**Expert Views** September 2024

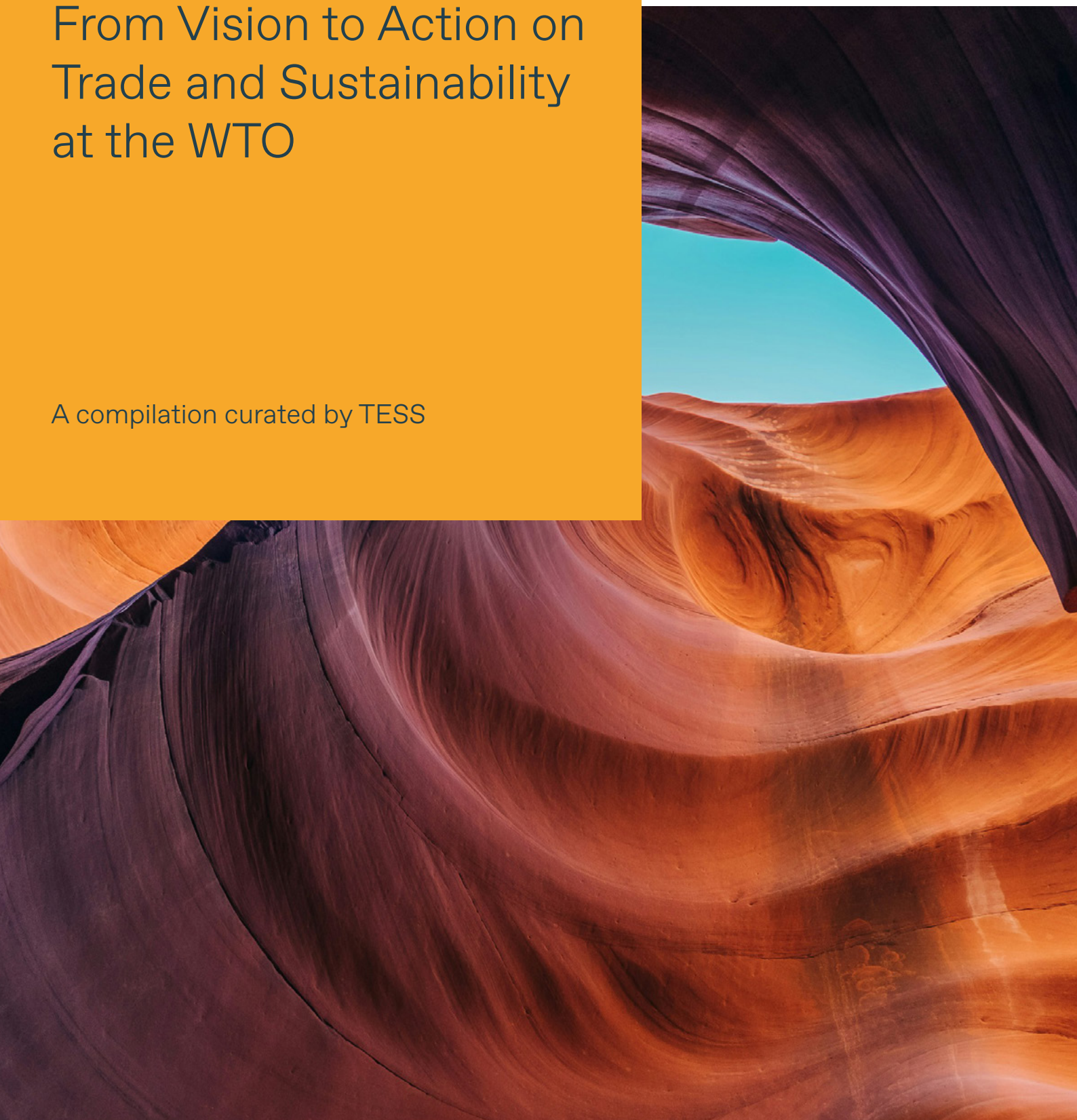
TESS Forum on Trade, Environment, & the SDGs

Synergies

# REVIVING MULTILATERALISM

## From Vision to Action on Trade and Sustainability at the WTO

A compilation curated by TESS



TESS Forum on Trade, Environment, & the SDGs

## About TESS

The Forum on Trade, Environment, & the SDGs (TESS) works to support a global trading system that effectively addresses global environmental crises and advances the sustainable development goals. To foster inclusive international cooperation and action on trade and sustainability, our activities seek to catalyse inclusive, evidence-based, and solutions-oriented dialogue and policymaking, connect the dots between policy communities, provide thought leadership on priorities and policy options, and inspire governments and stakeholders to take meaningful action. TESS is housed at the Geneva Graduate Institute.

## About Synergies

Curated by TESS, Synergies is a blog dedicated to promoting inclusive policy dialogue at the intersection of trade, environment, and sustainable development, drawing on perspectives from a range of experts from around the world. Curated for experts and policymakers from different policy communities, Synergies seeks to foster a shared understanding on options to shape a trading system that effectively addresses global environmental crises and advances sustainable development.

## Acknowledgements

This Synergies series and compilation on reviving multilateralism was curated and produced by Fabrice Lehmann, TESS Senior Editor and Publications Manager and Managing Editor of Synergies. Fabrice is grateful to Carolyn Deere Birkbeck, TESS Founder and Executive Director, and Christophe Bellmann, TESS Head of Policy Analysis and Strategy, for their direction and guidance as well as their continuous support. TESS would like to extend its deep appreciation to all of the authors who contributed to this series with their knowledge and expertise. We also thank Tohu Design for their creative work in the production of this publication

## Disclaimer

The views and opinions expressed in this compilation of Synergies articles are those of the authors and do not necessarily reflect those of TESS or any of its partner organizations, including the Geneva Graduate Institute, or of TESS funders. The authors contributed to this compilation in their personal capacity and no element of this compilation should be attributed to the organizations for which they work or to which they are affiliated.

**Recommended citation**: Synergies. (2024). *Reviving multilateralism. From vision to action on trade and sustainability at the WTO*. Compilation of expert views. Forum on Trade, Environment, & the SDGs (TESS).



tessforum.org

@TESSForum

info@tessforum.org

GENEVA GRADUATE INSTITUTE

INSTITUT DE HAUTES ÉTUDES INTERNATIONALES ET DU DÉVELOPPEMENT

GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES

TESS is housed at the Geneva Graduate Institute.

# Contents

# Overview

As the World Trade Organization (WTO) marks the 30th anniversary of the Marrakesh Agreement, the Forum on Trade, Environment, & the SDGs (TESS) invited articles from a diverse group of leading experts for a series titled *Reviving multilateralism: From vision to action on trade and sustainability at the WTO*. With the importance of environment and sustainable development taking on much greater salience at the WTO over recent years, the series was conceived as an opportunity for constructive reflection on the state of play in the multilateral trading system and how to put sustainability at the top of the agenda.

The majority of articles in this compilation were published online from February to September 2024 in Synergies, a blog curated by TESS dedicated to promoting inclusive policy dialogue at the intersection of trade, environment, and sustainable development, drawing on perspectives from a range of experts from around the world.

The experts contributing to the series were invited to address the following questions:

- In light of the immense sustainability concerns confronting the world, what are the areas where action is most needed in the multilateral trading system?
- What does this imply in terms of agenda-setting processes or reforms that need to be considered at the WTO?
- What are the opportunities and practical next steps that can be taken to advance action or lay the foundations for such an agenda?

In answering these questions, the authors were encouraged to focus on where the multilateral trading system needs to pivot in the near to medium term in order to reach the longer term vision of a trading system that enables and promotes sustainable outcomes. While observing a set of guidelines and framing questions put forward by TESS, the authors were free to select the topics on which they wished to focus.

Bringing together the patchwork of perspectives and topics gathered through that editorial project, this publication is not intended as a well-articulated or even coherent agenda on trade and sustainability in the multilateral trading system, but rather to spur reflection by bringing together different voices and a snapshot of ideas on a variety of issues at the heart of current debates.

The compilation is organized in five parts. The first provides general reflections on the state of play and ways forward on cooperation at the WTO on issues of trade, environment, and sustainable development, drawing heavily on lessons from the Thirteenth Ministerial Conference that took place in late February 2023. The second addresses crosscutting issues for trade governance that supports sustainability, ranging from discussions on reform to the intersections of trade, finance, and technology. The third set of articles considers how multilateral cooperation at the WTO could help avoid fragmentation and ease tensions around trade and sustainability. The topics covered here range from trade-related climate measures and carbon markets to initiatives aimed at greening supply chains and managing environmental and energy transitions. Part four then takes a deep dive into a hot topic on the sustainability and trade cooperation agenda: subsidies. The issue is discussed at a sectoral level, covering fisheries, fossil fuels, and agriculture, and also through broader perspectives on the reform of subsidy rules and transparency. The final part of the compilation provides a sample of positive thematic agendas and initiatives on sustainable trade, including

on environmental goods, services, and technologies, nature-positive trade, sustainable agriculture, and the transition to a circular economy.

We see this compilation of expert views as one instalment in an ongoing effort to spur dialogue and action on trade and sustainability in the multilateral setting.

We look forward to developing more such publications and activities on international cooperation on critical issues and themes at the intersection of trade, environment, and sustainable development both at the WTO and in other relevant fora and processes. In doing so, we will continue to work with a broad range of partners—from governments, delegations, and intergovernmental organizations to academia, non-profits, and stakeholder organizations from civil society and business—engaged in promoting a more sustainable trading system that better responds to the multiple social and environmental crises the world is grappling with.

We hope that these efforts will help translate into action the vision of an international trading system that effectively addresses global environmental crises and advances sustainable development.

# Reflections on the State of Play and Lessons for Ways Forward

# WTO at a "Crossroads" in Addressing Trade and Environment Nexus

*Jean-Marie Paugam*

*WTO members are recognizing the opportunity to shape a global "win-win" approach for trade and the environment, combining green transition, green industrialization, and trade cooperation. With uncoordinated green actions having the potential to fragment world trade and trigger unnecessary conflicts, the cause of the environment will oblige the WTO to invent new forms of trade commitments and global cooperation.*[1]

Just two days ago [on 2 July 2024], four countries—Costa Rica, Iceland, New Zealand, and Switzerland—completed negotiations on a groundbreaking agreement on climate change, trade, and environmental sustainability.

I think this remarkable achievement will inspire and motivate us at the WTO: although we have covered a lot of ground on the trade and environment front, especially in recent years, we need to accelerate our efforts in leveraging trade policy for sustainable development.

Surprisingly, the issue of trade and the environment is not so new. It dates back to the inception of the multilateral trading system itself. The topic was first formally recognized during the inaugural World Environment Summit in Stockholm in 1972, leading to the creation of a working group on trade and the environment within the framework of the GATT [General Agreement on Tariffs and Trade].

> The issue of trade and the environment is not so new—it dates back to the inception of the multilateral trading system itself.

Although the term "environment" was not explicitly included in the GATT when it was established in 1947, the agreement acknowledged the paramount importance of environmental protection. It incorporated provisions for the conservation of natural resources and the protection of animal and plant health.

Then came the Rio Earth Summit in 1992, which established the paradigm of "sustainable development", as outlined by the Brundtland Report.

This concept recognized the equal importance of economic, social, and environmental pillars. Two years later, in 1994, the WTO was created with a mandate to contribute to sustainable development. Its institutional framework included the establishment of a dedicated Trade and Environment Committee, tasked with exploring the synergies between trade and environmental protection.

1. The following is the text of a speech delivered by WTO Deputy Director-General Jean-Marie Paugam on 4 July at the Trade Horizons Conference in Dublin.

In 2001, the WTO Doha Declaration further advanced this agenda by initiating negotiations on trade and the environment. These negotiations addressed the relationship between WTO law and the multilateral environment agreements, the liberalization of green goods and services, and the reform of harmful fisheries subsidies.

As you can see, the issue has always been present with a trend towards greater sustainability. However, it must be acknowledged that until very recently, these efforts resulted in interesting discussions but few concrete outcomes, and even fewer changes in the course of international trade.

For a long time, the environment was treated with a form of benign neglect by trade negotiators: environmental losses were often considered unfortunate externalities to be corrected by non-trade measures and policies. The environment was mostly considered if it could help promote further trade liberalization, such as through the elimination of tariffs and restrictions on the trade of green goods and services.

Recently, there has been a radical change in this attitude. The reason is simple: yesterday, we saw only one direction, that of trade externalities harming the environment; today, it is the environment which is attacking trade.

> For a long time, the environment was treated with a form of benign neglect by trade negotiators; recently, there has been a radical change in this attitude.

Just think of the impact of natural disasters on trade infrastructures, or the drought in the Panama Canal, to understand this shift. Global supply chains, producers, traders, consumers are already under tremendous strain from climate change, extreme weather patterns, pollution, and loss of resources.

In the last three to five years, we have witnessed a paradigm shift within the WTO. What was the change?

First, WTO members explicitly recognized the role of trade in addressing sustainability challenges, including climate change, biodiversity loss, and pollution, in their Ministerial Declaration of 2022.

In the same year, our members achieved a major milestone by concluding a landmark agreement on the reform and prohibition of subsidies benefiting illegal and unreported fisheries. We are now negotiating the second part of this agreement, focusing on subsidies contributing to unsustainable fisheries, with strong hopes of concluding soon.

Second, a critical mass of our members has initiated in-depth discussions on several trade-related environmental topics. One focuses on plastics pollution supporting the broader UN negotiations for a global treaty against plastic pollution. Another dialogue is dedicated to the issue of reforming fossil fuel subsidies. A third addresses various interactions between trade and sustainable development, including the liberalization of green goods and services, trade of clean energies, environmentally harmful and trade distortive subsidies, and good circular economy practices.

Third, the Secretariat has been a strong advocate for advancing global understanding of the trade and environment nexus. The WTO Director-General, Dr. Okonjo-Iweala, frequently asserts that "the future of trade is green." Under her leadership, the Secretariat of the WTO has engaged in significant efforts to enhance our members' knowledge. We have also intensified our contributions to the Climate Change COP, in the framework of the Paris Agreement on Climate. Last year in Dubai, our efforts culminated in organizing the first ever "Trade Day" at the COP28 and the joint mobilization of ICC, UNCTAD, ITC, and the WTO in operating a "Trade House Pavilion".

Where do we stand after this? Significant progress has been made that is setting the stage for future action.

As I mentioned previously, Ministers have recognized the stakes of climate change and global sustainability challenges in the WTO rule book. It is also happening within our Dispute Settlement Mechanism, which—you would be glad to hear—is still operating, even if not fully functioning for the moment. For instance, a recent Panel report stated that "global warming and climate change pose one of the greatest threats to life and health on the planet" and that "climate change is inherently global in nature."

Our members have identified and mapped out very concrete trade actions that can contribute to promoting sustainable trade. For instance, best practices for increasing the transparency of trade flows of plastics, reducing plastics that are harmful to the environment, and the promotion of substitutes and alternatives.

> An integrated world trading system enables and can potentially accelerate the fight against climate change.

The WTO Secretariat has proposed a conceptual framework about the relation between trade and climate. One key finding is that an integrated world trading system enables and can potentially accelerate the fight against climate change, whereas fragmenting trade will only worsen the climate crisis and prevent nations from achieving their net-zero objectives. The WTO has partnered with other international economic organizations to develop a global approach to carbon pricing policies. We have published an inventory of trade policy actions for climate as a sort of toolkit for the use of governments. We are intensively working with the private sector and with standards setting organizations to promote convergence in the methodologies of calculation of the carbon content for "green steel." And, if successful, we hope that this work may be replicated later in other sectors. Together with the World Bank and World Economic Forum, we are helping developing countries to develop their capacity to analyse and find new trade opportunities arising from the growing new climate economy.

Is this enough? In truth it is not. The pace of this development remains too slow within the multilateral trading system.

Private investments in the green transition are advancing much faster than the WTO, as highlighted in our panel discussion. The magnitude of these investment decisions is unprecedented: for instance, one estimate of the

investments needed for decarbonizing the steel sector before 2050 revolves around US$ 1.4 trillion. These investments need legal predictability at national and global levels.

Governments are implementing their net-zero strategies in the framework of the Paris Agreement. In doing so, countries are adopting unilateral, bilateral, sometimes regional policies against climate change and biodiversity loss.

Yet, they do so without coordination regarding the trade dimensions or consequences of these policies on the world trading system. This is becoming a problem.

While very legitimate on their own, uncoordinated environment actions have the potential to fragment world trade.

Why? Because while very legitimate on their own, uncoordinated environment actions have the potential to fragment world trade.

— Take carbon pricing strategies, which are certainly a first best to fight climate change. Some countries choose to implement a carbon price, creating a risk of carbon leakage that must be addressed through carbon levies on imports. We have identified nearly 70 carbon taxes schemes in development worldwide, with several countries considering mechanisms similar to the EU's CBAM [Carbon Border Adjustment Mechanism].

— Take industrial and agricultural subsidies. Subsidies can accelerate the green transition and reduce carbon emissions. However, depending on their design they can also have adverse effects on the pace of the green transition and on trade, leading to competitive distortions, building of overcapacities, and discrimination. We have also seen in the past that "subsidy wars" can hurt the poorer, smaller nations that do not have the same capacity to subsidize.

— Take export restrictions of rare earths, critical minerals, or recyclable materials like steel scrap, which can also pose challenges. These restrictions can slow down the global path towards decarbonization, since access to these materials is essential for the green transition and the development of a green industry.

— Take standards, regulations, and labels. In the steel sector alone, which we are closely working with, we have identified more than 25 standards, public and private, with different measurement standards and methodologies of decarbonization. The same could be said in other sectors.

At a minimum, this landscape can increase trade transaction costs for businesses, complicate border operations, reduce transparency and traceability of traded goods. At worst, it can lead to discrimination, unfair competition, consumer abuse, and unnecessary trade conflicts.

This would be detrimental for both trade and the environment. A fragmented and conflictual trading system would disincentivize green innovation, reduce resources optimization and economies of scale, slow down technological dissemination and technology transfers. Last but not least, there is a real risk of eviction of poorer and most vulnerable producers. We already see that happening when traceability requirements for goods become unmanageable for small producers.

So we are at a crossroads in the multilateral system, with an opportunity to shape a global win-win approach for trade and the environment. We can combine green transition, green industrialization, and trade cooperation. This is what "reglobalization" is about. And the time to act is now.

Our members have started recognizing this. A first and very constructive ministerial conversation was held on these topics during our last Ministerial Conference in February 2024. Several of our major members have presented interesting propositions to elevate the level of urgency of the discussions and thematic approaches aiming at practical outcomes. They have started discussing topics such as: how to manage the green industrial transition while preserving globally a level playing field; how to provide sufficient policy space for developing countries to grab the opportunities associated with this new industrialization wave.

> Will we one day at the WTO open partial or full trade, climate, and sustainability negotiations?

What will come out of these discussions? And when? Will we one day at the WTO open partial or full trade, climate, and sustainability negotiations, just as the four pioneering countries that I initially mentioned have done?

I have no doubt that we will move in this direction, or the current world trading system will lose its relevancy. There is no shortage of substantive issues, as you could hear: green tariffs, export restrictions, green subsidies, fossil fuel subsidies, border adjustments, standards and regulations, ecolabels, public procurements...

Where I still have doubts is in how our trade negotiators will address these daunting issues within the WTO.

Inherited patterns of negotiation and a certain lack of trust will not help them. The truth is, the WTO is not used to negotiating for a public good that benefits all people, not just "my people": the mindset remains very impressed by the old mercantilist scheme which does not make room for public goods. However, we succeeded once with the Fisheries Subsidies Agreement, which is truly a public goods agreement.

> Beyond binding multilateral treaties, there are many distinct kinds of rule-making and international cooperation methodologies that could inspire environmental action in the WTO.

This is not the only approach. Beyond binding multilateral treaties, there are many distinct kinds of rule-making and international cooperation methodologies that could inspire environmental action in the WTO.

We have plurilateral commitments. Recently, a milestone agreement within the WTO saw some members adopting new disciplines for the transparency of their trade regimes in services domestic regulations. This approach could be a model for environmental action.

We also have experience with flexibilities in the adoption of trade commitments: agreements including "opt-in" and "opt-out" options can be designed in the WTO and, of course, special and differential treatment of developing countries is always a major principle in our legal architecture.

We may also look outside of the WTO to search inspiration from non-binding rules, soft laws or others. The Paris Agreement on Climate stands as a very inspiring model with its common objectives and "nationally determined contributions" for implementation. Regional cooperation experiences such as APEC [Asia-Pacific Economic Cooperation] also provide very insightful examples of voluntary trade action for the environment.

I trust that the cause of the environment will oblige us in the WTO to invent new forms of trade commitments and global cooperation.

> The cause of the environment will oblige us in the WTO to invent new forms of trade commitments and global cooperation.

Greening trade and making it sustainable stands as the defining challenge of our generation. Our daughters and kids will look back and judge us on what we achieved. They have already started, believe me!

Let me thank you from the heart for the inspiration that green Ireland provides, at this very time when we urgently need to act about green. I hope that this inspiration will help foster and accelerate the pace of the WTO towards shaping a sustainable trade for the future.

---

***Jean-Marie Paugam*** *is Deputy Director-General of the World Trade Organization.*

* This speech was first published as a WTO news item.

# Sustainability at the WTO After MC13: Forging a Proactive Response

*Carolyn Deere Birkbeck & Christophe Bellmann*

*As part of the assessment of the WTO's Thirteenth Ministerial Conference, it is important to recognize that a broad range of ministerial statements made at MC13 highlighted the relevance of environmental concerns to trade and expressed interest in pursuing cooperation in the WTO's multilateral setting.*

In the wake of the Thirteenth Ministerial Conference (MC13) of the World Trade Organization (WTO), there was considerable dismay among advocates of trade policies that advance sustainability objectives about the failure of governments to conclude phase two of the fisheries negotiations and the absence of an explicit commitment, or even mention, in the Abu Dhabi Ministerial Declaration of the importance of cooperation on issues of environment and climate. This disappointment was well-justified and the broader impacts on the relevance of the multilateral trade system should not be underestimated.

That said, the geopolitical tensions, short-term electoral considerations, ineffective negotiating processes, and hostage-taking tactics that led to failure at MC13 should not cloud recognition that the vast majority of WTO members did, in many respects, demonstrate they are ready to engage and build cooperation on sustainability and trade at the WTO. As governments and stakeholders assess the ways forward, it is important to acknowledge failures while also recognizing important ongoing progress, albeit incremental, and its value.

> The disappointing outcomes at MC13 should not cloud recognition that the vast majority of WTO members did, in many respects, demonstrate they are ready to engage and build cooperation on sustainability and trade at the WTO.

**What Emerged (or Not) From MC13?**

After more than 20 years of negotiations, the failure to reach an agreement to discipline subsidies that contribute to the global decline of fish stocks and directly threaten the livelihoods of fishing communities, food security, and the sustainability of shared natural resources raises significant doubts about the commitment of certain members to achieve the 2030 UN Sustainable Development Goals. While the Agreement on Fisheries Subsidies concluded at MC12 constituted a significant achievement, it remains a partial deal and leaves unaddressed critical aspects that are vital to securing sustainability of fish stocks. At MC13, a number of additional members ratified the agreement, and it has since reached a total of 81 (as of August 2024), but is still

29 short of the number needed to enter into force. It is more urgent than ever to pick up the work in Geneva where ministers left it and conclude the talks by MC14 if not before, as called for by the Director-General in her closing speech.

On broader sustainability issues, a strong ministerial-level commitment to strengthen international cooperation on agriculture and food security, global environmental challenges, and wider sustainable development priorities in the multilateral setting was not only long overdue, but would have provided vital renewed political impetus and orientation for further work.

At MC13, there was an urgent need, for instance, for ministers to build on the recognition at MC12 of the relevance of global environmental challenges, including climate change and related natural disasters, biodiversity loss, and pollution, and provide political guidance on the way forward. Collectively, ministers failed in this regard. The Abu Dhabi Ministerial Declaration does reassert the importance of sustainable development as an overarching objective of the WTO. It also recognizes the "short-term challenges faced by Members, in particular developing Members, including LDCs [least developed countries], confronting global and domestic crises including disasters caused by natural hazards" and "encourage[s] relevant WTO bodies to continue Member-driven work, aimed at supporting resilience and disaster preparedness." However, the absence of explicit mention of how to consolidate growing engagement on environment and climate over the past few years and strengthen cooperation at the WTO was hugely disappointing.

Nonetheless, as part of the assessment of MC13, it is important to recognize that a broad range of ministerial statements made at the conference by regional and other political groupings, individual WTO members, and on behalf of the three member-led initiatives on environment highlighted the relevance of environmental concerns to trade and expressed interest in pursuing cooperation in the WTO's multilateral setting.

Meeting on the eve of MC13, for instance, the Coalition of Trade Ministers of Climate issued a Communiqué and Menu of Voluntary Actions. With over 60 ministers from a diverse range of countries, the coalition reinforced one of its core priorities, namely to "[f]oster international cooperation and collective action to promote trade and trade policies that pursue climate action across the WTO." Their Communiqué underlines "the importance of making the WTO more responsive to global environmental challenges," and called for "ambitious, concrete and forward-looking commitments in the WTO Ministerial Declaration on how trade, trade policy and the WTO can support the global response to the climate crisis, bearing in mind sustainable development." The coalition's Menu of Voluntary Actions sets out eight action items that can be taken at the ministerial level by members, either collectively or individually, depending on their respective priorities and national capacities, including "[a]ctively engag[ing] in the WTO on the nexus of trade, climate and sustainable development."

An additional development at MC13 was a Ministerial Declaration on the Contribution of the Multilateral Trading System to Tackle Environmental Challenges co-sponsored by almost 70 developing countries. The specifics of the statement are worthy of attention because they demonstrate the engagement and interest of developing countries in substantive discussion of climate, environment, and sustainable development priorities, countering the false narrative that all developing countries are opposed to taking up such topics at the WTO.

Their declaration highlights, for instance, the support of co-sponsors for coherent, open, member-driven, consensus-based, and inclusive discussion of trade and environment issues across WTO bodies. It encourages enhanced transparency and multilateral cooperation on trade-related environmental measures; dialogue on how to promote trade that supports sustainable development and just transitions; and trade cooperation on incentives

for sustainably produced goods and climate technologies. The co-sponsors also emphasized the importance of enhancing coherence between international environmental regimes and trade regimes, calling on all members to refrain from imposing unilateral measures that create unnecessary obstacles to trade or arbitrary or unjustifiable discrimination, and highlighted links between sustainability in trade and climate finance.

> Many developed and developing countries presented perspectives and priorities related to environmental challenges in their ministerial statements, and supported the continued revitalization of discussions on these topics in the Committee on Trade and Environment.

In addition, many developed and developing countries presented perspectives and priorities related to environmental challenges in their ministerial statements, and supported the continued revitalization of discussions on these topics in the Committee on Trade and Environment (CTE). For instance, statements from the Organisation of African, Caribbean and Pacific States, the Pacific Group, and the LDC group, along with those of a range of Latin American countries emphasized concerns about the scale and impact of environmental crises, their relevance to the countries' economic and trade priorities, or noted specific topics for enhanced cooperation—from trade policy solutions to support climate change adaptation, supporting participation in green value chains, and incentives for sustainable production to the role of trade in ensuring global dissemination of low-carbon technologies and services. Many emphasized the need to assist developing countries, including LDCs, small island developing states, and small, vulnerable economies, in meeting trade-related environmental challenges, calling for collective and collaborative approaches to integrating sustainable practices and climate considerations into trade policies.

In addition, over half of the WTO's membership, covering more than 85% of global trade, reinforced their support for one or more of the three member-led initiatives on environmental sustainability, plastic pollution, and fossil fuel subsidy reform. Notably, the Dialogue on Plastic Pollution (DPP), which brings together over 80 WTO members, circulated a ministerial statement that identifies areas for international cooperation on the trade dimensions of plastic pollution, including through voluntary individual and collective actions, and calls for further concrete, pragmatic, and effective outcomes at the latest by MC14.

Similarly, the co-convenors of the Trade and environmental Sustainability Structured Discussions (TESSD) issued a statement, an updated work plan, and a series of outcome documents summarizing the work of its four working groups on environmental goods and services, trade-related climate measures, circular economy – circularity, and subsidies. Importantly, the co-convenor statements emphasize the goal of delivering concrete results by MC14.

Finally, co-sponsors of the Fossil Fuel Subsidy Reform (FFSR) initiative issued an updated ministerial statement and a set of options to advance reform focusing on enhancing transparency by making fuller use

of the Trade Policy Review Mechanism; developing practical guidelines to ensure that subsidies introduced to address the energy crises remain targeted, transparent, and temporary; and examining current forms of support to identify the characteristics of the most harmful ones to the environment and trade and considering possible pathways to reform them.

**Looking Ahead: A More Proactive Response**

Each of the efforts noted above play a key role in building shared understanding and cooperation on trade and sustainability among WTO members. Looking ahead, a key priority—and expectation—from many stakeholders is for the WTO to respond more explicitly and proactively to global environmental challenges, especially the climate crisis, and to wider sustainable development priorities. Members can and should harness the growing range of venues at the WTO to exchange perspectives on challenges and opportunities, identify pathways for cooperation, and forge concrete outcomes.

A key priority—and expectation—from many stakeholders is for the WTO to respond more explicitly and proactively to global environmental challenges, especially the climate crisis, and to wider sustainable development priorities.

First, governments and stakeholders should continue to support ongoing efforts to revitalize multilateral deliberations in the Committee on Trade and Environment (CTE). In a sign of the potential to "reform by doing," a first CTE thematic session was held in late 2023, focusing on trade contributions to energy transition efforts concerning climate adaptation and mitigation, with a second session on the same topic held in April 2024. Further such thematic sessions of the CTE are expected and can play a central role in fostering much-needed focused multilateral dialogue and cooperation on specific issues.

Second, beyond the CTE, governments can continue to highlight sustainability issues in various relevant WTO councils and bodies, including the councils responsible for goods, services, and intellectual property; the committees responsible for agriculture, development, and technical barriers to trade; and the working groups responsible for trade and technology transfer, and on trade, debt, and finance. Across these fora, WTO members can share national experiences, discuss best practices and concrete proposals, and fulfil their commitments to transparency of environment-related trade measures.

Third, ongoing discussions in the three member-led initiatives, namely the DPP, TESSD, and FFSR initiative, will continue to have a vital, complementary function as incubators of options for inclusive, collaborative action, while providing a non-negotiating venue to explore emerging issues and connect the dots between discussions currently occurring in silos in different parts of the WTO system. Faced with long-standing difficulties in reaching multilateral consensus, they can explore creative ways to revitalize and make multilateralism work. Here, soft law approaches in the form of best practices, voluntary actions,

commitments, and guidelines are examples of outcomes that can both sustain the relevance of the multilateral trading system and support policy actions at the national and regional level. In the year ahead, each initiative will need to frame their ongoing work and meetings in ways that support preparations for concrete outcomes at MC14.

Fourth, the ninth Aid for Trade Global Review in June 2024 offered opportunities to explore how aid for trade and financing can support trade-related contributions and responses to the sustainable development priorities of developing countries, including in relation to environmental challenges. Building on these discussions, governments could agree to pursue the development of a clear set of environmental goals, priorities, and targets in the aid for trade work programme.

Finally, there is an opportunity to better harness the expertise, convening power, and good offices of the WTO Secretariat to provide data and analysis on sustainability and trade that can support the work of members and foster and support engagement with key international partners. In this respect, one should highlight the precedent created by the Ministerial Decision on the Work Programme on Small Economies adopted at MC13, which instructs the Secretariat to provide relevant information and factual analysis for discussion in the CTE on "exploring with other relevant WTO bodies how to integrate trade related climate change adaptation and mitigation policies into the trade policies of small economies." The WTO's Director General, Dr. Ngozi Okonjo-Iweala, has demonstrated her commitment to a trading system that works for people and the planet, and has been a powerful advocate of the WTO and trade playing a more prominent role in the global response to the climate agenda. A clearer work programme and mandate from members would serve to provide guidance on emerging new and pragmatic roles for the WTO Secretariat—a discussion that inevitably needs to happen.

Trade and the multilateral trading system have a central role to play in contributing to global efforts to address sustainability challenges. It is right for the WTO's relevance and credibility to be judged by its ability to respond—swiftly—to urgent environmental crises, and to do so in ways that are effective, just, and address wider sustainable development priorities. We can take hope in the fact that the vast majority of WTO members demonstrated that they are ready to engage and build cooperation on sustainability and trade at the WTO. Now is the time to capitalize on this growing engagement and invest more in making the multilateral trading system work for sustainability.

---

***Carolyn Deere Birkbeck*** *is Founder and Executive Director, Forum on Trade, Environment, & the SDGs (TESS).*

***Christophe Bellmann*** *is Head of Policy Analysis and Strategy, Forum on Trade, Environment, & the SDGs (TESS).*

# There's a Great Future in Plastics – And Other Takeaways From the WTO MC13 Ministerial

*Robert Howse*

*Absent a grand bargain on trade and environment, there is much in the way of detailed technical work and informed policy dialogue that can be done to facilitate the use of the trade system to achieve environmental goals, while preserving values of openness and non-discrimination.*

In an iconic scene from the classic film The Graduate, Mr McGuire takes aside the main character, played by the young Dustin Hoffman, and says: "Just one word. Plastics. There's a great future in plastics, think about it." For the WTO after the Thirteenth Ministerial Conference (MC13), the future may indeed be in plastics—that is, in the kind of global governance exemplified by the WTO's plurilateral dialogue on plastics pollution.

MC13 brought forth a 14-page Ministerial Statement on Plastic Pollution and Environmentally Sustainable Plastics Trade. It was largely ignored or downplayed by commentators quick to express their disappointment that a grand bargain on trade and environment failed to materialize in Abu Dhabi.

The plastics initiative is sponsored so far by over 80 WTO members, who (according to the WTO) account for 85% of world trade. An essential part of the context for the initiative is the launch of negotiations at the United Nations (UN) on a binding multilateral agreement to curb plastic pollution. As UN treaty negotiations progress, the sponsors of the WTO dialogue seek to develop a set of approaches in the multilateral trading system that can facilitate these efforts. Here is something innovative and creative on trade and environment: the effort to be proactive in preparing to integrate international environmental norms on plastic pollution into the trading system as those norms are being developed at the UN.

> Here is something innovative and creative on trade and environment: the effort to be proactive in preparing to integrate international environmental norms on plastic pollution into the trading system as those norms are being developed at the United Nations.

Thus, the ministerial statement catalogues a range of actions WTO members can take to "promote cooperative and effective trade-related policies and measures [...] to reduce plastics and plastic products that are harmful to the environment or human health, or unnecessary single-use plastics and plastic packaging, associated with international trade that are not essential for medical or sanitary purposes."

Among the trade-related measures set out in the statement are reinforcing or broadening import and export restrictions on waste, designing internal taxes to promote recyclables, imposing charges on non-reusable plastic products, as well as "[r]eview[ing] and realign[ing] tariff profiles to level the playing field between plastics and non-plastic substitutes and alternative products."

The ministerial statement does not call explicitly for such actions, but their presence among the catalogue of options is a valuable signal that the WTO system is adaptable to the goal of curbing trade that contributes to plastic pollution, as well as facilitating trade in substitute products that are sustainable. It is an important message for the UN negotiators as they move to the completion of a treaty that will bind states to concrete measures to reduce environmental harm from plastics.

I doubt though that this will give much cheer to the WTO naysayers, whose pronouncements about the failure of MC13 were, of course, all too predictable. For the cynics, highlighting the lack of outcomes from ministerial conferences is a typical way of beating up on the organization, sometimes to the point of asserting its utter irrelevance to anything important in global economic governance.

These pronouncements beg the question of why ministerial conferences should be expected to produce results like breakthroughs in treaty negotiations, or to narrow fundamental differences of perspective—e.g. on how to curb subsidies. Bringing 165+ trade ministers together for a few days is, as US Trade Representative Katherine Tai has pointed out, a great opportunity for bilateral meetings, and the context also generated some impressive NGO networking, a plethora of brainstorming events. But why should a ministerial be expected to be a good negotiating forum?

In the heyday of neoliberalism, these gatherings were a pretext for creating a hothouse atmosphere of high-pressure, high-stakes bargaining, with Green Room tactics and all-night negotiating sessions that wore down delegates, among other dodgy tactics to get to Yes by isolating "hold outs." At Seattle and then Cancún, developing countries in particular pushed back, leading to the collapse of the meetings. Doha was barely a success, but at the cost of a false promise of a "development round." This could not but backfire when the expectations of what a development round should really mean were quickly quashed by developed country intransigence against rebalancing the Uruguay Round on matters like intellectual property, special and differential treatment, and policy space for subsidies and other activist economic measures.

The last ministerial that produced a "bargain" of sorts was Bali, where the multilateral Trade Facilitation Agreement was accepted by the membership, and a temporary solution was found on stockpiling and food security. In the case of Bali, then Director-General (DG) Roberto Azevêdo was careful not to raise expectations unduly, and he did much of the work of moving forward on negotiating drafts in Geneva beforehand. Azevêdo realized that if positions were not basically aligned going into the ministerial, the opportunities for negotiating would be very constrained; but on food security it took a last minute intervention of then US President Barack Obama to break the impasse.

MC12, on the heels of the pandemic, suggested the possibility of a different model for the ministerial: moving issues forward through high-level attention to them but without going the last mile to deliver a signed and sealed bargain. Thus, there was a positive result on fisheries subsidies, for example, but the work was far from done. On trade-related aspects of intellectual property rights (TRIPS) and the pandemic, agreeing to genuine flexibilities proved unsurmountable, given the strength of the pharma lobby—MC12 produced a basically stillborn or largely irrelevant vaccine waiver but with a commitment to negotiate further.

> MC12 suggested the possibility of a different model for the ministerial: moving issues forward through high-level attention to them but without going the last mile to deliver a signed and sealed bargain.

Along these lines, MC13—viewed as an inflection point for consolidating progress on some fronts and taking stock of persisting differences on others (e.g. agriculture)—did rather well. In the case of the plurilateral domestic regulation of services agreement, MC13 was a point of consolidation where many of the participating members finalized changes in their schedules to reflect commitments on domestic regulation. A definitive text of the plurilateral Investment Facilitation for Development (IFD) Agreement was released publicly. The positive significance of that was turned into a tense moment, quite unnecessarily, by the effort to strong-arm the inclusion of the IFD Agreement in Annex 4, as an official WTO plurilateral accord; this triggered disagreement from India and to some extent South Africa as well.[2]

Regrettably, the DG of the WTO was nudged towards a discourse suggesting that the test of the WTO's relevance would in significant ways be the "outcomes" of MC13. She spent too much time in Davos circles, arguably, and put too much effort into trying to pitch big business about the WTO's importance—on digital trade, for example. The folly of this was brought home when the US, supposedly the poster child for digital trade untethered by concerns such as privacy, announced loud and clear that Washington was tacking in a different direction. The DG ought to have stuck to her original themes of inclusiveness, equity, and empowerment, crucial to a post-neoliberal vision of the WTO. These were more in evidence at MC12, though they certainly did not disappear from MC13, and are reflected in the Ministerial Declaration ending the conference.

As for the lack of a grand bargain on trade and environment, the question is less why this did not emerge at MC13 and much more whether in the first place it is something we can or should expect from the WTO, even functioning at its best. Differences between states on environment and climate are real and serious. In many cases they are deeply political. We should not underestimate the resources that the fossil fuel world has at its disposal for buying and retaining political influence, impeding progress on environment in general, and climate in particular.

> As for the lack of a grand bargain on trade and environment, the question is less why this did not emerge at MC13 and much more whether in the first place it is something we can or should expect from the WTO, even functioning at its best.

2. I have addressed that conflict in previous TradeTakes posts; but there was in the first place no need to push the Annex 4 issue at MC13, because the IFD Agreement only comes into force once there are 75 ratifications. It is premature to place into Annex 4 an accord that is not yet in operation.

There is something else too. Agents bargain in the shadow of the law (a commonly-cited implication of the Coase theorem). As debates about the WTO consistency of the EU's Carbon Border Adjustment Mechanism (CBAM) amply illustrate, the existing legal baseline is largely that established by the Appellate Body in Shrimp/Turtle. Unilateral trade measures to protect the environment can be justifiable, but the different conditions in other states have to be taken into account, ideally through negotiation or at least dialogue with those states, but also by accommodations in regulatory design that are compatible with the overarching environmental goal. Further, the fine print of such measures must be free of unjustifiable or arbitrary discrimination; the scheme in practice must not operate in a protectionist manner. As far as grand bargains go, is it likely that WTO members could improve on this general equilibrium through negotiations in the current geopolitical environment? I am not persuaded.

On the other hand, there is much in the way of detailed technical work and informed policy dialogue that can be done to facilitate the use of the trade system to achieve environmental goals, while preserving values of openness and non-discrimination. On CBAM-type measures, for example, the WTO has already initiated a forum on technical standards for decarbonization, an important challenge if different countries' unilateral measures are to operate in a compatible, positively reinforcing fashion.

None of this has the glamour and theatricality of a grand bargain in the form of a treaty agreed by a breakthrough on the final day of a ministerial conference. But, like the plastics initiative, it is the kind of contribution that the WTO is suited to making. Viewed in light of the constraints in today's world, it also arguably represents state of the art global governance.

---

***Robert Howse*** *is the Lloyd C. Nelson Professor of International Law at NYU School of Law.*

* This article was first published in TradeTakes.

## Climate and Trade Cooperation After MC13: Quo Vadis?

*David Kleimann, Jodie Keane, & Michai Robertson*

*After a largely disappointing ministerial conference, it remains imperative to uphold stakeholder support for existing efforts that promote the reinvigoration of the WTO's deliberative functions. The organization's multilateral sustainability agenda should stand at the front and centre of such endeavours.*

The urgent need for international cooperation on policies at the intersection of climate and trade is a prominent feature of contemporary debates among governments, private stakeholders, think tanks, and academia around the world.

Trade and policy fragmentation resulting from uncoordinated environmental standards, national carbon markets, and green industrial subsidy races risk jeopardizing the climate benefits derived from trade by reducing efficiency, raising costs, and reinforcing existing international economic inequities.

The World Trade Organization (WTO) and other international organizations had pulled out all stops in their efforts to raise awareness for the imperative of international climate and trade policy coordination. Events such as the WTO Public Forum and the first-ever "Trade Day" at the 2023 UN Climate Conference (COP28) in December 2023 highlighted the crucial role international trade plays in supporting climate change adaption and mitigation through green supply chains and technological innovation.

However, those who may have expected that increasing public prominence of the climate and trade policy nexus would result in expedient progress or even tangible results at the Thirteenth WTO Ministerial Conference (MC13) (26–29 February 2024) were to be disappointed. Opposition from a handful of WTO members to "new" agenda items, the sputtering of the WTO's negotiation engine, and unfavourable geopolitical conditions have forced more managed expectations; this has redefined what constitutes "success" when it comes to WTO-centred processes in general, and the WTO's so far "informal" sustainability agenda in particular.

> The merit of WTO outcomes on sustainable trade should be assessed not against ideal world scenarios and dated hopes for binding multilateral agreements ready for national implementation, but against more realistic benchmarks.

The merit of WTO outcomes on sustainable trade should be assessed not against ideal world scenarios and dated hopes for binding multilateral agreements ready for national implementation, but against more realistic benchmarks. Consensus to revitalize the work of the WTO Committee on Trade and Environment in the near term—including through more sessions on thematic issues—as well as convergence on non-binding instruments, best practice principles, and codes of conduct to guide national policy practices, would make for valuable achievements in the medium term.

**Premature Optimism for Climate Change Progress at MC13**

Recent momentum in international climate negotiations under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC) may have fuelled some short-lived optimism for similar progress on sustainable trade issues at MC13. After all, the last Ministerial Conference (MC12) acknowledged the urgency of addressing global environmental challenges like climate change and reaffirmed the need to support developing countries, especially least developed countries, in achieving sustainable development.

Preparatory work on behalf of some WTO members had aimed to at least put the most pressing trade policy-related sustainability issues on the agenda of the WTO's multilateral committees. These efforts included proposals focused on addressing trade and global environmental challenges more broadly, new-era industrial policies, the link between environmental measures and development, and integrating developing countries into sustainable supply chains. For example, a February 2023 European Union communication to WTO members exemplifies this effort by outlining a pragmatic approach to "Reinforc[e] the Deliberative Function of the WTO to Respond to Global Trade Policy Challenges." China also supports multilateral discussions on carbon and reinvigorating the WTO's Committee on Trade and Environment.

The procedural modesty and pronounced incrementalism that characterize these proposals has likely been inspired by a recognition of the complexities of the issue at hand as well as contemporary geopolitics that have generated a highly challenging environment for trade multilateralism. It may also reflect lessons learned from over two decades of long-lasting fisheries subsidies negotiations, which MC13 was still not able to get across the line—a huge disappointment for many.

**Inconvenient Truths**

First and foremost, MC13 delivered a severe disappointment to those who expected more on climate-related trade issues. Hopes had focused on a Ministerial Declaration that would go beyond a paragraph recalling existing "sustainable development" commitments as per the 1994 Marrakesh Agreement Establishing the WTO; instead the Abu Dhabi Declaration did just that. At the end of the summit, literal reference to climate change only featured as support provided by all members regarding the Committee on Technical Barriers to Trade and its progress on member-driven work on the issue alongside, inter alia, sustainable development.

Prior to MC13, India in particular had repeatedly made clear that environment and climate do not belong on the WTO's agenda and signalled opposition to any related multilateral work programme, including through direct and pronounced opposition to the proposals put forward by the European Union. During the WTO conference itself, indeed, Indian Minister of Commerce Piyush Goyal prominently took to the media, to argue that trade and the environment "are two separate issues," while omitting that India had joined Brazil, China, and South Africa in their attempt at COP28 last December to place unilateral trade measures related to climate change on the formal negotiation agenda.

Given India's longstanding reluctance to add "new" issues to the multilateral trade agenda, its insistence may have come as no surprise to the more seasoned observers of the WTO-centred negotiation process. However, the Indian opposition to formally integrating deliberations on the climate and trade policy nexus issues into the WTO agenda stands in sharp contrast to an increasing number of developed, developing, and least developed WTO members who wish to address sustainable trade policy challenges in the most inclusive setting. And to some extent, it also stands in contrast to India's recent contributions to related deliberations at the Committee on Trade and Environment.

The best illustration of this circumstance may be the emergence of a Ministerial Declaration on the Contribution of the Multilateral Trading System to Tackle Environmental Challenges—an initiative led by Paraguay and co-sponsored by 15 other developing country members (but not India!) in addition to the African Group. The document calls for enhanced transparency on trade-related environmental measures; calls on members to refrain from unilateral protectionism disguised as environmental measures; highlights links between sustainable trade and climate finance; supports trade cooperation on sustainably produced goods; emphasizes the importance of cooperation on climate technologies; and overall underscores the importance of multilateral cooperation on trade-related environmental measures at the WTO. Many of the same developing country sponsors (Paraguay, the African Group, and Brazil amongst others) were also among the 112 supporters (alongside developed countries such as the European Union and the United States, amongst others) of the climate-related Ministerial Declaration on Strengthening Regulatory Cooperation to Reduce Technical Barriers to Trade. These constructive initiatives undermine one narrative that developing countries are dogmatically opposed to multilateral cooperation addressing the climate emergency.

These constructive initiatives undermine one narrative that developing countries are dogmatically opposed to multilateral cooperation addressing the climate emergency.

Indian opposition could be interpreted as a bargaining strategy that leverages its veto power on sustainability issues to gain ground with regards to India's agricultural trade policy priorities in WTO negotiations. As a side-effect, however, India's absence from the aforementioned initiatives inflicts considerable collateral damage on Global South solidarity.

Chances are high that India's stance will, if upheld, further force an even more pronounced shift of efforts towards advancing deliberations on climate and trade nexus policy measures in plurilateral WTO initiatives that typically include a much smaller subset of WTO members. Worse, it may make WTO-external fora, such as the G7's Climate Club initiative with its OECD Interim Secretariat (and only 38 members) as well as the OECD's Inclusive Forum for Carbon Mitigation Approaches (with currently 55 members) serious institutional alternatives for climate and trade nexus policy cooperation. Finally, India's position is grist to the mill of those who contend that unilateral policy approaches are a contemporary necessity.

**Some Progress on the Plurilateral Front**

At MC13, the WTO's member-led Trade and Environmental Sustainability Structured Discussions (TESSD), presented a political statement by the co-convenors, an updated work plan, and a series of outcome documents summarizing the work of its four working groups on environmental goods and services, trade-related climate measures, circular economy – circularity, and subsidies. Yet, these reports represent modest progress and the 2024 work plan from the 77 TESSD members (as of August 2024) illustrates modest ambitions, promising only to "guide work towards identifying possible concrete actions or recommendations by the next ministerial conference." The New Zealand-led Fossil Fuel Subsidy Reform (FFSR) initiative, co-sponsored by a 47-country strong subgroup of TESSD members (as of August 2024), presented an updated Ministerial Statement and a work programme towards MC14. Another member-led initiative, the Dialogue on Plastics Pollution (DPP), comprising 82 co-sponsors (as of August 2024), succeeded in agreeing on a joint MC13 Ministerial Statement reflecting the work to date, identifying areas for voluntary individual and collective actions on trade dimensions of plastic pollution.

However, while almost half of the DPP co-sponsors are developing countries, currently only a handful of least developed countries and small island developing states are members of the TESSD. This may reflect capacity constraints or concerns that the agenda does not fully prioritize their interests (e.g. adaptation, technology transfer). But it may also indicate their very preference to continue discussions in multilateral WTO committees (e.g. the Committee for Trade and Environment, the Committee on Technical Barriers to Trade, or the Committee on Subsidies and Countervailing Measures).

**Ministerial Engagement**

It is also notable that MC13 featured, for the first time, ministerial roundtables on industrial policy and sustainable trade, which, however, did not deliver more than symbolism and pre-prepared statements on good intentions (and the informal talks which had begun in 2023).

The Coalition of Trade Ministers on Climate—a WTO-external initiative launched in 2023 to promote policy coordination at the intersection of trade, climate, and sustainable development—met for the second time to give impetus to their attempt to bridge the gap between the trade and climate change regimes. On that occasion, the 60-plus members of the coalition released a Communiqué and a Menu of Voluntary Actions. While this effort is a useful addition to provide open and constructive dialogue, it must avoid the impression that it creates an alternative forum on climate and trade nexus cooperation outside of the WTO.

**The Way Forward**

While the developments outlined above illustrate highly desirable enhanced intensity of WTO members' engagement on sustainable trade issues at various levels, they also showcase the massive distance of travel to ideal-world outcome scenarios. It therefore remains crucial to manage expectations regarding immediate, binding agreements on the climate, trade, and development nexus within the WTO against the background of contemporary geopolitical contingencies that increasingly display the prevalence of national interest conflicts over self-interested multilateral cooperation.

The discursive value of the WTO as a diplomatic forum can, under favourable conditions, result in enhanced coordination of national policy approaches. Beyond mere system preservation, a realistic yet ambitious benchmark for success, as noted above, could be defined as a revitalization of the WTO's Committee

A realistic yet ambitious benchmark for success on sustainable trade issues could be defined as a revitalization of the WTO's Committee on Trade and Environment in the nearer term, as well as convergence on non-binding instruments, best practice principles, and codes of conduct to guide and coordinate national policy approaches.

on Trade and Environment in the nearer term, as well as convergence on non-binding instruments, best practice principles, and codes of conduct to guide and coordinate national policy approaches: for instance, with regards to the design of internationally interoperable carbon markets and carbon border measures, least-trade restrictive green industrial policy measures, as well as regarding transfers of climate-related technologies.

It remains imperative, against this background, to uphold rather than prematurely abandon stakeholder support for existing efforts that promote the reinvigoration of the organization's deliberative functions. Thematically, the WTO's—currently mostly informal—multilateral sustainability agenda should stand at the front and centre of such endeavours.

---

***David Kleimann*** *is a Senior Research Associate for ODI's International Economic Development Group and ODI Europe.*

***Jodie Keane*** *is a Senior Research Fellow with the International Economic Development Group at ODI.*

***Michai Robertson*** *is a Research Fellow within the Climate and Sustainable Programme at ODI.*

* A previous version of this article was published in ODI Insights.

# The WTO on Sustainable Trade: Far From Perfect, by No Means the Enemy of the Good

*Kimberley Botwright*

*The WTO can be an effective forum for knowledge exchange and working through complex issues. WTO members may not be ready to build a "green WTO," but there are already many practical steps they can take to collaborate through the institution to make trade for the green economy easier.*

We are at a difficult time for efforts to green economies. The UN climate gathering in Dubai in November 2023 highlighted that countries' climate mitigation efforts are falling short. Progress is being made in some places, but implementing the net-zero transition is no easy task. Traditional industries need new technologies, new technologies demand new supply chains and skills, far greater finance is required, and much more carbon content mapping must be conducted. The rubber truly has started to hit the road for governments, workers, companies, and consumers alike.

Why should WTO members take an interest in these debates? There are at least three reasons:

**1. A Rules-Based Trade System is Needed for Climate Action**

The WTO is the backbone for international, rules-based commerce. Sure, its dispute settlement function is threatened. But the organization is still a powerful source of rules and norms for the way countries regulate goods, services, and investment moving across borders. Companies appreciate that. In recent debates around the green transition and economic support, or on supply chain resilience, few executives suggest that a rules-based system needs to be upended. There is a general recognition that trade can help the world combat climate change and biodiversity loss, through spreading innovations and generating economies of scale for new technologies, among other things.

However, many companies would like to see WTO members work together for more consistency on subsidy rules—including working to phase out fossil fuel subsidies—or to address slow permitting processes for foreign investment in renewable energy projects. These wishes need to be balanced with countries' interests and debated, which leads us to the next point.

In recent debates around the green transition and economic support, or on supply chain resilience, few executives suggest that a rules-based system needs to be upended.

**2. Conversation is Helpful**

The green transition is taking place against a period of geopolitical turbulence. One has not caused the other, but the two are related, and will likely become more intertwined in the future. Further, if not wisely navigated, trade could hinder individual countries' efforts to combat climate change through offshoring emissions. Equally, the industrial transition needed to combat climate change creates competitive and protectionist dynamics which might also undermine climate action in the long run.

The World Economic Forum has mapped four future scenarios for trade and climate change to think through potential trends. According to our consultations around the scenarios, avoiding an "exponential disasters" scenario where climate policies precipitate trade wars—flanked by resource nationalism—can be helped by government discussions in a few areas. One of these is carbon accounting and reporting standards. These have proliferated, and may continue to do so, creating an uneven landscape on which countries will inevitably base trade policies.

Japan's G7 effort in 2023 around emissions measurement methodologies for a net-zero steel industry was a good push; these discussions need to be brought into wider international fora. Countries could use the WTO for exchange, or at least for sharing knowledge on key developments occurring in this space. Building up wider government knowledge and building institutional bridges ultimately helps the private sector deal with a less fragmented landscape.

**3. Facilitate the Green Economy**

Companies really like the WTO Trade Facilitation Agreement (TFA). It addresses practical challenges that occur on a daily basis when goods are moved across borders. Through initiatives such as the Global Alliance for Trade Facilitation (GATF), companies have also been able to work with governments on implementing the TFA, homing in on specific difficulties and working to address them.

WTO members should use the institution to look at ways they can facilitate green economic activity. Of course, "facilitation" can mean different things to different people. For some WTO members, there might be appetite to apply the proposed Investment Facilitation for Development agreement to focus specifically on climate-aligned capital flows. The Forum is already working with investment promotion agencies in Brazil and Namibia on actions to facilitate climate foreign investment into their economies. Targeted investment facilitation on climate-aligned invest projects can be a helpful way to ground investor interest in climate action into specific country needs and activity.

For other WTO members, it could mean working to boost goods and services trade essential for low-carbon economic activity. There are some politically sensitive products in this space—like electric vehicles—but there are also other items where non-tariff barriers like conformity assessment procedures and different technical requirements slow down market growth and vital technology diffusion. The Trade and Environment Sustainability Structure Discussions (TESSD) have made a good start in digging into these issues. For example, static converters used to convert solar energy to electricity face 523 technical requirements applied by 61 different countries. These requirements may be important and do not necessarily need to be eliminated, but governments could work on regulatory cooperation to maintain the outcome and reduce trade friction.

> WTO members can look at how existing tools like trade facilitation can be applied to environmental challenges.

WTO members can even look at how existing tools like trade facilitation can be applied to environmental challenges. Improving waste management and material recycling in some countries might require trade. Countries need to track waste movement to avoid trade being used for dumping. This is all covered by the Basel Convention, but as an environmental treaty, policymakers there could benefit from border expertise and new developments that make managing the process of trade easier. The GATF has worked with the International Plant Protection Committee to help countries roll out digitalized phytosanitary certificates for safe plant and food trade. Could WTO members encourage the same type of collaboration with relevant fora for more material circularity?

These are not necessarily topics or work that make headlines. Nor are they a package for a "green WTO." Members are not there yet; they may not be for some time. But business models that are low-carbon, based on reusing and surfacing alternative materials, and that have nature-positive outcomes are worth encouraging. Trade has a role to play in these new economic activities, and the WTO is a good avenue for countries to collaborate through.

---

***Kimberley Botwright*** *is the Head of Sustainable Trade at the World Economic Forum.*

# Recent Innovations in Trade and Sustainability Cooperation

*Joost Pauwelyn*

*New trends are emerging within and increasingly outside traditional trade agreements in relation to policy action and cooperation on trade and sustainability.*

Where is today's policy action on trade and sustainability?

Surely, a lot of innovations can be found in domestic law. Think the EU's Carbon Border Adjustment Mechanism and Regulation on deforestation-free products or the US Inflation Reduction Act. The World Trade Organization (WTO) has some initiatives too: the Trade and Environmental Sustainability Structured Discussions (TESSD), the Dialogue on Plastics Pollution (DPP), and the recently concluded Investment Facilitation for Development Agreement which includes provisions on sustainable investment.

That said, surprising and often overlooked innovations can be found also at the level of regional and bilateral (trade) negotiations. At this mid-level range, between the controversial unilateral layer and the often-stalled multilateral WTO, the policy action on trade and sustainability is, indeed, taking interesting new forms and shapes.

> Surprising and often overlooked innovations can be found at the level of regional and bilateral (trade) negotiations, where the policy action on trade and sustainability is taking interesting new forms and shapes.

**New Trends Within and Outside Traditional Trade Agreements**

For many years, starting with the North-American Free Trade Agreement (NAFTA) in the early 1990s, the focus was on one-size-fits-all state-to-state commitments to uphold, for example, minimum environmental and labour standards set out in preferential trade agreements (PTAs). In recent years, new trends have emerged within PTAs and, probably more importantly, a radical shift is happening away from PTAs altogether.

A first set of novelties can be found within recent PTAs, to the extent they are still being concluded (there is a clear drop in new PTAs notified to the WTO). In recent PTAs, the turn is one away from generic state-to-state sustainability commitments towards: (i) firm-level obligations and procedures (for example the Facility-Specific Rapid Response Labor Mechanism included in the United States-Mexico-Canada Agreement

(USMCA)); (ii) product or sector-specific provisions (for example, preferential access limited to sustainable palm oil in the EFTA-Indonesia Comprehensive Economic Partnership Agreement); and (iii) provisions proactively tailored to the specific sustainability needs of countries, the major novelty in the EU's Trade and Sustainable Development Review 2022 (for example Maori rights in the EU-New Zealand PTA or Amazon-related provisions in the EU-MERCOSUR PTA).

A second shift is found in deals or discussions that are not PTAs in the first place. Although the EU is doubling down on PTAs, the USMCA may well be the last traditional free trade agreement concluded by the US.

> In recent years, new trends have emerged within preferential trade agreements and, probably more importantly, a radical shift is happening away from such agreements altogether.

The US-led Indo-Pacific Economic Framework for Prosperity (IPEF) is one example. IPEF is neither a binding agreement, nor focused on trade or market access. If anything, its target is the externalities created by free trade including, very explicitly, sustainability. This is addressed in IPEF's Pillar II on supply chains and Pillar III on clean economy. In September 2023, the 14 IPEF countries released a new Agreement Relating to Supply Chain Resilience.

Another example of cooperation on trade and sustainability taking place outside of PTAs, in an approach that is less formal, more adaptive and incremental, and solution-focused, is the EU-US Trade and Technology Council (TTC). One of the TTC's workstreams is the Transatlantic Initiative on Sustainable Trade to promote closer cooperation on jointly advancing the green transition. Another is the Clean Energy Incentives Dialogue to help ensure that EU and US incentive programmes for a clean economy are mutually reinforcing. The TTC also includes the Trade and Labour Dialogue to deepen discussions on the eradication of forced labour from global supply chains. In May 2023, the EU also set up a TTC with India, mirroring much of the topics under discussion in the EU-US TTC.

Finally, and this is a turn in trade negotiations more broadly (think of stand-alone agreements on digital trade or the DPP focused on plastics), a flurry of sector or even product-specific bilateral arrangements on trade and sustainability topics have emerged. The prime example here is that of critical mineral agreements. These bilateral agreements focus on securing access to raw materials such as lithium, copper, or hydrogen (and, where the US is a party, access to US green subsidies under the Inflation Reduction Act), but also include sustainability components. Ongoing negotiations on an EU-US Global Arrangement on Sustainable Steel and Aluminium are another case in point. These negotiations have several objectives (such as addressing overcapacity and trade-distorting practices), one of which is reducing the carbon intensity of steel and aluminium. Any EU-US agreement may be extended to other countries and initiate a so-called "climate club" whereby members of the club (that is, those whose producers reach a certain carbon intensity target) can freely trade steel and aluminium, while "free-riding" outsiders will either be excluded or need to pay a price to enter the club's markets.

### A More Pragmatic and Tailored Approach

The jury is out on whether these novel approaches to trade and sustainability—first within PTAs, and second outside the WTO and PTAs altogether—will be more effective than the old ones. Implications for developing countries may also warrant more consideration. However, what they have in common is a more pragmatic, tailored approach: focused on firms or supply chains rather than states; addressing the peculiarities of specific countries, sectors, or products; and trying to find practical, often informal solutions rather than setting out general, legally binding rules.

---

***Joost Pauwelyn*** *is Professor of International Law, Head of the International Law Department, and Director of the Centre for Trade and Economic Integration, Geneva Graduate Institute. He is a member of the TESS Steering Committee.*

# Crosscutting Issues for Trade Governance That Supports Sustainability

# Trade in the Balance: Aligning the Trading System With Climate and Development Goals

*Kevin Gallagher & Tim Hirschel-Burns*

*The trade and investment regime needs to provide incentives for low-carbon, socially inclusive, and climate-resilient forms of economic activity while also discouraging the business-as-usual pathway that is inflicting enormous costs and inefficiency to the world economy.*

Each member of the World Trade Organization (WTO) and the Group of 20 (G20) has signed on to the United Nations 2030 Agenda for Sustainable Development to meet a set of ambitious climate and development goals by the end of this decade. To meet these goals, there needs to be a rapid structural transformation of the world economy towards low-carbon, socially inclusive, and resilient growth trajectories.

The G20 estimates that emerging market and developing countries (not including China) need to mobilize upwards of $3 trillion annually in order to make such a transformation. While the International Monetary Fund (IMF), the World Bank, and other multilateral development banks have moved to align themselves with the 2030 Agenda, the WTO remains an outlier. As the only global and rules-based institution established to set the parameters of global trade, and increasingly investment, it is imperative that the WTO becomes aligned with the 2030 Agenda.

**Five Structural Transformation Pathways for Developing Countries**

> The core task is to change the structure of the world economy from one that is inherently unequal and reliant on fossil fuels to one that is low-carbon, socially inclusive, and climate resilient.

The core task, as noted, is to change the structure of the world economy from one that is inherently unequal and reliant on fossil fuels to one that is low-carbon, socially inclusive, and climate resilient. There is no "one size fits all" set of policies for this, but all countries will have to move from one set of comparative advantages to another. In a 2023 article, we simplify these transitions into five general structural transformation pathways for developing countries:

1. *First movers*, countries that need to mobilize capital in order to invest in a new capital stock where little capital exists in the first place. For instance, in much of sub-Saharan Africa, there is a lack of

manufacturing capabilities and appropriate grid connectivity to harness the abundance of clean energy sources and consumer demand of a rapidly growing continent.

2. *New winners*, where states that are blessed with the vital "transition materials" and industries that form the basis of a new economy can work to harness those resources, increase value addition, and strengthen economy-wide linkages in a manner that ensures macroeconomic stability, shared prosperity, and environmental sustainability, not only globally but where these materials are generated.

3. *Large emitters and future large emitters*, which need to make massive investments to replace the existing capital stock through structural change away from fossil fuel production and consumption patterns towards clean energy, energy efficiency, and beyond.

4. *Fossil fuel extractors*, which are not high carbon emitters themselves but whose economies are dependent on exporting fossil fuels and need to diversify their economic base and change the structure of their economies towards new sources of foreign exchange and exports while buttressing themselves from "transition spillovers" that arise from the global shift away from fossil fuels.

5. *Climate-vulnerable economies*, which need to mobilize capital in order to reinforce their existing capital stock to adapt to climate change, build a new climate-resilient capital stock, and become more resilient to loss and damage from climate shocks.

Of course, many economies will have to work on all five fronts. This project should inherently be one for national development strategies but should also be guided by a global economic governance regime that supports those strategies. The WTO needs rules that create the incentives to go in a green and inclusive direction, multilateral development banks should provide financing to put wind in the sails of these incentives and help countries in the adjustment process, and the IMF should help countries respond to climate shocks and quickly get them back on track towards climate-resilient development.

The WTO needs rules that create the incentives to go in a green and inclusive direction.

**Needed Trade and Investment Regime Incentives**

Policy space and fiscal space are two important contributions that global economic governance can provide, while also ensuring that the pursuit of one country's new development strategy does not prevent other countries from meeting their own climate and development goals. Put simply, the trade and investment regime in general, and the WTO in particular, will need to provide incentives for low-carbon, socially inclusive, and climate-resilient forms of economic activity while also discouraging the business-as-usual pathway that is inflicting enormous costs and inefficiency to the world economy. This will be manifest in five key areas:

First, fossil fuel tariffs should be increased and renewable energy tariffs reduced, helping incentivize the energy transition. The current structure of the tariff system is implicitly subsidizing emissions. Joseph Shapiro estimates that the annual implicit subsidies from tariffs are roughly $550–$800 billion annually, implicitly paying economic actors around $100 per tonne to emit carbon dioxide. In other words, trade policy is currently giving the exact opposite price signal than the one needed for climate action.

Second, fossil fuels must be phased out, and green industrial policy must be ramped up. The IMF reckons that explicit and implicit fossil fuel subsidies worldwide now top $7 trillion. These subsidies need to be equitably phased out and poured into green industrial policy that stimulates new growth paths, especially in emerging markets and developing countries. The IMF estimates that "scrapping explicit and implicit fossil-fuel subsidies would prevent 1.6 million premature deaths annually, raise government revenues by $4.4 trillion, and put emissions on track toward reaching global warming targets. It would also redistribute income as fuel subsidies benefit rich households more than poor ones."

Third, new rules should be established for the diffusion of clean technologies. The world economy will need a mass diffusion of technology and know-how for the new climate economy in order to meet shared climate and development goals in an equitable manner. Most multilateral development banks have now banned investment in upstream oil and gas, as well as coal in all its forms. The WTO needs to rapidly align with such an approach, disincentivizing investment in brown technologies and loosening investment rules for green and inclusive technology. Such an approach will need to be supported by intellectual property rules that allow nations to rapidly share technology.

Fourth, all of this must be supported by deeper governance reform. Despite its flaws, the WTO's Appellate Body at least ensured that rules—and not only power—helped settle trade disputes. Procedural and substantive reforms could ensure the Appellate Body does not replicate mistakes of the past. Moreover, outside the WTO, the numerous regional trade agreements and bilateral investment treaties with investor-state dispute settlement will need to be reformed or countries should withdraw from them, as countries are now doing from the controversial Energy Charter Treaty.

> Policy space alone will not enable the rapid transformation necessary to meet our climate goals: even if trade rules do not block countries from using measures like subsidies, their ability to do so depends on drastically varying levels of fiscal space.

Fifth, development finance needs to back development goals. Policy space alone will not enable the rapid transformation necessary to meet our climate goals: even if trade rules do not block countries from using measures like subsidies, their ability to do so depends on drastically varying levels of fiscal space. A stepwise increase in development finance is needed to not only help countries make green transitions but also ensure

that such a transition is just, both within and across borders. If advanced economies implement carbon border taxes, rather than punishing developing countries that often lack the financial resources to transition to green economies, they would remit the fees to advance a just transition in developing countries—which will also help them chart foreign exchange pathways such that they are not reliant on fossil fuel exports for stability and growth.

**A Trading System That Rises to the Challenge**

It's not too late to create a healthy and balanced trading system. The resurgence of policy space in the trading system in recent years is welcome, as is the recognition of the importance of climate action; but to abandon multilateral trade cooperation is not the solution. Countries can come together to create a trading system that rises to the challenge of climate change. But time is running out for policymakers to do it.

---

***Kevin Gallagher*** *is the Director of the Boston University Global Development Policy Center and Professor of Global Development Policy at the Boston University Pardee School of Global Studies.*

***Tim Hirschel-Burns*** *is the Policy Liaison for the Global Economic Governance Initiative at the Boston University Global Development Policy Center.*

# The Governance of Trade as if a Healthy Planet Really Mattered

*Mark Halle*

*In reaction to fundamental shifts in consumer demand, policy, and regulation, will the trade regime conclude that a major redesign is needed—one that takes the WTO's preambular commitment to sustainable development seriously and places the trade regime at the service of a healthy, balanced, and equitable planetary community?*

Imagine for a moment—if only for the sake of argument—that stabilizing the climate and reversing the loss of biodiversity were to become the dominant imperative of our time before which all other priorities pale. How would an observer looking at the multilateral trade regime evaluate its fitness for purpose? Would that observer conclude that the system needs deep reform or that both climate and nature priorities can be addressed using the existing rules, without the need for trade discrimination?

This hypothetical is not a reflection of the current situation, but it is not difficult to imagine a scenario in the near-term future in which saving the planet trumps immediate economic interests. In early 2024, after all, earth surpassed the 1.5 degrees warming threshold for 12 consecutive months; and, despite decades of solemn goal setting, biodiversity loss has not been stemmed much less reversed. So, it is no longer wildly implausible to believe that such a deep shift of public priorities could become a reality.

**Critiques of the Trade Regime**

There are precedents for such speculative critiques of the trade regime. In 2001, Professor Dani Rodrik of Harvard University wrote a report for UNDP entitled The Governance of Trade as if Development Really Mattered. In it, he asks what the trading system would look like if its single purpose were to help the poorer countries surmount poverty. The answer, not surprisingly, is that it would look very different. It is not that one cannot imagine how countries might grow and prosper through the judicious application of the present trade rules, and many have. Further, it is recognized that development success in the poorer countries rests on many factors beyond access to world markets for their goods and services. But the paper makes clear that the devotion to raising the living standards of all countries—expressed in the preamble to the Marrakesh Agreement Establishing the World Trade Organization (WTO)—has been overwhelmed by a wish to maximize trade. Trade, intended to be a means to an end, has become an end in itself.

The devotion to raising the living standards of all countries—expressed in the preamble to the Marrakesh Agreement Establishing the World Trade Organization—has been overwhelmed by a wish to maximize trade.

In 2004, Aaron Cosbey at the International Institute for Sustainable Development (IISD) wrote a paper applying Amartya Sen's "capabilities approach" to trade and sustainable development. Starting from the basic premise that sustainable development is the appropriate goal of trade and investment policies, he asks what the role of the trade regime and of trade policy might be if these were truly in the service of sustainable development. Again, the answer is that they would look very different.

**Triggers of Fundamental Change**

Both exercises were speculative, musings on the deep differences between the objectives set out in the WTO preamble and the reality of the trade system's current functioning. They remained musings because the poorer countries could not establish poverty alleviation as the defining goal of the trade regime, just as sustainable development has—despite the solemn adoption of the Sustainable Development Goals—remained largely aspirational, disconnected from any genuine system of compliance and accountability. It is a "would be nice" rather than a "must have." Even where there is movement—like the European Union's Carbon Border Adjustment Mechanism (CBAM)—we are far from working out how to avoid penalizing carbon-intensive developing countries and thereby provoking geopolitical ruptures.

Even the looming threat of irreversible and catastrophic planetary change has not yet proved sufficient to trigger a fundamental re-evaluation of our economic system, but maybe it is not far off? Let us imagine that the imperative of avoiding disaster is so acute that politics moves to shut down or restructure all economic activity that undermines the climate and nature as well as equity within and among nations. We can imagine a world in which all economic and financial activity will be obliged to demonstrate that it generates net-zero carbon and nature-positive outcomes, and that it narrows gaps in social justice and equity.

> Sustainable development has remained largely aspirational, disconnected from any genuine system of compliance and accountability.

Robust and enforceable net-zero standards are not far off. Close behind is the articulation of what nature-positive outcomes would look like in practice. And serious attention is beginning to be paid on addressing the "S" in ESG, including robust work on the just transition. Sustainability-related standards are increasingly applied to corporate and financial activity, especially within the European Union. These standards are accompanied by ancillary obligations, such as the due diligence policies that require UK corporations to certify that their value chains are "deforestation free." Courts around the world are recognizing rights of nature or the right to a stable climate, and litigation around climate and nature is spreading. How close might we be to serious tipping points?

Fundamental change happens in the same way that, in the jocular description, small businesses fail—first slowly, then very quickly! If we manage to stave off global catastrophe, this will necessarily have resulted from a deep shift in what is regarded as acceptable behaviour, especially the behaviour of financial actors and corporations, leading to a large-scale shift in consumer demand, policy, and regulation.

**A Major Redesign of the Trade Regime?**

Will the trade regime conclude that a major redesign is needed—one that takes the WTO's preambular commitment to sustainable development seriously and places the regime at the service of a healthy, balanced, and equitable planetary community?

How might the trade regime react to such changes (already partially anticipated in CBAM)? Will it dig in its heels and insist that defence of public interest in the form of robust climate and nature action respect the present (binding and enforceable) rules? Or will it conclude that a major redesign is needed—one that takes the WTO's preambular commitment to sustainable development seriously and places the trade regime at the service of a healthy, balanced, and equitable planetary community?

The debates at the WTO's Thirteenth Ministerial Conference underlined once again just how difficult it is for the membership to advance on anything of real importance at a pace and scale that genuinely impacts the problem being addressed. Maybe developing a set of scenarios on how the trade regime might be repurposed, as suggested in this article, might breathe welcome life into a system.

---

***Mark Halle*** *is Senior Advisor at NatureFinance.*

# The Emerging Principle of Common Concern of Humankind and International Trade Regulation

*Thomas Cottier*

*As an emerging legal principle, Common Concern of Humankind has the potential to support the application and interpretation of existing trade law and support and guide future trade policymaking and law-making in line with the principle of sustainability.*

Trade law and policy faces the challenge to find appropriate responses in support of climate change mitigation and adaption. The reduction of greenhouse gas emissions and the ensuing transition in energy and agricultural policies cannot succeed without appropriate flanking trade policies. Likewise, preservation of biodiversity and fish stocks, combating air and plastic pollution, and preserving the habitat of the high seas cannot succeed without closer economic cooperation in trade and investment policies.

At the same time, geopolitical tensions due to different and competing political systems of democracy and autocracy tend to reduce relations between major powers to the law of coexistence, undermining joint efforts in addressing these and related challenges. The emerging principle of Common Concern of Humankind (CCH) bears the potential of providing guidance to legal interpretation and to policymaking in facing and addressing this dilemma in the coming decades. It offers foundations and an avenue to define areas where cooperation is indispensable and cannot be left and reduced to the law of coexistence of sovereign nation states. To this effect, the international community should develop CCH into a guiding principle of international law.

**The Principle of Common Concern of Humankind**

The 1992 United Nations Framework Convention on Climate Change as well as the 2015 Paris Agreement recognize climate change as a common concern of humankind. Likewise, the 1992 Convention on Biodiversity recognizes biodiversity as a common concern of humankind. The 2001 International Treaty on Plant Genetic Resources of Food and Agriculture recognizes that plant genetic resources are a common concern of all countries. The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage recognizes the "common concern to safeguard the intangible cultural heritage of humanity." The International Law Commission recognized that "atmospheric pollution and degradation is a common concern of humankind."

By and large, CCH today focuses on issues relating to sustainability; the 1987 Brundtland Report was framed in terms of common concerns, but essentially developed sustainability on the basis of the principle of common heritage of mankind, which is a different concept effectively excluding claims to ownership and sovereignty. Instead, common concern conceptually stands for the proposition of a shared problem which cannot be solved individually by single nations or states. It inherently entails international cooperation in addressing the problem. Whenever nations, in the process of claims and responses, recognize a shared problem to be a common concern of humankind, they essentially agree that cooperation is necessary. Importantly, common concern is not limited to global problems but may also apply in a region between neighbours, and even within countries. But it always depicts—and is limited to—a problem the solution of which inherently depends upon joint efforts and is not sufficiently accessible to unilateral action.

> The emerging principle of Common Concern of Humankind has not been fully developed. Its scope and ensuing obligations have remained unclear and need to be developed in the future.

Beyond such a commitment to cooperate, the principle of CCH has not been fully developed. Its scope and ensuing obligations have remained unclear and need to be developed in the future. The 2015 Paris Agreement expanded the concept and linked it to the protection of human rights and intergenerational equity. In the context of climate change, courts of law increasingly stress the obligation to act upon commitments made. Recently, the European Court on Human Rights invoked common concern of humankind in linking climate change to the right to health as a basis for the obligation of government to act. The Supreme Court of India obliged the government to act upon promises made in protecting biodiversity and wildlife.

More precise contours have been proposed in the literature.[3] In Cottier (2021), the authors suggest that the principle of Common Concern of Humankind entails three basic components:

- First, the duty to cooperate, which otherwise is not generally required and mandatory in general international law.
- Second, the duty to act to address the common concern, for example through the implementation of international obligations incurred, unilateral promises made, or domestic efforts in addressing the common concern (homework). CCH goes beyond jus cogens, which merely allows taking action erga omnes, but does not oblige to act.
- Third, CCH also implies compliance and the possibility to impose countermeasures against free-riding states not implementing homework promised and not filling their duties in international law incurred in an area recognized as a common concern of humankind

CCH may eventually develop to be recognized as a legal principle of international law, or of law in general. As much as the principle of sustainability—recognized in the preamble of the Marrakesh Agreement Establishing the World Trade Organization—evolved into a recognized principle and legal methodology requiring balancing ecological, social, and economic interests at stake, it may eventually emerge as a legal principle entailing general obligations as well as specific treaty-based commitments. The evolution will depend upon claims and responses by states in international relations, such as the recognition so far of CCH in climate change, biodiversity, and the outer atmosphere. The scope may vary and be expressed in terms of specific treaty language, going beyond the general principle of CCH.

As of today, CCH is mainly restricted to environmental concerns, including transfer and dissemination of sustainable technologies or addressing plastic pollution of the seas. Other areas may follow suit, but have not been taken up in these terms, such as global migration (except for climate migration covered under

3. For a comprehensive scholarly discussion of CCH, see Thomas Cottier (ed.), The Prospects of Common Concern of Humankind in International Law (Cambridge University Press, 2021). The book covers foundations and potential applications in the field of dissemination of sustainable technologies, plastic pollution of the seas, wealth distribution, economic sanctions for human rights enforcement, migration, and monetary and financial stability.

the UNFCCC), financial and monetary stability, global health (pandemics), the enforcement of human rights, intergenerational equity, or the problem of inequality within and among nations as one of common concern. It may be argued that keeping international peace per se amounts to one of the most important common concerns of humankind. While international peace and stability amounts to the ultimate goal and yardstick of CCH, keeping peace itself is mainly addressed by deterrence and military power on the basis of coexistence, which does not entail cooperation, except for alliances. It does not entail general and global duties to cooperate and to act beyond the UN Charter, and unilateral efforts made are not inherently beneficial to all of humankind.

In the field of trade regulation, climate change mitigation and adaption and the preservation of biodiversity and of cultural diversity are the fields where Common Concern of Humankind, as recognized today, can inform trade law and policymaking.

In the field of trade regulation, climate change mitigation and adaption and the preservation of biodiversity and of cultural diversity are the fields where CCH, as recognized today, may influence the application and legal interpretation of trade law and where it can inform trade law and policymaking, alongside other principles such as sovereignty, non-discrimination, transparency, equity, and sustainability. It informs the implementation of shared but differentiated responsibility in climate law, providing the obligation to act. Issues relating to public health may be informed by the determination by the World Health Organization of "health emergencies of international concern." It cuts across all the relevant areas of trade law, from goods, services, and intellectual property to investment law.

The fundamental difference with other principles of international law relies upon the fact that realization and implementation of CCH in terms of addressing and solving a problem inherently benefits all of mankind, both in exporting and importing countries, independently of where benefits are produced geographically. Greenhouse gas reduction, wherever it takes place around the globe, benefits all of mankind. The usual context of national sovereignty, competitiveness, and enhancing market access is reframed and amended by a truly new dimension informing international cooperation. This adds a novel dimension of mutual benefit to international trade relations beyond the political concept of reciprocity and balanced commitments operating under the principle of most favoured nation and national treatment.

**The Potential Impact on Trade Law and Policy**

As an emerging legal principle, CCH has the potential to support the application and interpretation of existing trade law and support and guide future policymaking and law-making in line with the principle of sustainability, in particular in the field of climate change.

*Interpreting WTO Law and Preferential Agreements*

So far, parties to WTO disputes under the Dispute Settlement Understanding (DSU) and panels have not made any references to CCH despite the fact that WTO law is not construed and applied in isolation. That could and should change in the future. As other principles of international law and general principles of law, CCH can assist in the application and interpretation of existing trade law in multilateral agreements under the WTO as well as preferential trade and cooperation agreements in applying the Vienna Convention on the Law of Treaties. CCH should be considered as context, and to the extent that it emerges as a legal principle, it has to be taken into account under Art. 31(3)(c) of the convention.

In the context of climate change mitigation and the energy transition, the shift from product standards to product-related and non-product-related process and production standards (npr-PPMs) in the analysis of like products and non-discriminatory treatment of imported and domestic products is at the heart of fostering sustainability. CCH informs the interpretation of non-discrimination and related exceptions, in particular Article XX GATT. CCH supports the promotion of differential tariffs in the Harmonized System, based upon npr-PPMs. It supports the elimination and reduction of tariffs for sustainably produced products while imposing bound tariffs on conventional products produced on the basis of fossil fuels. CCH encourages countries to adopt split tariffs as an incentive to accelerate the energy transition. At the same time, CCH implies, in terms of cooperation, that revenue generated from split tariffs can and should be used to foster technology dissemination abroad and thus enable countries affected by such tariffs to adjust to sustainable production standards. Split tariffs therefore are justified if proceeds are reinvested in climate change mitigation or adaption measures. CCH thus will inform the qualification and assessment of the Carbon Border Adjustment Mechanism introduced by the European Union in 2023. CCH potentially informs the interpretation of all pertinent provisions in trade law, adding a duty to act in the area recognized as a common concern of humankind, which in turn may justify flanking measures to implement homework obligations in addressing the shared problem. The impact will be case specific.

Trade law, however, also restricts the potential to use counter-measures in response to failing duties to implement international obligations on climate change. Such measures are only compatible in response to nullification and impairment of benefits accrued, mainly due to violations of obligations occurred. Trade law thus imposes limitations on market access restrictions in response to violations of other agreements, in particular under the UNFCCC, Paris Agreement, Convention on Biological Diversity, or Convention on the Law of the Sea. With the demise of the Appellate Body and the current option of appealing panel reports into the void for the WTO membership (with the exception of MPIA members[4]), there is an increasing risk of using trade-related counter-measures in response to failures to act on climate change. There is a risk that climate policies are increasingly unilateral, ignoring trade rules. In return, this is an incentive to engage in policymaking in international fora and to develop new disciplines under the heading of CCH in multilateral, plurilateral, and bilateral agreements.

*Guiding Trade Policy Negotiations*

The emerging principle of CCH offers guidance in shaping trade policy and in identifying areas of necessary cooperation. Unilateral climate policies affecting international trade can take recourse to CCH and trigger efforts at international cooperation in return. CCH can be invoked jointly, as a foundation of cooperation, of obligations to act and to secure compliance. It provides an incentive to negotiate common npr-PPMs, labelling,

4. The Multi-Party Interim Appeal Arbitration Arrangement was introduced in 2020 and currently entails, as a plurilateral agreement, a third of the WTO membership. It is based upon the arbitration clause of Article 25 of the DSU and also open in analogy to ad hoc uses by non-members, entering into an arbitration agreement prior to, or during, panel proceedings. The agreement allows both parties to appeal the panel report. Importantly, ensuing arbitration reports are subject to enforcement and compliance under the DSU and form part of WTO jurisprudence.

and certification schemes in public and private standards alike. The potential of CCH defined as a common problem requiring cooperation, as discussed, goes beyond environmental issues and potentially informs other trade-related policy areas such as global migration, human and labour rights, finance, monetary affairs, and indeed the trading system and trade cooperation in itself. Currently, as CCH is recognized in climate change, biodiversity, and cultural diversity, the scope of application is essentially limited to these areas and may offer guidance in trade negotiations. CCH induces a shift from reciprocity to closer cooperation in addressing a particular shared problem. CCH considerations should be used in all fora— multilateral, plurilateral, and bilateral—and also inform unilateral, national trade and investment policies.

> Common Concern of Humankind helps identify problems and challenges, the solution of which depends upon concerted action and the creation of appropriate incentives to address the common problem effectively.

CCH helps identify problems and challenges, the solution of which depends upon concerted action and the creation of appropriate incentives to address the common problem effectively. In the field of trade regulation, this essentially implies the definition of rights and obligations. CCH implies that efforts made—wherever they take place—are of mutual benefit and all nations and humans immediately benefit. This contrasts with areas outside of CCH, which essentially follow the logic of coexistence, national interests, competitiveness, and beggar-thy-neighbour policies, but not extensive cooperation or integration, and foremost an obligation to act under CCH, which otherwise is absent in international law.

The emerging principle of CCH can be invoked to define a trade policy agenda based upon mutual cooperation and mutual benefit, in particular in areas relating to climate change, the preservation of biodiversity, and food security. Inter alia, the following ideas and suggestions may be contemplated, linking CCH and trade regulation:

- *CCH and freedom of information*: Common concerns of humankind inherently are of common interest, and information relating to them should be freely circulating. Freedom of information should be contemplated not merely to secure transparent markets, but to support education on the common concern of humankind at hand, for example climate change. The duty to act depends upon full and prompt information and education.
- *Framing the law of npr-PPMs addressing common concerns of humankind*: Increasing unilateral recourse to npr-PPMs calls for additional disciplines framing the scope of such measures and linking them to beneficial incentives for exporting countries to adjust standards of production. This also includes new disciplines in tax and tariff law, and duties to act upon it. Revenues obtained in the field of CCH should be earmarked and used to foster efforts addressing the common concern of humankind concerned in exporting countries. Domestic taxes and tariffs in the field of CCH amount to incentives, and no longer qualify as fiscal revenues. They should be channelled back in order to address carbon storage, plastic pollution, and the like. Taxes and tariffs are simple tools and may replace an increasing number of non-tariff barriers to trade.

- *Linking trade to production standards addressing common concerns of humankind*: CCH calls for the formulation of common product-related and non-product-related production standards (PPMs) in appropriate international fora, and to linking them up with the Agreement on Technical Barriers to Trade, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Government Procurement. These agreements would entail a duty to implement such standards and act upon them.
- *Reframing disciplines on subsidies addressing common concerns of humankind*: Subsidies for industrial policies addressing common concerns of humankind call for new disciplines, including on export subsidies, in the field of goods and services. Existing disciplines are partly outdated and do not respond to CCH. Fuel subsidies are an example in point. Reduction of subsidies must be compensated by appropriate tools addressing CCH-compatible goals of sustainable development. In the field of services, no disciplines on subsidies exist. They should be considered under CCH.
- *Disciplines on agricultural trade relating to common concerns of humankind*: CCH informs new designs fostering diversification of sources with a view to addressing crop failures and food shortages induced by climate change. Food sovereignty should be reviewed in terms of CCH, in particular climate change and biodiversity. New disciplines on trade in meat production and meat consumption and other products contributing to global warming will be supported by CCH.
- *Dissemination of sustainable technologies addressing common concerns of humankind*: New disciplines on export credits and tax breaks for the dissemination of intellectual property by means of voluntary licensing to developing countries, which is to the benefit of all, also entails a reform of the Agreement on Subsidies and Countervailing Measures.
- *Intellectual property and common concerns of humankind*: New disciplines on intellectual property should be elaborated to frame public-private partnerships among government, the private sector, and non-governmental organizations working in the field of common concern. The law of patent pools and access, fair use, free and cross licensing for publicly funded technology, and recourse to models of compensation (liability rules) in intellectual property rights should be developed within the Agreement on Trade-Related Aspects of Intellectual Property Rights. Appropriate rules on competition need to flank these disciplines. They may be negotiated within the WTO, establishing an appropriate balance between intellectual property rights and competition.
- *The energy transition and common concerns of humankind*: Essential for climate change mitigation, the energy transition calls for enhanced efforts to link international grids for sustainably produced electricity and hydrogen and biogas. New disciplines on interconnectivity also address the world wide web, allowing the operation of smart grids transnationally.
- *Concessions in services relating to common concerns of humankind*: The definition of a particular common concern of humankind induces the examination as to which services need be available transnationally to commonly address the shared problem at hand. This in particular is relevant to engineering, transmission, education, and financial services in climate change.
- *Foreign direct investment and common concerns of humankind*: Favourable conditions for foreign direct investment, investment protection, and a framework for joint ventures in the field relating to CCH should be designed beyond existing rules on investment promotion.

- *National security and common concerns of humankind*: Recourse to national security and unilateral policies is subject to enhanced disciplines in areas subject to CCH, defining obligations to cooperate and to act. CCH essentially allows to identify technologies and dual-use goods which should be open for trade and cannot be restricted for the purpose of national security. This also applies to the technology of integrated circuits essential both to common concerns of humankind and national security.
- *Dispute settlement and common concerns of humankind*: Common concerns of humankind do not induce particular features relating to CCH, except for extending third party rights. As discussed, CCH informs the interpretation and application of trade rules, and secures that economic sanctions in addressing a failure to address a common concern and to act upon it remain confined and do not result in excessive unilateral sanctions. CCH, however, could justify that all WTO members are entitled to take counter-measures following approval by the dispute settlement body. This option, building upon jus cogens, would greatly enhance voluntary compliance at home with the judicial findings of panels and on appeal.

**Conclusions**

Trade policy, based upon sovereignty and reciprocity, is a form of international cooperation largely defined by distinct national interests in terms of market access and protection of own markets and producers. Once a particular area is recognized to amount to a common concern of humankind—as of today climate change, biodiversity, and cultural diversity— cooperation is enhanced under CCH as all share a common interest in resolving a problem which only can be addressed and solved jointly by common efforts. There is a common and shared goal, and measures taken are of mutual interest.

The multilateral system of the WTO has not taken up Common Concern of Humankind; its potential so far has not informed the application of the law and dispute settlement, nor an agenda for reform.

Trade law partly allows for enhanced cooperation, in particular in plurilateral and bilateral agreements, up to full integration such as the European Union. The multilateral system of the WTO has not taken up CCH. Its potential so far has not informed the application of the law and dispute settlement, nor an agenda for reform. Identifying internationally recognized common concerns of humankind offers guidance in defining areas where closer cooperation is necessary to solve a problem, and where traditional reciprocity and unilateralism, or even mere coexistence, continues to control international relations. Common concerns of humankind are recognized in a process of claims and responses. They do not trigger a particular legal regime beyond enhanced cooperation, duties to act, and of compliance. These elements can inform treaty interpretation and trade policymaking in areas subject to agreed areas of common concern.

The emerging principle of CCH offers directions and a compass. It depends upon the willingness of states and the creativity of negotiators and international lawyers to effectively address and solve the shared problem at hand.

---

***Thomas Cottier*** *is Emeritus Professor of European and International Economic Law, Senior Research Fellow, World Trade Institute, University of Bern, Switzerland, and member of the MPIA pool of appeal arbitrators at the WTO.*

# WTO Reform: Catalyst for a Sustainable Trade System and Transformative Change

*Jan Yves Remy*

*A WTO reform agenda where sustainability is placed at the centre is an opportunity to shape a multilateral trading system that is equitable, sustainable, and inclusive.*

Among the current negotiating topics on the agenda of the World Trade Organization (WTO), "WTO reform" stands out as a priority. At the Thirteenth WTO Ministerial Conference (MC13) held in 2024 in Abu Dhabi, WTO members reaffirmed their commitment "to work towards necessary reform of the WTO to improve all of its functions [ ... ] with a view to enhancing the WTO's efficiency, effectiveness, and facilitation of Members' participation in WTO work."

But the reform agenda at the WTO has morphed into a much wider mandate than simply improving transparency and procedural efficiency in the WTO council, committees, and processes. It encompasses long-standing issues such as special and differential treatment and fixing the WTO's dispute settlement mechanism, including the Appellate Body. It has also expanded to include the "sustainability" agenda as a focal point of realignment of the trade system to the Sustainable Development Goals (SDGs) and the pillars of environmental, economic, and social sustainability embodied therein. Of these reform issues, the latter has probably ignited the most controversy among the WTO membership; and the very question of inclusion of sustainability concerns into the WTO's remit, some would argue, explains the limited outcomes achieved at MC13.

The vision of a broad reform agenda paves the way for reimagining a multilateral system that is just and inclusive for non-state and state actors alike.

The vision of a broad reform agenda paves the way for not only enhancing the organization's working procedures so that they are fairer and more accessible to all WTO members, but also for reimagining a multilateral system that is just and inclusive for non-state and state actors alike. Yet the real question for all countries involved in ongoing reform negotiations, including the smallest like the Caribbean Community (CARICOM) states, is: how can we participate in the reform negotiations at the WTO in a way that ultimately drives transformation and delivers on our development goals and priorities?

**The Reform Agenda as a Gateway to Transformation and Advancing Sustainable Trade**

For advocates of integrating sustainability into trade, efforts to expand the WTO's agenda to a greater set of concerns of humanity represent a significant stride forward. Over the past two years, together with two professors from Yale University and Tufts Fletcher School of Diplomacy, I have been co-leading one such effort: the Remaking Trade for a Sustainable Future Project. The project sets forth a bold vision of a trade system where sustainability, in all of its dimensions, is placed at the centre of WTO reform efforts.

We engaged in a bottom-up process, organizing 10 workshops that brought together over 400 experts from the trade and sustainability communities and beyond. The workshops addressed multiple issues increasingly relevant to the trade agenda—encompassing climate action, industrial policy, ocean sustainability and conservation, the rights of marginalized groups, finance for developing countries, digital inclusion, financial and technological accessibility, and governance and institutional reform. This collaborative effort culminated in the Villars Framework for a Sustainable Trade System 2.0 (the Villars Framework), a comprehensive report offering recommendations for shaping the WTO into a more sustainable, equitable, people-centred, and transparent entity.

**Challenges and Opportunities for CARICOM and Developing Countries**

For CARICOM, the adoption of a sustainability agenda in trade negotiations and trade policy can only be successfully attempted if it aligns, or is made to align with, the region's own development needs arising from the challenges it faces; including undiversified economies, lack of competitiveness, vulnerability to shocks and climatic catastrophes, and chronic debt.

While there are challenges, the agenda also presents opportunities for the region. As the Villars Framework highlights, developing countries can take advantage of these opportunities by sustainably managing their ocean resources (which CARICOM states have in abundance), enhancing food security through favourable trade and agricultural policies, facilitating the transfer of green technologies, and securing access for sustainably produced goods and services. The Villars Framework also calls for promoting carbon market opportunities under the Paris Agreement where many developing countries, including CARICOM states, have expressed interest, and offering more targeted funding by developed countries to meet the adjustment costs that that the new agenda imposes.

At the same time, the sustainability agenda has also been accompanied by increases in unilateral industrial "green" policies from the Global North that are hindering the export potential of CARICOM states and other developing regions. For example, a 2024 report finds that the EU's Carbon Border Adjustment Mechanism will negatively impact Trinidad and Tobago's exports of ammonia and fertilizers to the EU, rendering them less competitive. These types of measures will only increase as countries take matters into their own hands to meet their Paris and other environmental targets. The Villars Framework calls for more participation by developing countries in standard setting for the new sustainability rules. It also recommends a more inclusive approach to WTO subsidy disciplines, which, with the rise of such measures by developed countries, will need to be updated to balance the trade restrictiveness of subsidies with their sustainability impact.

**Broadening Stakeholder Participation**

Another key topic lies in bringing more stakeholders into the trade policymaking and negotiating process. While there is concern that broadening stakeholder participation might overshadow the specific needs of

developing countries like those in CARICOM, a more inclusive approach could enrich the trade dialogue. My own institution, the Shridath Ramphal Centre for International Trade Law, Policy and Services (SRC), has experienced the value of this approach, having been invited to participate in sustainability discussions organized by civil society groups and non-governmental organizations (NGOs), such as TESS and IISD. Experiences from the 2023 UN Climate Conference (COP28) illustrate the benefits of incorporating diverse perspectives from different stakeholders, including those from entrepreneurs, MSMEs (micro, small, and medium-sized enterprises), women, indigenous communities, NGOs, and academic institutions.

> The WTO must endeavour to amplify these varied voices, as they are integral to ensuring that the trade system leads to a fairer distribution of gains and provides greater procedural access to the levers of power.

The WTO must endeavour to amplify these varied voices, as they are integral to ensuring that the trade system leads to a fairer distribution of gains and provides greater procedural access to the levers of power. Here again, the Villars Framework dedicates an entire chapter to the "social sustainability" agenda and makes specific recommendations to advance that dimension, including proposing that all trade agreements and negotiations include ex ante and ex post sustainability impact assessments to evaluate how trade has, does, and will impact different groups, especially the traditionally marginalized ones.

But the inclusive agenda is also about ensuring that the smallest voices among the membership can be heard, especially on issues vital to their interests. CARICOM's vocal and visible participation in the fisheries subsidies negotiations at MC12 and MC13 demonstrates how the smallest voices—when used to defend the interests of their constituencies like fisherfolk in the region who depend on the oceans for their subsistence and therefore should receive special accommodation in the ongoing negotiations—can be effective

**Consensus or No Consensus?**

A critical concern in these discussions is how these diverse interests and voices can be integrated into the WTO agenda. While the principle of "consensus" at the WTO serves as a safeguard against the dominance of larger interests, it should not impede progress on issues critical to smaller nations like those in CARICOM. CARICOM states are active in various plurilateral, member-driven initiatives, such as Investment Facilitation for Development, Dialogue on Plastic Pollution, and Trade and Environmental Sustainability Structured Discussions. Notably, a CARICOM ambassador chairs the group on MSMEs. If consensus cannot be reached on continuing these discussions, the interests of these smaller economies could be adversely affected.

The Villars Framework proposes that the WTO consider a new decision-making mechanism allowing a majority of members to agree on procedural decisions, such as setting up new plurilateral negotiations or adopting an agenda so that progress can be made. For the more substantive decisions, and to ensure that

smaller voices are not drowned out, the consensus rule still holds high value as a bastion against majority rule. But there must also be a balance to ensure that the minority do not hold up progress, or conversely, that more powerful voices do not silence the less powerful minority. The Villars Framework therefore promotes a form of "responsible consensus" on more substantive issues, encouraging countries not to arbitrarily veto decisions but rather to opt out of decisions they find contrary to their vital interests.

**Is Special and Differential Treatment Still Relevant?**

Special and differential treatment remains a cornerstone principle for CARICOM in the WTO reform dialogue. Like other developing countries, CARICOM states have legitimate concerns about the effectiveness of special and differential treatment in integrating their economies into the global trade system. The controversy primarily revolves around the eligibility for special and differential treatment—which countries are entitled to special relaxations from the rules, such as extended timelines and preferential access.

Setting aside the debate over whether larger emerging economies like China, India, and South Africa should be considered developing, CARICOM can certainly advocate for an agenda that acknowledges its unique vulnerabilities. Such a proposal would actually provide the economic basis for differentiation of small states based on objective criteria such as the Multidimensional Vulnerability Index, adopted by the United Nations in July 2024, which accounts for environmental and economic vulnerabilities. Additionally, legal recognition in other agreements, including the Paris Agreement, should be considered as grounds for CARICOM to receive greater support in meeting the financial demands imposed on them. This raises the question: why should these vulnerabilities not be grounds for special accommodation under trade rules as well?

> Why should these environmental and economic vulnerabilities not be grounds for special accommodation under trade rules as well?

**A Critical Juncture for CARICOM and the Global Trade System**

Despite the limited gains among members in advancing the broader WTO reform agenda at MC13, the conversations it has generated, and the opportunities it can unleash, holds particular significance for CARICOM, whose members have historically adopted a conservative approach to trade negotiations, especially regarding the sustainability agenda. These opportunities are not just important—if properly managed, they can be transformational. They present an opportunity for CARICOM states to reengage on new terms with the trade system and to defend their historical interests for special and differential treatment on a more widely accepted basis—environmental vulnerability. Moreover, the agenda provides a basis for a meaningful debate and engagement on how the trade system can be more inclusive, fair, and responsive to the needs of Caribbean people.

The sustainability agenda has taken off as a global preoccupation and there is no turning back. The Remaking Trade for a Sustainable Future Project will continue to help shape the WTO's reform agenda. It will also be on the frontiers of a new phase of engagement that reaches all parts of the international trade system, including countries, regions, and broader non-governmental constituencies, so that true realignment of the trade system with the SDGs can be achieved.

---

***Jan Yves Remy*** *is Director of the Shridath Ramphal Centre for International Trade Law, Policy and Services at the University of West Indies, Cave Hill Campus; Co-Lead of the Remaking Trade Project for a Sustainable Future; and WTO Chair for the University of the West Indies, Cave Hill Campus, Barbados.*

# How Can We Harness Aid for Trade as a Crucial Component of the Financing Landscape for a Just Transition to Sustainable Trade?

*Carolyn Deere Birkbeck & Fabrice Lehmann*

*Aid for trade is a crucial component of the financing landscape and integrated policy approach needed for trade and trade policies to advance sustainable development and support environmental objectives in developing and least developed countries, guided by their priorities.*

Extreme weather events and changing climate conditions are causing hundreds of millions in economic damage and severe suffering across developing countries. Among least developed countries (LDCs), Eritrea, Madagascar, Mauritania, Chad, the Democratic Republic of Congo, Sudan, Mali, Ethiopia, and Congo face climate adaptation costs higher than their national spending on healthcare, with these costs ranging from around 5–22% of gross domestic product. In the Caribbean, the devastating experience of recent hurricanes has shown that the GDP of one country can be set back by a quarter during a five-hour climatic activity.

The ocean states of Kiribati, the Solomon Islands, and Tuvalu and countries from Bangladesh and Senegal to Tanzania and Uganda are flooded with plastic pollution with tremendous economic and health costs. From Laos to Madagascar and Guinea, rural populations, which account for two thirds of people living in LDCs, are experiencing the loss of biodiversity and ecosystems on which they directly depend for their subsistence.

> Faced with the huge social and economic toll of planetary environmental crises, developing countries have repeatedly highlighted the need for international support measures, including aid for trade, to address their economic and trade-related impacts.

Faced with the huge social and economic toll of these planetary environmental crises, despite bearing the least historical responsibility for them, developing countries have repeatedly highlighted the need for international support measures, including through aid for trade and wider finance and investment, to address their economic and trade-related impacts.

For example, in their Ministerial Declaration at the World Trade Organization's (WTO) Thirteenth Ministerial Conference (MC13), the LDC Group calls for reinforced support, including aid for trade, dedicated to LDCs, while emphasizing the increasing economic and environmental vulnerability of all LDCs. The Organization of the African, Caribbean and Pacific States, in their MC13 Ministerial Declaration, "emphasize the need to assist developing countries and LDCs meet the trade-related environmental challenges they face and which have an impact on their development." And an MC13 Ministerial Declaration on the Contribution of the Multilateral Trading System to Tackle Environmental Challenges, co-sponsored by almost 70 developing countries, stresses that "capacity building, climate finance and technology transfer [ ... ] to address climate change are central for the adaptation and mitigation strategies of developing countries and a key element to facilitate growth and sustainable development."

**Bolstering Aid for Trade for Sustainable Development**

As governments and stakeholders work to promote the economic transformations vital to achieving resilient, decarbonized sustainable development, aid for trade is an important component of the financing, investment, and partnerships required to support a just transition for developing countries; one that enables new economic and social opportunities and decent work.

To better mobilize and channel the resources they need to tackle challenges and seize opportunities at the intersection of trade, environment, and sustainable development, a top priority is to ensure recipient countries are in the driver's seat with regard to prioritization and coordination of aid for trade.

The 9th Global Review of Aid for Trade, which took place in Geneva in June 2024, offered opportunities to explore how aid for trade and financing can support trade-related contributions and responses to the sustainable development priorities of developing countries, including in relation to environmental challenges. Among other notable events, the WTO Secretariat launched a report identifying trade opportunities available to developing economies and LDCs as the world transitions to cleaner energy sources while emphasizing the crucial role of development finance in helping achieve these opportunities.

**The Role of Aid for Trade in Supporting a Just Transition to Sustainable Trade**

There is broad consensus that the economic burden of the global response to environmental challenges should not fall on the world's poorest and most vulnerable economies and that developed countries have a responsibility to provide financial resources, capacity building, and technical assistance to bolster capacities in developing countries. In the face of climate change, the importance of collective action and bolstered partnerships to address such crises of the global commons is clear.

There is broad consensus that the economic burden of the global response to environmental challenges should not fall on the world's poorest and most vulnerable economies.

However, while commitments to provide capacity building and technical assistance to developing and least developed countries are included in the Sustainable Development Goals and a range of environmental and trade agreements, there are well-recognized shortfalls in the scale of financial and technical support relative to the challenges facing a broad diversity of developing countries, and especially LDCs, small island developing states (SIDS), and small, vulnerable economies (SVEs), at the interface of trade, environment, and sustainable development.

Discussions at recent global reviews have highlighted a number of ways that aid for trade, as part of a wider financing and investment landscape for sustainability in developing economies and LDCs, could be harnessed for a just transition to sustainable trade, including through support to: economic diversification so as to participate competitively in green markets and supply chains; boosting resilience, climate readiness, and adaptation in key export sectors; and building climate-smart and resilient trade-related infrastructure.

To effectively support recipient countries, it is also clear that efforts to "green" aid for trade need to take into account wider national goals like employment creation and poverty reduction.

**Complementary Pathways for Greening Aid for Trade**

Greening aid for trade to better respond to environmental priorities in the context of the broader trade and sustainable development objectives will require simultaneous action on six complementary pathways:

- Mainstreaming environmental goals in aid for trade planning and projects.
- Ensuring aid for trade monitoring systems accurately capture and report information about the environmental purpose and impacts of aid for trade projects.
- Securing new and additional resources for environment-related aid for trade, increasing the accessibility of aid for trade and other sources of finance that can support sustainable trade, and using aid for trade to mobilize further resources.
- Fostering coherence between aid for trade and wider efforts to finance the shift to a green global economy, including climate finance, development assistance, debt relief and investment that supports the transformation and competitiveness of developing countries in a global green economy. Alongside ensuring supportive domestic policy frameworks, critical in this context will also be reform of the international financial architecture to align with and catalyse investment in sustainability and supporting developing countries and businesses to raise capital and attract investments in the green transition.
- Integrating trade considerations into existing climate and environmental funding initiatives and in development assistance for sectors with a high environmental impact and trade dimension.
- Strengthening South-South cooperation on sustainable trade, including by learning from developing country experiences and existing practices that support environmental sustainability in trade.

As noted, boosting the contribution of aid for trade to sustainability goals and the trade priorities of developing countries will require complementary efforts to ensure that trade rules and policies address recipient country priorities and constraints. It will also require a wider international policy framework that supports them to be partners in and benefit from opportunities in environmentally sustainable trade.

> Harnessing aid for trade for a just transition to sustainable trade must put developing countries in the lead.

Critically, harnessing aid for trade for a just transition to sustainable trade must put developing countries in the lead; listening and responding to their priorities in the area of sustainable trade. Effective priority-setting can be bolstered by integrated policymaking involving a diversity of relevant government ministries and regular consultations with stakeholders, including local businesses, civil society, and researchers. Further, ensuring that aid for trade is aligned with nationally defined sustainable development and sustainable trade priorities will entail national-level leadership and coordination of donors and donor projects by recipient countries.

**Next Steps Towards Harnessing Aid for Trade for a Just Transition to Sustainable Trade**

To scale up and speed up just transitions to sustainable trade, governments must move now to build on discussions at the 9th Global Review of Aid for Trade. They need not wait two more years or a further review. Donors and recipients can already work to pursue the development of a clear set of sustainability goals, priorities, and targets for the next aid for trade work programme, underpinned by the environmental, economic, and social urgency of responding to environmental crises and advancing sustainable development objectives. To support such work on an ongoing basis, they could agree to convene joint sessions of the WTO Committee on Trade and Development and the Committee on Trade and Environment focused on priorities at the intersection of aid for trade, environment, and sustainable development.

> Donors and recipients can work to pursue the development of a clear set of sustainability goals, priorities, and targets for the aid for trade work programme.

In addition, developing countries and LDCs could call on the OECD and WTO secretariats to lead on a number of tasks that would inform and support the contribution of aid for trade to sustainable trade. These could include an environmental review of aid for trade, country-led assessments of trade-related environmental priorities, and the development of indicators for monitoring the environmental impacts of aid for trade projects as well as best practices for designing and implementing projects that respond to the sustainability objectives of developing economies and LDCs.

Governments can also catalyse dialogue, share experiences, and bolster cooperation through member-led initiatives at the WTO, such as the Trade and Environmental Sustainability Structured Discussions (TESSD) and the Dialogue on Plastic Pollution, each of which highlight the importance of enhanced aid for trade for developing countries, and especially for LDCs.

A final recommendation is to raise the political profile and attention to aid for trade, and the critical importance of investment and finance for the green transition in developing countries, by convening of a high-level summit on Financing a Just Transition to Sustainable Trade. The summit would provide a much-needed opportunity to promote increased financing for the transition to sustainable trade. It could also encourage greater coordination among the many disconnected public and private actors engaged in development, trade, climate, and environment finance, debt relief, and investment critical to achieving a green and inclusive global economy. The summit could bring together leaders from relevant international organizations, donor and recipient countries, and, critically, private sector and civil society actors with resources and knowledge vital to action. This gathering could also benefit from engagement with other complementary efforts, such as the Bridgetown Initiative, the Baku Initiative for Climate Finance, Investment and Trade Dialogue (to be launched at the 2024 UN Climate Change Conference—COP29), and the Coalition of Trade Ministers on Climate.

**An Opportunity to Move Forward**

As part of a wider package of financing and investment tools targeted at supporting sustainable development in developing countries, WTO members have the opportunity to move forward on an aid for trade agenda that supports developing and least developed economies to tackle pressing challenges at the intersection of trade and sustainability. Given the massive trade and environment-related challenges facing many developing countries, especially LDCs, SIDS, and SVEs, the huge gap between needs and available support for a just transition to sustainable trade, and the urgency, scale, and impact of intersecting environmental crises, mobilizing additional resources, investments, and partnerships is vital.

A just transition to sustainable trade, underpinned by strengthened partnerships and developing country leadership on priorities, would yield benefits for all and for the planet.

---

***Carolyn Deere Birkbeck*** *is Founder and Executive Director, Forum on Trade, Environment, & the SDGs (TESS).*

***Fabrice Lehmann*** *is Senior Editor and Publications Manager, Forum on Trade, Environment, & the SDGs (TESS).*

# The Role of Trade Cooperation in Addressing the Climate Technology Gap in Developing Countries

*Vicente Paolo Yu*

*The gap between developed and developing countries in the development, access, and endogenous production and deployment of climate technologies is a key constraint on collective progress in global efforts to achieve sustainable development and effective climate action. Enhanced international cooperation arrangements in the WTO, UNFCCC, and elsewhere are called for to foster effective technology transfer for climate action.*

The multiplicity of intersecting global economic, social, political, and environmental challenges are undermining hard-won development gains and hampering progress towards achievement of the Sustainable Development Goals by 2030. Developing countries confront the dilemma of having to pursue sustainable economic development while keeping emissions and resource consumption within ecological boundaries, while in most cases being in a position of structural and institutional weakness. Among these challenges, climate change is a systemic and existential threat.

To hold global warming to between 1.5 and 2.0 degrees Celsius as stipulated in the Paris Agreement, energy and productive sectors must undertake a rapid and systemic transformation towards low-carbon pathways. Most of the necessary emissions reductions can be achieved by deploying and expanding the use of existing, commercially proven low-carbon technologies. Developing countries also need technologies to put their economies on climate change-adapted pathways and to address climate change-related losses and damage.

However, despite the possibility of accessing and acquiring technologies through the usual channels—such as trade, foreign direct investment, licensing, or movements of people—and then innovating and adapting such technologies, many developing countries have struggled to move through these channels from simple foreign technology acquisition into adaptation and subsequent endogenous technology development.

Many developing countries have struggled to move through the usual channels from simple foreign technology acquisition into adaptation and subsequent endogenous technology development.

These barriers—which may vary according to specific sectoral and country contexts and can range from insufficient human capabilities to economic constraints like access to capital, institutional limitations such as inadequate legal protections, or a lack of understanding of local needs for example—have created a wide technology gap between developed countries and the large majority of developing countries, in many cases reflecting a broader development gap. This gap is among the key constraints adversely affecting collective progress in global efforts to achieve sustainable development and effective climate action under the UNFCCC and its Paris Agreement.

**Technology Transfer as a Key Means to Address the Technology Gap in Climate Action**

Developing countries view technology transfer as a key way to reduce technological, knowledge, and capacity gaps, as well as income and wealth gaps between developed and developing countries, particularly in regard to climate action. Technology development and transfer as a means of implementation and climate action is clearly highlighted in Article 4.7 of the United Nations Framework Convention on Climate Change (UNFCCC) and Articles 10.5 and 10.6 of the Paris Agreement. Many developing countries have also indicated the importance of technological innovation, research and development, and technology transfer in their nationally determined contributions under the Paris Agreement.

As most technologies that developing countries import, absorb, or adapt are privately owned, and most climate-relevant technologies are developed and produced in and traded by developed countries (with China being the major outlier among developing countries as a producer and trader of such technologies), the main direction of, and enhanced efforts for, technology transfer be from developed to developing countries, although South-South cooperation will also have an important role to play.

> Due to the diversity of countries' national circumstances and innovation needs, there is no one-size-fits-all approach to technology transfer.

Due to the diversity of countries' national circumstances and innovation needs, there is no one-size-fits-all approach to technology transfer.

There are specific treaty provisions pertaining to technology transfer to support climate change action under the UNFCCC and its Paris Agreement. Institutions such as the Technology Mechanism have also been set up under the convention. Developing countries have undertaken technology needs assessments and developed technology action plans under the UNFCCC.

Through these, developing countries have identified their technology transfer priorities in the mitigation and adaptation sectors, largely in relation to energy, transport, agriculture, water, and infrastructure and settlements. They have also identified the barriers to technology transfer that they experience as well as the enablers that would be needed to support effective technology transfer, such as financing for technology transfer.

**The Role of International Trade Measures**

> When pursued in conjunction with other policy measures designed to increase endogenous technological uptake and innovation, international trade measures have the potential to support the diffusion of climate-relevant technologies.

When pursued in conjunction with other policy measures designed to increase endogenous technological uptake and innovation, international trade measures have the potential to support the diffusion of climate-relevant technologies, increasing their availability, access, and potential to be used by developing countries to undertake climate mitigation, adapt to the impacts of climate change, and build resilience. The impact on innovation is less clear.

By themselves, however, such trade measures might not decrease the technological gap between developed and developing countries, with most production and trade of such goods being dominated largely by developed countries. In this context, trade in climate-relevant goods, services, and technologies should be complemented by other supportive domestic policy measures intended to increase the ability of the importing country's economic sectors to absorb such technology, innovate and adapt it to domestic requirements, and develop endogenous climate technologies.

Attention should also be paid to ensuring that national intellectual property systems are geared towards promoting and supporting endogenous learning and follow-on innovation with respect to domestically generated as well as imported and transferred technologies, with due consideration "to selecting [intellectual property] standards that recognize the rights of inventors but encourage dynamic competition." Strategic use of intellectual property flexibilities available under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights should be explored.

**Enhanced International Cooperation as Critical to Effective Technology Transfer**

National action and international cooperation are critical to promote the transfer of technology from developed to developing countries to support effective climate action and to encourage the development of endogenous technologies in developing countries.

There are three key areas in which complementary domestic and international cooperation efforts need to be made in this regard: facilitating technology transfers of climate-relevant technologies from developed to developing countries; providing additional finance for developing countries; and building their capacities to address climate challenges facing their tradeable sectors.

At the national level, a more strategic approach to technology-related policymaking in the context of the achievement of national sustainable development priorities and objectives will be necessary, with structural transformation of the national economy as the goal. A key tool in this regard would be the employment and use of green industrial policy as an important part of the policy mix.

At the international level, there are various entry points for boosting cooperation arrangements on technology transfer within and outside the WTO in ways that lead to development of endogenous technologies as well as self-reliance by developing countries with respect to climate technologies. Such arrangements include enhancing the work of existing fora in the WTO and in the UNFCCC with respect to the interlinkages between technology transfer, climate change obligations, sustainable development priorities, and international trade measures.

---

***Vicente Paolo Yu*** *is an independent expert and consultant for various United Nations agencies and NGOs.*

# Avoiding Fragmentation and Addressing Tensions Through Multilateral Cooperation

# Pathways Exist for the Appropriate Design and Implementation of Trade-Related Climate Measures

*Ujal Singh Bhatia*

*Existing WTO provisions and jurisprudence provide pathways for the appropriate design and implementation of trade-related climate measures and policies in a manner that is consistent with commitments in the climate regime.*

The issue of trade and environment continues to witness divergent views among members of the World Trade Organization (WTO). While there seems to be broad support for continuing discussions in the Committee on Trade and Environment, there are differences on what the specific discussions should be about and what the role of the WTO should be in addressing the challenge of climate change. In order for the discussions to be constructive and meaningful, it is essential that members have a common understanding of each other's concerns and expectations.

Climate change is a global crisis and requires global solutions. Given the multidimensional nature of the crisis, the search for solutions cannot be confined to deliberations in one body. In view of the large interface between trade and the environment, the WTO as a multilateral organization clearly has an important role to play in addressing the issue. Equally obviously, the WTO's role needs to be consistent with, and complementary to, the multilateral environmental agreements as well as the continuing discussions in the specialized bodies such as the United Nations Framework Convention on Climate Change (UNFCCC). This is especially so because trade-related climate measures and policies typically implicate other branches of international law, beyond trade law.

**The Issue of Differentiated Treatment**

In the absence of any consensus within the WTO regarding the ground rules for trade-related climate measures and policies, some members are introducing such measures unilaterally. An example is the EU's Carbon Border Adjustment Mechanism (CBAM), which seeks to apply an additional levy on the carbon emissions associated with certain imports into the EU, with the aim of aligning carbon prices of imported goods with those of domestically produced goods. Such measures have aroused widespread concerns, especially among developing countries, that they can lead to fragmentation of trade and severely disadvantage exports of developing countries that may not have the resources or the technologies to limit carbon emissions. There are also apprehensions among developing countries and their businesses that such measures constitute non-tariff barriers being erected to deny them their competitive advantage. An important concern is the extent to which such measures could conflict with the commitments of developing and least developed countries under the multilateral environmental agreements.

> Measures like the CBAM bring to centre stage the issue of differentiated treatment for developing and least developed countries in implementing trade-related climate measures and policies.

Indeed, measures like the CBAM bring to centre stage the issue of differentiated treatment for developing and least developed countries in implementing trade-related climate measures and policies. Differentiated treatment, which is based on the requirement of equity, has been heavily negotiated in the multilateral environmental agreements and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) is a key element of the tightly negotiated balance of rights and responsibilities of various countries within the climate regime. The principle of CBDR-RC has been described as "a fundamental part of the conceptual apparatus of the climate change regime, such that it forms the basis for the interpretation of existing obligations and the elaboration of future international legal obligations within the climate change regime." The centrality and relevance of CBDR-RC to the climate change regime was highlighted by the UN General Assembly in April 2023 when it recalled that the UNFCCC and the Paris Agreement "will be implemented to reflect equity and the principle of [CBDR-RC], in the light of different national circumstances."

Equity as a general principle of law is also recognized in the preamble to the Marrakesh Agreement Establishing the World Trade Organization as well as in specific provisions of the WTO agreements. Despite the most-favoured nation provision in Article I of the General Agreement on Tariffs and Trade (GATT), the WTO is no stranger to differentiated treatment. A good example is the 1979 GATT Decision on the "Enabling Clause", which allows developed countries to provide preferential access to goods from developing and least developed countries to promote their economic development. The several special and differential treatment provisions for developing and least developed countries in the WTO agreements seek to give effect to the equity principle.

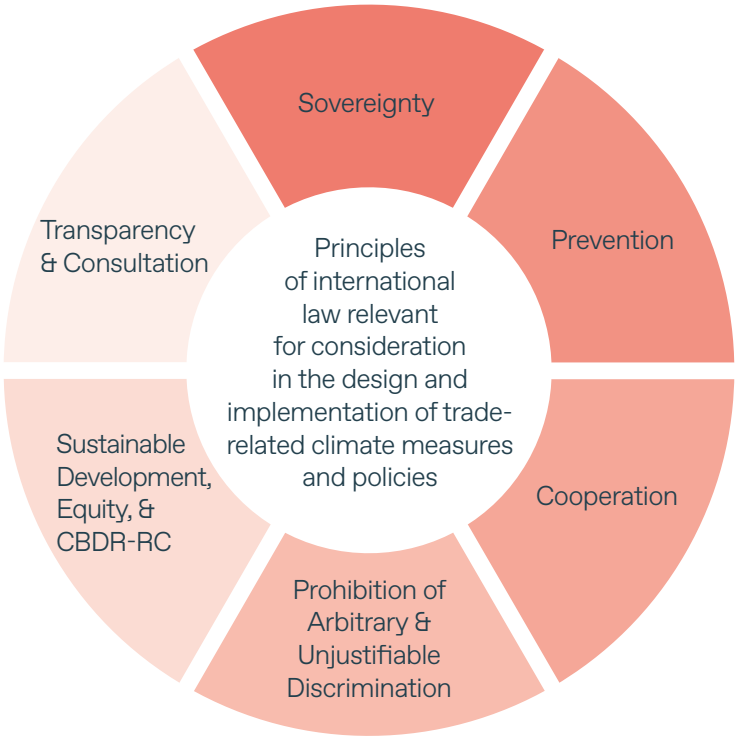
**A Set of Principles of International Law**

> In order to bridge the sharp differences among WTO members regarding trade-related climate measures and policies, they need to agree, as a first step, that commitments in the climate change regime and the WTO agreements must be interpreted in a coherent and mutually supportive manner.

It is clear that in order to bridge the sharp differences among WTO members regarding trade-related climate measures and policies, they need to agree, as a first step, that commitments in the climate change regime and the WTO agreements must be interpreted in a coherent and mutually supportive manner. The recent report of an International Legal Expert Group convened by TESS considers how this can be accomplished. It identifies a set of principles of international law relevant for the design and implementation of trade-related

climate measures and policies. The principles are sovereignty; prevention; cooperation; prohibition of arbitrary and unjustifiable discrimination; sustainable development, equity, and CDBR-RC; and transparency and consultation.

**Principles of International Law Relevant for Consideration in the Design and Implementation of Trade-Related Climate Measures And Policies**




Source: International Legal Expert Group on Trade-Related Climate Measures and Policies (2023).

Regarding differentiated treatment in accordance with the equity principle, the group finds that relevant provisions in the GATT/WTO agreements, and the extensive jurisprudence around them, provide pathways for the appropriate design and implementation of trade-related climate measures and policies in a manner consistent with similar commitments in the climate regime.

An important objective of the report is to ignite an informed international debate on the issue, with the aim of creating a common understanding on how this task can be accomplished. The principles of international law identified by the expert group provide a good basis for such a debate in the WTO.

---

***Ujal Singh Bhatia*** *is Honorary Professor at the National Law University Delhi and Advisor to the Council on Economic Policies. He served on the Appellate Body of the WTO from 2011–20 and was the Chairman from 2017–18.*

*Professor Bhatia was a member of the International Legal Expert Group on Trade-Related Climate Measures and Policies. The views expressed in this article are his own and do not necessarily reflect those of the group or of its members.*

# How to Avoid Potential Friction in Future Trade in Climate Technologies

*Brad McDonald & Scott Vaughan*

*Future deals under Article 6 of the Paris Agreement could include the transfer of climate technologies directly from home to host country, either at prevailing market prices or at deeply discounted or below market rates, in exchange for carbon credits. To avoid potential friction in such trade in climate technologies, there are avenues for cooperation within the WTO and beyond.*

Climate technologies are booming. 2023 saw a one-year jump of more than 50 percent in global renewable capacity. Expect continued rapid growth in the coming years.

Climate technologies fall into two big buckets. The first, and by far the largest, comprises mitigation or low-carbon technologies critical to meet decarbonization goals and net zero targets. Such technologies include a widening basket of renewable energy goods and services, as well as energy efficiency and others. The second basket comprises goods and services that support climate adaptation; examples include information and communication technologies vital for early warning systems, water irrigation technologies, climate-resilient crops, expertise needed for green, resilient infrastructure, water-bombers to fight wildfires, and many others.

**Wonderful Lists**

Climate technologies are changing. Familiar technologies like solar and wind are expanding at scales not seen before. Innovation is creating wholly new product categories, from net-zero steel to real-time carbon emission monitoring sensors.

The great Italian writer Umberto Eco once wrote that nothing is "more wonderful than a list." Unfortunately, no internationally agreed list of climate technologies exists.

The IMF's recent list is therefore welcome in consolidating and expanding previous low-carbon technology lists, adding for example new categories like rechargeable batteries.

**And the Problems They Show**

The list confirms two big problems in international efforts to promote the spread of climate technologies.

The first problem: climate adaptation technologies are barely mentioned. Aside from a few goods like energy-efficient air conditioners, refrigeration, and heat pumps—included because of their comparatively lower carbon footprints rather than their cooling functions—the list is dominated by mitigation-related technologies like solar panels, wind turbines, electric vehicles, and others. These comprise the bulk of the estimated $1.7 trillion clean technology global market.

The second problem is what the list reveals. Emerging and developing economies, with the exception of China, remain at the fringes of low-carbon technology trade. The leading five exporters of low-carbon

technologies are China, Germany, the United States, Japan, and Korea, and the top five importers are the United States, China, Germany, the United Kingdom, and France.

**Promises to Keep**

This wasn't the deal in the 1992 United Nations Framework Convention on Climate Change (UNFCCC) agreement, which pledged in Article 4 to "cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information."

Such optimism seemed reasonable at the time, given other successes. Agreement on the Montreal Protocol in 1987 was soon followed by the launch of its Multilateral Fund in 1989, created to help developing countries access additional finances for green technologies that avoided ozone-depleting substances. To date, over $5 billion in grants have been disbursed, making the Montreal Protocol both the most successful international environmental agreement as well as the gold standard in international efforts to promote technology transfer.

> The UNFCCC has struggled from the outset in financing and technology transfer.

By contrast, the UNFCCC has struggled from the outset in financing and technology transfer. The 2015 Paris Agreement tried to inject a new urgency to the issue, pledging to realize "technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions." Various working groups were established before and after Paris: the UNFCCC Technology Mechanism, the Climate Technology Centre & Network (CTCN), and various specialized UN programmes. Yet the trade data makes clear that such efforts are falling short.

**Early Paris Technology Deals**

Another provision of the Paris Agreement offers a glimmer of hope. The objective of Article 6 is to enable cooperation through international public sector carbon markets. A handful of actual deals have begun. A Switzerland-Thailand agreement under Article 6.2 entails Switzerland financing the conversion of buses from internal combustion engines to electricity. Another involves Swiss financing of solar panels in Vanuatu. So far, these deals resemble thousands of other clean energy overseas development assistance projects, but for an important twist.

> These deals resemble thousands of other clean energy overseas development assistance projects, but for an important twist—what's new is the link between technology investments and carbon credits.

What's new is the link between technology investments and carbon credits. In exchange for its investments in low-carbon technologies, Switzerland is eligible to receive international carbon credits—called internationally transferred mitigation outcomes (ITMOs)—roughly matching the avoided greenhouse gas emissions enabled by these technologies.

Another Swiss bilateral agreement with Ghana involves climate-smart rice production, which may support the much needed bundling of mitigation and adaptation deals (although any carbon credits would be limited to the mitigation outcome).

In turn, Switzerland can apply these credits to its Nationally Determined Contribution and net zero mid-century targets.

These early Article 6.2 deals entail the financing of domestic technologies and capacities rather than trade or transfer. But future Article 6 deals could include the transfer of climate technologies directly from home to host country, either at prevailing market prices or at deeply discounted or below market rates, in exchange for carbon credits. With nearly 200 Article 6 deals in a project pipeline dominated by industrial energy efficiency and renewable energy technologies, a clearer picture will emerge in the coming months.

Unfortunately, this is one among several areas where the climate and trade regimes might clash. What if, for example, China, Japan, or other clean energy powerhouses transferred technologies directly to developing economies at below market rates? The whole point of Article 6.8 of the Paris Agreement is precisely to advance non-market deals, but it is unclear what World Trade Organization (WTO) rules allow. Such lingering uncertainty discourages positive action on the climate front.

> Article 6 deals could exacerbate tensions around trade in climate technologies.

It is no secret that trade in climate technologies is a source of friction from tariffs on solar panels to early steps covering a booming trade in electric vehicles. Article 6 deals could exacerbate such tensions, drawing claims of export subsidies, dumping, injury, or other concerns.

**Supporting Cooperation**

Some steps could avoid potential friction.

A first is to bolster information sharing between the UNFCCC and WTO. For example, governments engaged in Article 6 deals that include clean technologies should notify various WTO bodies such as the Working Group on Trade and Transfer of Technology, the Trade and Environmental Sustainability Structured Discussions (TESSD), or via Article 66.2 of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Joint discussions could also include sharing technology-related assessments and related guidance underway as part of the rulemaking of the Paris Agreement Article 6.4 Supervisory Body. Recent draft assessments have included cautionary opinions regarding nascent technologies like carbon capture and storage. More definitive guidelines are expected from that Subsidiary Body by the 2024 UN Climate Change Conference (COP29) in November 2024.

Information exchanges could draw lessons from the Montreal Protocol, including the proposed implementation of the 2023 decision regarding energy efficiency standards for refrigeration, air conditioning, and heat pumps, all of which will have significant avoided emissions effects covering stratospheric ozone and climate goals.

With a few exceptions, technology transfer has been widely endorsed and rarely implemented.

A second step is to update on an ongoing basis a list of low-carbon and adaptation-related technologies. The 2023 IMF list is a good start.

Clearly, an updated list could support more ambitious goals, notably reducing tariffs and taking other steps to facilitate trade in climate-friendly goods and services. Decades of stalled WTO discussions intended to define a list of environmental goods and services seems likely to continue. Nonetheless, an updated list would support other goals, not least tracking trade in emerging product categories like net-zero aluminium or new generations of high-efficiency goods.

With a few exceptions, technology transfer has been widely endorsed and rarely implemented. Now is the time to make overdue climate technology transfer deals work at scale, with the proactive support of the trade regime.

---

***Brad McDonald*** *is a Lecturer with the University of Minnesota, Humphrey School of Public Affairs, and former Deputy Head of Trade, IMF.*

***Scott Vaughan*** *has worked for the secretariats of UNEP, the WTO, and the NAFTA Environment Commission.*

# Making a Border Carbon Adjustment Mechanism Work for Climate, Trade, and Equity

*Kasturi Das & Kaushik Ranjan Bandyopadhyay*

*As border carbon adjustments are increasingly adopted or contemplated, there are various constructive ways in which the WTO could play an important role in the context of multilateral discussions to enhance understanding of these mechanisms.*

The European Union's much-debated Carbon Border Adjustment Mechanism (CBAM), which officially entered into force in October 2023, is the first of its kind border carbon adjustment (BCA) measure being applied on cross-border trade. The CBAM primarily aims at addressing the risks of carbon leakage potentially arising from enhanced climate ambition of the bloc towards achieving climate neutrality under its Green Deal. It also intends to promote decarbonization in the EU's trade partners by encouraging use of technologies that are more efficient in reducing greenhouse gas emissions. Such encouragement is particularly relevant for the emissions-intensive and trade-exposed sectors that are already covered under the ambit of CBAM, which (as of now) broadly include iron and steel, cement, aluminium, fertilizers, electricity, and hydrogen.

The CBAM seeks to achieve the aforesaid objectives by levelling the carbon price paid by domestically produced goods under the EU Emissions Trading System (EU ETS) and imported goods by subjecting the imports to a carbon price that is equivalent to that paid by the domestic covered installations.

**CBAM – Old Wine in a New Bottle!**

While the EU may be credited for coining the phrase "carbon border adjustment mechanism," measures of this genre have traditionally been referred to as BCAs, besides other related nomenclature. The first such call for BCAs in the industrialized countries could be traced back to concerns about the lack of comparable climate commitments in developing countries and the withdrawal of the United States from the 1997 Kyoto Protocol. Years later, a similar measure was proposed in the United States in the 2009 Waxman-Markey bill (or the American Clean Energy and Security Act), in conjunction with a proposed nationwide cap and trade system. The bill, however, never became law and hence the proposed BCAs never saw the light of the day. Since then, BCAs have been periodically discussed and deliberated upon both in policy circles and academia, more so in the post-Paris Agreement world.

> Border carbon adjustments have been discussed and deliberated upon both in policy circles and academia for the past 20 years, more so in the post-Paris Agreement world.

Even since its launch, the EU's CBAM has been discussed in various World Trade Organization (WTO) fora, particularly the Committee on Trade and Environment. During the EU's latest Trade Policy Review in 2023, CBAM has also been questioned on several grounds

The EU's trade partners, particularly those from the Global South, have contested BCAs in general, and the EU's CBAM in particular, on multiple grounds. These include its inadequate environmental effectiveness, unilateral nature, alleged protectionist intent, questionable trade law compatibility, and extra-territorial impacts, including on climate justice and equity.

**Questionable Environmental Benefits**

The main reason why questions have been raised about the environmental benefits of CBAM is perhaps the lack of empirical evidence on carbon leakage. Although several ex-ante modelling studies have periodically made projections regarding the existence of carbon leakage, their projections at best indicate moderate leakage, varying from 3–15%. In contrast to the ex-ante modelling studies, empirical studies focused on the EU ETS do not find much evidence of carbon leakage ex post.

Even findings from the modelling studies on the potential environmental benefits of CBAM are at best mixed. According to a projection by UN Trade and Development (UNCTAD), although CBAM is expected to reduce carbon leakage, its overall impact on emissions reduction globally would be rather negligible. Merely 0.1% of global emissions and 0.9% of EU emissions are expected to be curtailed. While a few other modelling studies also came out with results similar to those of the UNCTAD study, a number of other studies found, on the contrary, that CBAM, when designed carefully, can effectively reduce carbon leakage and address competitiveness concerns in the domestic market. Importantly, the EU's own official impact assessment also revealed that CBAM would curtail EU emissions merely by an estimated 1% by 2030 and global emissions in the covered sectors by 0.4%.

**Unilateral Nature and Potential Impacts on Trade Partners**

The unilateral manner of imposition of CBAM with an extraterritorial fallout on trade partners has raised serious questions. The BASIC grouping (Brazil, South Africa, India, and China) have critiqued CBAM, stating that: "unilateral measures and discriminatory practices, such as carbon border taxes, that could result in market distortion and aggravate the trust deficit amongst parties, must be avoided." India, in its submission to the WTO, has argued that such measures pose "systemic implications for international law as a whole, since any unilateral action undermines multilaterally negotiated rights and obligations of countries." China has also opposed CBAM strongly, including in its WTO submissions. The measure has also been criticized by developing countries for undermining the multilateral climate regime under the United Nations Framework Convention on Climate Change (UNFCCC).

The CBAM has further been criticized for going against the principles of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC) as enshrined in the UNFCCC. A substantial body of modelling studies (see for example here, here, and here) indicates that BCAs would shift the economic burden of emissions reduction from abating industrialized countries to non-abating developing countries thus raising concerns of equity.

**Complexities Around WTO Compatibility**

Although the EU claims that CBAM has been designed to make it compliant with WTO rules, many trading partners have expressed concerns about its WTO compatibility. Some trading partners have also indicated that they would lodge a complaint under the WTO's Dispute Settlement System.

> The issue of WTO compatibility of CBAM is a complex and contentious one owing to ambiguities in existing WTO jurisprudence on several counts.

The issue of WTO compatibility of CBAM is a complex and contentious one owing to ambiguities in existing WTO jurisprudence on several counts. First, it is not clear whether a domestic tax based on the carbon content of a product could be eligible for adjustment at the border. Moreover, even if a domestic carbon tax is determined to be adjustable at the border, it must additionally be ensured that the concomitant border tax adjustment abides by the national treatment requirement—a pillar of the non-discrimination principle of the WTO, the other being most favoured nation, which also has to be complied with.

Another big question that comes up in this context pertains to that of "like" products: whether under WTO jurisprudence products can be regarded as "non-like" only on the basis of their differing carbon content. There also is significant uncertainty in existing WTO jurisprudence on this question, which further adds to the ambiguities pertaining to the WTO legality of any BCA. Importantly, even if a BCA turns out to be violative of any General Agreement on Tariffs and Trade (GATT) provision, it still stands a chance of being justified under the "general exceptions" provision, as enshrined in Article XX. This article allows a WTO member to deviate from its GATT obligations for fulfilling certain legitimate policy objectives, including environmental ones (under Articles XX (b) and (g)), provided the conditions included in the Chapeau (that is the introductory part) of Article XX are met. While there may be a good case for a BCA to be "provisionally" justified on environmental grounds, the trickier part would be to satisfy the Chapeau, which requires that the measure is "not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade." Importantly, the purpose of the Chapeau is to prevent (ab)use of trade measures for protectionist purposes.

It is worthwhile to note that Article 3.5 of the UNFCCC virtually shadows the GATT Article XX Chapeau language in its aim of preventing any climate measure being applied for protectionist purposes. In fact, this article has formed the basis of all the BCA-related discussions under the UNFCCC negotiations as part of a forum on the impact of the implementation of response measures created by the UNFCCC parties in 2010.

There is a plethora of literature that explores whether BCAs could be compliant with WTO law and jurisprudence, and more specifically what kind of BCA designs could potentially help towards this compliance. It is widely argued in this literature that the ultimate determination of the WTO compatibility or otherwise of any BCA measure would depend on the nitty-gritty of the design and implementation of the measure.

To have a better chance of WTO-compliance, BCAs would need to have a clear environmental justification, should consider the mitigation efforts and concomitant costs incurred by other countries, and provide for fairness and due process in the design and implementation, among other considerations.

**Risk of Enhanced Fragmentation in the World Order**

Although the EU may be a frontrunner in the BCA race, it is unlikely to be alone adopting such a climate-related trade measure. Unilateral BCAs are already contemplated in various other jurisdictions, including the UK, Canada, United States, Australia, Japan, and Taiwan. All these initiatives are at different stages of fruition, with each having its own underlying context, objective, and design principles in view.

As more jurisdictions opt for unilateral border carbon adjustments as per their own requirements, the fallout could eventually be multiple mechanisms with diverse or even contradictory rule books, running the risk of vitiating the environment for enhanced climate action.

As more jurisdictions opt for unilateral BCAs as per their own requirements, the fallout could eventually be multiple BCAs with diverse or even contradictory rule books. The brunt of this would eventually be borne by the exporters in the form of increased transaction costs in their endeavor to explore various BCA-imposing jurisdictions. Small players in the Global South with limited technical and financial resources could be the worst affected. Such a scenario could further aggravate trade frictions and geopolitical tensions as evinced by the reactions to the EU's CBAM.

Such fragmented rule-making and their impact run the risk of vitiating the environment for enhanced climate action, which demands concerted global efforts in a cooperative, rather than fragmented manner.

**Balancing Ambition and Equity – Some Food for Thought**

Some moot questions that arise in this context are:

1. Can BCAs be designed in ways such that they incentivize enhanced climate action, particularly deep decarbonization in the hard-to-abate sectors in the Global South? What could be the possible constituent elements of such a BCA?
2. What role could the global trading system play to facilitate deep decarbonization as well as just transitions in the hard-to-abate sectors in the Global South that is also commensurate with the sustainable development imperatives of developing countries,?

Underlying these questions is the inherent tension between: (a) the global community's efforts to control climate change and achieve net zero, ideally by mid-century; and (b) the legitimate right of developing countries to a just transition as well as sustainable development, as recognized by the multilateral trading system.

While a deeper exploration of the aforesaid research questions is beyond the scope of this commentary, the following paragraphs throw some reflections on possible ways forward.

> The principle of common but differentiated responsibilities and respective capabilities offers broad guidance that ideally should be considered in the design and application of any border carbon adjustment.

First, the CBDR-RC principle offers broad guidance that ideally should be considered in the design and application of any BCA. Although the precise content of the principle remains contested, it emphasizes the need to account for the historical contribution to climate change by developing countries, as well as their varied levels of economic development and capabilities to undertake climate action. This is also in tune with the special and differential treatment provisions for developing countries and the least developed countries (LDCs) under the multilateral trade regime of the WTO.

Some commentators have argued in favour of a blanket exemption of the LDCs from the purview of the CBAM. Some others suggest that instead of a complete exemption, the LDCs should receive targeted support from the EU. According to one expert, CBAM's compliance with international law would depend largely on "the EU's disposition to both recognize non-European countries' environmental policies, and the EU's willingness to support developing nations on their efforts to curb carbon emissions".

If a BCA is designed and implemented in compliance with the CBDR-RC principle, it would also increase the chance of the measure being compliant with WTO law, particularly under GATT Article XX (b) and (g) as well as the requirements under the Chapeau of the article.

Second, to make a BCA more effective in incentivizing decarbonization processes in trading partners, particularly those from the Global South, without compromising on the fairness and equity aspects, it is critical to allow for policy space and flexibility. This is also in concordance with the bottom-up approach of the Paris Agreement.

An illustration may help clarify the point better. While determining the carbon price differential between those paid by EU producers and imported products in the covered sectors in the context of CBAM, the EU would consider only the "explicit" carbon price paid in the exporting country, such as those under a carbon tax or cap-and-trade system. Instead, a more flexible approach could determine the "effective" carbon price by factoring in not only the "explicit" carbon price but also the carbon price equivalent of any "implicit" carbon price, say a fuel tax. This could be particularly important as some developing countries may encounter capacity constraints and other political and operational challenges to implement explicit carbon pricing, but may still be well positioned to

implement other policies and regulations having implicit carbon price implications. Allowing for such flexibilities and policy space in a BCA design and implementation may facilitate enhanced climate action, thereby making the potential impact of a BCA more effective from an environmental perspective and also more equitable. Such flexibility could also be in alignment with the bottom-up approach of the Paris Agreement. One way of arriving at the reconciliation could be through framing mutual recognition agreements with trading partners with the aim of creating equivalence between the carbon price effectively paid by an imported product in its country of origin.

Third, another way of allaying the equity and distributional concerns is by way of recycling of the proceeds from BCA to affected developing and the least developed countries.

Fourth, if required, a BCA imposing country could provide technical and capacity building support particularly for MSMEs in the exporting countries from the Global South to aid them in their decarbonization efforts. For instance, measurement of carbon content itself may require technical support for small players.

Fifth, an open and transparent discussion with the exporting countries at the planning stage of a BCA, rather than unilateral imposition, may help improve the legitimacy of a BCA and minimize any potential political backlash against it.

**A Constructive Role for the WTO**

China has already called for a dedicated multilateral discussion at the WTO to enhance understanding of EU's CBAM and other potential BCAs.

Indeed, the WTO could play an important role in this space in various constructive ways, for example by: (a) setting out basic principles and conditions for imposing BCAs; (b) specifying permissible design elements and applications; (c) setting out notification and cooperation procedures; and (d) by developing an institutional structure to facilitate capacity-building, oversight, implementation, and review of BCAs.

The overarching objective of the WTO should be to ensure that BCAs are not used in the guise of protectionism—a principle enshrined in the Chapeau of GATT, Article XX, as discussed.

Notwithstanding the efforts on multiple fronts at the WTO, the multilateral trade body is still confronted with insurmountable challenges, which include a dysfunctional Appellate Body that has plugged the "teeth" out of the organization. Among all WTO reform agenda items, restoration of the Appellate Body must assume foremost importance. A functional dispute settlement system may not only restore the WTO's lost glory, but can, among other things, also act against any climate-related trade measure like a BCA being misused for protectionist purposes rather than advancing the cause of climate.

---

***Kasturi Das*** *is Professor, Institute of Management Technology, Ghaziabad, Delhi-NCR, India; and Fulbright-Kalam Climate Fellowship for Academic and Professional Excellence (Research) Scholar and Visiting Fellow at the Yale Center for Environmental Law & Policy, Yale University.*

***Kaushik Ranjan Bandyopadhyay*** *is Chairperson, Centre for Business Sustainability, Indian Institute of Management, Lucknow.*

# Unfinished Business in Voluntary Carbon Markets – A New Frontier for Trade Cooperation

*David Luke & Cecilia Wandiga*

*At the 2023 UN Climate Change Conference (COP28), negotiations on global rules and disciplines for carbon markets collapsed. The unfinished business of establishing a regulatory framework for carbon markets could provide a new frontier for the trade and climate communities to bring coherence to this aspect of the trade-climate nexus, encompassing an expanding agenda that includes carbon pricing, carbon taxes, border adjustment measures, and fossil fuel subsidies.*

The sceptical reception of the underwhelming pledge by major fossil fuel producing countries to "transition away" from production of this energy source dominated news headlines on COP28's outcome. What was not widely reported was that negotiation of disciplines for the operation of carbon markets, including pricing and trading of carbon credits and offsets, was kicked down the road to COP29.

These negotiations collapsed over disagreements on regulatory parameters, transparency, and confidentiality of transactions. African delegations were prominent in calling for stronger checks and balances and loosening of confidentiality causes that would prevent scrutiny. In response to the deferment, independent carbon crediting standards agencies led by Verra issued a statement in Dubai to announce a collaborative initiative to promote transparency and consistency across the market. While the statement was a timely recognition of the inadequacies of current approaches, which inconsistencies in the activities of the agencies have revealed, the negotiation of disciplines for multilateral regulation of carbon markets as required under Article 6 of the Paris Agreement remains unfinished business in the COP process.

**Operation of Carbon Markets – Not Yet Optimal**

The challenges related to carbon market operations are well-known and include:

- *Greenwashing*: Where a business exaggerates its efforts to offset emissions while continuing environmentally harmful practices. Verra's Northern Rangeland Trust scandal continues to shake the confidence of investors and carbon market watchdogs.
- *Community rights*: Where local communities might find themselves marginalized as carbon market projects are implemented, resulting in a lack of consultation, inadequate compensation, and often displacement. Shmid's research on the Bukaleba forest reserve in Uganda revealed that the socio-economic development aspects in carbon contracts are simply not sufficient to protect indigenous land rights, even when these rights are legally recognized.
- *Non-transparency*: Where companies like the UAE-based Blue Carbon insist on the confidentiality of contract terms for land acquisitions across Africa, raising opacity concerns. This hinders the ability of stakeholders to assess the expected impact and promised benefits.

For Article 6 objectives to be realized, accountability and transparency must be built into the design of robust oversight systems for the functioning of carbon markets. These systems must also safeguard the rights of local communities and ensure effective impact on emission reductions. This is the unfinished task that remains before COP negotiators.

**High Stakes for African Countries**

For the African countries, the stakes on carbon markets that work effectively are high. Not only does carbon trading offer a new source of non-debt creating financial flows, but the continent also possesses unique assets and untapped potential for climate stabilization. It is to this end that the African Carbon Markets Initiative (ACMI) was launched at COP27 to work with African governments in cohering national approaches and ensuring high-integrity carbon markets.

> For the African countries, the stakes on carbon markets that work effectively are high. Not only does carbon trading offer a new source of non-debt creating financial flows, but the continent also possesses unique assets and untapped potential for climate stabilization.

From the outset, ACMI has put much emphasis on the equitable and transparent distribution of carbon credit revenue with a significant portion of the receipts going to communities. This is to ensure that carbon trading benefits communities on the ground and also provide a critical source of climate finance for the continent. Carbon markets are currently estimated to be worth some $2 billion with potential to reach $1 trillion by 2037 according to BloombergNEF. This is a multiple of the $100 billion in annual climate finance commitment agreed at COP15 in Copenhagen in 2009 and yet to be achieved.

The ACMI's economic modelling projects steady growth in Africa's carbon market transactions during the next 30 years with the retirement of up to 2.5 gigatonnes in CO2 emissions, mobilization of up to $200 billion a year in carbon trades, and creation of up to 190 million green jobs by 2050. It must be acknowledged that these projections could be upended by advances in carbon removal technologies. But even with any such advance, analysts expect that ultimately, a combination of verifiable avoidance and removal projects will be necessary. The focus is expected to be on the quality of both types of credit as the market continues to mature.

It should be recalled that the continent is home to the Congo Basin, a vital carbon sink storing over 30 billion metric tons of carbon. This surpasses the combined tropical forests of the Amazon and Asia. The continent is further endowed with a variety of ecosystems that are natural carbon sinks. These encompass oceans, forests, grasslands, and soil. Yet, Africa's monumental contribution to climate equipoise remains undervalued in carbon market trades. The continent accounts for just 11% of the world's recorded carbon offsets and 2% of global carbon market trading.

Moreover, the pricing of African carbon credits is relatively low. While the IPCC recommends a base price of $100 per tonne to maintain a safe 1.5°C warming limit, African credits currently fetch as little as $10/tCO2, significantly lower than in Europe and the United States. Increasing, both the price and volume of credits is a fundamental ACMI priority. In the Nairobi Declaration adopted at the September 2023 Africa Climate Summit that preceded COP28, African leaders called for measures that "elevate the continent's share of carbon markets." Innovations such as debt-for-nature swaps as in the Seychelles and Gabon have been welcomed.

**Far-Reaching Implications**

> Global rules and disciplines for carbon markets under Article 6 could impact both compliant carbon markets that rely on taxes and price-based voluntary markets that trade in carbon credits.

Global rules and disciplines for carbon markets under Article 6 could impact both compliant carbon markets that rely on taxes and price-based voluntary markets that trade in carbon credits. This will have far-reaching implications for the design of trade measures that seek to control the risk of leakage between production systems that are subject to different regulatory standards and obligations for carbon emissions. While the much-heralded "Trade Day" at COP28 may have helped to raise awareness of trade policy issues that intersect with climate, multilateral trade and climate discussions remain siloed. In looking ahead to COP29, the unfinished business on Article 6 could provide a new frontier for the trade and climate communities to bring coherence to this aspect of the trade-climate nexus, encompassing an expanding agenda that includes carbon pricing, carbon taxes, border adjustment measures, and fossil fuel subsidies. These require both urgent attention and coordinated approaches.

Media coverage of COP28 headlined the incredulous response to a vacuous promise to move away from fossil fuels that is the main driver of the climate emergency. Much better received was the reporting on more substantial COP28 achievements such as the loss and damage fund (which remains underfunded), the compact on curbing methane gas emissions, and the Global Stocktake (which provided a welcome emphasis on human rights-based approaches to the multiple impacts of climate change including on food security, health, water systems, and biodiversity). The laboured negotiations to ensure transparency and robustness in markets for carbon trading were ignored. Finishing this business at COP29 will generate the headlines it deserves and affirmation that the multilateral path does work.

***David Luke*** *is Professor in Practice, Firoz Lalji Institute for Africa, London School of Economics and Political Science.*

***Cecilia Wandiga*** *is Executive Director, Centre for Science and Technology Innovations, Nairobi.*

# Greening Supply Chains: Sleepwalking Into a New Era of Trade Policy?

*Marion Jansen*

*New corporate accountability tools that aim to hold companies accountable for the sustainability of their operations along their entire supply chain are moving into a space that is not or hardly occupied by the WTO. Trade negotiators are advised to become acquainted with the dynamics of the environmental and financial communities—and the growing range of supply chain initiatives—sooner rather than later.*

A new phenomenon is currently developing in international trade: the increased use of corporate accountability tools that aim to hold companies accountable for the sustainability of their operations along their entire supply chain. This development is already the talk of many UN climate change conferences and one that should be high on the agenda for attention on the road to the Fourteenth WTO Ministerial Conference (MC14). Indeed, this new development is creating headaches for supply chain managers and, just as importantly, could place additional stress on the relevance of the WTO dispute settlement mechanism.

One example concerns accountability for greenhouse gas (GHG) emissions along supply chains. The Greenhouse Gas Protocol (GHG Protocol) invites multinationals to report on their so-called Scope 3 emissions—i.e. the emissions that take place upstream or downstream in their supply chains. This has triggered a significant level of engagement by multinationals who saw a business interest in being an early mover in this direction while Scope 3 reporting was still voluntary. But the new EU Corporate Sustainability Reporting Directive requires large firms to start reporting their Scope 3 emissions as of 2025. Providing information on "embedded" emissions (i.e. emissions upstream in the supply chain) of imported goods is also an obligation for supply chains covered by the EU's Carbon Border Adjustment Mechanism (CBAM) regulation and other carbon border adjustment initiatives currently under consideration in other countries. Financial regulators in G7 countries like the United States and Japan are also considering requesting information on Scope 3 emissions from listed companies.

This development is already the talk of many UN climate change conferences and one that should be high on the agenda for attention on the road to the Fourteenth WTO Ministerial Conference.

**Challenges in Dealing With Corporate Accountability Tools**

Most of these initiatives, legislations, and regulations originate with environmental or financial regulators. Strictly speaking, they would therefore not be considered trade policies. Yet they are highly relevant for international trade and the multilateral trading system. This is the case because a company based in country A will have to provide information on GHG emissions occurring during production in country B if the company in country A uses inputs from country B. Information on a traded good has to be provided in country A, either to border authorities or to another domestic authority. If this cannot be done or if it cannot be done in an appropriate way, then trade will be affected.

It is not new for border authorities to be interested in how a good has been produced in another country. It is, for example, common for border authorities to check whether imported foodstuffs meet food safety standards. What is new is that border authorities will need to check something that cannot be detected in the good that is being traded. In testing a piece of clothing, for example, it will not be possible to assess the amount of GHG emitted in making that product.

In WTO language, this implies that corporate accountability tools require that importers and producers provide information on "non-product-related processes and production methods (NPR-PPMs)"—i.e. something that happens abroad but is not visible in the product itself and can hence not be controlled by border authorities. Because PPMs cannot be detected at the border, they have been considered to entail the risk of hidden protectionism. Not surprisingly, the multilateral trading system has traditionally found it difficult to deal with NPR-PPMs. Corporate accountability tools like the ones described above are therefore moving into a space that is not or hardly occupied by the WTO.

> The multilateral trading system has traditionally found it difficult to deal with non-product-related processes and production methods—corporate accountability tools are therefore moving into a space that is not or hardly occupied by the WTO.

Such tools create considerable challenges for supply chain managers in private companies for the same reason that the WTO has found it hard to deal with them: they require the collection of information on activities that take place on different territories. For these managers it is difficult to monitor this information and to aggregate it in a way that makes sense along the supply chain. Imagine a relatively simple supply chain with a multinational having ten suppliers in three different countries and buyers in four countries. Tracking GHG emissions or any other environmental or social indicator at each stage would be complex and require that information flows seamlessly across multiple borders. There are also concerns that the costs of compliance with corporate accountability tools (e.g. implementation, demonstrating compliance, acquiring information about what is required) will become prohibitive for certain suppliers in global supply chains, in particular for small businesses and especially for those in developing countries.

**Additional Stress on the Relevance of the WTO Dispute Settlement System**

In the context of international trade law, it will be challenging to deal with npr-PPMs and hence with corporate accountability tools, as this implies dealing with processes that are governed by different jurisdictions given that firm-level operations typically have to abide by the laws of the territory where their operations take place. Corporate accountability tools—where they are mandatory—circumvent this jurisdiction challenge by allowing complaints to be raised in civil courts in the country implementing the tool and by making companies hosted in that country accountable for what their suppliers abroad do. And this brings me to the last point made in the opening paragraph, which is that these accountability tools carry the risk of putting additional stress on the relevance of the WTO dispute settlement system by moving certain trade-related disputes out of this system and into national courts.

Corporate accountability tools carry the risk of putting additional stress on the relevance of the WTO dispute settlement system by moving certain trade-related disputes out of this system and into national courts.

Trade negotiators are advised to become acquainted with the dynamics of the environmental and financial communities—and the growing range of supply chain initiatives—sooner rather than later, as well as try to gain a better understanding of the challenges that supply chain managers currently face. The reference in the MC13 Ministerial Declaration to the importance of "open, inclusive, resilient, sustainable, diversified and reliable global supply chains" provides an opening for relevant discussions to take place at the WTO.

***Marion Jansen*** *is Director of the Trade and Agriculture Directorate at the Organisation for Economic Co-operation and Development (OECD).*

# Critical Minerals Initiatives for Green Supply Chains: How Multilateralism Can Help

*Henry Gao, Weihuan Zhou, & Victor Crochet*

*With exponential demand for critical minerals vital for the green transition, governments have launched cooperative arrangements and initiatives to address potential critical minerals supply chain disruptions. Yet these arrangements are predominantly selective engagement—addressing this global issue properly requires multilateral action.*

The Thirteenth Ministerial Conference of the World Trade Organization (WTO) largely left behind matters essential for safeguarding global supply chains for a green transition. Sitting at the very upstream of green supply chains are so-called critical minerals, such as lithium, nickel, and cobalt, which are vital for a range of green technologies. As green industrial policy proliferates worldwide, the demand for these minerals has increased exponentially. While some governments have launched cooperative arrangements to address potential critical minerals supply chain disruptions, these are predominantly selective engagement (particularly between allies) and can be disruptive themselves. Addressing this global issue properly requires multilateral action.

**Critical Minerals and the Green Transition**

Critical minerals are regarded as the oil of the twenty-first century. As reported by the International Energy Agency, to meet the Paris Agreement goals in the next two decades, the need for lithium, nickel and cobalt, and copper and rare earths—key minerals used for the production of electric vehicles and major renewables such as wind turbines and solar photovoltaics—will increase by 90%, 70%, and 40% respectively. The World Bank has also estimated that to meet the growing demand for clean energy technologies, the production of a wide spectrum of critical minerals will increase significantly by 2050, with the highest increase of nearly 500% for graphite, lithium, and cobalt.

> The supply of critical minerals is not guaranteed in most economies since the production and processing of these minerals are highly concentrated in a handful of countries.

The supply of critical minerals, however, is not guaranteed in most economies since the production and processing of these minerals are highly concentrated in a handful of countries. According to the same report of the International Energy Agency, Australia and Chile produce nearly 80% of the world's lithium, Indonesia, the Philippines, and Russia nearly 60% of nickel, Peru and China around 50% of copper, the Democratic

Republic of Congo around 70% of cobalt, and China itself around 60% of rare earths. While China does not control most of the mineral resources, it currently dominates the refining operations—an intermediate process necessary for purifying the minerals into usable components for manufacturing. At the same time, however, China is also a world's top importer of many critical minerals, hence facing similar supply chain challenges as other economies.

**Critical Minerals Strategies and Initiatives**

> Faced with the growing demand and competition for critical minerals, major economies have developed a variety of strategies and policy instruments to strengthen their own supply chains.

Faced with the growing demand and competition for critical minerals, major economies have developed a variety of strategies and policy instruments to strengthen their own supply chains. For example, as a typical resource-seeking economy, the European Union has rolled out a range of policies to foster extraction, processing, and recycling of critical minerals (i.e. inward-looking strategies) and to promote outbound investment in, and advance partnerships through, existing free trade agreements and new collaborative arrangements with resource-rich economies or allies (i.e. outward-looking strategies). The United States has also adopted a multidimensional strategy based on similar policy tools for similar goals, such as the well-known Inflation Reduction Act which seeks to reshore and friendshore electric vehicle supply chains, including critical minerals used for their production, through massive subsidies.

In contrast, resource-rich economies' critical minerals strategies have focused on capitalizing on the surging demand for such minerals by attracting foreign capital to help bolster their extraction and processing capabilities (e.g. Australia). They have also taken steps to protect their mineral resources and related industries through foreign investment screening (e.g. Canada), export restrictions, nationalization, and other defensive tools (e.g. Indonesia, Mexico, Chile).

> Resource-rich economies' strategies have focused on capitalizing on the surging demand for critical minerals by attracting foreign capital to help bolster their extraction and processing capabilities.

These strategies and policies, mostly unilateral, can stabilize one's supply chains while disrupting those of others. Cooperative arrangements did emerge quickly to avoid this negative spillover but have remained bilateral or plurilateral initiatives among allies or like-minded countries. The United Kingdom, Japan, South Korea, and India, for example, have each entered a partnership with Australia. Japan also entered a critical minerals arrangement with the United States to become eligible for the subsidies under the IRA, which is also why the EU is contemplating a similar arrangement with the United States.

At the plurilateral level, the Supply Chain Agreement concluded under the Indo-Pacific Economic Framework for Prosperity (IPEF), the first of its kind and one of IPEF's first landmark achievements, sets out shared goals and detailed actions to strengthen global supply chains. It indirectly addresses the critical minerals by referring to "key goods," which are defined as "raw, in-process, or manufactured materials, articles, or commodities, the absence of which could have a significant effect on a Party's national security, public health and safety, or prevention of significant or widespread economic disruptions." While this agreement is a major step towards addressing supply chain challenges, its utility is limited as it excludes China.

> For economic, strategic, and security reasons it is understandable for governments to diversify supply chains, avoid over-dependency on any single source of supply, and compete in resource-abundant markets.

Friendshoring critical minerals initiatives is, thus, motivated by security and geopolitical concerns which have led to a strategy of de-risking from China, as announced in the G7 Leaders' Communiqué in May 2023. When it comes to critical sectors, however, decoupling seems to be the actual strategy being pursued. For economic, strategic, and security reasons it is understandable for governments to diversify supply chains, avoid over-dependency on any single source of supply, and compete in resource-abundant markets. China itself has pursued such diversification and global competition via its own critical minerals strategies.

**Multilateralizing Critical Minerals Initiatives**

China remains a key player in global supply chains and a top trading partner with many economies, including a majority of IPEF members. With China excluded, current critical minerals arrangements would provide only partial solutions to potential supply chain issues and may cause further uncertainties and disruptions. The ongoing geopolitical tensions are likely to remain a major obstacle for China to join these arrangements, especially IPEF. This is why the World Trade Organization provides an ideal forum for inclusive deliberation on what is truly a global issue.

> The World Trade Organization provides an ideal forum for inclusive deliberation on what is truly a global issue.

The IPEF Supply Chain Agreement establishes mechanisms and concrete steps to monitor supply chain risks, enhance regulatory transparency, technical assistance, and capacity building, minimize market distortions and unnecessary trade restrictions, and promote labour standards. These efforts to tackle supply chain risks can be better achieved with China's participation. Engaging China would also impose additional discipline or peer pressure, which would help enhance regulatory transparency and coordination by the Chinese government while disincentivizing it from non-market policies and practices or the weaponization of its dominant position in critical minerals supply chains.

With the world's two superpowers involved, multilateral negotiation would also create opportunities for them to play a leadership role in managing geopolitical conflicts while prioritizing cooperation in building resilient supply chains for the green transition.

For other countries, especially the many developing countries which now find themselves rich in resources that the world seek, a proper understanding of existing agreements is crucial for them to comprehend the issues at stake, available policy options, and potential ways to participate in these initiatives in a constructive manner. For this purpose, development agencies at the regional and global level need to incorporate critical minerals agreements in their technical assistance and capacity building plans and activities.

Hopefully, with such enhanced understanding, more governments will join in the efforts to multilateralize critical minerals initiatives and address unilateral and disruptive policies through coordinated action for certainty, stability, and sustainability.

---

***Henry Gao*** *is Professor of Law, Singapore Management University.*

***Weihuan Zhou*** *is Associate Professor, Director of Research, and Co-Director of the China International Business and Economic Law (CIBEL) Centre, Faculty of Law and Justice, University of New South Wales, Sydney.*

***Victor Crochet*** *is a Senior Associate in the Brussels office of Van Bael & Bellis.*

# Protecting Forests Through Sustainable Supply Chains: A Future Role for the WTO?

*Brendan Vickers*

*With international trade driving deforestation, some WTO members are adopting due diligence laws to ensure zero-deforestation supply chains in their markets. An informal dialogue on trade and environmentally sustainable forests and agricultural commodities among interested members could help advance better understanding to find common ground on trade and sustainability objectives.*

The 2023 UN Climate Change Conference (COP28) reinforced the role of nature in combating climate change by noting the need to enhance support and investment to halt and reverse deforestation and forest degradation by 2030. This builds on one of the targets that was delivered as part of the Kunming-Montreal Global Biodiversity Framework at COP15 of the Convention on Biological Diversity (CBD) in December 2022, previous UN climate change conferences, and other key moments like the New York Declaration on Forests in 2014.

Deforestation resulting from international trade-related activities accelerates biodiversity loss and is estimated to account for approximately one-third of deforestation-related emissions. Agricultural expansion stands out as the primary driver, particularly in tropical regions. Seven commodities—cattle, oil palm, soy, cocoa, rubber, coffee, and plantation wood fibre— significantly contribute to forest loss. Several multilateral environmental agreements and bilateral trade deals support efforts to address deforestation, especially by reducing illegal logging through law enforcement and monitoring. Recent EU trade deals with Kenya and New Zealand specifically mention deforestation-free supply chains.

> In view of the increasing impact of trade on nature, along with growing calls for the WTO to take more decisive sustainability action, a crucial question emerges: should the multilateral trading system assume a larger role in ensuring the sustainability of supply chains?

In view of the increasing impact of trade on nature, along with growing calls for the World Trade Organization (WTO) to take more decisive sustainability action, a crucial question emerges: should the multilateral trading system assume a larger role in ensuring the sustainability of supply chains? Or, as James Bacchus proposes, should we consider negotiating new multilateral trade rules to help protect the world's forests?

**Adoption of Unilateral Due Diligence Laws**

Some WTO members have started adopting due diligence laws to ensure their supply chains are free of products linked to deforestation and forest degradation. The EU Regulation on Deforestation-free Products (EUDR) sets a precedent in this regard, while the UK Environment Act and the US Forest Act pursue similar objectives. More countries may follow suit to promote the sustainable production and consumption of forest-risk commodities.

WTO rules allow countries to use trade measures to restrict imports of products linked to deforestation. The United Nations Framework Convention on Climate Change (UNFCCC) also recognizes that parties can take unilateral response measures. However, such measures must be based on scientific evidence and not be used as a means of arbitrary discrimination or a disguised restriction on international trade (Article 3.5). Brazil and Indonesia and some Latin American developing countries have raised concerns that the EUDR may be protectionist and discriminatory. It could also trigger retaliatory responses, such as banning affected exports to implementing countries.

Restricting trade in timber and wood products in violation of national laws, particularly illegal lumber, is prudent to address deforestation. However, emerging measures will regulate market access for specific products and their entire supply chains based on an indirect variable related to these exports: the risk of deforestation in the country of origin. This approach may pose challenges to fundamental WTO rules and impose burdensome reporting and traceability requirements.

**Reassessing the WTO's Role?**

It is commendable that certain WTO members now recognize the impact of their consumption on deforestation abroad while simultaneously offshoring their carbon footprints. Nonetheless, imposing unilateral measures that could unfairly penalize developing and least developed countries—particularly their micro, small, and medium-sized enterprises (MSMEs), smallholder farmers, and forest communities—may not represent the optimal path forward. Greater multilateral cooperation and dialogue between producing and consuming countries may offer more effective solutions and better trade, environmental, and sustainable development outcomes.

There may be a compelling argument for re-examining the WTO's role and urging bolder action.

Some may argue that WTO councils and committees, notably the Committee on Trade and Environment (CTE), already facilitate reporting and transparency on trade-related climate measures. However, given that trade may incentivize deforestation and that emerging supply chain measures could potentially distort trade, there may be a compelling argument for re-examining the WTO's role and urging bolder action.

**Towards an Informal Dialogue at the WTO**

Interested WTO members could consider launching an open-ended informal dialogue on trade and environmentally sustainable forests and agricultural commodities, which could complement the work of the CTE. This dialogue would explore how enhanced trade cooperation, within the rules and mechanisms of the WTO, could effectively contribute to addressing deforestation linked to global agricultural supply chains.

> Interested WTO members could consider launching an open-ended informal dialogue on trade and environmentally sustainable forests and agricultural commodities.

The involvement of the EU, having adopted the EUDR, along with Indonesia and Brazil as major affected producers, would enhance the political weight and credibility of this process and its outcomes. Indonesia, alongside the UK, co-chairs the Forest, Agriculture & Commodity Trade (FACT) Dialogue, launched during COP26. Brazil's hosting of the G20 in 2024 and its presidency of COP30 of the UNFCCC in 2025, scheduled to be held in the Amazonian city of Belem, offer significant opportunities to underscore the critical role of tropical forests in trade, climate, and nature discussions. This also presents a unique chance to foster linkages among deliberations within the G20, WTO, and UNFCCC.

Furthermore, an informal dialogue should prioritize the voices of smaller WTO members affected by such unilateral measures, especially commodity-dependent developing and least developed countries. Their involvement would contribute crucial perspectives, especially regarding just transitions and a fair allocation of the burden of change. For instance, the African Group has articulated principles to guide the development and implementation of trade-related environmental measures. This could be examined within the context of how zero-deforestation measures impact the continent's exports and regional value chain development under the African Continental Free Trade Area.

> An informal dialogue should prioritize the voices of smaller WTO members affected by unilateral measures, especially commodity-dependent developing and least developed countries.

Possible discussion topics of an informal dialogue at the WTO could include, among others:

- Exchanging knowledge and policy experiences and assessing their effects in consuming and producing countries, particularly in least developed countries, and for small farmers and businesses.
- Clarifying legal matters and defining "forest" biomes and "deforestation" for trade-related purposes, and exploring benchmarking measures.
- Promoting best practices (such as the EFTA-Indonesia Comprehensive Economic and Partnership Agreement, which links preferential palm oil market access to certified sustainable production methods).
- Exploring opportunities for procurement preferences for zero-deforestation products.
- Assessing capacity and technical support needs for compliance and traceability.
- Fostering collaboration with other international processes, such as the UN Forum on Forests, UN Environment Assembly, UNFCCC, and CBD.

At a more ambitious level, the informal dialogue could consider developing a set of regulatory principles for appropriately designing and implementing zero-deforestation supply chain measures. This framework could draw upon innovative provisions in recent trade deals and voluntary sustainability standards. Given the significant role of developing and least developed countries as producers of forest risk commodities, such a framework should recognize their national circumstances and priorities and provide special and differential treatment, especially for least developed countries. It should also reflect international legal principles like common but differentiated responsibilities and respective capabilities, even if the latter lies outside the scope of WTO agreements. More targeted aid for trade would support compliance with due diligence requirements, particularly for MSMEs in developing countries.

Addressing the intricate interplay between trade and deforestation requires more collaborative efforts within multilateral frameworks like the WTO. An informal dialogue on trade and environmentally sustainable forests and agricultural commodities could help advance better understanding to find common ground on trade and sustainability objectives.

---

***Brendan Vickers*** *is Head of International Trade Policy at the Commonwealth Secretariat in London.*

# Trade and Environment in a Cul-De-Sac: Balance Sustainable Consumption with Production

*Pradeep S. Mehta, Bipul Chattopadhyay, and Shruti Maheshwari*

*Each year, people in the United States discard over 300 million pairs of shoes, with 95% ending up in landfills, and families in the Global North throw away an average of 30kg of clothing, of which only 15% gets recycled. Beyond discourse, it is time for sustainability in trade to be implemented in practice by addressing both sustainable consumption and production.*

The idea of sustainable development gained global attention in 1972 at the United Nations Conference on the Human Environment in Stockholm. Since then, it has become a key aspect of international environmental policy, aiming to balance poverty eradication, resource exploitation, and environmental protection. As per the Brundtland Report from the Stockholm Conference, sustainable development means meeting the needs of the present without compromising the ability of future generations to meet their own needs.

With an emphasis on development, it highlights cleaner production rather than reducing consumption as corporate and industrial interests have significant influence on sustainable development strategies as compared to consumer interests within the UN discourse. This is despite the revision of the UN Guidelines for Consumer Protection (UNGCP), 1985, in 1999, which included "sustainable consumption" in the list of consumer responsibilities. This had resulted from Chapter 4 of Agenda 21 on sustainable consumption and production adopted at the Earth Summit in 1992.

Also, in the run-up to the amendment in the UNGCP in the late 1990s, consumer groups wanted to cover the whole gamut of "sustainable consumption and production" but the "production" part was dropped due to the US's recalcitrance on the specious grounds that the guidelines are for governing consumption issues and not production. In fact, both are symbiotic.

**A Balanced Treatment of Sustainable Consumption and Production**

In other words, a balanced treatment of economic, equality, and environmental aspects of sustainable development requires equal emphasis on sustainable consumption and production.

Also, when international law refers to sustainable consumption, it typically integrates it with production considerations. This is illustrated in Goal 12 of the Sustainable Development Goals (Responsible Consumption and Production), which underlines the need to address unsustainable patterns of production and consumption.

Therefore, the moot question is: why this neglect? Perhaps because, unlike production, which is related to economic institutions, consumption is influenced by both societal and economic institutions. Consequently, advocating for a reduction in consumption is challenging as it questions ever-evolving societal practices.

Moreover, unlike sustainable production, which aims to reduce pollution and transition to clean energy, sustainable consumption is yet to have a clear direction; although taxation has been used as a policy measure in some cases to curb unnecessary consumption, particularly for sin goods. The political economy of societal practices blurs its definition and constrains related policy prescriptions.

Additionally, advocating for reducing consumption may contradict the notion of consumer sovereignty, particularly in poor countries where a large number of citizens are yet to be consumers due to their low purchasing power. This can also threaten economic growth through a reduction in aggregate demand. Governments also face a big dilemma because less consumption means lower tax revenues and associated challenges.

**The Carbon Footprint Conundrum**

Is this balanced treatment of sustainable consumption and production happening? Unfortunately, not. When it comes to carbon footprints, for example, size does matter, and the Global North is wearing the bigger shoes. Per capita carbon emissions of the US (14.9 tonnes), Canada (14.2 tonnes), Australia (15.0 tonnes), and the European Union (EU) (6.2 tonnes) are significantly higher than those of developing countries. Take India, for instance, with one of the lowest per capita carbon emissions at 2.0 tonnes. This difference underlines the complexities of global sustainability efforts.

Also, is it not true that while the developed world has historically reaped the benefits of industrialization, their developing counterparts are left to grapple with its unintended consequences? Most of them do not have the resources to tread the path of sustainability and they are being preached to make adjustments that could entail significant economic sacrifices in terms of growth, employment, and economic well-being.

However, in spite of such imbalances, recent policies like the EU's Carbon Border Adjustment Mechanism (CBAM) are putting pressure on developing countries to adopt cleaner production practices. This is notwithstanding the commitment of the Global South on the necessity of creating new development paths that prioritize sustainability and a net-zero future.

This transition must be fair and inclusive. Many countries in the Global South rely on carbon-intensive production processes in sectors such as steel or cement and their shift to a green economy may not happen by 2026 as envisaged under the CBAM. As a result, they will face penalties at a significant cost to their economies.

**International Trade and Sustainable Development Nexus**

The CBAM example demonstrates some of the complex issues at the nexus between international trade and sustainable development. This in a context in which production and consumption structures have been transformed in the recent past by the emergence of global value chains, whereby our economies have become more integrated and dependent.

Moreover, as anticipated in a joint World Trade Organization (WTO) and the United Nations Environment Programme (UNEP) report, increased trade will likely result in higher industrial production and, consequently, increased carbon emissions. For instance, the demand for steel globally is projected to rise from 1,880 million tonnes in 2020 to 2,500 million tonnes by 2050, which will significantly increase the industry's carbon emissions.

At the same time, a more open trade regime, including for environmental goods and services, has the potential to promote the growth of environmentally friendly businesses, improving economic efficiency, facilitating access to affordable clean technologies, and supporting environmental conservation. Achieving this will require global cooperation; https://www.wto.org/english/res_e/publications_e/unereport2018_e.pdf owever, there is no universal solution or standard strategy to optimize trade for sustainable development. Such an approach calls for multiple actions.

One crucial area of action is technical assistance and capacity building in developing and least developed countries. It is pertinent to acknowledge that these countries require support in terms of technology, financial resources, and adequate transition periods to keep pace with developed countries in their path towards achieving economic efficiency with clean energy. Decarbonization efforts should recognize the principle of common but differentiated responsibilities and respective capabilities. Only then can environmental standards and other such measures be considered "fair" as against protectionist and/or precautionary measures.

The role of institutions is equally important. Efforts are underway to align trade with sustainable development at the WTO. For instance, the WTO's Trade and Environmental Sustainability Structured Discussions (TESSD) aims to complement the work of the Committee on Trade and Environment while advancing discussions on trade and environmental sustainability. Over 70 WTO members are engaged in this initiative, which covers related issues such as climate change, trade in environmental goods and services, and sustainable supply chains among others.

**Concluding Remarks**

The challenge of integrating sustainability into consumption and production is a major focus of both public and private organizations. Although the focus on sustainable production is prominent through initiatives like the EU's CBAM, it is equally important to address sustainable consumption by recognizing its political economy. This requires a fundamental rethink of production (and distribution) processes and a cultural shift towards consuming less while enjoying living.

In this respect, India's Lifestyle for the Environment (LiFE) initiative, launched at the 2021 UN Climate Change Conference (COP26), is an appropriate example. It aims to promote "mindful and deliberate utilisation" as against "mindless and wasteful consumption." As Mahatma Gandhi famously said, "Earth provides enough to satisfy every man's needs, but not every man's greed."

Therefore, it is essential that international efforts towards sustainability prioritize fairness and inclusivity in trade policies, as exemplified by provisions on special and differential treatment, acknowledging the differing starting points and capacities of countries for their transition to sustainable consumption and production.

---

***Pradeep S. Mehta*** *is Secretary General of CUTS International.*

***Bipul Chattopadhyay*** *is Executive Director of CUTS International.*

***Shruti Maheshwari*** *is Senior Research Associate of CUTS International.*

# Subsidies as a Hot Topic on the Sustainability and Trade Cooperation Agenda

# Why Delivering a Fisheries Subsidies Agreement Matters for Small Islands

*Matthew Wilson*

*As governments seek to reach consensus on a transformational agreement on fisheries subsidies, such an agreement must be balanced and fair and place a premium on protecting our oceans and the people that rely on them, especially vulnerable communities.*

In February 2024, a few days before the World Trade Organization's Thirteenth Ministerial Conference (MC13) in Abu Dhabi, Barbados ratified the Agreement on Fisheries Subsidies, commonly known as "Fish 1".

This ratification was a long time coming but it had not been an easy ride. Barbados, like many other small island developing states (SIDS) and small, vulnerable economies (SVEs) had been intimately involved in the fisheries subsidies negotiations since they were launched formally in 2005. As an island state that depended on fisheries for food security, jobs, and livelihoods, the negotiations quickly rose to the top of the policy agenda for Barbados. As is the case with many other small economies that have similar economic structures and limited natural resources on land, we recognized that our maritime space was one that we both had to protect and sustainably exploit as we diversified our economy away from sugar.

One of the most significant contributions that SIDS and SVEs made in the very early years of the negotiations was to introduce into the mandate language on special and differential treatment that focused on livelihoods, poverty alleviation, and food security as important parts of any final agreement.

> Any negotiation on fisheries has to be more than just about trade rules and protection of marine resources; it has to ultimately also be about people, especially vulnerable communities.

Trade history is unfortunately well known for erasing the contributions of small countries in trade outcomes, but the history books should be kind in recognizing the role that Barbados, the Caribbean, the Pacific, and other small economies played in highlighting why any negotiation on fisheries had to be more than just about trade rules and protection of marine resources; it had to ultimately also be about people, especially vulnerable communities.

And this is why delivering a fair and balanced Fisheries Subsidies Agreement is necessary on so many levels.

First, the WTO needs this win. Multilateralism is under threat and the only multilateral trade rule-making organization is no exception. The fisheries negotiations are a stress test for the WTO, but also for members on whether they truly wish to recommit to mechanisms that can lead to shared outcomes where everyone can be mildly satisfied and hence only mildly dissatisfied.

The June 2022 Fish 1 agreement confirmed that the WTO can produce legal outcomes and it sent a strong, though fairly obvious, signal that Illegal, unreported, and unregulated fishing would not be tolerated. A successful conclusion of "Fish 2", a much more transformational agreement, does more than simply send a signal: it will be a sign of positive defiance in a world where geopolitics threatens to dismantle structures of multilateralism.

Second, it bolsters the WTO and the trade community's sustainability credentials. Often touted as the WTO's first successful trade AND sustainability outcome, the Fisheries Subsidies Agreement aims to arrest decades of destruction of fish stocks by industrial fishing fleets while also placing a premium (and some capacity building through the Fish Fund) on centralizing fisheries management as a core pillar of ecosystem recovery.

At a time when the climate crisis is the most existential threat of the 21st century and when many of the most vulnerable island nations are on the frontlines, a WTO that does not address sustainability and the green transition risks ringfencing itself obsolete.

A WTO that does not address sustainability and the green transition risks ringfencing itself obsolete.

Third, it supports the call for special and differential treatment to be operational and based on needs, while also recognizing the need for common but differentiated responsibility when seeking to protect the global commons.

One doesn't need to be an oceanologist to agree that those that contributed the most to the diminishing fish stocks should have the greater responsibility in curtailing exploitative fishing activity; and that those small countries that rely on fishing for employment and nutrition should not be constrained. The de minimis proposal championed by the African, Caribbean, and Pacific (ACP) group of states and first put on the table in 2005–06 by small vulnerable economies is a fair, practical, and measurable mechanism to differentiate between those who have the potential to offer subsidies that lead to overfishing and overcapacity and those that do not.

That said, the continued assertions in some quarters that those countries who fall under the de minimis in the text, and hence will be able to continue to provide support to their nascent industries, should be more strongly disciplined show a lack of sensitivity to small island priorities and our indescribably small impact on fish stocks.

And fourth, an actionable agreement that truly disciplines the greatest subsidizers and sends a signal to the largest fishing nations to reassess their activities is a developmental win for the ocean and for small developing countries that need to diversify and confront food security challenges.

While recognizing that all countries may have artisanal and small-scale fishing communities, not all WTO members have the capacity to provide unemployment benefits, seasonal pay, skills retraining, boat upgrading to meet "green" rules, or alternative livelihood incomes. Barbados certainly does not, hence giving us the flexibility to protect our artisanal and small-scale fisheries should not be a decision to be traded off to the highest bidder: it is the difference between coastal communities slipping into poverty or not. Our small islands cannot afford for that to happen. One only has to look at a video submission circulated as a room document in the fisheries subsidies negotiations by Barbados to understand the impact of fishing on women's economic empowerment and on food security for small islands.

Barbados' road to ratification included national consultations with the fishing communities to understand their needs and their realities. It has informed our negotiating position and confirms why the final agreement must be balanced, fair, and place a premium on protecting our oceans and our people that rely on them. WTO members must deliver on this urgently.

---

***H.E. Matthew Wilson*** *is Ambassador and Permanent Representative of Barbados to the United Nations, World Trade Organization, and other international organizations in Geneva. Ambassador Wilson is Chair of the WTO Informal Working Group on MSMEs. He is a member of the TESS Steering Committee.*

# The WTO Can Help Reform Subsidies to Fossil Fuels That Propel the Climate Crisis

*Peter Wooders*

*As the world seeks to transition away from fossil fuels, there is a strong rationale for collective action on fossil fuel subsidy reform. Among the many international agreements, fora, and processes relevant to such reform, the WTO could expand its role.*

Moving away from fossil fuels is an imperative across much of the world, as recognized in the UNFCCC COP28 decision text of 13 December 2023 on the outcome of the first global stocktake, which calls on parties to contribute to "transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science."

Greenhouse gases from the combustion of fossil fuels are the major man-made contributor to global warming, leading to climate-related risks and extreme events of mounting severity around the world. Many of the worst climate impacts occur in developing countries facing a range of sustainable development challenges, often reversing hard-won development gains. The International Energy Agency's Net Zero Emissions by 2050 Scenario shows that the path to 1.5°C sees fossil fuel demand drop by more than a quarter by 2030 and 80% in 2050.

Beyond producing greenhouse gas emissions, fossil fuels lead to a range of other adverse impacts, for example as a major contributor to local air pollution in many locations and building up significant environmental liabilities at numerous production sites. On top of diminishing these impacts, the transition away from fossil fuels will also reduce countries' exposure to fossil fuel markets, where prices can be highly volatile. There are also expected benefits from fossil fuel subsidies, including those targeted at vulnerable populations in low-income countries.

**The Challenge of Reforming Fossil Fuel Subsidies**

Over recent years, progress has been made in reducing or eliminating fossil fuel subsidies in many countries, yet their global value remains around $600 billion in a typical year (noting that they doubled in 2022), with many more fossil fuel subsidies not identified or quantified due to often incomplete or non-transparent government information.

> The global value of fossil fuel subsidies is around $600 billion in a typical year.

Subsidizing fossil fuels works against the need to reduce fossil fuel consumption as it lowers prices, thereby increasing consumption and making fossil fuels artificially more competitive compared to alternatives such as renewables. Higher fossil fuel consumption intensifies adverse impacts.

Fossil fuel subsidies are introduced for a range of reasons. A comparison of the expected benefits and adverse impacts for each of the main categories of consumer and producer subsidies are shown in the table below. All subsidies reduce governments' fiscal space, as they divert public money away from other priorities such as health, education, or investing in the green transition and infrastructure. But the table shows that all categories of subsidies have both expected benefits and lead to adverse impacts, which makes them complicated to reform (i.e. to reduce or eliminate).

**Expected Benefits and Adverse Impacts of Fossil Fuel Subsidies**

**Expected Benefits** strong lower **Adverse impacts** strong lower

| Generic Subsidy Type / Impact of Subsidy | | Share of Global FFS (approx.) | Income | Mobility | Inflation Control | Health and Safety | Economic Activity | Security of Supply | Government Fiscal Space | GHG Emissions | Local Pollution | Production Liabilities | Corruption and Smuggling | Export Market Restrictions |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Consumer | Make fossil fuels cheaper for tranport | 25% | strong | strong | lower | | lower | lower | strong | strong | strong | | strong | |
| | Make fossil fules cheaper for other consumers* | 55% (30% residential, 25% others) | strong | | lower | | | lower | strong | strong | strong | | lower | lower |
| | Increase energy access to modern fuels | minor (<5%) | | | | strong | strong | | strong | lower | lower | | | |
| Producer | Reduce costs to producers to encourage more production | 15%-20% (of which 3/4 to extraction or mining, 1/4 to refining or processing) | | | | | strong | lower | strong | strong | strong | strong | lower | |
| | Support improved environmental performance** | minor (<1%) | | | | | | | strong | lower | lower | | | |
| | Support post-production costs** | minor (<1%) | | | | | | | strong | lower | lower | strong | | |
| | Increase security of supply, across the fossil fuel system*** | minor (<1%) | | | | | | strong | strong | lower | lower | | | |

Source: Wooders (2024).

**We Understand How to Reform Fossil Fuel Subsidies but the Process Must Be Just**

How to reform fossil fuel subsidies is well understood: alternative support measures must be implemented and any remaining subsidies targeted to those who need them. Fossil fuel subsidies are often highly inefficient—i.e. only a small share of the benefit they bring goes to those consumers or parts of the economy that they are designed to assist. Alternatives to providing support—e.g. direct payments to households to help prop up their incomes—are easier to target, less expensive, and cause much lower associated adverse impacts.

The transition away from fossil fuels must be just and fossil fuel subsidy reform should follow the same principle—ensuring that the process is as inclusive and fair as possible and that vulnerable parts of society are not adversely impacted by reform. Successful reform examples and good practice follow this principle. The COP28 decision text notes that inefficient fossil fuel subsidies should be phased out "as soon as possible," except for those subsidies which "address energy poverty or just transitions."

> Developing countries face particular challenges in reforming fossil fuel subsidies.

However, developing countries face particular challenges in reforming fossil fuel subsidies as large parts of their population can be vulnerable to fuel price increases and less public resources are available to provide alternative support or develop social safety nets. Reform progress is thus expected to be slower and less complete than in developed countries. Yet easing the fiscal burden of fossil fuel subsidies can be extremely important in low-income countries, and the benefits of many subsidies tend to accrue to wealthier consumers and businesses.

**Priorities for Fossil Fuel Subsidy Reform**

Approximately 70% of global fossil fuel subsidies by value are granted to three categories: transport consumers (≈30%), residential consumers (≈25%), and oil and gas producers (≈15%). Major reduction of fossil fuel subsidies—and the adverse impacts that they cause—can only be successful if there is reform of these categories, freeing government budgets for other societal priorities. The high relative adverse impacts of coal call for urgent reform of subsidies to this fuel.

Some of the minor fossil fuel subsidies by value can have important development objectives. Reform of such subsidies—e.g. to remote communities or for access to modern energy sources for poor and vulnerable populations—require careful consideration, with particular focus given to the development of alternative support measures. While a periodic review of all fossil fuel subsidies is recommended, many of the minor ones will not be a priority for reform, especially in low-income countries, and the main financial and environmental benefits of reform will come from eliminating and/or reducing the three larger categories of fossil fuel subsidies.

**The Case for Collective Action**

There is a strong rationale for collective action on fossil fuel subsidy reform. This is because world fuel markets are highly competitive and domestic subsidies can lead to significant distortions across markets. Second, energy markets are also globally connected and the actions of a large country on domestic production or consumption can affect other countries and potentially security of supply. Third, the global warming effect and the pollution associated with fossil fuel use directly affects third countries beyond national borders. Finally, there are several commonalities between countries in the types of subsidies they have and their reform challenges (even if there are major differences between countries in terms of vulnerabilities and the availability of resources to cushion rising prices).

There is a strong rationale for collective action on fossil fuel subsidy reform.

Among the many international agreements and processes relevant to fossil fuel subsidy reform, the World Trade Organization (WTO) could expand its role. The organization is the custodian of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), which includes a definition of subsidies tested by a wide experience of jurisprudence. Fora where subsidies are discussed at the WTO include the Committee on Trade and Environment, SCM Committee, Trade Policy Review Mechanism, the member-led Trade and Environmental Sustainability Structured Discussions (with subsidies the focus of one of its four working groups), and the Fossil Fuel Subsidy Reform initiative (which at the Thirteenth WTO Ministerial Conference in February 2024 committed to proposing "concrete options" to guide its work).

**Options for Collective Action at the WTO**

Moving forward, there are four categories of collective action where the WTO could contribute to fossil fuel subsidy reform efforts. The table provides options for how this contribution could be provided in each of these categories. Inclusive cooperation in these areas will require consultation with the WTO membership as well as other stakeholders active in the field, including intergovernmental organizations, multilateral development banks, international financial institutions, and non-governmental organizations.

Collective action is essential to driving the urgently needed reduction and elimination of fossil fuel subsidies that hasten the climate crisis. The WTO has a key role to play in this reform.

### Options for Collective Action at the WTO on Fossil Fuel Subsidy Reform

| Category of Collective Action | Recommendation For How Support at the WTO Could be Provided |
|---|---|
| **Sharing problems, solutions, experience, and information** | ■ Further develop understanding on how to identify and measure fossil fuel subsidies and produce national inventories, building contacts and collaborating with key organizations.*<br>■ Investigate and develop options to increase transparency at the WTO and under other fora and processes, in collaboration with these fora and processes.<br>■ Increase experience-sharing of reform challenges, solutions, and lessons, including around managing the impacts of reform on the most vulnerable groups and sectors of the economy. This should include a particular focus on reducing temporary support/emergency response measures as soon as possible and on devising and implementing plans to minimize fossil fuel subsidies when global prices increase. |
| **Supporting the capacity to reform fossil fuel subsidies, following just transition principles** | ■ Facilitate links between WTO members planning or undertaking reform—with a focus on developing countries—and key organizations able to provide support. |
| **Enhancing coordination** | ■ Improve coordination of the activities of organizations providing information and support to fossil fuel subsidy reform globally, and the WTO should liaise with other key organizations to improve coordination globally and regionally. |
| **Assessing options for future cooperative arrangements** | ■ Review and discuss how existing WTO rules apply to fossil fuel subsidies and how multi-country reform agreements could be formulated (including how to scope which subsidies could be included within an agreement and which should be prioritized for reform). A necessary part of such discussions will be to agree on how differences in levels of economic development could be included (e.g. special and differential treatment).<br>■ A particular opportunity may be to instigate discussions and analysis around whether the zero taxation almost exclusively imposed on fuels used for international aviation and maritime transport could be increased. |

Source: Wooders (2024).

***Peter Wooders*** *is an independent energy specialist.*

# Transparency is Vital to Sustain State Support for the Clean Energy Transition

*Simon J. Evenett & Fernando Martin*

*A free-for-all between governments able to afford subsidies to mitigate climate change has arisen. Rather than becoming a source of trade tensions this is a huge opportunity to broaden the transparency and deliberative functions of the world trading system.*

In principle, World Trade Organization (WTO) ministerial conferences are an opportunity to "think big" about the fundamental challenges facing the world trading system and its contribution to sustainable development. Whether or not the Thirteenth WTO Ministerial Conference (MC13) lives up to this billing remains to be seen. There are no shortages of global challenges out there—top of many peoples' list is accelerating the clean energy transition before the temperatures rise much further.

At present, governments are taking uncoordinated steps to facilitate the clean energy transition. In fact, most of those efforts are selective, favouring particular sectors and often specific firms. Done wrong these interventions appear like governments are playing favourites and can become a source of trade tensions. What is needed is transparency, accountability, and evidence-driven deliberation about which policy interventions work and which do not. The WTO is well-placed to shed light on the cross-border consequences of clean energy policies.

> What is needed is transparency, accountability, and evidence-driven deliberation about which policy interventions work and which do not.

At the Global Trade Alert we are determined to play our part too. The New Industrial Policy Observatory (NIPO), launched in January 2024, systematically records government interventions targeted at fostering specific domestic firms, industries, or economic activities to achieve national objectives, whether economic or non-economic (such as security or environmental goals). The February 2024 data release comprises 3,092 entries of government measures taken since the start of 2023, with climate change mitigation or the transition to a low-carbon economy being the stated motive behind 564 measures. Additionally, 1,145 measures in our inventory relate to low-carbon technology products (taken here to be products such as wind turbines, solar panels, biomass systems, and carbon capture equipment), signifying technologies and products that generate fewer pollutants than their traditional counterparts and are pivotal in the transition to a low-carbon economy.[5]

5. The definition of low-carbon technology products comes from the IMF Climate Change Dashboard and includes mechanisms such as wind turbines, solar panels, biomass systems, and carbon capture equipment.

### Main Takeaways on Industrial Policies Advancing the Low-Carbon Economy Transition

1. The majority of climate-related measures are subsidies to local firms, accounting for 54.6% of policy interventions supporting the transition to a low-carbon economy or involving low-carbon technologies. Table 1 illustrates that higher per capita-income economies ("advanced economies" in IMF parlance) award domestic subsidies more often than emerging and low-income developing countries.

**Table 1. Deep Pockets Likely Matter**

| Country by Income Group | Number of Subsidies | Percentage of Subsidies |
|---|---|---|
| Advanced economies | 616 | 79.4% |
| Emerging market and low- income developing economies | 160 | 20.6% |
| Total number of domestic subsidies addressing sustainability | **776** | |

2. In spite of the increasing attention given to national security and geopolitical factors, state financial commitments to subsidies that address climate change were notably higher. The combined value of corporate subsidies associated with industrial policy measures announced since the beginning of 2023 total $1.1 trillion, with $563.3 billion specifically allocated to objectives related to climate change mitigation. Strategic competitiveness enhancements receive a higher financial allocation, surpassing subsidies dedicated to climate-related goals.

**Table 2. Total Value of Industrial Subsidies, by Stated Motive**

| Country by Income Group | Number of Entries | % of Entries With Subsidy Value | Subsidy Value ($ billion) |
|---|---|---|---|
| All measures in NIPO database | 2108 | 41.3% | 1160.8 |
| All measures with stated motive | 1293 | 46.1% | 1043.0 |
| Strategic competitiveness | 609 | 51.1% | 658.0 |
| Climate change mitigation | 471 | 68.8% | 563.3 |
| Security of supply | 258 | 46.9% | 426.0 |
| National security | 142 | 23.2% | 199.5 |
| Without stated motive | 815 | 33.7% | 117.5 |
| Other | 325 | 37.5% | 47.5 |

Note: This table displays the total value of industrial subsidies announced since 01.01.2023 and in force. The amounts recorded could cover multiple years. The table also shows the percentage of entries in the database for which the subsidy value could be estimated.

3. Some worry that climate change-related subsidies are a cover for supporting national firms. As Figure 1 shows, over 150 subsidy awards are associated with two or more stated motives, one of which is climate change mitigation. Under these circumstances, no wonder some suspicions arise.

   Among the product groups implicated by corporate subsidies, low-carbon, advanced technology, and dual-use (civilian and military) products were the most frequently identified.[6] The majority of domestic subsidies targeting low-carbon technologies involve products that also appear on recognized lists of dual-use items and advanced technology products (Figure 2). In light of these findings, confidence-building measures are needed.

**Figure 1. Overlap Between Strategic Competitiveness and Climate Change Mitigation Subsidies Hamper Interpretation**

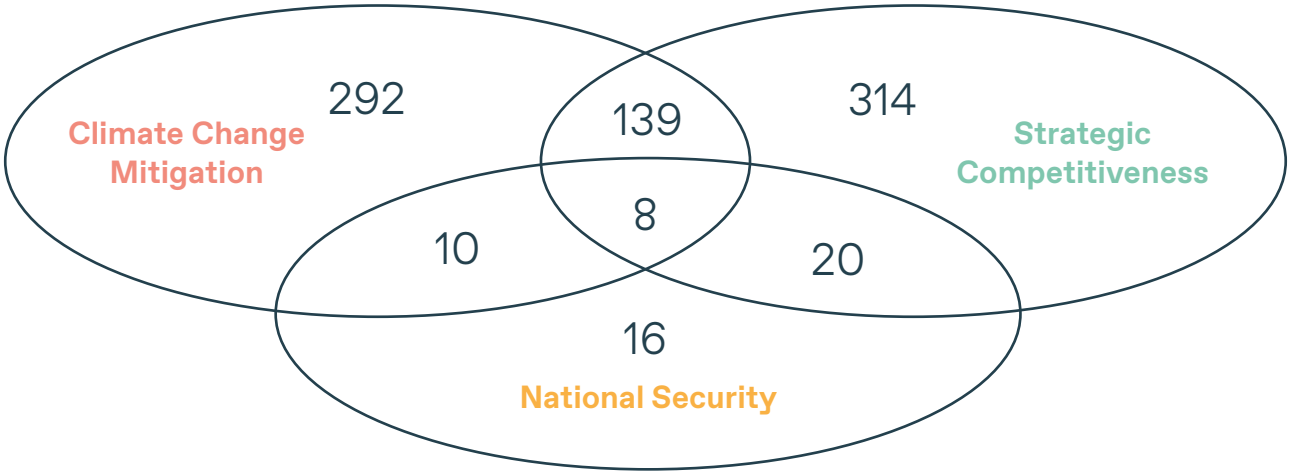
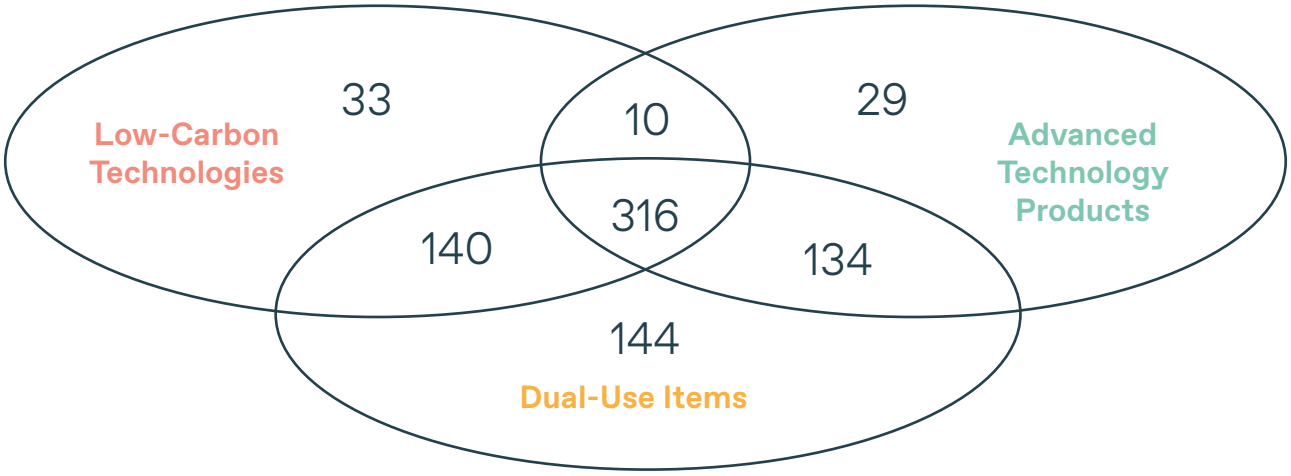



**Figure 2. Overlap Between Product Categories Hamper Interpretation**




Note: Standard definitions of these three groups do not involve mutually exclusive lists of Harmonized Sytem codes.

6. The definition of dual-use or national security-related products comes from the Export of Commercial or Dual-Use items (EAR) by the US Department of Commerce Bureau of Industry and Security.

**A Question of Accountability**

Monitoring corporate subsidies related to the low-carbon transition is essential for comprehending the economic policy landscape, facilitating informed decision-making, fostering constructive dialogue based on alternative and potentially superior practices, and enhancing transparency to mitigate distrust and minimize trade tensions. Given the substantial financial investments in transitioning to a low-carbon economy, this monitoring process should be complemented by additional evaluations and effectiveness studies.

The process of monitoring corporate subsidies should be complemented by additional evaluations and effectiveness studies.

Governments must start articulating the outcomes expected from these subsidies—in so doing they will address two key challenges. First, robust impact evaluation is needed to identify subsidies that significantly contribute to climate change mitigation, thereby enhancing understanding of best practices and optimizing resource allocation in the future. Second, in terms of efficiency, a clear definition of measurable objectives will facilitate democratic accountability and will help sustain public trust in the huge outlays needed to tackle climate change. Failure to do so invites another populist backlash.

Foreign governments will be keen to learn whether generous corporate subsidies effectively redirect cross-border trade and investment flows in clean energy technologies and infrastructures away from their economies. To the extent that scarce R&D budgets ("innovation dollars") are induced by subsidies to develop new technologies skewed towards the climate change challenges of societies where governments have deep pockets, then concerns may arise in nations with less fiscal space. The importance of these spillover effects needs to be established empirically. Here neutral analysts at international organizations can make an important contribution.

**Another Multilateral Contribution to Sustainable Development**

Given the desire to tamp down trade tensions and discord, the WTO is the appropriate place to track climate-related industrial policies.

Given the desire to tamp down trade tensions and discord, the WTO is the appropriate place to track climate-related industrial policies. Deliberations on ways to advance the climate-related dimensions of sustainable development by drawing upon cross-border commercial ties would then be grounded in a sound evidential

base. Actual practice—rather than teleological considerations—would then become the currency of trade-and-climate-change discourse. From this due consideration could be given to potential reforms of the WTO Agreement on Subsidies and Countervailing Measures and any other multilateral accords demonstrated to be holding back the transition to a low carbon economy.

---

***Simon J. Evenett*** *is Professor of Geopolitics and Strategy at IMD.. He is also the Founder of the St. Gallen Endowment for Prosperity Through Trade.*

***Fernando Martin*** *leads the Analytics Unit at the Global Trade Alert.*

# Reshaping WTO Subsidy Rules for a Sustainable Future

*Daniel C. Esty & Elena Cima*

*A fundamental regearing of WTO subsidy rules offers the potential for transformative change—not only for the trade system but for multilateral cooperation more generally and progress on climate change and other sustainability challenges specifically.*

Governments across the world spend more than $7 trillion annually on subsidies for fossil fuels, agriculture, and fisheries according to a 2023 World Bank report. Much of this support is economically inefficient, trade distorting, and actively exacerbates the global environmental and climate crises.

At the same time, at the UN Climate Change Conference (COP28) in Dubai in December 2023, governments struggled to come up with $800 million in commitments to a "loss and damage" fund and a few billion dollars for other critical climate protection investments including clean energy projects. In the meantime, a handful of governments—notably the United States, European Union, China, India, Japan, and South Korea—spend orders of magnitude more each year on harmful subsidies.

Imagine if governments were to repurpose this spending to support the transition towards a low-carbon and nature-positive future economy.

But imagine if governments were to repurpose this spending to support the transition towards a low-carbon and nature-positive future economy. What if, instead of subsidizing fossil fuels, governments shifted their funding to programmes that promote clean and renewable energy? And what if they repurposed their current agricultural subsidies (which too often promote expanded crop production without regard to environmental impacts) for nutrition enhancement, assistance for farmers shifting to sustainable agriculture, and nature-based carbon capture?

**The Push for Subsidies Reform**

In providing its members with a forum for negotiations, the World Trade Organization (WTO) is particularly well positioned to take the lead in advancing fundamental subsidies reform. First, it has an existing framework of subsidies rules, which provides a base on which to build a new global policy framework. Second, a sustainability-driven reform effort would reinvigorate the WTO's original 1994 Marrakesh Agreement mandate, which made clear that trade liberalization should not be understood as an end unto itself but rather a means to the end of sustainable development and a world in which all people can thrive.

A push for subsidies reform aligns with the vision of WTO Director General Ngozi Okonjo-Iweala to modernize the international trade system for the 21st century. During the Thirteenth WTO Ministerial Conference (MC13) in late 2023, Dr. Ngozi reiterated the pivotal role of trade in addressing national and global priorities, including the UN Sustainable Development Goals and environmental conservation. She emphasized this at COP28, highlighting trade's potential in climate change mitigation and urging governments to distinguish between "the good subsidies they need to fight the climate crisis and the bad ones that are increasing greenhouse gas emissions." Notably, her statements came at a significant juncture: COP28 marked the first climate summit featuring a "Trade Day" organized by the UAE government, acknowledging trade policy as a potential climate solution.

Despite these efforts, the WTO faces challenges in fulfilling its mandate, evident in the limited outcomes of MC13. Discussions on trade and sustainability, fisheries subsidies, and agriculture yielded no substantial progress. From a sustainability perspective, MC13 represents a missed opportunity. Yet the WTO continues to be the best-positioned forum to engage in trade and sustainability discussions and to change the misalignment of resources that the existing multilateral subsidies rules allow.

> The WTO continues to be the best-positioned forum to engage in trade and sustainability discussions and to change the misalignment of resources that the existing multilateral subsidies rules allow.

**A New Subsidy Framework**

Indeed, the existing subsidy structure is out of date and misaligned with today's sustainability imperative. Current rules regulating subsidies at the multilateral level do not account for implicit subsidies, which arise when the ultimate price of a product does not account for the negative externalities associated with it. They do not apply to many forms of harmful subsidies. And they focus the WTO's review narrowly on whether a subsidy distorts trade and not on whether the government funding promotes sustainable development. At the same time, a fundamental regearing of the WTO subsidy rules offers the potential for transformative change—not only for the trade system but for multilateral cooperation more generally and progress on climate change and other sustainability challenges specifically.

Simply put, the international community needs a new subsidy framework, which would be at once in line with the original Bretton Woods trade system vision (which gave national governments great flexibility to pursue their own domestic political agendas) and the urgent need for the WTO to support national efforts to ramp up the response to climate change and deliver on the UN Sustainable Development Goals.

> The international community needs a new subsidy framework in line with the urgent need for the WTO to support national efforts to ramp up the response to climate change and deliver on the UN Sustainable Development Goals.

Such a reform would re-focus WTO subsidies rules on the purpose of government funding and whether the impact of this support is sustainability-positive or -negative, rather than only looking at its impact on trade. To this end, our new framework for analysis yields a two-by-two matrix, whereby all subsidies are assessed on a spectrum across two key variables: sustainability impacts and trade distortions.

**Sustainability-Based Matrix**

| | **Positive sustainability impacts** | **Negative sustainability impacts** |
|---|---|---|
| **No trade distortions** | Allowed | Rebuttable presumption of inconsistency with WTO law |
| **Trade distortions** | Rebuttable presumption of consistency with WTO law | Prohibited - Obligation to phase out |

Source: Cima & Esty (2024).

The *green box* encompasses subsidies with positive sustainability impacts and minimal trade distortions, intended to encourage sustainable development without hindering international trade. These subsidies should always be allowed, incentivizing governments to invest in sectors contributing to sustainable development. Subsidies that fall under the *yellow box* yield substantial sustainability gains but also notable trade distortions. They are granted a presumption of WTO rules consistency, subject to factors ensuring transparency, effectiveness in sustainability, absence of trade barriers, and proportionality. The *red box* includes all those subsidies that produce negative sustainability impacts without significant trade distortions. They are presumed inconsistent with WTO law, unless justified by overriding trade principles or domestic priorities, subject to a proportionality test. Finally, subsidies falling into the *double red box* cause both negative sustainability impacts and significant trade distortions. They are proposed for outright prohibition,

with WTO members required to phase them out on a fixed schedule that reflects each country's level of economic development. A safety valve allows countries to delay phase out by contributing to a Global Sustainability Transition Fund, aiming to provide financial assistance to developing nations for transitioning industries towards sustainability.

Once established, this new regime would empower the WTO to come down hard on fossil fuel subsidies as well as ecologically damaging agricultural or fisheries subsidies. This refocusing would encourage countries to shift their funding towards initiatives that advance renewable energy, a vibrant blue ocean economy, and sustainable agriculture.

> Once established, this new regime would empower the WTO to come down hard on fossil fuel subsidies as well as ecologically damaging agricultural or fisheries subsidies.

**Appetite for Change Within the Trade System**

Some elements of what a new subsidy framework might include have been spelled out in our Journal of International Economic Law article and in the Villars Framework for a Sustainable Trade System, which was produced by a network or researchers and policymakers operating under the banner of the Remaking Trade Project. Many of the details, however, remain to be worked out. But the opportunity is clear and the appetite for transformational change within the trade system is greater today than at any point in recent decades. Thus, the trade community should redouble their efforts to re-align the rules of global commerce with the WTO's sustainable development mandate under 1994 Marrakesh Agreement.

Some old trade hands might ask, why now? But the answer is simple: better late than never. Across the world, citizens have signaled their interest in a transformed world that eliminates harmful subsidies, requires businesses to operate sustainably, and ensures a climate-safe future. Failing to step up to this urgent action item and the 21st century's sustainability imperative more generally puts the future of the entire multilateral rules-based trade system at risk.

---

***Dan C. Esty*** *is the Hillhouse Professor of Environmental Law and Policy at Yale University. His 1994 book, Greening the GATT, helped to spur interest in the trade-environment interface. He is a co-lead of the Remaking Trade Project and he spent 2022–23 on public service leave from Yale at the World Trade Organization in Geneva.*

***Elena Cima*** *is Lecturer in Law at the University of Geneva and a contributor to the Remaking Trade Project.*

# Practical First Steps Towards Comprehensive Subsidy Reform

*Ken Ash, Anthony Cox, & Peter Draper*

*Many countries are introducing new forms of subsidies support, rather than removing existing policy disincentives for globally sustainable outcomes and markets. There is an urgent need for WTO members to embrace the reform nettle, starting with generating a robust analytical base in partnership with other international organizations.*

There is a vast literature demonstrating the high economic and trade costs, and the limited benefits, of many government support measures across commodity and industrial sectors. There is also growing evidence of these policies' huge environmental and climate costs, and a strong economic and environmental case for public support to accelerate the transition to a low carbon circular economy.

But policy design matters. To be effective, support provided must be transparent, targeted at explicit beneficiaries, proportionate to achieving the desired outcome, time-limited, and non-discriminatory. To ensure that support works as intended, it is essential that attention focus on the actual impacts of support policies as they are implemented. Explicit policy objectives only describe what governments want to achieve; the actual impacts of support, domestically and internationally, can be very different.

Absent a consensus amongst WTO members to reform subsidy rules, relevant international organizations should be requested to work together to distinguish much more clearly between good subsidies and bad subsidies.

**Subsidies, the Green Transition, and International Organizations**

Absent a consensus amongst World Trade Organization (WTO) members to reform subsidy rules, relevant international organizations should be requested to work together—urgently—to distinguish much more clearly between good subsidies and bad subsidies. Valuable data and analytical work have already been undertaken by the Organisation for Economic Co-operation and Development (OECD) and the WTO and, along with the International Monetary Fund (IMF) and the World Bank Group (WBG), they have committed to further individual and joint efforts addressing subsidies and related policies. But more needs to happen, more quickly. The four international organizations, along with relevant others, should step up their efforts to define the characteristics of good subsidies (i.e. those most likely to achieve their aims at reasonable cost and without unintended negative impacts) in contrast to bad subsidies (i.e. those least likely to perform as intended).

Early action can be taken based on what is already known about existing subsidies and related regulatory policies. Many are unlikely to achieve their stated aims, are production and trade distorting, can damage the environment and increase greenhouse gas (GHG) emissions, are costly, and can crowd-out investment in other public priorities. Once this analytical work is complete, the WTO's existing subsidies categorizations, represented in the Agreement on Subsidies and Countervailing Measures (SCM Agreement) can be comprehensively updated and modernized, particularly Parts II and III that deal with prohibited and actionable subsidies.

**What Analytical Work is Required, and By Whom?**

International organizations should take a comprehensive approach to analysis of government support, looking across fossil fuels, agriculture, fisheries, industrials, and advanced technologies. Three examples illustrate this point.

From a climate perspective, the continued existence of fossil fuel subsidies is particularly egregious. In 2022, 45 countries, all G20 or OECD members, provided support to producers and consumers of fossil fuels totalling around 1$.3 trillion; for the decade prior, support ranged from just under $400 billion to $800 billion annually. Phasing out these subsidies would provide immediate environmental and climate benefits and make significant funding available for other public policy priorities, from education and health to a clean energy economy.

Agriculture, forestry, and other land use change are responsible for around 30% of global GHG emissions. Support to the sector currently averages more than $851 billion per year, fully $456 billion of which is directly tied to farm input use and output quantities, which are amongst the potentially most trade distorting and environmentally harmful forms of support available. Phasing out production-linked support in favour of new policy approaches that encourage efficient resource use, address climate change, boost innovation, increase productivity, and enhance livelihood opportunities would improve climate, environment, and economic outcomes. Increased public and private investments in digital tools and data analytics would be particularly beneficial across the food supply system, including most importantly on farms.

The aluminium sector has attracted global attention in a context of concern about the growing role of state enterprises in international markets, but there has been less consideration of associated environmental impacts. Pervasive state support across aluminium supply chains has primarily encouraged extraction, production, processing, and export in high GHG emitting production systems, and contributed directly to a much higher than otherwise carbon footprint across the sector globally. High levels of government support also discourage investment and innovation by unsubsidized firms unable to compete with the deep pockets of the state. This is particularly important as demand for aluminium as a critical material for the energy transition is expected to grow 80% by 2050.

> In stepping up their efforts to support subsidy reform, international organizations should collaborate actively with stakeholders to ensure the widest possible availability of robust data and objective analysis to inform public policy choices.

In stepping up their efforts to support subsidy reform across these and other areas, international organizations should collaborate actively with the private sector, the academic community, and other stakeholders, to ensure the widest possible availability of robust data and objective analysis to inform public policy choices. This is essential, both ex ante and ex post, as poor policy design carries an enormous risk of creating wasteful and offsetting subsidies, divergent regulatory frameworks, and fragmented regional and global markets—all while failing to achieve the stated policy goals.

**The Case for Reforming "Bad Subsidies"**

We do not suggest that government support for globally sustainable outcomes and markets needs to "go to zero." We do advocate that demonstrably bad subsidies that distort production, investment, and trade decisions, discriminate across potential beneficiaries, or harm the environment be removed in favour of good subsidies and other forms of government support that address market failures and promote competition and innovation.

The rationale is simple.

First, the opportunity costs of ineffective subsidies are enormous for all countries—developed, emerging, and developing. No countries can afford to financially support the few and forego investments in essential public services for the many. Second, subsidy competition amongst countries increases uncertainty for businesses needing to invest in their own contributions to more sustainable outcomes. Governments should instead be looking at ways to establish the enabling environment in which businesses can be confident in spending the trillions required to build a circular and clean energy economy.

It is very easy to write about removing bad subsidies, but it is much harder to remove them. There are major consequences for the individuals, families, and firms that currently benefit from subsidies, trade protection, and the resulting industry structure. Not all will be able to make the transition to a new living and working environment on their own. Socially responsible subsidy reform should happen progressively over time and be accompanied by adjustment assistance for those unable to make the transition on their own.

> Societal acceptance of eliminating subsidies at home would be greatly facilitated if undertaken in the context of multilateral cooperation.

**The WTO's Central Role**

Societal acceptance of eliminating subsidies at home would also be greatly facilitated if undertaken in the context of multilateral cooperation—at the WTO—where all countries agree to avoid the temptation to increase global market share based on discriminatory subsidies and regulations. The benefits of subsidy reform would accrue both to the relatively few countries that account for most subsidies today and to the

many more less-developed countries that simply do not have the fiscal capacity to join a subsidy race. As the custodian of the SCM Agreement, WTO members have a crucial role to play in securing meaningful reform commitments.

But until the first-best option of a multilateral commitment to eliminating bad subsidies is in hand, the IMF, OECD, WBG, WTO, and others, should work together to articulate and promote objective and evidence-based policies, including good subsidies and other forms of government support, that would enable globally sustainable outcomes and markets.

---

***Ken Ash*** *is Director, Ash Global Insights, Visiting Fellow at the Institute for International Trade, Adelaide, and former OECD Director of Trade and Agriculture.*

***Anthony Cox*** *is Senior Policy Advisor with the Ecologic Institute, and former OECD Deputy Director of the Environment Directorate.*

***Peter Draper*** *is Executive Director of the Institute for International Trade and Director of the Jean Monnet Centre of Excellence in Trade and Environment at the University of Adelaide.*

# Promoting Sustainability Through Reforming Subsidies for Agriculture in the WTO

*Clara Brandi, Christophe Bellmann, Umberto Celli Junior, Carolyn Deere Birkbeck, & Peter Draper*

*By fostering an open dialogue and cooperation on feasible and effective measures to tackle environmentally harmful agricultural subsidies, the WTO can catalyse momentum towards a more sustainable and equitable global agricultural system.*

Agriculture is at a critical juncture, where today's decisions will significantly impact the future of our planet and its inhabitants. As governments and stakeholders work to enhance sustainability in the sector, subsidies are a key focus due to their clear influence on international production, consumption patterns, and environmental impacts.

Of the nearly $540 billion spent annually on global producer support, the Food and Agriculture Organization (FAO), United Nations Development Programme (UNDP), and United Nations Environment Programme (UNEP) estimate that 87% are price distorting and harmful to the environment and health. These practices not only perpetuate unsustainable farming methods but also lead to biodiversity loss, soil degradation, water pollution, and greenhouse gas emissions. The consequences of these actions reverberate across ecosystems, endangering the foundation of agriculture and, ultimately, global food security.

> The consequences of these actions reverberate across ecosystems, endangering the foundation of agriculture and, ultimately, global food security.

## The Need for Reform

On the international stage, the need to tackle the environmental impact of agricultural subsidies has been reaffirmed at the highest political level. Target 18 of the Kunming-Montreal Global Biodiversity Framework, adopted in 2022, which calls on governments to address subsidies harmful to biodiversity and reduce them by at least $500 billion per year by 2030, signals a collective need for decisive action.

At the World Trade Organization (WTO), negotiations on agricultural subsidies have focused on reducing substantially and progressively the most distorting forms of domestic support, including the large entitlement granted to the biggest subsidizers during the Uruguay Round, and encouraging a shift towards less production and trade distorting forms of support as defined in the different coloured boxes of the WTO Agreement on Agriculture.

> Existing trade rules and ongoing negotiations essentially focus on the production and trade distorting effects of subsidies, not on their sustainability impact.

Comprehensive reform has so far proven elusive in the WTO. While these deliberations will continue, a critical gap relates to the fact that existing trade rules and ongoing negotiations essentially focus on the production and trade distorting effects of subsidies, not on their sustainability impact. This gap could be addressed both under ongoing negotiations in the special session of the Committee on Agriculture and supported by dialogue underway in the work stream on subsidies of the Trade and Environmental Sustainability Structured Discussions (TESSD), co-sponsored by 77 WTO members (as of August 2024).

While there is growing recognition of the need to reform global agricultural subsidies to align the sector with the Kunming-Montreal Global Biodiversity Framework and the Sustainable Development Goals, a key conceptual and technical challenge relates to defining what constitute environmentally harmful agricultural subsidies.

Since the actual environmental impact of a particular subsidy scheme is highly context specific, identifying ex ante the environmental effect of particular forms of support remains largely hazardous. A second challenge relates to building political support for such reform among a critical mass of countries. So far, the debate has focused mostly on repurposing existing support measures through domestic reform. Collective approaches, however, would avoid the free-rider problem and are better suited to address global environmental challenges compared to a patchwork of fragmented actions.

> A key challenge is to define what constitute environmentally harmful agricultural subsidies.

**What Can be Done in the WTO**

Looking ahead, WTO members can play a key role in addressing both challenges by fostering an open dialogue and cooperation on feasible and effective measures to tackle environmentally harmful subsidies and promote sustainable agriculture. As noted, an approach associating, ex ante, certain environmental effects with different forms of support (e.g. support based on outputs, input use or income, general services, or consumer support) is unlikely to provide the necessary granularity to single out environmentally harmful subsidies.

A possible approach to overcome this challenge is to shift the focus from the type of subsidies to the specific agricultural practices, production methods, or specific situations associated with clearly negative environmental impacts. In other words, instead of starting from the type of subsidies, one would rather identify those harmful agricultural practices that from an environmental perspective should not be incentivized or supported via subsidies regardless of the form that such support takes.

> A possible approach is to shift the focus from the type of subsidies to the specific agricultural practices, production methods, or specific situations associated with clearly negative environmental impacts.

This nuanced perspective would define ex ante a set of circumstances and possibly thresholds where agriculture should not receive support based on environmental sustainability considerations, regardless of subsidy categorization. This could then be used as a basis to design new international disciplines in the form of prohibited subsidies or enhanced transparency obligations. If this is not possible, WTO members could also use this list to design guidelines for the granting of support or to undertake voluntary commitments or pledges not to grant support to these practices.

The approach is not completely new. WTO negotiations on fisheries subsidies have already highlighted the difficulty of establishing a list of harmful subsidies (e.g. for fuel, boat construction, or equipment) that contribute to overcapacity or overfishing and therefore should be prohibited. This is because the impact of subsidies on fish resources depends on a number of other factors including the extent to which effective fisheries management regimes are in place.

The current WTO Agreement on Fisheries Subsidies, adopted in 2022, partially overcomes this difficulty by focusing on certain fishing practices or conditions where fishing and fishing-related activities should not be subsidized regardless of the type of support. It provides, for example, that subsidies to illegal, unreported, and unregulated fishing shall be prohibited. Similarly, any subsidies for fishing and fishing-related activities of stocks that are already overfished or that take place in the unregulated high sea shall be prohibited.

In spite of differences between agriculture and fisheries, moving away from the traditional classification of subsidies—which was designed to reflect the trade and production effect of subsidies, not their environmental effect—makes sense in both cases. The focus should be on the production conditions, practices, or methods that should not be incentivized through subsidies. This not only offers more granularity but also makes more sense from an environmental perspective.

**Practical Steps Forward**

In practical terms, a first step in pursuing such an outcome-based approach would be to define a set of priority environmental concerns to be addressed (e.g. greenhouse gas emissions, biodiversity loss, water scarcity, soil degradation, or chemical contamination).

The next step would be to identify potentially harmful agricultural practices affecting these environmental priorities. This would imply, for example, identifying a range of biodiversity impacts or greenhouse gas emissions driven by or closely associated with certain agriculture practices or production methods.

The analysis could be further refined through additional layers, highlighting the specific circumstances or thresholds making such practices particularly harmful from an environmental perspective or possible trade-offs between different environmental objectives. For example, while mechanical tillage may generally have negative environmental impacts like pesticide and nutrient runoff, soil erosion, or loss of soil organic carbon, such impacts may be exacerbated under certain agro-ecological conditions or depending on the time of the year when this is done.

Finally, should this approach ultimately lead to a negative list to be used as the basis for new disciplines or even voluntary commitments, a third aspect would consist in reflecting the specific concerns and conditions prevailing in developing countries, in particular the least developed or small island developing states. This should not only recognize possible trade-offs between environmental objectives and other critical economic and social policy objectives central to sustainable development, including rural development and food or livelihood security, but also the need to reflect principles of international law relevant to the environment—such as the principles of equity, sustainable development, and common but differentiated responsibilities and respective capabilities—in the light of different national circumstances.

Building on existing experience at the WTO with special and differential treatment provisions for developing countries, this could be addressed in various ways, including through exemptions, flexibilities, or transition periods for countries at different levels of development and faced with different vulnerabilities or for different types of agriculture (e.g. low-income or resource-poor producers). Any eventual disciplines or guidelines would need to include elements related to transparency and also international cooperation, recognizing the challenges some developing countries may face in reducing subsidies, in the form of adjustment support such as technical assistance and capacity building to assist the phase-down or phase-out process.

Overall, by fostering an open dialogue and inclusive cooperation on this critical issue of environmentally harmful agricultural subsidies, the WTO can catalyse momentum towards a more sustainable and equitable global agricultural system.

---

***Clara Brandi*** *is Head of Programme, Transformation of Economic and Social Systems, German Institute of Development and Sustainability (IDOS).*

***Christophe Bellmann*** *is Head of Policy Analysis and Strategy, Forum on Trade, Environment, & the SDGs (TESS).*

***Umberto Celli Junior*** *is Professor of International Law, University of São Paulo.*

***Carolyn Deere-Birkbeck*** *is Executive Director of the Forum on Trade, Environment, & the SDGs (TESS).*

***Peter Draper*** *is Executive Director of the Institute for International Trade and Director of the Jean Monnet Centre of Excellence in Trade and Environment at the University of Adelaide.*

# A Sample of Positive Thematic Agendas and Initiatives

# Five Suggestions to Reframe Discussions on Environmental Goods, Services, and Technologies at the WTO

*Christophe Bellmann*

*A new approach in talks on environmental goods, services, and technologies at the WTO could help promote inclusive cooperation, respond to key environmental challenges, and foster benefits for developing countries.*

Faced with multiple environmental crises and pressing development challenges, governments are exploring options to accelerate the transition to a more sustainable, inclusive, and resilient global economy. In this process, trade and trade policies have a critical role to play to foster the development, diffusion, affordability, and uptake of goods, services, and technologies critical to address the climate crisis, global pollution, and biodiversity loss. There is also a growing recognition of the role that trade and trade policies can play in providing market opportunities for products that are produced sustainability.

In the world of trade policymaking and diplomacy, this has prompted calls for governments to do more to facilitate and promote trade in environmental goods, services, and technologies. More broadly, it is spurring recognition that in order to achieve the scale and speed of transformation required to meet shared sustainability goals, there is a need to go beyond promoting trade in niche products and to foster a transformation of all commercial relations towards shared goals and in support of action at the national level.

An important backdrop for this discussion are longstanding efforts from developing countries to secure specific opportunities for their exports, diversify their economies, and derive greater benefits from their participation in global trade for their sustainable development priorities. In a rapidly changing market and regulatory landscape, there are fears among many developing countries and businesses that the shift towards a greener global economy will leave them behind, further marginalize their economies, and reinforce the technology and competitiveness gap between developed and developing countries. In particular, there are concerns about growing restrictions on trade in the pursuit of environmental priorities and their limited access to technologies, finance, or investment needed to propel a structural transformation addressing both urgent development and environmental priorities.

At the World Trade Organization (WTO), governments are discussing issues related to trade in environmental goods and services in a number of settings including the Committee on Trade and Environment and the Council on Trade in Services. There are also discussions underway in an informal working group launched under the Trade and Environmental Sustainability Structured Discussions (TESSD). Finally, the topic has arisen in the context of the Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade (DPP). In these discussions, a core priority of governments has been to explore ways forward that build broad-based support for future work among a wider range of members at different levels of development.

> Many governments are conveying a new openness to considering different ways of approaching the topic of trade in environmental goods and services.

Conscious of the need to avoid past mistakes, many governments are conveying a new openness to considering different ways of approaching the topic. In today's setting, there is no broad-based appetite for "relaunching" or "reviving" old talks at the WTO.[7]

Building on past lessons, we put forward five suggestions to reframe the discussion and adopt a new approach in environmental goods, services, and technologies for sustainable development at the WTO.

**Suggestion 1: Start from the Environmental Problem and Work Backwards**

A key mistake of past negotiations has been to spend too much time trying to define environmental goods and services. Rather, a first step should be to define the environmental problem that members are seeking to address. For example, is it climate change mitigation, climate adaptation, biodiversity loss, pollution, water scarcity, soil degradation, or desertification? Defining the objective is key not only to inform the types of goods, services, and technologies that discussions should focus on but also participation.

As discussions in the DPP illustrate, engagement of members is likely to be directly related to the imperative felt by individual members to cooperate around a particular environmental challenge. The fact that a wide range of developing countries have decided to join the DPP largely reflects the scale and urgency of the plastic pollution challenge faced by much of the developing world.Once the environmental objective is agreed, members should work backwards to understand the role of international trade and trade policies in addressing the issue at hand and the kinds of goods, services, or technologies that may help. For example, reducing greenhouse gas emissions requires a focus on ensuring affordable and large-scale access to renewable energy and energy efficiency technologies, whereas tackling plastic pollution may require facilitating trade in sustainable and effective substitutes or environmentally sound and safe waste management goods, services, and technologies.

**Suggestion 2: Move From a Market Access Agenda to a Cooperation Agenda**

A second error in previous talks consisted in framing environmental goods and services as a market access discussion. There is very little appetite for such a narrow discussion among members at the WTO, nor is there a strong rationale for an agreement solely aimed at opening markets. For the most part,

7. WTO negotiations on environmental goods and services first started in 2001. Thirteen years later, the persisting lack of agreement on which goods and services were "environmental" and how they should be liberalized prompted a subgroup of 46 WTO members to launch a plurilateral initiative for an Environmental Goods Agreement in the hope that discussions among a smaller set of like-minded countries could facilitate convergence. However, despite intensive talks, these negotiations ultimately failed to reach consensus and have been inactive since December 2016. Since then, negotiations have shifted to the bilateral and regional levels, with regional trade agreements becoming the preferred avenue to facilitate trade in environmental goods and services.

developing countries essentially import environmental goods and services and have limited export capacity. If developing countries need to promote imports for specific environmental purposes, they can do it unilaterally and do not need a binding WTO agreement.

In other words, as put in the TESSD Ministerial Statement on Trade and Environmental Sustainability adopted in December 2021, the talks should not be framed as a liberalization initiative but rather as "promoting and facilitating trade in environmental goods and services to meet environmental and climate goals and commitments." Such an approach helps to shift from a purely mercantilist discussion to include an approach to trade measures and trade policy cooperation that also addresses the constraints faced by developing countries and their businesses related to trade finance, transfer of technology, or capacity building.

**Suggestion 3: Focus on Identifying and Addressing Key Constraints Affecting Trade**

Past discussions have wrongly assumed that removing market access barriers would automatically enhance trade in environmental goods and services. Empirical evidence suggest that the reality is more complex. For example, a review of regional trade agreements with provisions on environmental goods undertaken by the Swedish Board of Trade shows that these agreements do not affect trade flows in those goods. Similarly, several developing countries that have liberalized trade in environmental goods and services under free trade agreements claim that they are yet to see increases in the diffusion and uptake of key environmental goods, services, or technologies.

> A critical lesson is the need to first identify what really prevents trade in goods and services or the production or diffusion of technologies from happening.

A critical lesson here is the need to first identify what really prevents trade in goods and services or the production or diffusion of technologies from happening. Depending on the sector, this may be higher tariffs, but it can also be due to a lack of finance supporting investment, differences in standards or regulations, or intellectual property and licensing costs. In such cases, the answer may be regulatory cooperation, investment facilitation, innovative licencing agreements, government procurement, or trade financing as opposed to endless discussions on lists of Harmonized System codes of products to be liberalized. Precedents of such approaches exist in regional trade agreements and could serve as inspiration.

**Suggestion 4: Take a Whole of the Supply Chain Approach**

Past discussions on environmental goods and services have mostly focused on technologically advanced finished goods with clear environmental end use. This approach, however, may not be appealing for many developing countries with only limited export capacities in those goods. While it may be unrealistic to assume that all developing countries could emulate China or India in building the capacities to develop entire wind farms or solar panel plants for example, a key priority for many is to integrate international production networks and

possibly move up the value chain through the production of certain parts and components. A value chain analysis involving technologies, services, and components at different stages of the life cycle may therefore broaden the opportunities to engage and help move away from fruitless discussions on the environmental credentials of specific goods and services.

**Suggestion 5: Explore Alternative Outcomes**

> There is limited appetite among members for traditional outcomes from negotiations in the form of new schedules of commitments or binding rules in the WTO.

There is limited appetite among members for traditional outcomes from negotiations in the form of new schedules of commitments or binding rules in the WTO. Nor are such outcomes always appropriate to achieve a desired environmental objective. Thus, there may be value in exploring new types of outcomes, of which successful precedents exist, notably in regional trade agreements.

Possible options here include innovations in both format and the legal nature of results. On format, members could explore a series of sectoral initiatives focused on particular environmental challenges (e.g. climate adaptation) or technologies (e.g. renewable energy) with different configurations in terms of participants and issues covered. On the legal nature, depending on the challenges identified, options may include guidelines and best practices, voluntary pledges, or individual commitments based on a positive list of possible measures to facilitate and promote trade in environmental goods, services, and technologies (see Box).

**Towards an Environmental Project Approach?**

A possible avenue to explore is to take a project-based approach. In the area of renewable energy, for example, trade in goods and services almost exclusively takes place under specific projects (e.g. to build a solar plant or a wind farm). Individual WTO members could agree on a voluntary basis to remove tariffs and non-tariff barriers on all goods, services, and technologies imported in the context of such environmental projects. This could also involve government procurement or trade and investment facilitation measures to expedite customs procedures. The commitments would, however, be limited to environmental projects recognized as such by the importing country. In exchange, exporting countries could commit to providing technical assistance, financing, or technology cooperation. Such an approach built around mutually beneficial partnerships would send a strong

signal to investors and contribute to reducing the costs of individual projects. It would also solve the problem of the environmental credentials of specific goods and services to the extent that the preferential treatment would only apply to goods and services imported for an environmental end use. This approach was originally suggested by India in 2005 during the environmental goods and services negotiations. At the time, it did not gather consensus, partly because it would not provide sufficient predictability in terms of market access conditions. In the present context, however, where members are exploring alternative approaches, this option could be revisited as a possible outcome under ongoing discussions.

**Concluding Remarks**

As WTO members explore possible options to reframe the discussion on environmental goods and services in the Committee on Trade and Environment, TESSD, or DPP, the five suggestions presented here can help inspire cooperation, create benefits across the diversity of the WTO membership, support environment and development outcomes, and avoid repeating past mistakes. Using an objective-based approach, participants in the TESSD working group on environmental goods and services are already moving in that direction with an initial focus on clean energy and a mapping of wind and solar value chains involving technologies, services, and components at different stages of the life cycle.

> A core priority should be to address key developing country interests in the realm of trade in environmental goods, services, and technologies.

As these discussions advance, a core priority should be to address key developing country interests in the realm of trade in environmental goods, services, and technologies, including by focusing on technologies vital to addressing specific environmental challenges they face. This may require enhanced engagement of environmental ministries and constituencies in understanding where they need environmental goods, services, and technologies to support their sustainable development priorities. It should also address trade opportunities for developing countries, particularly for micro, small, and medium-sized enterprises and wider development goals. Here, key considerations include the need to promote economic diversification and employment generation, and to identify opportunities for participation and upgrading in supply chains critical to the shift to a low-carbon economy, including through value-added exports or niche products.

***Christophe Bellmann*** *is Head of Policy Analysis and Strategy, Forum on Trade, Environment, & the SDGs (TESS).*

# Trade Can Support the Achievement of a Nature-Positive Global Goal to Reverse Biodiversity Loss

*Marco Lambertini*

*There is an urgent need to mainstream biodiversity in international trade policies. The WTO has immense potential to strengthen inclusive policies for the advancement of nature-positive trade for the benefit of economies, nature, and people.*

Humanity is rapidly approaching its greatest challenge but also its greatest opportunity. Either we let earth systems—from weather systems to entire ecosystems and ecoregions—reach tipping points and deeply destabilize under human pressures with terrifying consequences for our society, economy, and well-being. Or we embrace a turning point in our relationship with nature. We are both in the middle of a dangerous ecological crisis and on the cusp of a green revolution. Multilateral trade and trade-related policies can play a pivotal role in supporting environmental sustainability for the future. The relevance of the nature and climate agendas in the trade arena is not just growing, but is devastatingly clear: nature underpins every aspect of our businesses, our financial systems, and our livelihoods.

> The relevance of the nature and climate agendas in the trade arena is not just growing, but is devastatingly clear: nature underpins every aspect of our businesses, our financial systems, and our livelihoods.

The World Economic Forum found that $44 trillion of economic value generation—over half the world's total GDP—is moderately or highly dependent on nature and its services and, as a result, exposed to risks from biodiversity loss and ecosystem degradation. It's no surprise that businesses and intergovernmental trade bodies are paying particular attention to fighting climate change, addressing plastic pollution, and transitioning to a green economy.

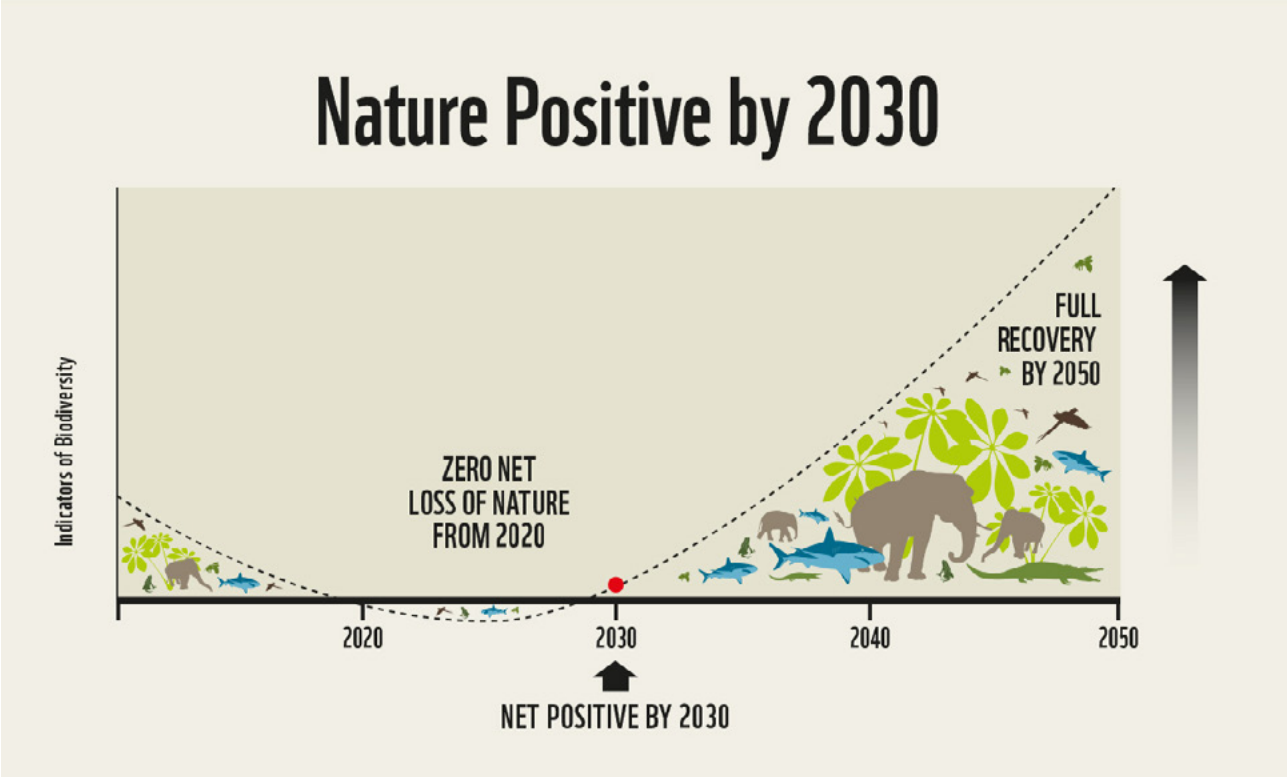
So how can the World Trade Organization (WTO) and its members demonstrate leadership in approaching these environmental crises and the silent decline of nature and biodiversity?

### A Nature-Positive Global Goal

In December 2022, the world came together to adopt at the UN Biodiversity Conference (COP15) an ambitious framework to halt and reverse nature loss, for the benefit of all people and the planet. This is no mean feat. Over 190 governments were negotiating late into the night to arrive at the final agreement, a demonstration of global alignment at the highest level.

The mission outlined in the Kunming-Montreal Global Biodiversity Framework codifies for the first time a global goal for nature, similarly to what the Paris Agreement did for climate: halt and reverse biodiversity loss by 2030, a nature-positive global goal. This is not just a slogan. It is an ambitious and disruptive measurable goal, indicating what all sectors in society should contribute to and be measured against: a nature-positive outcome, one where there is more nature at the end of the decade than at its start. Just as we have net-zero emissions and carbon-neutral for climate, we need net-positive biodiversity and nature-positive, for nature. Nature can recover, and fast, if given a chance.

### The Trajectory of Nature Positive By 2030




Source: Nature Positive Initiative (2023).

The nature-positive global goal drives a new and measurable ambition in governments, business, and society. It also drives the opportunity for links between biodiversity and other conventions, the UN Sustainable Development Goals, and particularly on climate, ocean, and land degradation.

Year on year, the climate, biodiversity, and pollution crises worsen. The latest data from the Copernicus Climate Change Centre shows that the world endured 12 consecutive months with global warming of 1.5°C above pre-industrial levels. The world has woken up to the crisis in plastic pollution, which continues to kill millions of wild animals every year and has entered the food we eat, water we drink, and air we breathe. Nature loss continues unabated. Yet action is flagging behind with the poorest and most vulnerable populations hit first and hardest.

All three crises are linked and, as such, should be addressed together. To deliver a swift transition to an equitable, nature-positive, and net-zero emissions future, the world must get behind joined-up action.

**More Sustainable Trade Practices**

Against this backdrop, there is an urgent need to mainstream biodiversity in international trade policies. The WTO has immense potential to strengthen inclusive policies for the advancement of nature-positive trade—for the benefit of economies, nature, and people—especially in the developing world. In simple words, nature-positive trade should be trade that incentivizes nature-positive practices in the production and consumption of all major commodities throughout the supply chain: from agricultural produce to fish, timber, and minerals. It could help halt and reverse biodiversity loss with tools such as lowering tariffs on relevant environmental goods and services, eliminating perverse subsidies, and reducing the complexity of environmental standards.

> Nature-positive trade is trade that incentivizes nature-positive practices in the production and consumption of all major commodities throughout the supply chain.

Despite this potential, the Thirteenth WTO Ministerial Conference ended without agreement on the second phase of negotiations on fisheries subsidies that contribute to overcapacity and overfishing. Ministers also failed to agree on a roadmap to revive agricultural negotiations and on a permanent solution on subsidies granted through the purchase of food at administered price under public stockholding programmes for food security purposes. This comes as a disappointment against the backdrop of environmental momentum building seen at the WTO in recent years.

In 2020, a group of WTO members launched an initiative to identify opportunities for enhanced trade cooperation to contribute to efforts to reduce plastic pollution and promote the transition to more environmentally sustainable plastics trade, leading to the establishment of the Dialogue on Plastics Pollution (DPP). This is an example of constructive engagement in seeking to move trade to more sustainable practices. A set of members has also developed opportunities to consider the intersection of trade, environment, and sustainable development in the context of the Trade and Environmental Sustainability Structured Discussions (TESSD) and the Fossil Fuel Subsidy Reform (FFSR) initiative. Topics of discussion

in these member-led initiatives include, among others, trade-related climate measures, promoting trade in environmental goods and services, trade and the transitions to a circular economy and circularity, and subsidies relevant to a low-carbon transition. At MC13, TESSD co-conveners released a statement and ministerial statements were issued by the DPP and FFSR initiative together with updated work plans as well as a series of outcome documents summarizing the work to date. This ambition needs to continue.

**Shifting Towards Nature-Positive Trade**

Key challenges lie ahead. Defining specific metrics to measure the loss or gain of nature will be vital to shift towards nature-positive trade. Aggregating this measurement globally will give an overall picture and allow us to work towards the 2030 global goal.

This is where the Nature Positive Initiative wants to offer its contribution. The diversity of highly credible organizations from the environmental, sustainable business, and standard-setting sector coupled with their technical knowledge and capability aims at driving alignment, convergence, and integration on the principles, definitions, frameworks, and metrics necessary to drive genuine and demonstrable nature-positive outcomes. Encouragingly, an increasing number of businesses, financial institutions, and organizations are joining the initiative.

Sustainability is essential to us all. We must work together to ensure that the vital resources nature offers are responsibly managed and maintained for future generations. Moving towards nature-positive trade is not just possible but necessary. To really embed sustainable practices in our society and economy we need every element of our complex and globalized economy to play its part. Trade is no exception and, in fact, a crucial component of building a safer and more just future for all.

---

***Marco Lambertini*** *is Convenor of the Nature Positive Initiative. He was WWF International Director General (2014-2022) and Special Envoy (2023).*

# How the WTO Can Help Foster Cooperation on Sustainable Agriculture and Trade

*Christophe Bellmann*

*There are several avenues through which WTO members could address the urgent need for the multilateral trading system to foster an open and inclusive dialogue on the sustainability dimensions of agricultural production and trade.*

Agriculture represents a critical source of food, feed, fuel, and livelihood. Yet, the current food system remains largely unsustainable and fails to deliver food and nutrition security for all. In recent years, progress in reducing food insecurity have been reversed, with the number of hungry people increasing by 20% between 2018 and 2022. Climate change, a global pandemic, and escalating conflicts have all contributed to making food less accessible to many, particularly women and people living in rural areas, whether in terms of physical or economic scarcity. In 2023, the Food and Agriculture Organization of the United Nations (FAO) estimated that the number of people chronically at risk of not having enough food for a healthy life had reached between 713–757 million people. The FAO also estimates that 35.5% of the global population was unable to afford a healthy diet in 2022.

At the same time, agriculture contributes to environmental degradation, including soil and water pollution and biodiversity loss. Between 2000 and 2018, agricultural expansion drove 88% of global deforestation, with cropland expansion and livestock grazing respectively responsible for 50% and 38% of deforestation. Food systems also account for as much as 34% of total greenhouse gas emissions, when considering agriculture and land use, storage, transport, packaging, processing, retail, and consumption. Meanwhile, impacts of climate change affect crop yields, productivity, and ultimately food security and nutrition through increasing temperatures, changing precipitation patterns, and greater frequency of extreme weather conditions.

Over the coming years, one of the greatest challenges facing the agricultural sector will be to improve equitable access, availability, and stability of food supply and respond to the changing diet of a growing urban population while protecting ecosystems, restoring biodiversity, maintaining soil productivity, rationalizing water use, and reducing greenhouse gas emissions.

### Trade and Sustainable Agriculture: A Multidimensional Relation

In today's highly integrated global economy, international trade and trade policies will play a critical role in this equation. In the absence of effective regulatory frameworks, trade can exacerbate environmental challenges associated with food production and land use trends such as deforestation, land degradation, increased greenhouse gas emissions, and biodiversity loss. Indiscriminate trade opening can also disrupt local food production systems, markets, and communities, or introduce unhealthy foods that generate public health challenges.

On the other hand, trade plays a critical role in ensuring access to food and a balanced diet for the vast majority of countries that rely on imports to meet at least part of their nutritional needs. Over the last 20 years, trade in agricultural products has almost doubled in volume, with the share of imports in global consumption growing significantly for products such as wheat, maize, rice, soybeans, vegetable oil or meat. In the future, trade will also play an essential role in tackling food insecurity by offsetting production shortfalls resulting from the climate crisis, water scarcity, or desertification. Participation in international supply chains can also help diffuse environmentally sustainable practices or technologies and support higher returns for sustainably produced food. More generally, trade can be key to creating jobs and raising incomes, thereby contributing to improved access to nutritious food.

In spite of this, agricultural markets remain particularly thin, with the share of production traded internationally only reaching 23% on average and even less for key staple foods such as rice or maize. As a result, a growing number of countries depend on a few exporters to meet their nutritional needs—which makes them highly vulnerable to supply chain disruptions and price volatility, as illustrated by the price spikes from 2006–2008 and, more recently, the food and energy price crises associated with the Covid-19 pandemic or the conflict in Ukraine. These interdependencies highlight the importance of collective action to ensure sustainable and resilient food systems.

These interdependencies highlight the importance of collective action to ensure sustainable and resilient food systems.

The need to ensure that trade policies proactively deliver for sustainable agriculture has been repeatedly affirmed at the highest political level, for example through the Leaders' Declaration on Forests and Land, signed by 141 countries at the 2021 UN Climate Change Conference (COP 26) in Glasgow, and the Forests, Agriculture and Commodity Trade (FACT) Dialogue, supported by key global exporters and importers of agricultural commodities. Focusing on the negative environmental effects of support policies, Target 18 of the Kunming-Montreal Global Biodiversity Framework calls for addressing subsidies harmful to biodiversity in a "proportionate, just, fair, effective and equitable way" and reducing them by at least $500 billion by 2030, starting with the most harmful incentives. Countries are also taking a range of autonomous measures, as illustrated by the European Union mandatory due diligence requirement on deforestation-free supply chains. Finally, numerous private sector initiatives and international organizations are working to improve the sustainability of global supply chains, for example, through voluntary standards and traceability and transparency requirements.

**How Can Trade Policy Contribute to Sustainable Agriculture?**

> Governments have a range of trade-related policy tools at their disposal to promote more environmentally sustainable agricultural practices or production methods.

Faced with the pressing need to address sustainability concerns, governments have a range of trade-related policy tools at their disposal to promote more environmentally sustainable agricultural practices or production methods. These can either encourage sustainable agriculture production and trade or discourage unsustainable practices. The measures themselves can take the form of:

1. Measures at the border, such as tariffs targeting mostly imports.
2. Economic incentives, such as subsidies targeting mostly domestic producers.
3. Regulatory measures of a voluntary or mandatory nature targeting both domestic producers and imports.
4. International support measures promoting sustainable production and trade in third countries, for example through technical assistance or technology transfer.

The table provides an overview of different approaches, with examples of measures discouraging and unsustainable production and trade and encouraging sustainable production and trade under each of the four categories.

**What Role for the WTO?**

The measures highlighted in the table can, for the most part, be pursued by governments acting autonomously. To the extent that they are designed as good faith environmental policies and do not discriminate arbitrarily between countries where the same conditions prevail, they will most probably not violate existing World Trade Organization (WTO) rules. The effectiveness of these measures will however significantly increase if they are pursued collectively and applied consistently among a range of countries. The benefits of such international cooperation is particularly clear in the case of measures aimed at removing perverse incentives, such as environmentally harmful subsidies, or fostering trade in environmentally preferable products. In a similar vein, ensuring that environmental regulations, standards, and conformity assessment procedures are applied in a way that ensures interoperability across countries and minimizes trade frictions will send a powerful signal of coherence to exporters. More broadly, in a globalized world economy dominated by highly integrated supply chains, addressing transboundary environmental challenges, such as climate change and biodiversity loss, and food and nutrition insecurity increasingly requires coherent policy approaches across jurisdictions.

### Sample of Trade-Related Policy Tools to Promote Sustainable Agriculture

| Measures | | Discouraging unsustainable production and trade | Encouraging sustainable production and trade |
|---|---|---|---|
| Trade and trade-related policy measures | **Border measures** | • Removing tariff protection on domestically produced goods with high environmental footprint (e.g. meat products)<br>• Applying market-correcting measures on imports to internalize negative environmental externalities (e.g. border carbon adjustment)<br>• Import and export bans of harmful pesticides and hazardous chemicals | • Conditioning market access concessions to compliance with specific sustainability requirements (e.g., through tariff rate quotas or trade preferences)<br>• Removing tariff and nontariff measures on environmentally preferable products and services.<br>• Trade facilitation measures for healthy but perishable products (e.g. fruits and vegetables) |
| | **Economic incentives** | • Removing environmentally harmful subsidies (e.g. subsidies for fossil fuel, fertilizers, pesticides, etc.)<br>• Removing domestic support encouraging the production of goods with high environmental footprint. | • Payments for environmental purposes (e.g. conditioning the provision of subsidies to environmental performances, cross compliance schemes)<br>• Payments for extension and advisory services, research or pest and disease control<br>• Subsidizing the consumption and distribution of healthy food |
| | **Regulatory measures** | • Food safety standards and regulations (e.g. maximum pesticide residue limits)<br>• Mandatory environmental requirements (e.g. requirements concerning acceptable level of nutrients, pollutants, wildlife and habitats protection, animal welfare)<br>• Mandatory due diligence requirements (e.g. deforestation free supply chains) | • Voluntary standards and environmental labelling (e.g. organically produced food)<br>• Private standards (e.g. carbon footprint,) |
| International support measures | **Technical assistance and capacity building** | • Support for subsidy reform | • Technical assistance and capacity building to promote sustainable production methods and technologies or meet environmental requirements in export markets. |

Source: Author's elaboration adapted from Bellmann (2022).

> Addressing transboundary environmental challenges and food and nutrition insecurity increasingly requires coherent policy approaches across jurisdictions.

Acknowledging this reality, several countries have emphasized the need to address collectively the sustainability dimension of agriculture in WTO. Today however, there is no single forum to discuss cooperation on trade and sustainable agriculture in the multilateral trading system. While the Committee on Trade and Environment could arguably provide a space for such a discussion, this has only happened sporadically with individual members raising specific concerns (e.g. on deforestation related to agriculture). Nor is sustainable agriculture explicitly addressed in the current WTO negotiating track under the Special Session of the Committee on Agriculture (CoA-SS); and experience has shown that achieving progress on this front has been challenging.

A third avenue is the Trade and Environmental Sustainability Structured Discussions (TESSD), launched to advance policy dialogue, promote transparency, and identify areas for future work including possible "deliverables" on environmental sustainability in the WTO. While TESSD does not have a specific work stream on sustainable agriculture besides its informal working group on subsidies, which addresses the sustainability dimension of agricultural domestic support, several proposals circulated since 2021 have identified issues related to agricultural standards and regulations, sustainable commodities, and deforestation-free supply chains as a topic for discussion.

> There is no single forum to discuss cooperation on trade and sustainable agriculture in the multilateral trading system.

Moving forward, fostering a more systematic dialogue on sustainable agriculture could involve reinvigorating discussions under relevant regular committees including the Committee on Trade and Environment and the Committee on Agriculture. In this respect, the work programme on emergency response to food insecurity established after the Twelfth WTO Ministerial Conference in 2022 provides an interesting precedent. Beyond the regular bodies, concerns around sustainable agriculture could feature more systematically in the context

of the Aid for Trade initiative and related support measures under the Enhanced Integrated Framework (EIF) and the Standards and Trade Development Facility (STDF). Similarly, the WTO Secretariat could include consideration of climate and other environmental risks and vulnerabilities in sections of Trade Policy Review reports dealing with agriculture. Additionally, Brazil has proposed to initiate a dedicated dialogue on sustainable agriculture in the multilateral trading system under the direction of the General Council as a complement to the existing negotiating track under the CoA-SS. This would provide a space for a forward-looking discussions on how the multilateral trading system can better support sustainable agriculture.

Regardless of where such discussion takes place, there is an urgent need for the multilateral trading system to foster an open and inclusive dialogue on a topic that is only likely to gain in momentum and importance over the coming years. Such efforts should not detract or divert attention from ongoing agriculture negotiations at the WTO, but rather complement them and contribute to catalysing discussions on how cooperation on trade and trade policies can contribute to a more sustainable food and agricultural system. Importantly, these discussions should take a comprehensive approach integrating not only concerns around environmental sustainability but also critical public policy objectives including food and nutrition security, livelihoods, and rural development.

---

***Christophe Bellmann*** *is Head of Policy Analysis and Strategy, Forum on Trade, Environment, & the SDGs (TESS).*

# Unlocking the Potential of International Trade to Promote the Transition to a Circular Economy: What Role for the WTO?

*Antoine Oger & Pierre Leturcq*

*The transition to a global circular economy supported by a clear and transparent rules-based trading system is a key solution to address the unfolding triple planetary crisis. The WTO has the potential to be central in this process of regulatory alignment by ensuring a flexible application of common circular economy principles globally and avoiding costly market fragmentation.*

Extraction and processing of the earth's material resources are the main drivers of the triple planetary crisis. These activities account for over 60% of global greenhouse gas emissions while the use of biomass alone accounts for over 90% of the total land use-related biodiversity loss and water stress. In addition, the manner in which we consume our resources is largely inefficient as material use has increased more than three times over the last 50 years and is expected to continue increasing by almost 60% by 2060 while material productivity has stagnated and shows no sign of future increase.

The transition from such an inefficient linear production and consumption model to a circular economy would therefore support resource efficiency to reduce environmental impacts, notably in high-income countries which use six times more materials per capita. However, this transition must be based on multilateral collaboration and coordination to prevent the risk of developed economies creating distortions and unnecessary barriers to trade by leveraging their existing comparative advantage(s) and eventually fostering a circularity divide.

> The transition to a circular economy must be based on multilateral collaboration and coordination to prevent the risk of fostering a circularity divide.

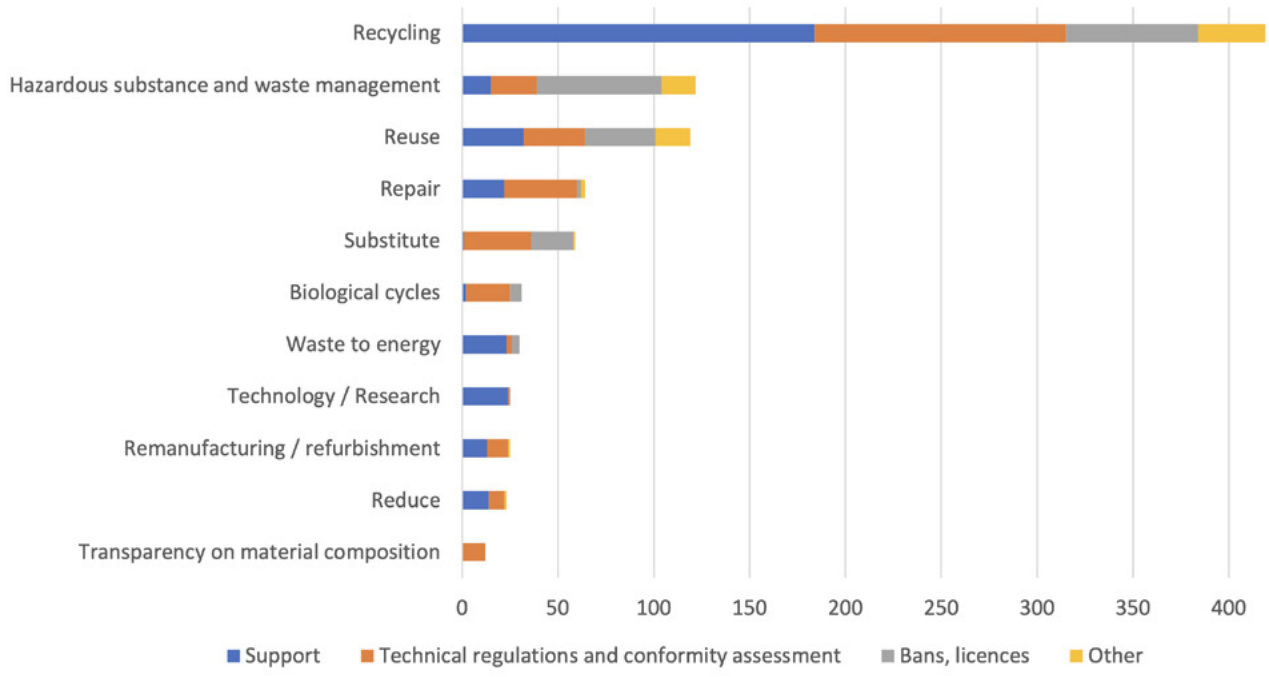
Members of the World Trade Organization (WTO) aim to support this transition, notably through ongoing discussions at the Informal Working Group on Circular Economy – Circularity convened under the member-led Trade and Environmental Sustainability Structured Discussions (TESSD). The informal working group published a mapping of trade measures notified by members to the WTO on circular economy on the occasion of the Thirteenth Ministerial Conference in February 2024. Members are now exchanging on how to take this agenda forward.

### State of Play of Deployment of Circular Economy Solutions

The TESSD mapping exercise of measures that relate to circular economy finds a total of 520 measures notified between 2009–2021, mostly under the Agreement on Subsidies and Countervailing Measures (41% of measures) and the Agreement on Technical Barriers to Trade (35%). The most active members are the United States (22% of measures), followed by China (9%), Korea (6%), and the European Union (4%). Uganda is the only developing country among the top 20 members notifying circular economy-related measures to the WTO with seven measures. Interestingly, the vast majority of measures, both in terms of support and technical regulations, relate to a product's end of life or waste disposal (Figure 1). The number of notified measures directed at upstream activities, such as aiming to reduce or substitute products (and thereby resource use), is substantially lower.

The current focus therefore clearly seems targeted at reducing the environmental impact of end-of-life products rather than addressing the unsustainable use of resources embedded in the upper stages of the life cycle of a product. Upstream measures (i.e. measures aimed at raw material extraction and product design/use) combined only account for 30% of all measures notified, while measures targeting end of cycle and waste disposal represent 54%. These upstream measures, such as extending product lifespans through repair measures, are also concentrated in a limited number of sectors like vehicles and electronics. Meanwhile, the highest number of circular economy-related measures are found in the plastics and packaging sector, of which nearly half are aimed at recycling.

**Figure 1. Measures by Circular Economy Activity and Type in WTO Notifications (2009–2021)**




Source: WTO (2024).

Of course, these findings only cover official notifications to the WTO under specific agreements and are not comprehensive in terms of ongoing initiatives relevant to circular economy globally, especially in developing economies. The mapping exercise undertaken by Chatham House in collaboration with UNIDO lists (as of August 2024) 75 national circular economy "calls to action," "roadmaps," and "operational strategies" across the world. These initiatives encompass 2,882 individual actions, thus confirming that circular economy-related policy initiatives are not limited to trade-related measures officially notified to the WTO. The mapping exercise also highlights the dynamism of the European Union in adopting such initiatives, as the proportion of EU roadmaps and strategies amounted to 70% of the total in 2024, thus demonstrating greater activism than the 4% of notified measures at the WTO noted above.

Most interestingly, the Chatham House mapping project sheds lights on the current momentum of circular economy initiatives in developing economies, with operational strategies and roadmaps already in place in Nigeria, Rwanda, and Ghana, as well as policies under development in Benin, Cameroon, Chad, and Ethiopia. Such momentum is expected to continue, as over 10 more roadmaps had been announced in Latin America, Africa, and Asia as of May 2024. These initiatives also demonstrate a broader consideration of product life cycles and a stronger focus on upstream action, with initiatives related to circular resources management, for instance, featuring higher than waste management.

**The Role of the WTO as a Key Driver of the Transition**

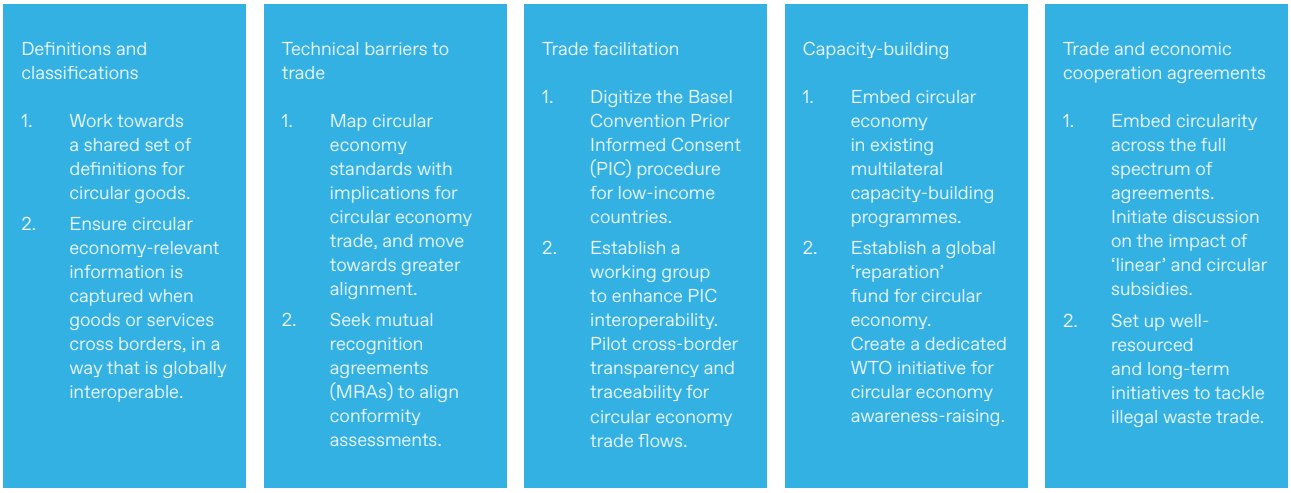
As noted, circular economy initiatives are burgeoning around the world, including in developing economies, but with a lack of multilateral coordination and collaboration. The WTO so far appears to somewhat fail to fully monitor these evolutions beyond end-of-life measures and this is jeopardizing its capacity to play its full potential in coordinating the roll out of circular economy measures throughout global value chains. This is particularly important in the current fraught geopolitical context dominated by state policy approaches towards resource security and reshoring or friend-shoring of supply chains, marking the emergence of circular resource nationalism.

> The role of trade policy in fostering a global circular economy is relatively well documented and potential solutions are already being brought forward.

As illustrated in Figure 2, the role of trade policy in fostering a global circular economy is relatively well documented and potential solutions are already being brought forward. The role of the WTO is now more essential than ever to support these solutions and prevent, or at least mitigate, the risks of market

fragmentation. Core WTO principles for a rules-based world trading system are key. These include the principle of non-discrimination, which ultimately seeks to ensure that resources, goods, and services are available at affordable prices for all actors in cross-border value chains, and that of subsidiarity, by which the WTO focuses on solutions that are relevant at the international level while most decisions should be taken as close as possible to a¬ffected people to ensure impact.

**Figure 2. Areas for Collective Action on Trade and Circular Economy**




Source: Chatham House (2022).

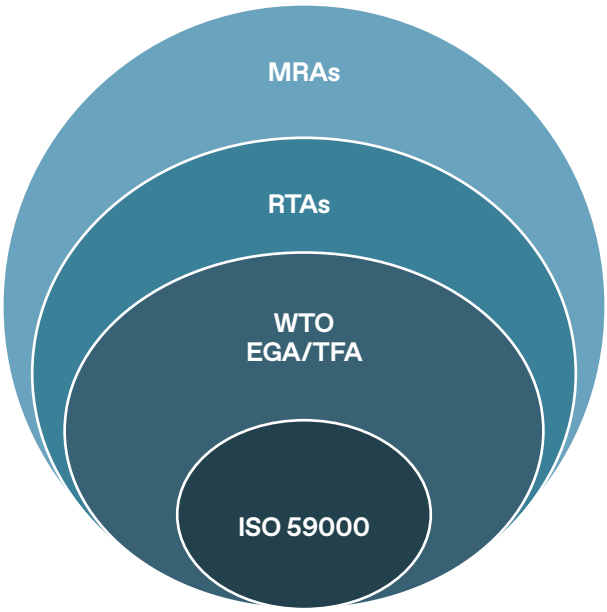
Among these solutions, the need to come up with common recognition(s) of what constitutes circular goods or services and move towards regulatory alignment stands out as a priority as this would unlock the potential for market measures both to facilitate circular trade and limit the most socially and environmentally harmful linear value chains.

> The need to come up with common recognition(s) of what constitutes circular goods or services and move towards regulatory alignment stands out as a priority

While respecting WTO compatibility, members could take concrete measures in that direction, such as officially rekindling discussions on definitions and classifications of circular goods and services, but with the stated intention of focusing on mutual recognition aspects in an inclusive manner rather than mere tariff solutions in order to avoid the risk of a breakdown in talks as occurred for the Environmental Goods Agreement (EGA).

To prevent such deadlock, the notion of concentric circles (illustrated in Figure 3) could be useful when considering circular economy standards to fully account for the various capacities of members to align with these common practices. These concentric circles would include the adoption of mutual recognition agreements (MRAs), the integration of relevant provisions in regional trade agreements (RTAs), a relaunched EGA at the WTO, and, for those members/companies with the capacity to do so, certifications under the recently adopted ISO 59000 series on circular economy.

**Figure 3. A Dynamic Alignment System for Circular Economy Solutions**




Source: Authors' elaboration.

The WTO is arguably an ideal forum to drive such a concerted approach. While negotiation of a fully-fledged EGA would presently appear highly optimistic, there are many provisions in the existing WTO Trade Facilitation Agreement (TFA) that could be leveraged to promote the concept of trusted trade in reverse supply chains and achieve the same objective of common recognition of circular economy goods and services while supporting customs and market surveillance authorities to embark on the process, especially in developing countries.

Under this approach, countries would be encouraged to integrate their circular economy standards deeper and deeper, thereby further liberating the market potential of circular economy goods and services, yet without presuming any particular level of economic development or domestic capacities. The process could start with a "simple" MRA with trusted partners, eventually moving towards more stringent definitions, with the ISO 59000 series providing the ultimate benchmark for these discussions and cooperation.

This coordination effort would be fuelled by agreements to further improve the Harmonized System (HS) linked to tariff and non-tariff solutions (e.g. subsidies) to promote circular trade over non-circular options. It would also be supported by specific initiatives based on principles of extended producer responsibility (EPR); a key policy approach to improve the price dynamics of circular practices for economic operators.

Yet such policies currently tend to focus on downstream activities while remaining largely confined to the domestic level, thereby failing to address properly largely globalized value chains where goods are disposed or recycled at the end of the life cycle in a different country. The WTO could facilitate international cooperation to formulate and promote cross-border EPR schemes that include upstream considerations such as circular design while ensuring that the EPR fees follow the goods across borders. This would help to address the current focus on downstream considerations at the WTO, and support greater transparency and traceability on global material flows throughout the life cycle.

> These renewed efforts at a global transition towards circularity must be concerted and financed, as well as contingent on effective capacity building measures to address the adaptation challenges of vulnerable operators.

**Consultation, Coordination, and Financing**

In order to be impactful, these renewed efforts at a global transition towards circularity must be concerted and financed, as well as contingent on effective capacity building measures to address the adaptation challenges of vulnerable operators—such as smallholders and micro, small, and medium-sized enterprises (MSMEs) in developing economies—to adopt new circular economy practices and standards. Support measures should also include technology access and diffusion agreements as well as digital skills training to drive innovation towards circularity in production processes in developing countries.

These support measures should be embedded and streamlined in all cooperation mechanisms, with major economies and donors such as the EU, United States, China, and multilateral development banks playing a crucial role, thus further highlighting the necessity of coordination among a variety of stakeholders. The role of international cooperation programmes and political alliances such as the Global Alliance on Circular Economy and Resource Efficiency (GACERE) could also be further enhanced.

The transition to a global circular economy supported by a clear and transparent rules-based trading system is a key solution to address the unfolding triple planetary crisis. The WTO has the potential to be central in this process of regulatory alignment by ensuring a flexible application of common circular economy principles globally and avoiding costly market fragmentation. Members now have the responsibility to drive this agenda forward.

***Antoine Oger*** *is Research Director, Institute for European Environmental Policy.*

***Pierre Leturcq*** *is Head of Programme, Global Challenges and SDGs, Institute for European Environmental Policy.*

# ANNEX 1. List of Authors

**Ken Ash** is Director, Ash Global Insights, Visiting Fellow at the Institute for International Trade, Adelaide, and former OECD Director of Trade and Agriculture.

**Kaushik Ranjan Bandyopadhyay** is Chairperson, Centre for Business Sustainability, Indian Institute of Management, Lucknow.

**Christophe Bellmann** is Head of Policy Analysis and Strategy, Forum on Trade, Environment, & the SDGs (TESS).

**Ujal Singh Bhatia** is Honorary Professor at the National Law University Delhi and Advisor to the Council on Economic Policies. He served on the Appellate Body of the WTO from 2011–20 and was the Chairman from 2017–18.

**Kimberley Botwright** is the Head of Sustainable Trade at the World Economic Forum.

**Clara Brandi** is Head of Programme, Transformation of Economic and Social Systems, German Institute of Development and Sustainability (IDOS).

**Umberto Celli** Junior is Professor of International Law, University of São Paulo.

**Bipul Chattopadhyay** is Executive Director of CUTS International.

**Elena Cima** is Lecturer in Law at the University of Geneva and a contributor to the Remaking Trade Project.

**Thomas Cottier** is Emeritus Professor of European and International Economic Law, Senior Research Fellow, World Trade Institute, University of Bern, Switzerland, and member of the MPIA pool of appeal arbitrators at the WTO.

**Anthony Cox** is Senior Policy Advisor with the Ecologic Institute, and former OECD Deputy Director of the Environment Directorate.

**Victor Crochet** is a Senior Associate in the Brussels office of Van Bael & Bellis.

**Kasturi Das** is Professor, Institute of Management Technology, Ghaziabad, Delhi-NCR, India; and Fulbright-Kalam Climate Fellowship for Academic and Professional Excellence (Research) Scholar and Visiting Fellow at the Yale Center for Environmental Law & Policy, Yale University.

**Carolyn Deere Birkbeck** is Founder and Executive Director, Forum on Trade, Environment, & the SDGs (TESS).

**Peter Draper** is Executive Director of the Institute for International Trade and Director of the Jean Monnet Centre of Excellence in Trade and Environment at the University of Adelaide.

**Simon J. Evenett** is Professor of Geopolitics and Strategy at IMD.. He is also the Founder of the St. Gallen Endowment for Prosperity Through Trade.

**Dan C. Esty** is the Hillhouse Professor of Environmental Law and Policy at Yale University; Co-lead of the Remaking Trade Project.

**Kevin Gallagher** is the Director of the Boston University Global Development Policy Center and Professor of Global Development Policy at the Boston University Pardee School of Global Studies.

**Henry Gao** is Professor of Law, Singapore Management University.

**Mark Halle** is Senior Advisor at NatureFinance.

**Tim Hirschel-Burns** is the Policy Liaison for the Global Economic Governance Initiative at the Boston University Global Development Policy Center.

**Robert Howse** is the Lloyd C. Nelson Professor of International Law at NYU School of Law.

**Marion Jansen** is Director of the Trade and Agriculture Directorate at the Organisation for Economic Co-operation and Development (OECD).

**Jodie Keane** is a Senior Research Fellow with the International Economic Development Group at ODI.

**David Kleimann** is a Senior Research Associate for ODI's International Economic Development Group and ODI Europe.

**Marco Lambertini** is Convenor of the Nature Positive Initiative. He was WWF International Director General (2014-2022) and Special Envoy (2023).

**Fabrice Lehmann** is Senior Editor and Publications Manager, Forum on Trade, Environment, & the SDGs (TESS).

**Pierre Leturcq** is Head of Programme, Global Challenges and SDGs, Institute for European Environmental Policy.

**David Luke** is Professor in Practice, Firoz Lalji Institute for Africa, London School of Economics and Political Science.

**Shruti Maheshwari** is Senior Research Associate of CUTS International.

**Fernando Martin** leads the Analytics Unit at the Global Trade Alert.

**Brad McDonald** is a Lecturer with the University of Minnesota, Humphrey School of Public Affairs, and former Deputy Head of Trade, IMF.

**Pradeep S. Mehta** is Secretary General of CUTS International.

**Antoine Oger** is Research Director, Institute for European Environmental Policy.

**Jean-Marie Paugam** is Deputy Director-General of the World Trade Organization.

**Joost Pauwelyn** is Professor of International Law, Head of the International Law Department, and Director of the Centre for Trade and Economic Integration, Geneva Graduate Institute.

**Jan Yves Remy** is Director of the Shridath Ramphal Centre for International Trade Law, Policy and Services at the University of West Indies, Cave Hill Campus; Co-Lead of the Remaking Trade Project for a Sustainable Future; and WTO Chair for the University of the West Indies, Cave Hill Campus, Barbados.

**Michai Robertson** is a Research Fellow within the Climate and Sustainable Programme at ODI.

**Scott Vaughan** has worked for the secretariats of UNEP, the WTO, and the NAFTA Environment Commission.

**Brendan Vickers** is Head of International Trade Policy at the Commonwealth Secretariat in London.

**Cecilia Wandiga** is Executive Director, Centre for Science and Technology Innovations, Nairobi.

**H.E. Matthew** Wilson is Ambassador and Permanent Representative of Barbados to the United Nations, World Trade Organization, and other international organizations in Geneva. Ambassador Wilson is Chair of the WTO Informal Working Group on MSMEs.

**Peter Wooders** is an independent energy specialist.

**Vicente Paolo** Yu is an independent expert and consultant for various United Nations agencies and NGOs.

**Weihuan Zhou** is Associate Professor, Director of Research, and Co-Director of the China International Business and Economic Law (CIBEL) Centre, Faculty of Law and Justice, University of New South Wales, Sydney.

# ANNEX 2. WTO Bodies Where Trade and Environment Issues Arise

By providing a space for multilateral cooperation, the World Trade Organization (WTO) is an important venue for deliberations and action in support of trade that advances sustainable development in its three dimensions—economic, social, and environmental. It offers a range of entry points for governments to address the intersection of trade and environment, along with wider sustainable development objectives.

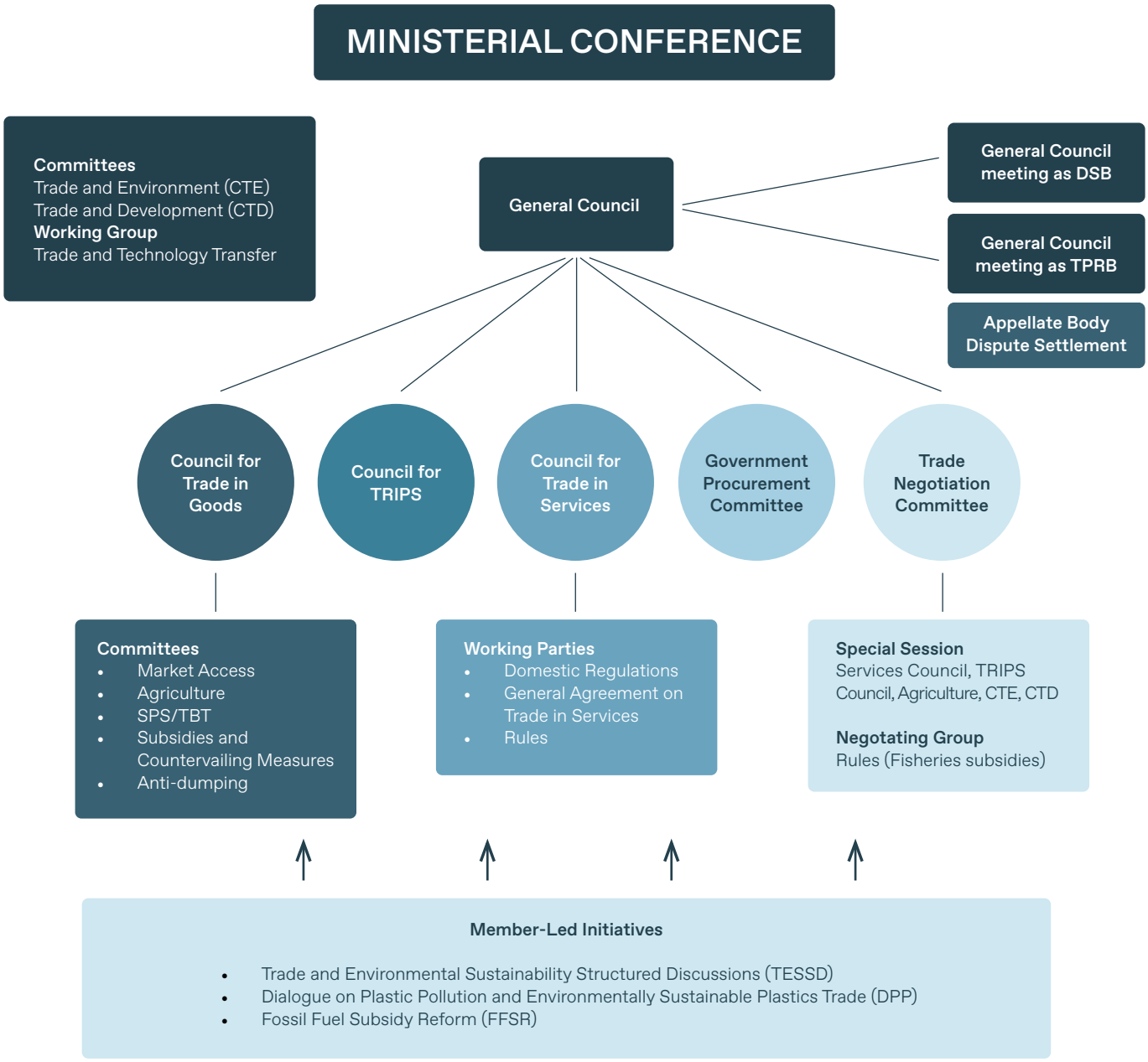
While there is no specific agreement in the WTO dealing in general with the environment, numerous provisions in existing agreements are relevant to environment and trade and to harnessing trade and trade policies to advance sustainability goals. Trade-related environmental policies are routinely discussed under WTO bodies charged with monitoring implementation of and compliance with existing agreements. WTO committees also provide a deliberative space to clarify rules, discuss new issues, and explore specific aspects of the trade and environment nexus.

In addition, recent initiatives sponsored by different subsets of WTO members on environmental sustainability, plastic pollution, and fossil fuel subsidy reform present new openings for fostering dialogue and cooperation on trade, environment, and sustainable development at the WTO.

The range of entry points, institutional fora, and processes at the WTO where the trade-environment-sustainable development interface is or can be addressed provide critical spaces to review existing policies, exchange information, discuss best practices, incubate stronger multilateral cooperation, foster shared understandings, negotiate, solve problems, and litigate when necessary.

Taken from the TESS policy brief on *Trade and environment at the World Trade Organization: state of play and entry points*, the figure provides a schematic (and non-exhaustive) overview of WTO bodies where environmental discussions have arisen over the years, even if sporadically. It also includes the initiatives on environment and sustainable development led by different subsets of WTO members.

**WTO Bodies Where Trade and Environment Issues Arise**




Note: DSB stands for Dispute Settlement Body, TPRB for Trade Policy Review Body, TRIPS for trade-related aspects of intellectual property rights, SPS for sanitary and phytosanitary, and TBT for technical barriers to trade. The figure does not cover all WTO processes and member-led initiatives where sustainability issues arise.

Source: TESS (2024).

TESS Forum on Trade, Environment, & the SDGs

tessforum.org

@TESSForum

info@tessforum.org



Published by the Forum on Trade, Environment, & the SDGs (TESS)

Geneva Graduate Institute
Chemin Eugène-Rigot 2
CH-1202 Genève
Switzerland

GENEVA GRADUATE INSTITUTE

INSTITUT DE HAUTES ÉTUDES INTERNATIONALES ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES

TESS is housed at the Geneva Graduate Institute.