General Council (GC) is composed of the representatives of all the members and acts on behalf of the MC.<sup>43</sup> The GC oversees the WTO

agreements and ministerial decisions on a regular basis and it sits in its headquarters Geneva, Switzerland usually once a month.<sup>44</sup> It also meets under different rules as the Dispute Settlement Body as well as the Trade Policy Review Body.<sup>45</sup> Besides the General Council, there is also the Council for Trade in Services, the Council for Trade in Goods and the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Pal, Deepali, The World Trade Organisation (WTO): Structure, Functions and Agreements. Retrieved from. <http://www.economicdiscussion.net/world-trade->

[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org2_e.htm)

<sup>45</sup> The WTO General Council. WTO. Retrieved from. [https://www.wto.org/english/thewto\\_e/gcounc\\_e/gcounc\\_e.htm](https://www.wto.org/english/thewto_e/gcounc_e/gcounc_e.htm)

who and their subsidiary bodies carry out their specific responsibilities.<sup>46</sup>

Further, there are three committees, namely, the Committee on Trade and Development (CTD), the Committee on Balance of Payments Restrictions (CBOPR), and the Committee on Budget, Finance and Administration (CF&A).<sup>47</sup> The CTD is concerned with issues relating to the developing countries and, especially to the "least-developed" among them.<sup>48</sup> The CBOPR is responsible for consultations between WTO members and countries which take trade-restrictive measures, under Articles XII and XVIII of GATT, in order to cope with balance-of-payments difficulties. Finally, issues relating to WTO's financing and budget are dealt with by the CF&A.<sup>49</sup>

The administration of the WTO is conducted by the Secretariat which is headed by the Director General (DG) appointed by the MC for the tenure of four years who is assisted by four Deputy Directors from different member countries.<sup>50</sup>

Article III of the Marrakesh Agreement establishing the WTO states the functions of the WTO, as follows:<sup>51</sup>

- The WTO shall facilitate the implementation, administration and operation, and further the objectives, of its Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and

operation of the Plurilateral Trade Agreements.

- The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations.
- The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (referred to as the "Dispute Settlement Understanding" (DSU)) in Annex 2 of the Marrakesh Agreement.
- The WTO shall administer the Trade Policy Review Mechanism (TPRM) provided for in Annex 3 of the Marrakesh Agreement.
- With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the IMF and with the International Bank for Reconstruction and Development and its affiliated agencies.
- It shall provide technical assistance and training for members of the developing countries.<sup>52</sup>

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<sup>46</sup> Ibid.

<sup>47</sup> Chand, Smriti, WTO: The World Trade Organisation: Features, Structures, Objective and Function of the WTO, Your Article Library. Retrieved from. <http://www.yourarticlelibrary.com/trade-2/wto-the-world-trade-organisation-features-structures-objective-and-function-of-the-wto/26274>

<sup>48</sup> The Structure of WTO. Retrieved from. <http://www2.econ.iastate.edu/classes/econ355/choi/wtworks.htm>

<sup>49</sup> Ibid.

<sup>50</sup> Chand, Smriti, WTO: The World Trade Organisation: Features, Structures, Objective and Function of the WTO, Your

Article Library. Retrieved from.

<http://www.yourarticlelibrary.com/trade-2/wto-the-world-trade-organisation-features-structures-objective-and-function-of-the-wto/26274>

<sup>51</sup> Marrakesh Agreement Establishing the World Trade Organization, WTO, 2019. Retrieved from. [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm#articleIII](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm#articleIII)

<sup>52</sup> Pal, Deepali, The World Trade Organisation (WTO): Structure, Functions and Agreements. Retrieved from. <http://www.economicdiscussion.net/world-trade-organisation/the-world-trade-organisation-wto-structure-functions-and-agreements/14215>

**SECTION 2**

# Issues dealt by both organizations

## 2.1 Trade

### How trade is discussed/negotiated in UNFCCC?

The United Nations Framework Convention on Climate Change, giving birth to the UNFCCC itself in 1992, mentioned trade in its article 3 “Principles”: “The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade”.<sup>53</sup>

The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997 and entered into force on 16 February 2005. It recognized that developed countries are principally responsible for the current high levels of GHG emissions in the atmosphere as a result of more than 150 years of industrial activity, the Protocol places a heavier burden on developed nations under the principle of “common but differentiated responsibilities.”<sup>54</sup>

Trade per se is mentioned once in the Protocol, in its article 2.3: “The Parties included in Annex I (i.e. developed countries) shall strive to implement policies and measures [...] in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties [...]”.<sup>55</sup> UNFCCC members recognize that the fight against climate change should not negatively impact trade relations between countries, within countries. Trade is more considered by UNFCCC members as a tool to achieve their mitigation objectives.

In fact, the Kyoto Protocol established flexible market mechanisms, which are based on the trade of emissions permits, creating what is known as the carbon market. Developed countries’ Parties (Annex 1 countries) are required to meet their emission reduction targets largely through domestic action. But they can meet part of their targets through these market-based mechanisms that ideally encourage GHG abatement to start where it is most cost-effective, for example, in the developing world. This can lead to an increase of green investment in developing countries, switch towards greener technology, greener infrastructure and models, with positive impacts on sustainability development of the developing world.<sup>56</sup>

<sup>53</sup> UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, United Nations, 1992. Retrieved from. <https://unfccc.int/resource/docs/convkp/conveng.pdf>

<sup>54</sup> What is the Kyoto Protocol, UNFCCC, 2019. Retrieved from. <https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/what-is-the-kyoto-protocol>

<sup>55</sup> UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, United Nations, 1992. Retrieved from. <https://unfccc.int/resource/docs/convkp/kpeng.pdf>

<sup>56</sup> Climate Get the Big Picture, UNFCCC, Retrieved from. <https://unfccc.int/resource/bigpicture/>

The three market mechanisms are<sup>57</sup>:

- Clean development mechanism (CDM): It allows a country with an emission-reduction or emission-limitation commitment under the Kyoto Protocol to implement an emission-reduction project in developing countries. Such projects can earn saleable certified emission reduction (CER) credits, which can be counted towards meeting Kyoto targets.
- Joint implementation (JI): It allows a country with an emission reduction or limitation commitment under the Kyoto Protocol to earn emission reduction units (ERUs) from an emission-reduction or emission removal project in another country, which can be counted towards meeting its Kyoto target.
- Emissions trading (ET): It allows countries that have emission units to spare - emissions permitted them but not "used" - to sell this excess capacity to countries that are over their targets.

In 2010, the UNFCCC established a response measures forum to reflect on the implications of what are called “response measures” to climate change. In this forum, there have been attempts to generate a discussion about international trade. Although the work programme of the forum does not directly tackle the climate-trade overlap, technical work on assessing the impacts of response measures suggests that trade-related impacts will be considered. In particular, the UNFCCC guidance on the impact assessment of response measures on developing countries mentions trade impacts from tariffs and border

carbon adjustments (BCAs).<sup>58</sup> However, this has been difficult and contentious—not least due to the perception that the debate about response measures may be tied to “compensation obligations” towards countries whose exports would be negatively affected by climate measures, as well as the view that trade discussions belong purely to the WTO. With a shift of tone and focus in the response measures forum since the adoption of the Paris Agreement, focusing now more on the “sustainable transition,” international trade may feature again in that context.<sup>59</sup>

In fact in 2016, UNFCCC members went beyond the Kyoto Protocol and adopted the Paris Climate Agreement. For the first time, it brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects. In fact, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change. To reach the ambitious goal of keeping a global temperature rise well below 2 degrees Celsius, appropriate financial flows, a new technology framework and an enhanced capacity building framework will have to be put in place, thus supporting action by developing countries and the most vulnerable countries, in line with their own national objectives.<sup>60</sup>

Compared to the Kyoto Protocol, there is however no strict mention of trade in the Paris Agreement. However, trade (through voluntary market mechanisms, technology transfer mechanisms...) is considered as one of the means to achieve not only mitigation, but also adaptation objectives of signatories of the agreement.

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<sup>57</sup> Mechanisms Under the Kyoto Protocol, UNFCCC, 2019. Retrieved from. <https://unfccc.int/process/the-kyoto-protocol/mechanisms>

<sup>58</sup> The trade system and climate action: ways forward under the Paris Agreement, Climate Strategies, 2016 Working Paper, 2016. Retrieved from. <https://climatestrategies.org/wp-content/uploads/2016/10/Trade-and-climate-ways-forward-1.pdf>

<sup>59</sup> Brandi, Clara, Trade Elements in Countries' Climate Contributions under the Paris Agreement, ICTSD, 2017. Retrieved from.

[https://www.ictsd.org/sites/default/files/research/trade\\_elements\\_in\\_countries\\_climate\\_contributions.pdf](https://www.ictsd.org/sites/default/files/research/trade_elements_in_countries_climate_contributions.pdf)

<sup>60</sup> The Paris Agreement, UNFCCC, 2019. Retrieved from. <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>



- Article 6: 2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, [...].
- Article 10: 1. Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions; 5. Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development. Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties.<sup>61</sup>

Concerning market mechanisms and technology transfer mechanism, the detailed rulebook is still under negotiation with an initial deadline of 2018. Common principles include environmental integrity, transparency, and prevention of double counting. The latter is important as, in contrast with the Kyoto regime, all countries contribute to mitigation under the Paris Agreement.<sup>62</sup> However, at the last COP in Poland in December 2018, discussions struggled to move forward on

the rulebook, especially concerning Article 6 details. In fact, towards the end of week one, co-facilitator of the talks Kelley Kizzier told a side event: “I think we are starting to see some landing zones [for agreement], but it’s still cooking.” In the end, it was not to be and the whole section was deferred to COP25. The most contentious point was on basic accounting rules to prevent “double counting” of emissions reductions by the buyer and seller of offsets. The draft text set out how each party should make a “corresponding adjustment” to their emissions inventories to reflect the trade.<sup>63</sup>

A critical aspect in achieving the Paris Agreement objectives is the Nationally Determined Contributions (NDCs). There are plans of action to be developed and communicated by each country presenting how they will reduce national emissions and adapt to the impacts of climate change. Those plans should be reviewed every five years. Trade-related elements feature prominently in the current NDCs, including those of developing countries and least developed countries (LDCs), there are still some room for improvement, on how trade can support climate adaptation and mitigation. According to a study dated March 2017<sup>64</sup>, while around 45 percent of all climate contributions include a direct reference to trade or trade measures, only around 22 percent include trade measures that are specifically geared towards fostering mitigation. While around 6 percent of all climate contributions mention a reduction of trade barriers, around 11 percent entail a reference to the regulation of trade on climate grounds. Around 3 percent respectively refer to timber trade and to response measures, 6 percent indicate

<sup>61</sup> Ibid

<sup>62</sup> MARKET MECHANISMS AND THE PARIS AGREEMENT, Harvard Project on Climate Agreements, 2017. Retrieved from. [https://www.perspectives.cc/fileadmin/Publications/Market\\_mechanisms\\_and\\_the\\_paris\\_agreement\\_Michaelowa\\_Axel\\_2017.pdf](https://www.perspectives.cc/fileadmin/Publications/Market_mechanisms_and_the_paris_agreement_Michaelowa_Axel_2017.pdf)

<sup>63</sup> COP24: Key outcomes agreed at the UN climate talks in Katowice, Carbon Brief, 2018. Retrieved from.

<https://www.carbonbrief.org/cop24-key-outcomes-agreed-at-the-un-climate-talks-in-katowice>

<sup>64</sup> Brandi, Clara, Trade Elements in Countries' Climate Contributions under the Paris Agreement, ICTSD, 2017. [https://www.ictsd.org/sites/default/files/research/trade\\_elements\\_in\\_countries\\_climate\\_contributions.pdf](https://www.ictsd.org/sites/default/files/research/trade_elements_in_countries_climate_contributions.pdf)

plans to reform fossil fuel subsidies, and 9 percent mention standards or labels. The most common trade-related elements are international market mechanisms, technology transfer and renewable energy. More specifically, 56 percent indicate an interest in using international market mechanisms, 63 percent indicate that their contribution is conditional on technology transfer, and almost all contributions mention renewable energy as a mitigation sector, with more than 50 percent referring to it as a priority sector.

## Potential synergies or inconsistencies with WTO discussions/negotiations

Keeping in mind the country members of WTO and UNFCCC are nearly the same, there are several domains where the climate actions decided in Bonn might be supported, or in the contrary be hindered, by what their WTO counterparts are discussing/negotiating in Geneva, as presented below.

### Market mechanisms & Emissions trading

Market mechanisms covered by Article 6 of the Paris Agreement and the trading of international emission reduction units could not be contested from a trade policy point of view. However, there is a demand for a clearer definition of related goods and services under the WTO arrangements.<sup>65</sup>

In the literature, there are different views on whether emissions units would constitute goods under the General Agreement on Tariffs and Trade (GATT), or services under the General Agreement on Trade in Services (GATS), with a majority of commentators concluding that they are neither.

Greater agreement exists that services provided in the context of markets for different tradable climate-related units, for instance greenhouse gas emission allowances, offset credits, or renewable energy and energy efficiency certificates in energy markets, fall under the GATS. Their markets have seen robust growth, including the number of intermediaries (banks, brokers, exchanges, insurances, project developers, data providers, and verifiers). There has been some disagreement among scholars as to whether these services are covered by the GATS, and more specifically its Annex on Financial Services. Driven by the private sector, some primary markets for units have also given rise to secondary markets for derivative products, which expressly fall within the scope of the Annex on Financial Services. While some variability again exists between individual Schedules of Commitments, a majority of members will have committed to exercise non-discrimination subject to MFN, market access, and national treatment principles. New issues could arise if emissions trading or carbon pricing coalitions would emerge with rules that discriminate among WTO members, for instance by excluding trade with non-parties or excluding trade with parties based on the strength of respective emissions trading schemes (i.e. their environmental integrity). This has already been the case with the restricted fungibility of certain Kyoto Protocol units in the EU ETS based on their geographic origin (EU, 2009, Article 11a.4).<sup>66</sup>

Cost increases relating to an emissions trading system (ETS) 'indirectly' raise issues under WTO law if a higher costs burden is placed on foreign producers, as preventing discrimination is a major objective of the WTO legal system. By contrast, a 'direct impact' of an ETS on trade in such situations is less obvious because trading in emission allowances does not constitute trade in its traditional sense. Traded are not conventional

<sup>65</sup> The trade system and climate action: ways forward under the Paris Agreement, Climate Strategies, 2016 Working Paper,

2016. Retrieved from. <https://climatestrategies.org/wp-content/uploads/2016/10/Trade-and-climate-ways-forward-1.pdf>  
<sup>66</sup> Ibid.

goods and services, but emissions allowances, which essentially represent rights to certain amounts of emissions. While the legal status of emissions allowances under WTO law is disputable and will remain so until it is clarified in a WTO dispute, one element appears certain: irrespective of whether emissions allowances fall within the scope of the WTO Agreement or not, restrictions on the eligibility of emissions allowances for compliance with an ETS requirement and also other design features of emissions trading have the potential to affect international trade indirectly, through an impact on trade in goods and services, and as such get in conflict with the rules of the GATT and/or the GATS.<sup>67</sup>

## Implementation of NDCs

The bottom-up approach to climate governance, leading to a range of different climate policies and numerous levels of national ambition enshrined in the NDCs, will have manifold trade-related implications. It will affect international trade flows, produce positive and negative spill over effects on other countries through trade, and can be expected to generate more trade conflicts, probing the boundaries of trade rules.<sup>68</sup>

On one hand, the NDCs show that many countries are interested in using domestic carbon pricing and emissions trading for complying with their mitigation targets. Concerns about competitiveness impacts could reanimate the discussion about carbon leakage and adjustment of carbon prices at the border through trade measures.<sup>69</sup> On another hand, the implementation of NDCs under the Paris

Agreement also includes more support for renewable energy in many countries. The number of specific regulations, such as local content clauses and subsidies that are in conflict with WTO rules could rise.<sup>70</sup>

There is a clear trend of countries increasing the use of trade defence measures against renewable energy products. This trend actually accelerated in 2012–2013 among key producers of renewable energy. More than 41 cases on antidumping and countervailing duties have been initiated since 2008 against biofuel, solar energy and wind products. Clear guidance, including through WTO understandings and rules, could help define the scope of national policy flexibility for green economy and climate change policies. Consensus is needed in this area, not only to avoid disputes in the WTO but, more importantly, for Governments to carry out the design and implementation of effective policies for sustainable development and climate protection without the fear of costly reprisals from trading partners.<sup>71</sup>

## Technology transfer mechanisms

A huge shift to climate-friendly technologies is essential to reach the objectives of the Paris Agreement. However, a number of trade barriers undermine their diffusion and deployment. The liberalisation of international trade can thus significantly stimulate the development of this market and increase the spread and affordability of, for instance, clean energy or energy efficiency technologies. In particular, the reduction of trade barriers for environmental goods and services can contribute to climate change goals by facilitating the switch to renewable energy, as well as in

<sup>67</sup> Holzer, Kateryna, WTO law issues of emissions trading, 2016 Working Paper, World Trade Institute, 2016. Retrieved from. [https://www.wti.org/media/filer\\_public/6e/88/6e884b29-f5e2-4a25-85a6-a6edb5c25ed9/working\\_paper\\_short\\_version.pdf](https://www.wti.org/media/filer_public/6e/88/6e884b29-f5e2-4a25-85a6-a6edb5c25ed9/working_paper_short_version.pdf)

<sup>68</sup> Brandi, Clara, Trade Elements in Countries' Climate Contributions under the Paris Agreement, ICTSD, 2017. [https://www.ictsd.org/sites/default/files/research/trade\\_elements\\_in\\_countries\\_climate\\_contributions.pdf](https://www.ictsd.org/sites/default/files/research/trade_elements_in_countries_climate_contributions.pdf)

<sup>69</sup> The trade system and climate action: ways forward under the Paris Agreement, Climate Strategies, 2016 Working Paper, 2016. Retrieved from. <https://climatestrategies.org/wp-content/uploads/2016/10/Trade-and-climate-ways-forward-1.pdf>

<sup>70</sup> Ibid.

<sup>71</sup> TRADE AND CLIMATE CHANGE POLICY BEYOND 2015, UNCTAD, 2015. Retrieved from. [https://unctad.org/en/PublicationsLibrary/presspb2015d8\\_en.pdf](https://unctad.org/en/PublicationsLibrary/presspb2015d8_en.pdf)

improving energy efficiency and thus reducing fossil fuel usage. Moreover, climate-related provisions in trade agreements can act as stimulating framework conditions for decarbonising economic activities. Trade can also help compensate for or adjust to altered productive capacities caused by climate change, for example to ensure access to food or to support economic diversification.<sup>72</sup>

However, technology transfer and the protection of intellectual property rights will most probably remain a potential source of conflict in the future. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) does not provide enough common ground among the WTO members from industrial countries and from developing countries.<sup>73</sup>

The TRIPS Agreement plays an important role when countries discuss the future handling of IPRs for traded climate-friendly technologies. It offers flexibility on how countries and firms want to protect their IPRs, and demands special treatment for LDCs. With a view to economic development, concerns about strengthening IPRs under the TRIPS Agreement need to be addressed, paying attention to the international trends that emerged over the last 20 years. In 2010, the WTO provided an overview for policy makers, identifying the relevant standards of the TRIPS Agreement for climate negotiations. The most important IPR issue in the climate context are patents, but other IPR tools are relevant too (e.g. trademarks, plant variety rights, certification marks). The debate was taken up in the WTO CTE, too, when in 2011 China and India made a joint submission. They underscored that IPRs must not become a barrier for the transfer of

environmentally sound technologies. A similar claim was made in the TRIPS Council in a submission by Ecuador in 2013.<sup>74</sup>

## 2.2 Environment & Climate Change

### How environment/climate change is discussed/negotiated in the WTO?

Sustainable development and protection and preservation of the environment are fundamental goals of the WTO. They are enshrined in the Marrakesh Agreement of 1994, which established the WTO, and complement the WTO's objective to reduce trade barriers and eliminate discriminatory treatment in international trade relations. While there is no specific agreement dealing with the environment, under WTO rules members can adopt trade-related measures aimed at protecting the environment provided a number of conditions to avoid the misuse of such measures for protectionist ends are fulfilled.<sup>75</sup>

In Marrakesh, ministers also signed a specific "Decision on Trade and Environment" which states that:

*"There should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other."*<sup>76</sup>

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<sup>72</sup> Brandi, Clara, Trade Elements in Countries' Climate Contributions under the Paris Agreement, ICTSD, 2017. [https://www.ictsd.org/sites/default/files/research/trade\\_elements\\_in\\_countries\\_climate\\_contributions.pdf](https://www.ictsd.org/sites/default/files/research/trade_elements_in_countries_climate_contributions.pdf)

<sup>73</sup> The trade system and climate action: ways forward under the Paris Agreement, Climate Strategies, 2016 Working Paper, 2016. Retrieved from. <https://climatestrategies.org/wp-content/uploads/2016/10/Trade-and-climate-ways-forward-1.pdf>

<sup>74</sup> Ibid.

<sup>75</sup> Activities of the WTO and the challenge of climate change, WTO, 2019. Retrieved from.

[https://www.wto.org/english/tratop\\_e/envir\\_e/climate\\_challenge\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/climate_challenge_e.htm)

<sup>76</sup> Early years: emerging environment debate in GATT/WTO, WTO, 2019. Retrieved from.

The decision also called for the creation of the Committee on Trade and Environment (CTE). It is the standing forum dedicated to dialogue between governments on the impact of trade policies on the environment, and of environment policies on trade. The CTE is open to the entire WTO membership, with some international organizations as observers. The committee's mandate is broad<sup>77</sup>:

- identify the relationship between trade measures and environmental measures in order to promote sustainable development
- make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.

Created in 1995, the Committee has followed a comprehensive work programme. Under the Doha Development Agenda, the regular committee is also looking at the effects of environmental measures on market access, the intellectual property agreement and biodiversity, and labelling for environmental purposes.<sup>78</sup>

Separately, eighteen participants representing 46 WTO members are negotiating an Environmental Goods Agreement (EGA). They are seeking to eliminate tariffs on a number of important environment-related products. These include products that can help achieve environmental and climate protection goals, such as generating clean and renewable energy, improving energy and resource efficiency, controlling air pollution, managing waste, treating waste water, monitoring the quality of the environment, and combatting

noise pollution. The participants to these negotiations account for the majority of global trade in environmental goods. The benefits of this new agreement will be extended to the entire WTO membership, meaning all WTO members will enjoy improved conditions in the markets of the participants to the EGA.<sup>79</sup>

A successful outcome of the negotiations on environmental goods and services could deliver a triple-win for WTO members: a win for the environment, a win for trade and a win for development. In the negotiations on environmental services, WTO members are seeking GATS specific commitments on activities which may be directly relevant to policies aimed at mitigating climate change. During the Uruguay Round, negotiations focused on sewage services, refuse disposal services and sanitation services, which are listed in the environmental services sector of the Services Sectoral Classification List (MTN.GNG/W/120). Other environmental services, which are commonly understood to be covered by the category "Other" in this list, attracted limited attention at the time. In recent years, these "other" environmental services have expanded as a consequence of increasingly demanding environmental regulations and have gained in prominence both from an environmental and economic point of view. These services are now on the negotiating table and should offer good prospects for new GATS commitments.<sup>80</sup>

Global trade rules of the WTO could be used affirmatively to combat climate change is by imposing new and more specific trade disciplines on fossil fuel subsidies. Toward this end, in

[https://www.wto.org/english/tratop\\_e/envir\\_e/hist1\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/hist1_e.htm)  
<sup>77</sup> Items on the CTE's Work Programme, WTO. Retrieved from. [https://www.wto.org/english/tratop\\_e/envir\\_e/cte00\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/cte00_e.htm)  
<sup>78</sup> The Committee on Trade and Environment, WTO, 2019. Retrieved from.

[https://www.wto.org/english/tratop\\_e/envir\\_e/wrk\\_committee\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e.htm)

<sup>79</sup> Environmental Goods Agreement (EGA), WTO, 2019. Retrieved from. [https://www.wto.org/english/tratop\\_e/envir\\_e/ega\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/ega_e.htm)  
<sup>80</sup> Activities of the WTO and the challenge of climate change, WTO, 2019. Retrieved from. [https://www.wto.org/english/tratop\\_e/envir\\_e/climate\\_challenge\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/climate_challenge_e.htm)

December 2017, at the last WTO ministerial conference in Buenos Aires, 12 of the 164 members of the WTO<sup>81</sup> issued a declaration voicing the need for fossil fuel subsidy reforms in the existing WTO rules. These dozen WTO members have embarked now on a diplomatic campaign to enlist more countries in calling on the WTO to “achieve ambitious and effective disciplines on inefficient fossil fuel subsidies that encourage wasteful consumption including through enhanced WTO transparency and reporting that will enable the evaluation of the trade and resource effects of fossil fuel subsidies programmes.”<sup>82</sup>

This Ministerial Declaration is encouraging reform and phasing out of fossil fuel subsidies. Reducing subsidies to fossil fuels would have a significant environmental impact, and would contribute to limiting the estimated temperature increases. The WTO has an important role to play in this regard, including through enhanced transparency and reporting. The Ministerial Declaration reads as follows:

1. Recognizing that fossil fuel subsidies encourage wasteful consumption, disadvantage renewable energy, and depress investment in energy efficiency, and that effectively addressing fossil fuel subsidies will deliver trade, economic, social and environmental benefits;
2. Recalling our Leaders' commitment to fossil fuel subsidy reform under the Sustainable Development Goal 12 (c) of the 2030 Agenda, and recognising that a

growing number of WTO Members have made further pledges under the auspices of the G20, G7, APEC and V20, and in the context of the Paris Agreement on Climate Change and the Addis Ababa Action Agenda on Financing for Development; [...]<sup>83</sup>

The WTO has a system of disciplines for agricultural subsidies, upon which a regime for reduction of fossil fuel subsidies could easily be modelled. In addition, the WTO is hosting negotiations on the reduction of harmful fisheries subsidies, which also provide a model for negotiation and eventual agreement on a mechanism to reduce fossil fuel subsidies. Moreover, it already has a set of rules for disciplining subsidies generally, including the WTO Agreement on Subsidies and Countervailing Measures. However, this agreement was designed to address subsidies based on their trade-distorting effects, and is not well suited to fossil fuel subsidies, which may be environmentally disastrous even when they do not cause injury to another member's domestic industry – a required condition for subsidies to be deemed actionable and thus subject to challenge.<sup>84</sup>

To conclude, the issue of *climate change*, per se, is not part of the WTO's ongoing work programme and there are no WTO rules specific to climate change. However, the WTO is relevant because climate change measures and policies intersect with international trade in a number of different ways<sup>85</sup>:

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<sup>81</sup> The members that signed the statement include Chile, Costa Rica, Iceland, Liechtenstein, Mexico, Moldova, New Zealand, Norway, Samoa, Switzerland, Chinese Taipei and Uruguay.

<sup>82</sup> Sanchez, Lourdes, Tackling Fossil Fuel Subsidies at the WTO MC11 in Buenos Aires, FFSR, 2017. Retrieved from: <http://ffsr.org/2017/12/tackling-fossil-fuel-subsidies-at-the-wto-mc11-in-buenos-aires/>

<sup>83</sup> MC11 Ministerial Declaration on Fossil Fuel Subsidy Reform, Norway in Geneva: Permanent Mission. Retrieved from.

<https://www.norway.no/en/missions/wto-un/our-priorities/trade/wto-world-trade-organization/mc11-ministerial-declaration-on-fossil-fuel-subsidy-reform/>

<sup>84</sup> Trachtman, P. Joel, A role for the WTO in reducing fossil fuel subsidies. ICTSD, 2017. Retrieved from: <https://www.ictsd.org/opinion/a-role-for-the-wto-in-reducing-fossil-fuel-subsidies>

<sup>85</sup> The multilateral trading system and climate change: introduction, WTO, 2019. Retrieved from.

1. Trade openness can help efforts to mitigate and adapt to climate change, for example by promoting an efficient allocation of the world's resources (including natural resources), raising standards of living (and hence the demand for better environmental quality) and improving access to environmental goods and services.
2. The WTO is relevant because national measures to mitigate and adapt to climate change may have an impact on international trade (as they may modify conditions of competition) and may be subject to WTO rules. The WTO “tool box” of rules can be relevant, therefore, to the examination of climate change measures. Moreover, WTO rules, as a whole, offer a framework for ensuring predictability, transparency and the fair implementation of such measures.
  - A. Potential synergies or inconsistencies with the UNFCCC discussions/negotiations?

While cooperation is already taking place between the WTO and the UNFCCC, as UNFCCC representatives participate in meetings of the regular WTO CTE and is an ad hoc observer to the CTE in Special Session, while the WTO secretariat attends UNFCCC Conference of Parties meetings; there are areas in which both organizations might adopt supportive positions, or in the contrary hindering each other's objectives, as showcased below.

## A need for paradigm shift

The climate change treaties and the WTO regime have the same goal, namely, promoting human welfare. The UNFCCC and the Paris Agreement are not just focused on the environment. If fully implemented, these instruments will shift the paradigm of economic activity, moving the global market from a fossil-based economy to a low-carbon economy, in part by using the market-based mechanisms. This leads to fundamental changes in the bases of production and consumption, transport, investment, and sources of energy. In that scenario, the idea that WTO operates in a vacuum is not viable. Making progress in addressing climate change calls for changes in the relationship between the WTO and the climate change regime. Any trade measures inserted into the climate treaties should be carefully written in order to avoid conflicts with the WTO rules and the WTO rules need to become more sensitive to the new scenario of trade-related measures used to address climate change.<sup>86</sup>

Despite certain common features and shared views on the importance of sustainable development, a fundamental difference exists between the UNFCCC and the WTO regimes. Climate change could be considered as an extreme case of market failure—namely the failure to incorporate the damage done by GHG emissions into the prices of goods and services—and that a classic role for governments is to correct market failures. However, governments normally want great flexibility in the choice of national instruments to correct market failures, because they need to balance the economic characteristics of alternative measures against their political acceptability. By contrast, the trade rules embodied in the GATT and the WTO presuppose a world of market economies and attempt to discipline government failures that lead

[https://www.wto.org/english/tratop\\_e/envir\\_e/climate\\_intro\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/climate_intro_e.htm)

<sup>86</sup> Halvorssen, M. Anita, UNFCCC, THE KYOTO PROTOCOL, AND THE WTO – BREWING CONFLICTS OR ARE THEY

MUTUALLY SUPPORTIVE? 2008. Retrieved from. <https://www.law.du.edu/documents/djilp/36No3-4/UNFCCC-Kyoto-Protocol-WTO-Brewing-Conflicts-They-Mutually-Supportive-Anita-M-Halvorssen.pdf>

to economic distortions with the flavour of mercantilism and protectionism. This fundamental difference entails potential conflicts between the two regimes.<sup>87</sup>

## Consideration of climate change in WTO's regular work

The regular work of the WTO could potentially support UNFCCC members in reaching their climate change/environmental objectives, as detailed below.

### The Committee on Technical Barriers to Trade (TBT)

The TBT Committee provides an important forum to discuss technical regulations adopted by governments to mitigate climate change. Technical specifications and labelling requirements related to climate change are not new to the WTO. The TBT Agreement requires members to share information on technical regulations that may have an impact on trade. In recent years, a number of product standards and labelling requirements targeted at energy efficiency or emissions control were notified. The climate change-related technical regulations discussed in the TBT Committee so far appear to principally concern product requirements. Examples of regulations discussed so far include: fuel economy standards for cars; eco-design requirements for energy-using products; energy efficiency programmes for consumer products and emission limit values for diesel engines. The Committee looks at climate change measures to ensure they do not pose unnecessary obstacles to international trade, while still achieving the

legitimate objective of protecting the environment, and encourages harmonization.<sup>88</sup>

The prior record of panel and Appellate Body decisions on these and other climate-related questions is still sparse. If the rule book is filled out through case by-case litigation, it could be years before an overall framework is established. Moreover, case outcomes may depend heavily on how disputed measures are designed and implemented, making for a pretty complicated rule book.<sup>89</sup>

### 2. The Committee on Trade and Environment (CTE)

The work programme of the CTE covers the main issues at the intersection of trade and environment. A number of issues indirectly relating to climate change, such as the environmental benefits of removing trade restrictions in the energy and forestry sectors and the effect of energy efficiency labelling on market access, have been discussed in the CTE. The Committee serves as an incubator for ideas to advance the trade and environment agenda and is the main gateway should members decide to explore further the linkages between climate change and trade.<sup>90</sup>

In this context, WTO members could take this opportunity to discuss ways to ensure a harmonious coexistence between WTO rules and specific trade obligations in the UNFCCC and other related agreements that have been negotiated multilaterally to protect the environment. The importance of the CTE cannot be overemphasized, given the present consensus

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<sup>87</sup> Hufbauer, Clyde Gary and Kim, Jisun, *The World Trade Organization and Climate Change: Challenges and Options*, PIIIE, 2009. Retrieved from: <https://piie.com/sites/default/files/publications/wp/wp09-9.pdf>

<sup>88</sup> The multilateral trading system and climate change. Retrieved from: [https://www.wto.org/english/tratop\\_e/envir\\_e/climate\\_change\\_e.pdf](https://www.wto.org/english/tratop_e/envir_e/climate_change_e.pdf)

<sup>89</sup> Hufbauer, Clyde Gary and Kim, Jisun, *The World Trade Organization and Climate Change: Challenges and Options*, PIIIE, 2009. Retrieved from:

<https://piie.com/sites/default/files/publications/wp/wp09-9.pdf>

<sup>90</sup> Trade and Climate Change, WTO-UNEP Report, 2009. Retrieved from:

[https://www.wto.org/english/res\\_e/booksp\\_e/trade\\_climate\\_change\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/trade_climate_change_e.pdf)



in the international community on the value of multilateralism to combat climate change.

## Negotiations on fossil fuel subsidies

The removal of fossil fuel subsidies could bring about climate benefits, but still needs more support by the WTO (between others). This could bring about more transparency and coordination of national activities.<sup>91</sup> Whilst negotiations and work are ongoing at the WTO, as discussed in previous parts of this paper, fossil fuel subsidy reform was also high on the agenda at the UN Climate Change Conference of the Parties (COP 23). At several events, experts and political leaders sent a clear signal to move fast to reform fossil fuel subsidies, which stood at over USD 425 billion in 2015. It can particularly be highlighted that *the Friends of Fossil Fuel Subsidy Reform*, also active at the WTO, organized a ministerial-level side event that highlighted the opportunities that reforming subsidies and taxing fossil fuels offer for attaining the Sustainable Development Goals (SDGs) and implementing the Paris Agreement.<sup>92</sup>

## 2.3 Agriculture

Agriculture is one of the common issues of concern dealt in both the WTO and the UNFCCC. It might be critical for both organizations to advance their own agendas and missions, without contradicting each other, and even (potentially) supporting each other.

## Agriculture at the WTO

### The Agreement on Agriculture

In 1995, the year that the WTO was established, the first effective rules governing international trade in agriculture and food were introduced. Following the Uruguay Round negotiations, all agricultural products were brought under multilateral trade rules by the WTO's Agreement on Agriculture (AoA). The overall aim of the WTO AoA is to establish a fairer trading system that will increase market access and improve the livelihoods of farmers around the world.

The Agreement is made up of three 'pillars': market access, export competition and domestic support. Market access involves all tariffs to be bound to a certain limit. Export competition comprises value and volume of export subsidies and Domestic support involves the use of subsidies. All WTO members, except least developed countries (LDCs), were required to make commitments in all these areas in order to liberalise agricultural trade.

The Agriculture Committee oversees the implementation of the AoA, providing members with the opportunity to share information on the implementation of their commitments. Members can ask each other questions about the "notifications" shared by other members and may raise concerns about each other's agricultural policies.<sup>93</sup>

The agriculture-related negotiations and discussions take place in special sessions of the Agriculture Committee. The WTO AoA provides a framework for the long-term reform of agricultural trade and domestic policies, with the aim of

<sup>91</sup>The trade system and climate action: ways forward under the Paris Agreement, Climate Strategies, 2016 Working Paper, 2016. <https://climatestrategies.org/wp-content/uploads/2016/10/Trade-and-climate-ways-forward-1.pdf>

<sup>92</sup> Zinecker, Anna and Merrill, Laura, Part of the policy solution: fossil fuel subsidy reform and taxation at the UNFCCC, Global

Subsidies Initiative, 2017, Retrieved from. <https://www.iisd.org/gsi/subsidy-watch-blog/part-policy-solution-fossil-fuel-subsidy-reform-and-taxation-unfccc>

<sup>93</sup> The Agriculture Committee, WTO, 2019. Retrieved from. [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_work\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_work_e.htm)

leading to fairer competition and a less distorted sector. Article 20 of the WTO AoA recognizes that the long-term objective of substantial progressive reductions in support and protection in agriculture is an ongoing process.

The developed countries should have implemented the AoA by 2000 and those from developing regions by 2004. However, this has not been the case. To this end the AoA has come under heavy criticism when it comes to food security and poverty reduction in developing regions as the playing field has not been levelled, given the continued heavy subsidization of agricultural production in developed countries.<sup>94</sup>

## Snapshot of the latest negotiating moves in agriculture

In November 2001, the agriculture talks became part of the "single undertaking" in the Doha Round of trade negotiations.

In 2004, WTO members meeting as the General Council agreed on a set of decisions, sometimes called "the July 2004 package". The main section on agriculture contains a framework which outlines what could be a final deal. Members were able to narrow their differences at the Hong Kong Ministerial Conference in December 2005.

A draft agriculture text was circulated in 2006. This and later revisions contain proposed formulas for cutting tariffs and subsidies, along with various new provisions that would be included in the future agreement on agriculture.

Much of 2007 and 2008 saw intensive negotiations, and numerous working papers were developed. Drawing on over a year of negotiations, on 6 December 2008 the chair of

the agriculture negotiations issued a fourth revision of the draft (often called "Rev.4") to capture the progress and highlight the remaining gaps.

From 2011, the talks resumed on trying to narrow the differences in members' positions. WTO members adopted important decisions on agriculture at the 2015 WTO Ministerial Conference in Nairobi, Kenya. These include a commitment to abolish subsidies for farm exports as well as decisions on public stockholding for food security purposes, on a special safeguard mechanism for developing countries, and on trade rules for cotton.<sup>95</sup>

## Agriculture at the UNFCCC

Agriculture was not part of the issues originally negotiated under the UNFCCC Ad Hoc Working Group for the Kyoto Protocol (AWG-KP) or the Ad Hoc Working Group on Long-term Cooperative Action (AW-LCA). However, there have been discussions about its role in climate change mitigation and adaptation since 2005, with a view to exploring how agriculture may be integrated into the negotiations.

These discussions have occurred on the basis that the UNFCCC text (article 4) includes agriculture, calling for "cooperation in preparing for adaptation to the impacts of climate change in agriculture, as well for promotion and cooperation in the development and transfer of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in agriculture."<sup>96</sup>

It is important to highlight that most Parties to the UNFCCC include agriculture in their mitigation targets (80%) and adaptation strategies (64%).

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<sup>94</sup> Climate Change and Agriculture Negotiations, CUTS International Tanzania Training Manual, 2018. Retrieved from. [http://www.cuts-geneva.org/pdf/PACT2-NTW2-1808-Tanzania\\_Training%20Manual.pdf](http://www.cuts-geneva.org/pdf/PACT2-NTW2-1808-Tanzania_Training%20Manual.pdf)

<sup>95</sup> Agriculture, WTO, 2019. Retrieved from. [https://www.wto.org/english/tratop\\_e/agric\\_e/agric\\_eNEW.htm](https://www.wto.org/english/tratop_e/agric_e/agric_eNEW.htm)

<sup>96</sup> UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE. United Nations, 1992. Retrieved from. <https://unfccc.int/resource/docs/convkp/conveng.pdf>

Non-annex 1 Parties noted the need for international financial support to implement their INDCs and raise the ambition of their contributions. For countries to meet their targets, climate finance will need to address agriculture. However, agriculture was not expressed explicitly in the Paris Agreement, but is feature prominently in the NDCs submitted by most developing countries, as well as developed countries.

Although there has not been a formal negotiation track on agriculture in the UNFCCC, provision has been made to report progress through the National Communications done regularly after every 5 years under the UNFCCC. However, work has continued and various activities/workshops on agriculture have been organized at the time of climate negotiations under the UNFCCC since 2006 (COP12). This has ultimately led to a common decision by Parties on Agriculture - Koronivia Joint Work on Agriculture. The Koronivia Joint Work on Agriculture requested the UNFCCC's Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) to jointly deal with matters related to agriculture between 2018 and 2020. This implies that the advice and negotiations on agriculture will run for the next years until COP 26 with the objective to have a draft text on the Agreement on Agriculture. Such matters will be dealt with through workshops and expert meetings.<sup>97</sup>

The matters upon which the UNFCCC Parties and observers are to address under the Koronivia Joint Work include<sup>98</sup>:

- a. Modalities for implementation of the outcomes of the five in-session workshops

on issues related to agriculture and other future topics that may arise from this work;

- b. Methods and approaches for assessing adaptation, adaptation cobenefits and resilience;
- c. Improved soil carbon, soil health and soil fertility under grassland and cropland as well as integrated systems, including water management;
- d. Improved nutrient use and manure management towards sustainable and resilient agricultural systems;
- e. Improved livestock management systems; and
- f. Socioeconomic and food security dimensions of climate change in the agricultural sector.

## Potential synergies or inconsistency between WTO & UNFCCC

The agriculture related objectives of WTO and UNFCCC are not explicitly in conflict with each other. In fact, they both aim at ensuring efficiency in the use of resources, from the perspective of either maximizing the gains from the comparative advantage of nations through trade, or ensuring that economic development is environmentally sustainable. However, in an inter-connected world, there is an urgent need for negotiators across the negotiating fora to be aware of the work of each other and find synergetic outcomes when dealing with the same issue. Unfortunately, that is still not the case. Many times, the negotiators continue to work in silos. Agriculture, which is now on the

<sup>97</sup>Climate Change and Agriculture Negotiations, CUTS International Tanzania Training Manual, 2018. Retrieved from. [http://www.cuts-geneva.org/pdf/PACT2-NTW2-1808-Tanzania\\_Training%20Manual.pdf](http://www.cuts-geneva.org/pdf/PACT2-NTW2-1808-Tanzania_Training%20Manual.pdf)

<sup>98</sup> Koronivia joint work on agriculture. Retrieved from. [https://unfccc.int/files/meetings/bonn\\_nov\\_2017/application/pdf/cp23\\_auv\\_agri.pdf](https://unfccc.int/files/meetings/bonn_nov_2017/application/pdf/cp23_auv_agri.pdf)

table at both the WTO and the UNFCCC, is one such example. Indeed, UNFCCC has recently adopted the Koronivia Joint Work on Agriculture, and it is now time now for agriculture negotiators to interact across fora to learn from each other towards finding synergetic solutions. Though, it is correct to say that the Koronivia Joint Work does not explicitly mention “trade”, it would be considered in upcoming discussions on market access, technology development and transfer, co-benefits, etc.

Some benefits to climate change mitigation and adaptation, albeit indirectly, could result from the WTO negotiations on agriculture and market access for non-agricultural goods. First, the elimination of tariff and non-tariff barriers and a reduction in agricultural support in developed countries may lead to a more efficient allocation of global resources and production.

Second, trade negotiations will lead to increased trade opportunities for developing countries which could lead to important income gains for these countries. Increased incomes may enable poorer countries to reduce their vulnerability to the effects of climate change by investing in irrigation, for example. This could ensure that developing countries do not suffer disproportionately from the negative impacts of climate change.<sup>99</sup>

In an event organized by CUTS International, Geneva at the 2018 WTO Public Forum, David Reid of the New Zealand Permanent Mission to the WTO outlined the main reasons for impasse in the WTO agriculture negotiations as: inadequately defined direction; lack of conceptual clarity due to multiple boxes to deal with domestic subsidies; and a cognitive bias as negotiations are about reduction of “entitlements”. Agricultural

trade has the potential to contribute to both adaptation and mitigation to climate change. However, at the moment, the G-20 countries are spending more than 600 billion USD on trade distorting measures instead of investing in a more sustainable future and climate-smart agriculture.<sup>100</sup>

At the same event, Debora Cumes of Guatemala Permanent Mission to the WTO stated that the main objective of the WTO should be to achieve a fair reform of agricultural markets. However, the reality is different and there is no negotiation on that topic at the moment, though she strongly believes that WTO remains the only space to discuss agricultural policy reforms. She also shared the importance of national consultations on international negotiations on agriculture. Guatemala has a holistic national consultation process among relevant public and private entities that feeds into its position both in the WTO and UNFCCC.<sup>101</sup>

While the UNFCCC Paris Agreement states that measures to combat climate change should not disguise trade restrictions, Article XX of GATT on general exceptions clearly mentions that necessary measures can be taken to protect natural resources from exhaustion. The need is to have appropriate policies at national level as well as harmonious approach on agriculture at international level, including through policy dialogues. A lot remains to be done at national level (modernization of agriculture, capacity building, etc), and international level (agreements, financing, etc.); and Developing countries face formidable capacity challenges and need understanding/support in that regard from their counterparts.

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<sup>99</sup> Activities of the WTO and the challenge of climate change. WTO., 2019, Retrieved from. [https://www.wto.org/english/tratop\\_e/envir\\_e/climate\\_challenge\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/climate_challenge_e.htm)

<sup>100</sup> Agriculture in the WTO and UNFCCC: From Common Challenges to Synergetic Solutions? CUTS-Geneva, 2018. Retrieved from. <http://www.cuts-geneva.org/Event?id=181004>  
<sup>101</sup> Ibid.

## SECTION 3

# Lessons learnt and Way forward

UNFCCC and WTO have been facing some similar challenges in their operations, negotiations concerning differentiation between members due to their different level of development and capacities, involvement of public and private stakeholders in their negotiations and day-to-day processes, between other. The way each organization has (tried to) tackled those barriers can inspire others in being more inclusive and taking more coherent actions/decisions.

### 3.1 Differentiation

#### What are the challenges with regards to differentiation between member countries?

Common but Differentiated Responsibilities and Respective Capabilities (CBDR–RC) is a principle within the UNFCCC that acknowledges the different capabilities and differing responsibilities of individual countries in addressing climate change. The principle of CBDR–RC is enshrined in the 1992 UNFCCC treaty calls for the widest possible participation and cooperation by all Member countries “*in accordance with their CBDR-RC and their social and economic conditions.*”<sup>102</sup>

The Kyoto Protocol divides the participating countries into “Annex I” who are the developed countries and “non-Annex I,” who are the developing countries. Greater responsibility for mitigation of climate change consequences was given to the countries under Annex I than the non-Annex I countries. After that stage, some developing countries wanted to keep their “*status quo*” instead of ensuring a well-balanced distribution in responsibilities for emissions reduction. Point in case is the 2009 Copenhagen Climate Summit where many non-Annex countries resisted to take emission mitigation targets despite showing signs of having the capability to undertake emission reduction at a higher scale.<sup>103</sup> Tensions about the defined lines of the Annex I and non-Annex I countries have thus arisen. Need has been felt to revise the lines of allocation of responsibilities for emissions reduction between these two categories of countries to achieve sustainable success in the climate change negotiations and common climate objectives.<sup>104</sup>

A report by the Overseas Development Institute (ODI) states that one of the fundamental problems between the two categories of Members is that developed and developing countries tend to interpret the principles and responsibilities enshrined in the UNFCCC in very different ways.<sup>105</sup> Developed countries tend to favour cost-

<sup>102</sup> Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), Climate Nexus. Retrieved from. <https://climatenexus.org/climate-change-news/common-but-differentiated-responsibilities-and-respective-capabilities-cbdr-rc/>

<sup>103</sup> Ibid.

<sup>104</sup> Ari, Izzet and Sari, Ramazan, Developing CBDR-RC indices for fair allocation of emission reduction responsibilities and capabilities across countries, Cogent, P 3. Retrieved from.

<https://www.cogentoa.com/article/10.1080/23311843.2017.1420365.pdf>

<sup>105</sup> Richards, Michael, A Review of the Effectiveness of Developing Country Participation in the Climate Change Convention Negotiations, Overseas Development Institute (ODI), 2001. Retrieved from. <https://www.odi.org/publications/3618-review-effectiveness-developing-country-participation-climate-change-convention-negotiations>

effectiveness as the main component to pursue climate change abatement; while developing countries have equity, costs of climate change adaptation and technology transfer as their main concerns.<sup>106</sup>

Since the last decade, developing countries like China have been growing in their industrial capability. It has been stated that countries which were previously considered to be developing but now are wealthy cannot claim special treatment regarding “respective capabilities” anymore.<sup>107</sup> For instance, the United States had argued that developing countries should undertake more responsibilities regarding emissions mitigation as they kept evolving economically and, hence had called for a more defined interpretation of CBDR-RC and allocating responsibilities to the members based on their capabilities.<sup>108</sup> However, it is interesting to note that United States which was the largest GHG emitter at the time of the Kyoto Protocol never itself ratified it.<sup>109</sup> It appears that while country Members agree to implement the principle of CBDR-RC, they tend to “wait & see” for the other parties to take on a larger responsibility.<sup>110</sup>

Developed countries, emerging economies, and other developing countries face different challenges in terms of innovations of low-carbon development transitions and need different types of support from international cooperation.<sup>111</sup> While the primary task of the developed countries

would be to take the lead in their demonstration towards a low-carbon development path by reducing their own GHG emissions, emerging economies need to skip from conventional development model and bifurcate towards an innovative low-carbon development path.<sup>112</sup>

At the WTO, the way Special and Differential Treatment (S&DT) is implemented presently is often considered inefficient because SDT is granted to countries classified as “developing” while this category includes countries which are now well industrialised.<sup>113</sup> WTO does not have any set criteria for “developed” and “developing” countries.<sup>114</sup> Countries declare for themselves which category they belong to and avail of the provisions offered by the WTO for the developing countries.<sup>115</sup> However this has created problems where countries with very different levels of economic development (e.g Singapore) are brought under the category of “developing countries”.<sup>116</sup>

Some critics say that S&DT traditional classification needs to undergo an overhaul due to the present times of rapidly changing global economic scenario where countries like China are emerging as economic superpowers and are categorised as “upper middle income” country by the World Bank:-<sup>117</sup> Developing country status may have made sense to some when China joined

<sup>106</sup> Ibid.

<sup>107</sup> Josephson, Per, COMMON BUT DIFFERENTIATED RESPONSIBILITIES IN THE CLIMATE CHANGE REGIME, P 37, 2017. Retrieved from. <http://www.diva-portal.org/smash/get/diva2:1134510/FULLTEXT01.pdf>

<sup>108</sup> Pauw, Bauer, Richerzhagen, Brandi and Schmole. Different Perspectives on Differentiated Responsibilities, German Development Institute, P 28, 2014. Retrieved from. [https://www.die-gdi.de/uploads/media/DP\\_6.2014..pdf](https://www.die-gdi.de/uploads/media/DP_6.2014..pdf)

<sup>109</sup> Josephson, Per, COMMON BUT DIFFERENTIATED RESPONSIBILITIES IN THE CLIMATE CHANGE REGIME, P 32, 2017. Retrieved from. <http://www.diva-portal.org/smash/get/diva2:1134510/FULLTEXT01.pdf>

<sup>110</sup> Ibid.

<sup>111</sup> Ji, Zou and Sha, Fu, The challenges of the post-COP21 regime: interpreting CBDR in the INDC context. Springer. Pp 6-7. 2015.

Retrieved from. [https://www.fun-mooc.fr/c4x/uved/34003/asset/The\\_challenges\\_of\\_the\\_post-COP21\\_regime.pdf](https://www.fun-mooc.fr/c4x/uved/34003/asset/The_challenges_of_the_post-COP21_regime.pdf)

<sup>112</sup> Ibid.

<sup>113</sup> Jean. Sebastien Par, WTO: Rethinking the special and differential treatment granted to developing countries, CEPII, 2015.

Retrieved from.

<http://www.cepii.fr/blog/bi/post.asp?IDcommuniqu=249>

<sup>114</sup> Who are the developing countries in the WTO? WTO, 2019. Retrieved from.

[https://www.wto.org/english/tratop\\_e/devel\\_e/d1who\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm)

<sup>115</sup> Ibid.

<sup>116</sup> Jean. Sebastien Par, WTO: Rethinking the special and differential treatment granted to developing countries, CEPII, 2015. Retrieved from.

<http://www.cepii.fr/blog/bi/post.asp?IDcommuniqu=249>.

<sup>117</sup> Ibid.

the WTO in 2001. But today, China is the second largest economy in the world.<sup>118</sup>

Under the WTO, developing countries can benefit from S&DT, ranging from longer timetables for implementing agreements to weaker market access commitments.<sup>119</sup> At present, about two-thirds of its 164 members currently consider themselves developing countries.<sup>120</sup> It is said that the major developed countries in the WTO are able to push for their agenda in the WTO due to their greater clarity regarding their objectives, good coordination among and taking the lead and initiative in the course of negotiations.<sup>121</sup> This is something which their developing counterparts are yet to match in scale and unity.

## What has been done in both organizations to tackle the challenge of developed vs. developing countries?

In the UNFCCC negotiations starting from Durban in 2011, members have allowed countries to individually determine their “contribution” to addressing GHG emissions.<sup>122</sup> In 2015, 196 Parties agreed to undertake Nationally determined contributions (NDCs) as part of their commitment to align their economic development with the goal of sustainable environmental development.<sup>123</sup> Under NDCs, each country commits to reduce national emissions and adapt to the impacts of

climate change as as part of this long-term goal, each Party is required to “prepare, communicate and maintain successive NDCs that it intends to achieve”.<sup>124</sup>

Within the context of negotiations on the Durban Platform (2011), it is said that some developing countries have increasingly been expressing the view that no nation should be fully exempted from climate mitigation responsibilities.<sup>125</sup> WTO is still considering the debate on developing country status, referred to among WTO members as ‘differentiation’.

In 2001, Ministers in the WTO had agreed that all S&DT provisions contained in WTO agreements should be reviewed with a view to make them strong and effective.<sup>126</sup> However, out of an original set of 88 proposals tabled by developing countries and LDCs in the WTO’s Committee on Trade and Development (CTD), members have only reached agreement on five LDC-specific ones, including a 2005 decision on duty-free quota-free (DFQF) market access for LDCs.<sup>127</sup>

A wide range of suggestions have been put forward in place by researchers and think tanks to assist WTO in considering possible reforms. Some of the wide-ranging suggestions are:-<sup>128</sup>

- a) The first option can be to develop an objective standard based on relevant metrics in line with those used by the United Nations, International Monetary

<sup>118</sup>Cutler, Wendy and Doyle, Kevin, China’s developing country status in the WTO: time for an upgrade? East Asia Forum, 2019. Retrieved from.

<http://www.eastasiaforum.org/2019/01/21/chinas-developing-country-status-in-the-wto-time-for-an-upgrade/>

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Bhagirath Lal Das, WTO: Challenges for Developing Countries in the Near Future, TWN Trade & Development Series, P 2. Retrieved from.

<https://www.twn.my/title2/t&d/tnd15.pdf>

<sup>122</sup> Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), Climate Nexus. Retrieved from.

<https://climatenexus.org/climate-change-news/common-but-differentiated-responsibilities-and-respective-capabilities-cbdr-rc/>

<sup>123</sup> Nationally Determined Contributions (NDCs), UNFCCC, 2019. Retrieved from. <https://unfccc.int/process/the-paris-agreement/nationally-determined-contributions/ndc-registry>

<sup>124</sup> Ibid.

<sup>125</sup> Role of Countries in Climate Negotiations. Climate Policy Info Hub. Retrieved from. <https://climatepolicyinfohub.eu/role-countries-climate-negotiations>

<sup>126</sup> Bridges Negotiations Briefing, ICTSD, P 22, 2017. Retrieved from.

[https://www.ictsd.org/sites/default/files/2017\\_bridges\\_negotiation\\_briefing\\_-\\_final5.pdf](https://www.ictsd.org/sites/default/files/2017_bridges_negotiation_briefing_-_final5.pdf)

<sup>127</sup> Ibid.

<sup>128</sup> Cutler, Wendy and Doyle, Kevin, China’s developing country status, East Asia Forum, 2019. Retrieved from.

<http://www.eastasiaforum.org/2019/01/21/chinas-developing-country-status-in-the-wto-time-for-an-upgrade/>

Fund and World Bank. WTO members could choose one or a series of metrics — such as the size of the economy, GDP per capita or volume of trade — and determine a threshold above which countries should no longer qualify as ‘developing’.

- b) A second option would be for a member to qualify as ‘developing’ for specified sectors. South Korea, for example, maintains self-declared ‘developing country’ status, but in practice only exercises it in the most sensitive areas like agriculture and fisheries while accepting full obligations in other sectors.
- c) A third possibility would be to accept self-declared developing status for existing WTO agreements and obligations, while updating the terms for status declaration or eliminating developing status for future agreements. Going forward, countries could negotiate for their status based on objective metrics like those suggested above.
- d) A fourth option would be for individual WTO members to reassess their current economic situations and self-declare themselves as ‘developed’ countries. Taiwan did so recently and others should follow. Alternatively, developing countries could be asked to develop roadmaps for graduating out of ‘developing’ status. Periodic WTO reviews could ensure these roadmaps are followed.

An ICTSD article named “*Rethinking Special and Differential Treatment: Towards an integration of*

*S&DT principles into the 21st century*” advises that for the S&DT provisions to be effective, practical and results-oriented with specific concerns and needs of beneficiary countries at the national level needing to be addressed.<sup>129</sup> Assistance should be prioritised in favour of those most in need, but also at the same time address the concerns of all developing countries. In this context, resource and capacity-related limitations that constrain the abilities of many countries to use these provisions should also be addressed. Developed countries also should not seek to do away with the protective or trade-promoting practices within the multilateral trade agreements (MTAs) without taking into consideration their continued contribution in developing countries.<sup>130</sup>

After the Bali Ministerial Conference, in 2014 and 2015, developing countries started to consider next steps on the S&D negotiations.<sup>131</sup> On July 2015, the G-90 submitted a package of 25 proposals to the Committee on Trade and Development in Special Session with a revised proposal being submitted in November 2015 (*JOB/TNC/51/Rev.1*).

At MC10, The G-90 proposed to continue S&D negotiations after MC10, based on paragraph 44.

*“With regard to special and differential treatment provisions of the WTO Agreements, we instruct the Committee on Trade and Development in Special Session to continue to negotiate on the basis of specific proposals found in JOB/TNC/51/Rev.1 and any other proposals from developing countries including LDCs and SVEs, pursuant to the mandate under paragraph 44 of the Doha Declaration, with a view to achieving*

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<sup>129</sup> McCook, Wayne, Rethinking Special and Differential Treatment: Towards an integration of S&D principles into the 21st century, ICTSD, 2015. Retrieved from. <https://www.ictsd.org/bridges-news/bridges-africa/news/rethinking-special-and-differential-treatment-towards-an>

<sup>130</sup> Ibid.

<sup>131</sup> THE WTO'S SPECIAL AND DIFFERENTIAL TREATMENT NEGOTIATIONS (PARAGRAPH 44), South Centre, Pp 8-13, 2017. Retrieved from. [https://www.southcentre.int/wp-content/uploads/2017/01/AN\\_TDP\\_2017\\_3\\_The-WTO%E2%80%99s-Special-and-Differential-Treatment-Negotiations-Paragraph-44\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2017/01/AN_TDP_2017_3_The-WTO%E2%80%99s-Special-and-Differential-Treatment-Negotiations-Paragraph-44_EN.pdf)



agreement on all of proposals by 31 July 2016.”<sup>132</sup>

However, this proposal was finally not adopted.

## 3.2 Stakeholders’ involvement

### What has been done in both organizations to ensure an open environment to both public and private players?

In 2012, UNFCCC launched the Adaptation Private Sector Initiative database- a new online tool which allowed businesses, private sector and communities to see how they can address and adapt to the inevitable effects of climate change.<sup>133</sup> It features good practices and profitable climate change adaptation activities being undertaken by private companies (sometimes in partnership with NGOs or the public sector) from a wide range of regions and sectors.<sup>134</sup> It aims to bring private sector engagement in climate change adaptation efforts and provide a platform for the private sector to showcase and exchange best practices and experiences.<sup>135</sup> The PSI allows the private sector organizations the opportunity to develop knowledge on climate change adaptation, build adaptive capacity and be part of a growing

network of organizations taking measures to adapt to the impacts of climate change.<sup>136</sup>

The Marrakesh Partnership for Global Climate Action had been launched in 2016 to increase climate action by Parties and non-Party stakeholders, including the private sector by 2020.<sup>137</sup> Parties to the Paris Agreement recognized explicitly that action by the national governments alone would be insufficient to limit temperature rise to 1.5 degrees Celsius and hence concerted action is needed through partnerships at all levels with the private sector and the civil society alongside the government stakeholders. The Marrakesh Partnership has been designed to support this concerted action in line with countries’ NDCs under the Paris Agreement.<sup>138</sup>

In this context, it is important to mention the Talanoa Dialogue which was held in Katowice, Poland on January 2018.<sup>139</sup> It is a year-long process of discussions and consultations aimed at understanding how the goals of the Paris Agreement can be achieved through collective efforts and also for informing the Nationally Determined Contributions (NDCs).<sup>140</sup>

In Fiji, “*talanoa*” means to hold a conversation in an inclusive, receptive space and is traditional method of solving differences in the Pacific.<sup>141</sup> It seeks to break the climate deadlock by drawing governments, NGOs, civil society and businesses closer together through sharing their stories of

<sup>132</sup> Ibid.

<sup>133</sup> Bisiaux, Alice, UNFCCC Launches Database of Private Sector-Led Adaptation Activities, IISD, 2012. Retrieved from. <http://sdg.iisd.org/news/unfccc-launches-database-of-private-sector-led-adaptation-activities/>

<sup>134</sup> Ibid.

<sup>135</sup> Private Sector Initiative, UNFCCC Nairobi Work Programme, P 1. Retrieved from. [https://unfccc.int/resource/docs/publications/pub\\_nwp\\_private\\_sector\\_initiative\\_flyer.pdf](https://unfccc.int/resource/docs/publications/pub_nwp_private_sector_initiative_flyer.pdf)

<sup>136</sup> Ibid.

<sup>137</sup> Private, Public Action Together Needed to Tackle Climate Change. UNFCCC. 2018. Retrieved from.

<https://unfccc.int/news/private-public-action-together-needed-to-tackle-climate-change>

<sup>138</sup> Ibid.

<sup>139</sup> What is the Talanoa Dialogue? International Chamber of Commerce. Retrieved from. <https://iccwbo.org/publication/icc-primer-talanoa-dialogue/>

<sup>140</sup> Ibid.

<sup>141</sup> Sauer, Natalie, The Talanoa Dialogue explained, Climate Home News, 2018.

Retrieved from.

<https://www.climatechangenews.com/2018/12/10/talanoa-dialogue-explained/>

climate change and sidestep the power struggle inherent to negotiations.<sup>142</sup>

Currently, UNFCCC has initiated climate action initiatives in collaboration with two sectors: the fashion industry and the sports community whose stakeholders convene to develop a coherent, unified position on climate.<sup>143</sup> Their work programmes aim to connect the diverse stakeholders within their respective industries, to identify new areas for action and to scale up existing initiatives that connect the value chain.<sup>144</sup>

The international climate change negotiations of the UNFCCC is said to have relatively generous rules for NSAs concerning access to documentation, making statements, submission of written input and consultations with the presiding officers and the Executive Secretary. The Secretariat also has an NGO-liaison section, which can be viewed as a sign of the deep engagement with NSAs.<sup>145</sup>

There are some debates and discussions regarding the openness of UNFCCC to the non-state actors. States have complex relationships with non-state actors and this is revealed in the workings of intergovernmental meetings with some states wishing to restrict NSA participation in issues which they deem as sensitive. At times, interactions between states, NSAs, and the UNFCCC Secretariat have been strained. The handling of NSAs at the 15th Conference of the Parties (COP) in Copenhagen in 2009 has been described as particularly damaging.<sup>146</sup>

In 1995, WTO members established a legal basis for consultation and cooperation with NGOs where they recognized “the role NGOs can play to increase the awareness of the public in respect of WTO activities” and agreed “to improve transparency and develop communication with NGOs” by giving the WTO Secretariat the authority to establish direct contacts with NGOs. NGOs can be accredited to take part in ministerial conferences and attend the public hearings of some dispute settlement proceedings.<sup>147</sup>

The Public Forum of the WTO is the largest annual outreach event of the organization with thousands of representatives of NGOs, academia, business, media, government, parliamentarians and intergovernmental organizations participating in it each year focusing on discussions of trade issues and globalization.<sup>148</sup>

WTO is in a unique position whereby the organization aims at regulating the trade activities of the public sector, but focuses on the outcomes for the private sector (which constitutes the vast majority of the traders) as means of regulating international trade.<sup>149</sup> WTO law is frequently required to examine the boundary between public and private spheres of action, yet the Subsidies and Countervailing Measures Agreement is the most far reaching as it creates not only specific obligations but also a “framework of rights and obligations” that serves to discipline and regulate the autonomy of the state to act within the market, thus creating a legal barrier between the public and private.<sup>150</sup>

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<sup>142</sup> Ibid.

<sup>143</sup> Sectoral Engagement for Climate Action, UNFCCC, 2019. Retrieved from: <https://unfccc.int/climate-action/sectoral-engagement-for-climate-action>

<sup>144</sup> Ibid.

<sup>145</sup> Nasiritousi, Naghmeh and Linnér, Björn-Ola, Open or closed meetings? Explaining nonstate actor involvement in the international climate change negotiations, Springer Link, 2016. Retrieved from:

<https://link.springer.com/article/10.1007/s10784-014-9237-6#CR8>

<sup>146</sup> Ibid.

<sup>147</sup> NGOs and the WTO, WTO, 2019. Retrieved from: [https://www.wto.org/english/forums\\_e/ngo\\_e/ngo\\_e.htm](https://www.wto.org/english/forums_e/ngo_e/ngo_e.htm)

<sup>148</sup> Ibid.

<sup>149</sup> Messenger, Gregory, The public-private distinction at the World Trade Organization: Fundamental challenges to determining the meaning of “public body”, International Journal of Constitutional Law, 2017. Retrieved from:

<https://academic.oup.com/icon/article/15/1/60/3068317>

<sup>150</sup> Ibid.

In 2015, over 150 representatives of governments, private sector, international organizations and experts across the globe met at the Global Facilitation Partnership meeting in Geneva, where they stressed their willingness to support international organizations in assisting countries implement the World Trade Organizations Trade Facilitation Agreement.<sup>151</sup> Representatives discussed ways in which the business community can work together with the international organizations to help countries implement the Trade Facilitation Agreement.<sup>152</sup> It is an example of private sector and other stakeholders representation in the WTO to discuss about trade facilitation for boosting national competitiveness.

On 11<sup>th</sup> December 2018, WTO Director-General Roberto Azevedo addressed a WTO economic conference namely, 'Updating Trade Cooperation: An Economic View' where he called upon the academic community and trade policy experts to comprehend how research-based analysis can enable WTO to find ways to strengthen and improve the trading system.<sup>153</sup>

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<sup>151</sup> Private Sector keen to support countries in implementing the WTO Trade Facilitation Agreement, UNECE, 2015. Retrieved from. <http://www.unece.org/info/media/presscurrent-press-h/trade/2015/private-sector-keen-to-support-countries-in-implementing-the-wto-trade-facilitation-agreement/private-sector-keen-to-support-countries-in-implementing-the-wto-trade-facilitation-agreement.html>

<sup>152</sup> Ibid.

<sup>153</sup> Azevedo, DG, Economic research vital to strengthen trade cooperation, WTO, 2018. Retrieved from. [https://www.wto.org/english/news\\_e/news18\\_e/rese\\_11dec18\\_e.htm](https://www.wto.org/english/news_e/news18_e/rese_11dec18_e.htm)

# Conclusion

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While the WTO and the UNFCCC are two international organizations with clearly different mandates, objectives and functioning models, they are dealing with common issues, in a more direct and indirect way. Those are, between other, trade, climate change, agriculture, as well as fishery, biofuel, etc.

WTO and UNFCCC are both discussing and/or negotiating on those issues of common interest, and may take decisions and actions that could either contradict or support each other objectives. Climate and trade negotiators should be more aware of what their counterparts are doing, and interact more, to contribute to sustainable development of their country.

While the trade and agriculture agenda of the WTO could support the environmental agenda of the UNFCCC, and vice & versa, both organizations could also learn from each other to surpass some of their challenges related to differentiation between members and stakeholders' involvement, to function in a more inclusive and coherent manners in the near future.

