

Environmental Issues in the Multilateral Trading System

Past, Present and Possible Future



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Published by:



CUTS INTERNATIONAL, GENEVA

Rue de Vermont 37-39

1202 Geneva, Switzerland

www.cuts-geneva.org

Also at: Jaipur, New Delhi, Chittorgarh, Kolkata, Hanoi,
Nairobi, Lusaka, Accra, Washington DC

This paper was prepared by Kartikeya Garg, under the supervision of Rashid S Kaukab and Leslie Sajous. It is published under CUTS International Geneva's project "Keeping Pace with Trade Developments", undertaken with funding support from the Ministry of Foreign Affairs, Sweden.

Citation: Garg, K. (2021). *Environmental Issues in the Multilateral Trading System: Past, Present and Possible Future*. Geneva: CUTS International, Geneva.

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Cover Photo: WTO

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Abbreviations

A4T	Aid for Trade
art.	Article
CBD	Convention on Biological Diversity
CSO	Civil Society Organisation
CTE	Committee on Trade and Environment
DDG	Deputy Director-General
DG	Director-General
EFTA	European Free Trade Association
EGA	Environmental Goods Agreement
EIF	Enhanced Integrated Framework
EMIT	Environmental Measures and International Trade
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ITC	International Trade Centre
LDC	Least Developing Country
MC	Ministerial Conference
MEA	Multilateral Environmental Agreement
MFN	Most Favoured Nation
MTS	Multilateral Trading System
NGO	Non-Government Organisation
NT	National Treatment
OECD	Organisation for Economic Cooperation and Development

SCM	Subsidies and Countervailing Measures
SDGs	Sustainable Development Goals
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TRIPS	Trade-related Aspects of Intellectual Property Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
WCED	World Commission on Environment and Development
WTO	World Trade Organisation

Abstract

The growth of international trade in the latter half of the 20th Century has happened side by side with increase in pollution and emissions, and extreme weather phenomenon. It can be argued that international trade and environment are inextricably linked, impacting each other in various ways. This link has been recognised within the multilateral trading regime, even before the formation of the WTO. Various measures such as the creation of the GATT-EMIT Group and the Tokyo Round of negotiations were important precursors towards an environmentally conscious trading system.

These efforts were accelerated after the WTO was established, creating the Committee on Trade and Environment (CTE) in order to have focused discussions on environmentally sustainable trade. Some trade and environment issues were also included in the Doha Round of negotiations. At present, various efforts are being taken by WTO Members to initiate discussions and take crucial steps towards trade and environment sustainability, sustainable plastics trade, fossil

fuel subsidy reform, trade and climate change, to name a few, to ensure that the WTO contributes to the achievement of Sustainable Development Goals (SDGs).

This paper has attempted to track the efforts in the multilateral trading system, both in the past as well as several current initiatives, and concludes by suggesting further steps that Members may consider in order to move towards a more environmentally conscious WTO while taking into account the needs and interests of developing and least-developed countries.

SECTION 1

Introduction

International trade has grown steadily since the latter half of the 20th century. It has been consistently driven by reduction in transportation and communication costs, income growth and changes in consumer preferences, comparative advantage in the production of particular goods and services and an increasing number of facilitating trade policies and bilateral and multilateral trade agreements.¹ However, at the same time, the effects of climate change also began to be more severe with rising sea levels, global warming and extreme temperatures being experienced more frequently around the world. Climate change also has significant economic consequences, especially regarding changes in production and consumption of goods and services, and consequently on international trade.² Thus, first and foremost, it is crucial to discuss the impact that international trade has had on the environment and how climate change is (can potentially) impact global trade. Subsequently, the paper discusses the key developments in the international trading regime with respect to environment protection, current initiatives at the World Trade Organisation (WTO), and lastly, the possible way forward.

1.1 Impact of trade on environment

Increased international trade has the potential to cause significant damage to the environment. An increasingly globalized economy has led to a high need to transport goods to different parts of the world, which directly increases carbon emissions and causes pollution. Open markets have led to increased competition and have bettered the quality of life of people worldwide, increasing income and demand for a wide variety of goods and services. With an increased income comes an increase in purchasing power, and these changing consumer habits can lead to further exploitation of natural resources. Moreover, a rise in tourism can severely impact fragile ecosystems such as mountains and forests.

Despite these adverse effects, more international trade can also mean more environmental sustainability and more opportunities to mitigate climate change and its impact. Enhanced trade leads to better availability of more energy-efficient goods and services. Increase in income can also lead to more demand for environmentally sound products and services, resulting in a decrease in greenhouse gas emissions. Importantly, international trade can allow the transfer of

¹ Dellink, Hwang, Lanzi & Chateau, 'International Trade Consequences of Climate Change', OECD Trade and Environment Working Papers 2017/01, p. 10, found at <https://www.oecd-ilibrary.org/docserver/9f446180->

<en.pdf?expires=1619135638&id=id&accname=quest&checksum=670527F91B417116813C8F3F25EB4A52>

² Ibid.

technology that can be used for the purposes of environmentally sustainable production and climate change adaptation and mitigation, especially beneficial for developing countries and Least Developed Countries (LDCs). Lastly, open international markets assist in countries adapting to disruptions caused by environmental disasters and climate change, such as shortage in food supplies.³

1.2 Impact of climate change on trade⁴

Countries' comparative advantage has evolved, leading to a change in the global pattern of international trade. For instance, agricultural economies might reduce their exports if global warming and extreme weather result in decreased crop yields. These effects can also extend to trade in services, where tourist destinations that rely on natural assets such as beaches, snowfall and tropical climates might be adversely affected for example. Climate change might deprive these countries of substantial economic gains.

Climate change can also have severe impacts on global supply and distribution channels. Extreme weather can paralyze transport routes and damage crucial trade infrastructure. Transportation routes in permafrost zones could also be negatively affected by high temperatures, and rising sea levels can damage coastal infrastructure. Such disruptions increase the cost of trade, which would be especially negative for developing countries and LDCs, which the WTO seeks to integrate in the multilateral trading system (MTS).

³ Tamiotti, Teh, Simmons, *et.al*, 'Trade and Climate Change: A report by the United Nations Environment

Programme and the World Trade Organisation', 2009, p. 61.

⁴ *Ibid.* p. 64.

SECTION 2

GATT and the WTO on Environment

Multilateral trading system recognized the impact that trade has on the environment, and vice versa. They hence sought to regulate these inextricably linked obligations through a series of actions and developments. Two distinct periods will be presented below: (i) pre-WTO (GATT) developments and (ii) WTO measures and progress.

2.1 Pre-WTO Developments

The linkages between trade and environment were underscored even before the formation of the WTO under the auspices of the General Agreements on Tariffs and Trade (GATT). More particularly, major steps were taken from the advent of the 1970s.

1971 GATT Study

While preparing for the Stockholm Conference,⁵ the UN Secretary-General requested the GATT Secretariat to prepare a report that would analyze the various issues that national environment protection measures might create for international trade, along with a proposal of possible solutions for the same.⁶ This led to formulation of a study titled 'Industrial Pollution Control and International Trade' which was presented at

the Conference. The study highlighted three main ways by which pollution control methods might interact with trade: in the form of import restrictions,⁷ grant of subsidies,⁸ and internal taxes or restrictions.⁹

The study concluded by recommending to governments to 'resist being rushed into short-term expedients, the effects of which could disturb the flow of international trade' and therefore hamper the advancement of more effective, environment-oriented technology in the long run.¹⁰ It also recognized that domestic pollution control methods might lead to new forms of protectionist measures (i.e. green protectionism).¹¹

1972 EMIT-GATT Group

Understanding the need to harmonize the two disciplines, the GATT Council of Representatives set up the Group on Environmental Measures and International Trade (EMIT) in 1972, whose mandate extended to examining the possible effects of environment protection schemes on the functioning of GATT.¹² Although membership to the Group was open to all GATT Members, it would only be convened at the request of a Member. It therefore took 20 years for the

⁵ United Nations Conference on the Environment, 5-16 June, 1972, Stockholm.

⁶ Note by the GATT Secretariat, *Industrial Pollution Control and International Trade*, L/3538, 9 June 1971, found at https://www.wto.org/gatt_docs/English/SULPDF/90840247.pdf

⁷ Ibid. p. 14.

⁸ Ibid. p. 15.

⁹ Ibid. p. 16.

¹⁰ Ibid. p. 20.

¹¹ WTO, 'Early years: emerging environment debate in GATT/WTO' found at https://www.wto.org/english/tratop_e/envir_e/hist1_e.htm#EMIT

¹² UNCTAD, *Trade and Environment in the Multilateral Trading System: Module 2*, TrainforTrade 2000, December 2001, p. 4, found at <https://www.oas.org/dsd/Tool-kit/Documentos/ModuleII/doc/Trade%20and%20Environment%20in%20the%20Multilateral%20Trading%20System.pdf>

Group to be convened, when the European Free Trade Association (EFTA) requested the Group for an opinion in 1992.¹³ A host of developments within and outside the GATT regime took place in between, as showcased below.

1973-1979 Tokyo Round of Negotiations

The Round, inter alia, addressed the extent to which environmental protection measures could form trade barriers¹⁴ This can be argued to have led to the negotiation of the Technical Barriers to Trade (TBT) Code among a subset of GATT Contracting Parties. The Code recognized the need to allow Members to take necessary measures to protect the environment as long as they do not result in arbitrary or unjustifiable discrimination between countries.¹⁵ Furthermore, it underscored the need for international standardization of such measures to ensure that such protectionist actions are not excessive and emphasized the importance of transparency for all of them.

1982 Concerns about Export of Domestically Prohibited Goods

Developing countries party to the GATT began to express concern regarding the increase in export by firms in developed countries of products, which were prohibited by domestic laws in developed countries to protect the environment.¹⁶ In this regard, the Ministerial Declaration of 1982 specified a specific

notification procedure, as well as recognizing the need to study problems of the export of such goods with respect to the GATT.¹⁷ This eventually led to the creation of a Working Group on the Export of Domestically Prohibited Goods in 1989, and the formulation of a Draft Decision on Products Banned or Severely Restricted in the Domestic Market in 1991.

The Draft Decision lays out three primary obligations for states when a product is banned; *first*, to consider whether the export of such a product should be subject to equivalent measures; *second*, if these measures are not applied to exports, there is a duty to notify the GATT Secretariat of the measures and the reason for such measures; and *third*, members provide additional information about the product if asked.¹⁸

The need for developing a harmonious relationship between trade and environment obligations was emphasized by organizations other than the GATT as well. Two landmark developments in this regard took place:

1987 Brundtland Report

The World Commission on Environment and Development (WCED) drafted a report titled 'Our Common Future', which for the first time, brought out the concept of 'sustainable development'.¹⁹ According to the report, it refers to '*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*'²⁰ It also found poverty to be one of the

¹³ *supra* note 11.

¹⁴ *Ibid.*

¹⁵ Preamble, Technical Barriers to Trade Agreement.

¹⁶ Preparatory Committee for the WTO, '*Exports of Domestically Prohibited Goods: Background Note by the Secretariat*', PC/SCTE/W/7, 22 December 1994, found at https://www.wto.org/gatt_docs/English/SULPDF/91840223.pdf

¹⁷ WTO Ministerial Declaration adopted 28 November 1982, BISD 29S/9.

¹⁸ *supra* note 16 at p. 10.

¹⁹ Report of the World Commission on Environment and Development, '*Our Common Future*', United Nations, 1987.

²⁰ Confederation Suisse, '*1987: Brundtland Report*', found at <https://www.are.admin.ch/are/en/home/sustainable-development/international-cooperation/2030agenda/un-milestones-in-sustainable-development/1987-brundtland-report.html>

biggest causes of environmental degradation, explaining that greater economic growth could generate the necessary resources to combat the ‘pollution of poverty.’ This can occur only by allowing the increase in international trade.²¹ The Brundtland Report was eventually debated in the UN General Assembly which led to the creation of the United Nations Conference on Environment and Development (UNCED).

1992 UNCED Rio Conference

Also called the Earth Summit, more than 178 countries adopted Agenda 21, which was a non-binding but comprehensive action plan with respect to sustainable development. Countries pledged to build global partnerships for sustainable development to improve human live and protect the environment,²² while promoting international trade.

These developments provided a much-needed impetus to members within the multilateral trading regime as well, and formed a basis for future discussions and deliberations on trade and environment linkages within the WTO. In fact, future WTO developments explicitly incorporated references to the Rio Conference.

1992 EMIT Report

Twenty years after its creation, the EFTA requested the EMIT Group for recommendations on environmental issues under trade. Its mandate extended to determining the anticipated impact of environmental protection policies on the functioning of GATT, where the Group recognized the need for transparency of

domestic environmental regulations with potential impact on trade. The Group also discussed the effects of environment measures on international trade and the relationship between multilateral trade instruments and multilateral environmental agreements (MEAs).²³

Thus, before the formation of the WTO, the key development in the GATT era was the over-arching emphasis on sustainable development developed in the Brundtland Report and the outcome of the first Earth Summit in 1992 (Agenda 21), which formed the bedrock of future discussions on the interlink between the two fields.

2.2 Developments at the WTO

During the Uruguay Rounds of negotiations (1986-1994), issues regarding trade and environment were specifically brought to the forefront. More importantly, it formed one of many crucial bases that led to the negotiation of important agreements that formed a part of the WTO, including the General Agreement on Trade in Services (GATS), the Agreement on Agriculture, the Sanitary and Phytosanitary Measures (SPS) Agreement, and the Subsidies and Countervailing Measures (SCM) Agreement.²⁴ The creation of the WTO led to a host of new developments in order to ensure that international trade and environmental protection can take place side by side.

²¹ *supra* note 11.

²² UN Department of Economic and Social Affairs, *Sustainable Development: The 17 Goals*, found at <https://sdqs.un.org/goals>

²³ *supra* note 11.

²⁴ *Ibid.*

1994 Marrakesh Agreement establishing the WTO

The Agreement establishing the WTO specified the importance of sustainable development considerations while furthering international trade. For instance, the first paragraph of the preamble to the Agreement itself sets that members must recognize

“that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living..., while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.” (Emphasis Added)

Furthermore, Members incorporated the General Exceptions under Articles XX and XIV in the GATT and GATS respectively. These allowed WTO Members to take measures that deviate from their primary obligations of Most-Favoured Nation (MFN) and National Treatment (NT) in certain situations. Amongst them, the Articles stipulate that Members may adopt measures necessary to protect animal or plant life,²⁵ or relating to the conservation of exhaustible natural resources²⁶, furthering the cause of protecting the environment in a manner that does not constitute an arbitrary or unjustifiable discrimination in trade.

1994 Ministerial Decision on Trade and Environment

The WTO attempted to coordinate trade and environment policies without exceeding the competence of the multilateral trading system; by emphasizing the need to prevent policy contradictions between upholding an equitable trading system while at the same time, promoting sustainable development.²⁷ In this regard, the Marrakech Ministerial Decision on Trade and Environment directed the General Council to create the Committee on Trade and Environment (CTE), which would be open to all WTO members. It also emphasized the need for rules that would ‘*enhance positive interaction between trade and environmental measures for the promotion of sustainable development*’, and the necessity to avoid protectionist trade measures in order to achieve the targets set forth in Agenda 21.²⁸

The Committee on Trade and Environment (CTE)

The CTE replaced, and enhanced the mandate of the EMIT Group to include two main tasks; *firstly*, identifying the relationship between trade and environmental measures to promote sustainable development; and *secondly*, recommending whether modifications of the current multilateral trading regime are necessary, ‘compatible with the open, equitable and non-discriminatory nature of the system.’

This strong mandate of the CTE led to the focused ten-item regular work programme of

²⁵ GATT, art. XX(b), 1994.

²⁶ GATT, art. XX(g), 1994.

²⁷ Preamble, WTO Decision on Trade and Environment, 1994 found at

https://www.wto.org/english/docs_e/legal_e/56-dtenv_e.htm

²⁸ WTO, *Decision on Trade and Environment*, 1994 found at https://www.wto.org/english/docs_e/legal_e/56-dtenv_e.htm

the CTE which can be summarized as follows²⁹:

- *Item 1*: The relationship between multilateral trading system and trade measures for environmental purposes.
- *Item 2*: The relationship between environmental policies relevant to trade and environment measures and multilateral trading system provisions.
- *Item 3*: Understanding the relationship between multilateral trading system provisions and taxes imposed for environmental purposes; as well as standards, technical regulations and labelling requirements mandated for environment protection purposes.
- *Item 4*: Analyzing the transparency of trade measures for environmental purposes.
- *Item 5*: Understanding the relationship between dispute settlement mechanisms in the multilateral trading regime and those existing in multilateral environment agreements.
- *Item 6*: Effect of environmental measures on market access, especially with respect to developing countries and LDCs.
- *Item 7*: Issues related to the exports of domestically prohibited goods.
- *Item 8*: Issues regarding TRIPS and the environment.

- *Item 9*: The Work Programme mentioned under the Decision on Trade and Services and the Environment
- *Item 10*: Input to relevant WTO bodies on appropriate arrangements for relations with intergovernmental organizations and NGOs.

Trade and Environment in the Doha Round

This strengthened mandate also paved the way for the CTE to undertake focused discussions as well as negotiations on some important issues related to trade and environment as part of the Doha Round launched in 2001.³⁰ Paragraph 31 of Doha Ministerial Declaration specifically provided the mandate on the follow three issues:³¹

- The relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs);
- Procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status; and
- The reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

The CTE was also instructed in paragraph 32 of the same Declaration to pursue work on all items on its regular agenda within its current terms of reference, to give particular attention to:³²

²⁹ Ibid.

³⁰ WTO, *Items on the CTE's Work Programme*, found at https://www.wto.org/english/tratop_e/envir_e/cte00_e.htm

³¹

https://www.wto.org/english/thewto_e/minist_e/min01_e/minidecl_e.htm#tradeenvironment

³² *Supra*

- The effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- Labelling requirements for environmental purposes.

SECTION 3

Current Initiatives at the WTO

These aforementioned steps taken under the ambit of the WTO to harmonize trade and environment concerns at the international sphere have not stayed stagnant. On the contrary, there are currently various initiatives being taken within the CTE and outside to promote sustainable development and contribute to the achievement of the Sustainable Development Goals (SDGs).

3.1 WTO Initiatives to meet SDGs

Aside from the recent initiatives taken to combat global environmental issues, the WTO has played a crucial role in contributing to the achievement of the UNs Agenda 2030 for Sustainable Development, working closely with UN Department for Economic and Social Affairs (UN-DESA).³³ In this regard, two WTO initiatives are particularly relevant.

The Aid for Trade Initiative (A4T)

Launched at the Hong Kong Ministerial Conference in 2005, the A4T aims to mobilize resources to address trade-related constraints by developing countries and LDCs. It attempts to solve the problem faced by these countries with respect to trade-related capacity constraints that restrict their ability to engage

in international trade.³⁴ In this regard, the WTO attempts to secure cooperation with various other international organization, including the ITC, OECD, UNCTAD, UNEP and the UNDP, to ensure effective implementation. The A4T initiative covers four key areas: (i) Trade policy and regulation; (ii) Economic Infrastructure; (iii) Productive capacity building; and (iv) Adjustment assistance.³⁵

More specifically, the WTO's role is to encourage additional flows of A4T from other bilateral and multilateral donors in order to respond to requests for trade-related capacity building from beneficiary countries. It is also tasked with supporting improved ways of monitoring and evaluation the A4T, as well as encouraging the mainstreaming of trade into national development strategies by partner countries.

LDCs use the Enhanced Integrated Framework (EIF) to better incorporate the A4T into their domestic systems. The EIF assists by providing a procedure for clearly mapping and prioritizing key areas for trade-related assistance and capacity building, as well as submitting these demands to the donor

³³ WTO, *The WTO and the Sustainable Development Goals*, found at https://www.wto.org/english/thewto_e/coher_e/sdgs_e/sdgs_e.htm#:~:text=The%20WTO%20is%20central%20to,health%20education%20and%20the%20environment

³⁴ WTO, *Aid for Trade*, found at https://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm

³⁵ UNEP, '*Aid for Trade: A vehicle to green trade and build climate resilience*', Issue brief- April 2020, p.2 found at <https://wedocs.unep.org/bitstream/handle/20.500.11822/32204/AfT.pdf?sequence=1&isAllowed=y>

community. Furthermore, the EIFs Trust Fund helps LDCs boost their trade capacity.³⁶

The new Work Programme of the A4T for 2020-2022 is themed on '*Empowering Connected, Sustainable Trade*'. It aims at developing analysis on the opportunities offered by digital connectivity and sustainability for economic and export diversification, and how the A4T can help different economic actors realize these opportunities.³⁷

Such trade-related economic growth, propelled with the help of the A4T increases a country's income-generating capacity, which is a key component in the achieving of sustainable development.³⁸ This is crucial in the attainment of SDG 8: Decent Work and Economic Growth.

Furthermore, the United Nations Environment Programme (UNEP) recognizes that the A4T can serve as a valuable tool to assist developing countries in coping with challenges posed by climate change, and that the Initiative be focused on areas that support countries' both environment and economic goals. According to one UNEP official,

*"Developing countries face the challenge of 'double exposure' to both economic shocks and environmental challenges, which have been exacerbated by climate change. Systematically integrating environmental considerations in A4T investments-constituting roughly 30% of total official development assistance could be an effective mechanism through which to build climate resilience."*³⁹

In the last few years, there have been increasing calls for 'greening A4T', with the aim of prioritizing sustainability in trade and investment decision making, which would also assist in stimulating post-COVID 19 recovery and accelerating the green transition. The UNEP, for instance, recognizes the importance of creating a coherent framework to streamline environment concerns into all other A4T projects. It suggests that the following be done in order to incorporate them into key areas under A4T⁴⁰:

- *Trade Policy and Regulation:* Encouraging development of trade policies that protect biodiversity and ecosystems; build capacity to negotiate trade agreements regarding exchange of green goods and technologies for climate change mitigation and disaster responses; support the development of policies aimed at increasing sustainability in global value chains.
- *Economic Infrastructure:* Increasing investment in renewable energy production and promotion of clean and efficient technology; supporting sustainable infrastructure development.
- *Productive Capacity Building:* Build capacity in climate smart agriculture through the adoption of modern technology; adopt sustainability standards that would assist in building capacity to take advantage of new green market access opportunities

Additionally, the UNEP also suggests that by reinforcing A4T with climate obligations, there would be greater effectiveness in addressing

³⁶ WTO, *The Enhanced Integrated Framework*, found at https://www.wto.org/english/tratop_e/devel_e/a4t_e/enhanced_if_e.htm

³⁷ *supra* note 46.

³⁸ *supra* note 47.

³⁹ UNEP, '*For developing nations facing climate shocks, Aid for Trade can offer hope for a more secure future*', 29 August 2019, found at <https://www.unep.org/news-and-stories/story/developing-nations-facing-climate-shocks-aid-trade-can-offer-hope-more>

⁴⁰ *Supra* note 55 at p. 3.

climate change and trade-related issues, and would help solving significant funding gaps that exist for developing countries to address climate change.⁴¹

The A4T can thus, along with the Trade and Environmental Sustainability Structured Discussions (TESSD) and the Informal Dialogue on Plastic Pollution, can be an effective tool to achieve SDG 13: Climate Action.⁴²

Negotiation on Fisheries Subsidies

WTO Members are in the process of negotiating rules to prohibit subsidies that threaten the sustainability of fishing to help ensure the sustainable use and conservation of marine resources. Launched in 2001 at the Doha MC, these negotiations aimed to clarify and improve existing WTO disciplines on fisheries subsidies. Its mandate was elaborated in 2005 to include calls for prohibiting certain forms of fisheries subsidies that contribute to overcapacity and overfishing.

At the 11th MC in 2017, ministers aimed at concluding negotiations and adopting an agreement on fisheries subsidies that would deliver on SDG 14.6, namely

“by 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to illegal, unreported and regulated (IUU) fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation.”⁴³

The year 2020 saw the introduction of a draft consolidated text by the Chair of the WTO Negotiating Group on Rules (which is tasked with the negotiations on fisheries subsidies) which sought to cover the main pillars of negotiations: a) prohibition on subsidies to IUU fishing; b) prohibition on subsidies for fishing overfished stocks; c) prohibition on subsidies contributing to overcapacity and overfishing; d) provisions for special and differential treatment for developing countries and LDCs; e) technical assistance and capacity building; f) notification and transparency; g) institutional arrangements; h) dispute settlement.⁴⁴ The process moved further forward with a new draft text issued by the Chair on 11 May, 2021.⁴⁵ Intense negotiations are currently underway and a virtual ministerial meeting is planned for 15

⁴¹ Ibid. at p. 4.

⁴² Another effective mechanism is the ongoing negotiations on eliminating trade barriers on environmental goods and services' (WTO, *Eliminating trade barriers on environmental goods and services*, found at https://www.wto.org/english/tratop_e/envir_e/envir_neg_serv_e.htm.) This attempts to create a win-win-win for trade, environment, and development and focuses on reducing tariff and non-tariff barriers for such goods, which should enable easy transfer of technology and liberalizing trade in environmental goods. Additionally, it might improve a country's ability to procure high quality environmental goods which would directly improve the quality of life for citizens, leading to a cleaner environment.

⁴³ WTO, *Negotiations on fisheries subsidies*, found at https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm

⁴⁴ WTO, *Factsheet: Negotiations on fisheries subsidies*, found at https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_intro_e.htm

⁴⁵ WTO, *Fishing subsidies negotiations chair introduces new text in run-up to July ministerial*, 11 May 2021, found at https://www.wto.org/english/news_e/news21_e/fish_11may21_e.htm

July 2021 to narrow the differences among Members.

Fossil Fuels Subsidies Reform

In 2017 (at WTO MC11), some WTO members released a Ministerial Statement seeking to ‘*phase out inefficient fossil fuel subsidies that encourage wasteful consumption*’ and the need for reform taking into account the needs of developing countries as well as minimization of adverse effects on development in pursuant of the commitment to fossil fuel subsidy reform under the Sustainable Development Goal 12 (c) of the 2030 Agenda. They recognized that fossil fuel subsidies, which accounted for 20% of the value of internationally traded fuels in 2015, negatively impacts renewable energy and investment in energy efficiency.⁴⁶ The Statement thus emphasizes the need for global action at the WTO, and calls for reforming such fossil fuel subsidies which can release funds for other development priorities.

This initiative of fossil fuel subsidy reform extended to beyond the WTO regime as well, with a group of countries joining the ‘Friends of Fossil Fuel Subsidy Reform’, which recently called on world leaders to take urgent action in phasing out inefficient fossil fuel subsidies, especially in the context of the post COVID-19 economic recovery phase.⁴⁷ This was done in the build-up to the fifth Anniversary of the conclusion of the Paris Agreement.

The recurring importance of this subject was not lost on the WTO. As part of the Trade and

Environment Week 2020, New Zealand (on behalf of the signatories to the MC11 Ministerial Statement) organized an event titled ‘*Fossil Fuel Subsidy Reform as part of the Green COVID-19 Recovery*’, which recognized the drastic change in the policy landscape caused by the pandemic, and the need to focus fiscal stimulus packages on green recovery.⁴⁸ Members thus took stock of recent developments and highlighted the value of information and experiences within the WTO framework.

3.2 Trade and Environmental Sustainability Structured Discussions (TESSD)

On November 17 2020, some WTO members communicated the need for urgent action to support global efforts towards achieving SDGs and other international environmental commitments. Specifically, they recognized the impact of the COVID-19 pandemic on the global economy and trade, and therefore the requirement to ‘*diversify and strengthen the resilience and sustainability of global supply chains to ensure stability of trade in the face of global challenges*’.⁴⁹

This Communication recommended that Members collaborate and prioritize discussions on the topics of trade and environmental sustainability. These

⁴⁶ WTO, *Fossil Fuel Subsidies Reform Ministerial Statement*, 11 December 2017, found at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=240841,240845,240847,240848,240824,240821,240788,240773,240787,240774&CurrentCatalogueIdIndex=2&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False

⁴⁷ International Institute of Sustainable Development, ‘*We must act now”: ten governments call on world leaders to phase out fossil fuel subsidies*’, December 10, 2020 found

at <https://www.iisd.org/gsi/news-events/we-must-act-now-ten-governments-call-world-leaders-phase-out-fossil-fuel-subsidies>

⁴⁸ WTO, ‘*Fossil Fuel Subsidy Reform as part of a Green COVID-19 Recovery*’, 18 November 2020, found at https://www.wto.org/english/tratop_e/envir_e/member_event_no_6_fossil_fuel_subsidy_reform.pdf

⁴⁹ Communication on Trade and Environmental Sustainability, Para 1(f), Committee on Trade and Environment, W/CTE/W/249, 17 November 2020.

discussions would also discuss possible steps that could be taken by Members to *a)* enhance transparency and exchange of information sharing; *b)* strengthen national and international coherence; *c)* increase cooperation with other international organizations, NGOs, and private parties; and *d)* work on possible actions and deliverables of environmental sustainability in other WTO areas.⁵⁰ Thus, they proposed organising structured discussions to initiate dialogue for WTO members and other relevant external stakeholders, beginning in 2021.

According to a former -WTO Deputy Director-General Alan Wolff, the work programme should include considerations revolving around eliminating tariff and non-tariff barriers in environmental goods and services and strengthening links between trade and climate change mitigation efforts. This, according to him, could be achieved by collaboration on schemes addressing carbon content of trade products, and assisting poor countries to secure green financing.⁵¹

These Structured Discussions were recognized by the new WTO Director-General Ngozi Okonjo-Iweala as well, emphasizing the need to create jobs in the renewable energy sector and bring attention to climate change.⁵² She suggested various issues that Members should incorporate in their discussions, including trade in environmental goods and services, using trade to meet net-zero carbon

targets, options to deal with environmentally harmful subsidies, and deliberating ways in which WTO rules could facilitate circular economies. However, like all other WTO initiatives, these should not result in an arbitrary and unjustifiable manner that adversely affects exports of developing countries and LDCs. In other words, *'the green transition must be just and fair.'*⁵³

These issues were raised in the first formal meeting of the Structured Discussions which took place on 5 March 2021. In addition, participating states also identified setting parameters for negotiations on liberalizing trade in environmental goods and services. They also recognized the value of broadening participation in the Discussions, while taking into account the special needs of developing countries and LDCs. Further meetings have been planned throughout the year, leading to a possible Ministerial Declaration by interested members at the next WTO Ministerial Conference schedule later in 2021.⁵⁴

3.3 Informal Dialogue on Plastics Pollution and Environmentally

⁵⁰ Communication on Trade and Environmental Sustainability, Para 2, Committee on Trade and Environment, W/CTE/W/249, 17 November 2020.

⁵¹ WTO, *New Initiatives launched to intensify WTO work on trade and the environment*, 17 November 2020, found at https://www.wto.org/english/news_e/news20_e/envir_17nov20_e.htm

⁵² For an excellent discussion of the need and possibilities generate jobs in developing and least-developed countries in the environment sector, please see Dr Raymond Saner e-book "Greening the World Trade Organisation" available at

https://www.feem.it/m/publications_pages/20163231141134FinalPublished.pdf.

⁵³ WTO, *DG Okonjo-Iweala hits the ground running*, 5 March 2021, found at https://www.wto.org/english/news_e/news21_e/dgno_05mar21_e.htm

⁵⁴ WTO, *First meeting held to advance work on trade and environmental sustainability*, 5 March 2021, found at https://www.wto.org/english/news_e/news21_e/tessd_08mar21_e.htm

Sustainable Plastics

Trade

Seven WTO Members⁵⁵ recognizing the importance for coordinated efforts to resolve rising environmental, health and economic cost of plastics pollution, and the relevance of the trading regime as a possible solution, launched an open-ended informal dialogue to survey the viability of environmentally sustainable plastics trade, and invited all WTO Members to participate. Some subjects for discussion included increasing transparency, promoting best practices, rendering technical assistance and strengthening policy coherence.⁵⁶

The former Deputy Director-General Alan Wolff also recommended the revival of the Environmental Goods Agreement (EGA) negotiation which could effectively contribute to better plastics trade. This could be done by '*reducing trade barriers to environmentally sound plastic substitutes, as well as to equipment that helps to enhance waste management.*'⁵⁷ While endorsing these informal dialogue, he suggested that Members also include; *a) Drafting principles for effective trade measures that can tackle plastic pollution in a WTO-consistent manner; b) aiming to reduce trade in single-use plastic in a WTO-consistent manner; c) Creating a monitoring mechanism to check relevant measures regarding the same in order to ensure effective progress, while also*

identifying and appreciating innovations and best practices.⁵⁸

He went on to identify the necessity for international cooperation in the matter while also discussing the use of Aid for Trade (A4T) and the Enhanced Integrated Framework (EIF) to support capacity building and a sustainable plastics circular economy. According to Director-General Ngozi Okonjo-Iweala, *Trade can and must play a role in ensuring the transition towards an environmentally sustainable plastics economy. ... trade is a great vector for ensuring efficient, environmentally friendly solutions to find their way to where they are needed the most.*⁵⁹

This Dialogue took place on 29 March 2021 with emphasis being placed on enhancing transparency and international cooperation, the aim of which was to establish a solid factual basis to support WTO members' efforts to reduce plastics pollution and to promote sustainable trade in plastics. The aim for the parties was to understand the source of data deficits and to understand the role other international organizations and stakeholders are playing. This would lead to a comprehensive understanding of the role that the WTO and the multilateral trading regime as a whole need to play in support of already existing international efforts.⁶⁰

In this regard, the next meeting is scheduled to take place potentially in June, with items such as '*strengthening policy coherence, assessing capacity and technical assistance*

⁵⁵ Launched on 17th November 2020. The seven Members are Australia, Barbados, Canada, China, Fiji, Jamaica and Morocco.

⁵⁶ *supra* note 31.

⁵⁷ WTO, *WTO Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade*, Remarks by DDG Alan Wolff, 17 November 2020, found at https://www.wto.org/english/news_e/news20_e/ddgaw_17_nov20a_e.htm

⁵⁸ *Ibid.*

⁵⁹ WTO, *Informal Dialogue on Plastics Pollution kicks off again*, 29 March 2021, found at https://www.wto.org/english/news_e/news21_e/tesd_29m_ar21_e.htm

⁶⁰ WTO, *Informal Dialogue on Plastics Pollution kicks off again*, 29 March 2021, found at https://www.wto.org/english/news_e/news21_e/tesd_29m_ar21_e.htm.

*needs and identifying the scope for collective approaches*⁶¹ forming a part of the agenda.

relationship between e-commerce and climate change during the COVID-19 pandemic.

3.4 Trade and Environment Week 2020⁶²

In furtherance of achieving the ‘fundamental goals’ of sustainable development and environment protection and preservation, the WTO organized a global forum titled ‘Trade and Environment week 2020’ from 16-20 November 2020. The event consisted of multiple events and workshops organized by WTO members, along with a high level session co-hosted by the UNEP and the WTO Secretariat. All these events were held in conjunction with the CTE. The event aimed at: (i) Exploring issues at the forefront of trade and environment linkages; (ii) demonstrating success stories on how to make global trade more ‘*sustainable, resilient and inclusive*’; and (iii) engaging in discussions on building a greener and better WTO after the COVID-19 pandemic.

Some of the topics that were brought to light were: ‘Sustainable Living and International Trade’ (with respect to Costa Rica’s sustainable economic recovery); a roundtable on ‘Stakeholder Priorities for a Forward-looking WTO Agenda on Environmental Sustainability and Trade’; discussions on the use of trade facilitation as an effective tool for climate change mitigation and reduction of natural disasters; and deliberations on the

⁶¹ Ibid.

⁶² WTO, *WTO Trade and Environment Week 2020*, found at

https://www.wto.org/english/tratop_e/envir_e/tedweek2020_e.htm

SECTION 4

Way Forward

The most important way to ensure that trade and environmental protection obligations are harmonized is through increased international cooperation, not just between international organizations, including the WTO, but also between Members themselves.

Sustained cooperation between international organizations

International organizations have frequently come together to draft reports and conduct workshops about international trade and environment linkages. For instance, The WTO and UNEP have frequently collaborated, including through a comprehensive joint-report on Trade and Climate Change, which discusses the need to mitigate, multilateral efforts and national policy changes to mitigate and adapt to climate change, and implications on trade.⁶³ Although there has been significant progress, it is the need of the hour for the relevant international organisations (e.g. WTO, UNCTAD, ITC, UNEP, UNFCCC, UNDP, etc) to continue their sustained efforts to work together to ensure that SDGs are met, especially in light of the COVID-19 pandemic. Inputs must also be taken from other stakeholders as well, including international think tanks, Civil Society Organisations (CSOs), and the private sector.

Utilising current exceptions and initiatives in the multilateral trading system

As it stands, Article XX of GATT provides a number of scenarios where it might be possible for Members to deviate from their non-discrimination obligations under the WTO. Article XX(b) for instance, allows Members to adopt measures deviating from WTO obligations if they are '*necessary to protect plant, animal and human health and environment*';⁶⁴ while Article XX(g) states that deviation would be permitted if a Member adopts measures '*necessary to protect exhaustible natural resources*'.⁶⁵ These exceptions can be used by members to adopt strong environment protection measures that do not constitute violations of their obligations under the WTO. The very important condition is that such measures must not constitute arbitrary discrimination in trade, which is a vital principle of the WTO. The exceptions, coupled with the several new initiatives (as described in the earlier sections), provide useful means to harmonize trade and environmental agendas for inclusive and sustainable development.

⁶³ *supra* note 3.

⁶⁴ GATT, art. XX(b), 1994.

⁶⁵ GATT, art. XX(g), 1994.

Coherent and effective domestic laws that ensure WTO compliance as well as environmental protection

The WTO framework gives Members a strong enough basis to harmonize their obligations under international trade and environment protection under their domestic laws and regulations. For instance, in a case by the WTO Appellate Body,⁶⁶ where India imposed local content requirements for the production of solar cells and claimed that this measure fell under an exception, the Appellate Body ruled that this exception can be availed only if there are strong and coherent laws, and not mere policy changes. Thus, the onus is on Member states to adopt coherent environment protection schemes in their domestic laws. This can be done by coherent laws rather than mere policy changes, effective domestic implementation requirements, and strictly adhering to the standards laid down by international organizations. These include obligations not just under the WTO but also the UNFCCC, and any other international environmental obligations. For instance, the obligations set forth in the Paris Agreement and the SDGs must be sought to be achieved, not as mere policy considerations, but as cogent laws.

Increased cooperation between Members

The agenda for harmonizing trade and environment protection obligations has picked up increasing steam, especially since the turn of the 21st century. States, as stated before, have adopted various international obligations to help guide their efforts in mitigating and adapting to the impact of climate change and have recognized the need for free exchange of information, technology transfer, and discussions on the global stage. States must continue this momentum and continue to take concerted efforts to ensure that trade and environment protection obligations are harmonized. Their cooperation with each other in this sphere can include: sharing of experiences and best practices; transfer of technology; provision of targeted technical and financial assistance; bilateral, sub-regional and regional agreements; and joint initiatives in the multilateral trading system.

The increased cooperation among Members will go a long way in building trust which is a pre-requisite for making progress on this important issue.

⁶⁶ Appellate Body Report, *India- Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456/AB/R, adopted 14 October 2016.

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