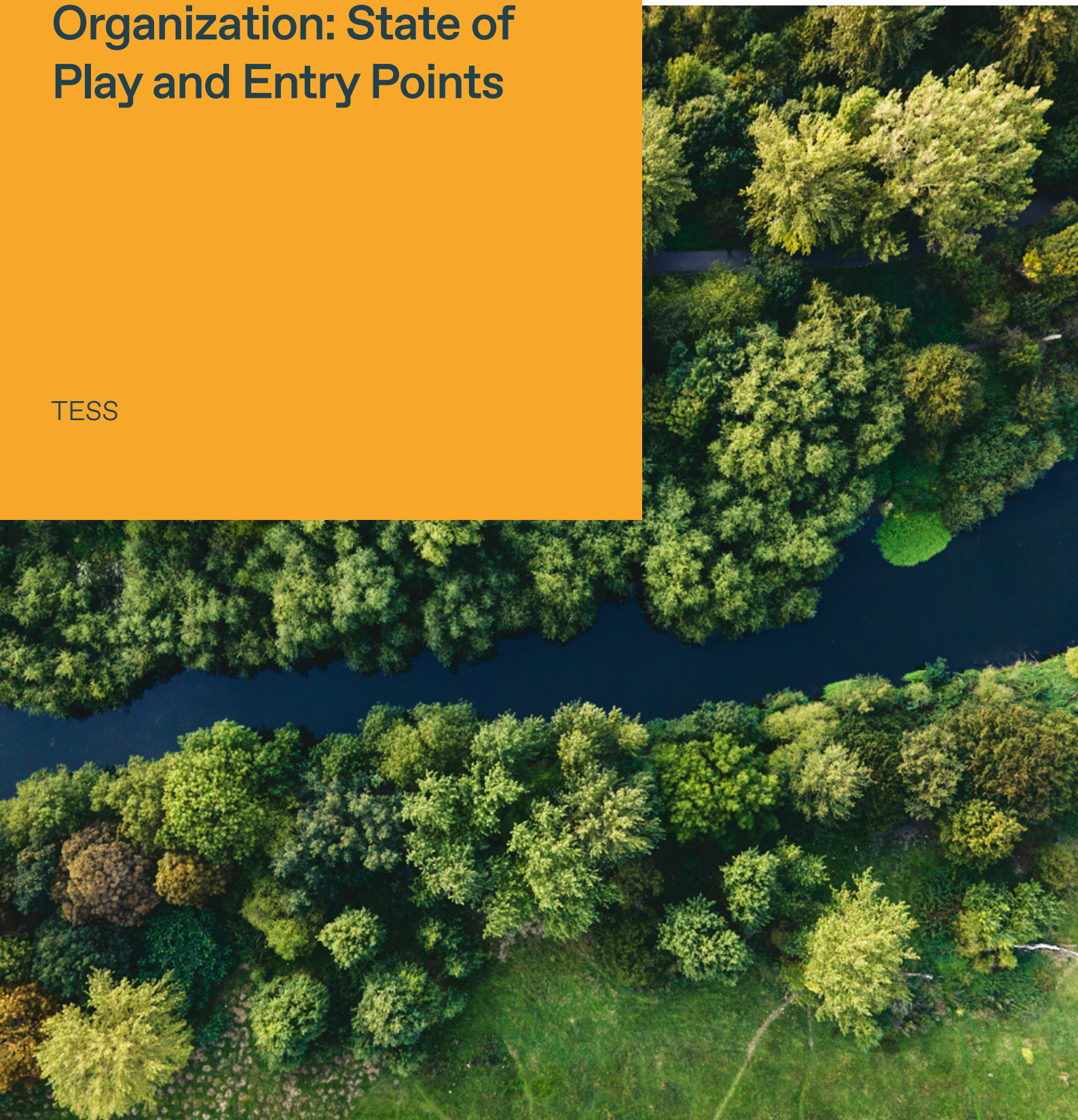


# Trade and Environment at the World Trade Organization: State of Play and Entry Points

TESS



## 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.

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## Executive Summary

In today's global economy, addressing transboundary environmental crises such as climate change, biodiversity loss, and pollution requires coherent and collaborative policy approaches across jurisdictions and between policy communities. Aligning trade and environment policies is a critical challenge for global governance, which will require enhanced cooperation among governments and stakeholders at the World Trade Organization (WTO).

By providing a space for multilateral cooperation, the 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.

This policy brief provides an update on the trade and environment interface at the WTO from a governance perspective. It offers governments and stakeholders an overview of the range of entry points, institutional fora, and processes at the WTO where this interface is or can be addressed.

The various WTO bodies and initiatives described in this policy brief 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.

Looking forward, the key to harnessing the WTO as an effective arena for advancing cooperation on pressing trade, environment, and sustainable development challenges facing the global economy will be to foster a critical reflection on how global rules and new forms of cooperation can be developed to proactively support action on trade and sustainability.

## Abbreviations

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CBAM	Carbon Border Adjustment Mechanism
CPC	Central Product Classification
CTD	Committee on Trade and Development
CoA-SS	Committee on Agriculture in Special Session
COP	UN Climate Change Conference
CTD	Committee on Trade and Development
CTE	Committee on Trade and Environment
CTE-SS	Committee on Trade and Environment in Special Session
CTS	Council for Trade in Services CTS
CTS-SS	Council for Trade in Services in Special Session
DPP	Dialogue on Plastic Pollution
EDB	Environmental Database
FFSR	Fossil Fuel Subsidy Reform
GATT	General Agreement on Tariffs and Trade
IUU	Illegal, Unreported, and Unregulated
LDC	Least Developed Country
LLDC	Landlocked Developing Country
MC	Ministerial Conference
MEA	Multilateral Environmental Agreement
MPIA	Multi-Party Interim Appeal Arbitration Arrangement
NGO	Non-Governmental Organization
OACPS	Organisation of African, Caribbean and Pacific States
RFMO/A	Regional Fisheries Management Organization/Arrangement
SDG	Sustainable Development Goal
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TESSD	Trade and Environmental Sustainability Structured Discussions
TNC	Trade Negotiations Committee
TPRM	Trade Policy Review Mechanism
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNEP	United Nations Environment Programme
WCO	World Customs Organization
WTO	World Trade Organization

# 1. Introduction

The interface between trade and environment policies is a critical challenge for global governance and is increasingly recognized by a range of governments and stakeholders as a central topic for enhanced cooperation at the World Trade Organization (WTO). While sustainable development, including the protection of the environment, is firmly enshrined in the Preamble of the Marrakesh Agreement establishing the WTO as a key objective of the multilateral trading system,<sup>1</sup> the nexus between trade, environment, and sustainable development has been a recurring subject of debate for the last 50 years.<sup>2</sup>

Since then, “trade and environment” has been permanently on the agenda of the WTO although the discussion has significantly evolved over the years. At the Twelfth WTO Ministerial Conference (MC12) in June 2022, members in the Outcome Document recognized “global environmental challenges including climate change and related natural disasters, loss of biodiversity and pollution” and noted “the importance of the contribution of the multilateral trading system to promote the UN 2030 Agenda and its Sustainable Development Goals in its economic, social, and environmental dimensions, in so far as they relate to WTO mandates and in a manner consistent with the respective needs and concerns of Members at different levels of economic development.”<sup>3</sup> The Ministerial Declaration of the Thirteenth WTO Ministerial Conference (MC13) in February 2024 recalled the objectives of the Marrakesh Agreement and “underscore[d] the importance of trade and sustainable development in its three pillars – economic, social, and environmental.”<sup>4</sup> Additionally,

a number of ministerial declarations, decisions, and statements at MC13 noted the contribution of the multilateral trading system to tackling environmental challenges including climate change (Deere Birkbeck & Bellmann, 2024b) (see Box 1).

While there is no specific WTO agreement dealing in general with the environment, several provisions in WTO agreements define the conditions under which members can adopt trade-related environmental measures. At the broadest level, Article XX of the GATT (the core instrument governing trade in goods in the WTO) allows members to implement environmental measures to protect human, animal, or plant life and health or to conserve exhaustible natural resources, provided these measures do not constitute a “means of arbitrary or unjustifiable discrimination” between countries where the same conditions prevail or a “disguised restriction on international trade.”<sup>5</sup> Building on this general principle, several other WTO agreements, such as the Agreement on Technical Barriers to Trade (TBT), also address the balance between the right to adopt environmental measures and the need to avoid unnecessary restrictions to trade.

Issues related to trade and the environment are routinely raised in a variety of WTO bodies. Each of these bodies supports one or more of the WTO’s functions—e.g. trade negotiations, monitoring and supporting implementation of existing agreements, dispute settlement, policy dialogue, transparency, technical assistance and capacity building, outreach and cooperation with other organizations—and addresses the issue from their respective angle.

1. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement].
2. The link between trade and environmental protection was first recognized in the General Agreement on Tariffs and Trade (GATT)—the predecessor of the WTO—with the creation of a Group on Environmental Measures and International Trade in the run-up to the 1972 Stockholm Conference on the Human Environment. In practice, the group convened only 20 years later when Austria, Finland, Iceland, Liechtenstein, Norway, Sweden, and Switzerland (who were at the time all members of the European Free Trade Association) proposed to discuss possible contributions of the system to the upcoming 1992 Rio Conference on Environment and Development. In 1982, a number of developing countries raised concerns about the export by developed countries of products that these same countries prohibit domestically due to their impact on the environment, human health, or safety—a concern that led to the creation in 1989 of a Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances. Following the Rio Conference, these discussions led to the incorporation of the newly established notion of sustainable development into the Preamble of the Marrakesh Agreement, and additionally to a 1994 Ministerial Decision on Trade and Environment, which highlighted the mutual supportiveness of trade and environmental policies and called for the creation of what would become the WTO Committee on Trade and Environment (CTE) (WTO, n.d.-k).
3. World Trade Organization, MC12 Outcome Document of 17 June 2022, WTO Doc. WT/MIN(22)/24, WT/L/1135 (2022).
4. World Trade Organization, Abu Dhabi Ministerial Declaration of 2 March 2024, WTO Doc. WT/MIN(24)/DEC (2024).
5. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT].

This policy brief provides an overview of the different entry points at the WTO where the trade and environment interface is or can be addressed. The focus is on WTO processes and functions rather than specific trade rules or policies, with the goal of helping readers understand where and how environmental issues arise in the WTO. From this governance perspective, the paper provides an overview of the state

of play on trade and environment by reviewing recent deliberations in the WTO's various multilateral bodies and in the Secretariat's activities. It also provides an introduction to ongoing discussions taking place under initiatives led by different subsets of WTO members on environmental sustainability, plastic pollution, and fossil fuel subsidy reform as reflected in three ministerial statements launched in December 2021.

### Box 1. Sample of Ministerial Declarations, Decisions, and Statements on Environment or with Environmental Elements at MC13

- *Ministerial Declaration by all WTO members on Strengthening Regulatory Cooperation to Reduce Technical Barriers to Trade* (see footnote 53): Reaffirmed the relevance of the TBT Agreement to tackle “modern global trade challenges and emerging policy concerns, including measures taken to address climate change.” The declaration further urged the TBT Committee to “promote its Member-driven work on immediate and emerging regulatory challenges, including but not limited to the areas of climate change, sustainable development” and others.
- *Ministerial Declaration by Argentina, Bangladesh, Barbados, Plurinational State of Bolivia, Brazil, Cabo Verde, Colombia, Ecuador, Egypt, Honduras, Indonesia, Kazakhstan, Panama, Paraguay, Peru, South Africa, Uruguay, Bolivarian Republic of Venezuela, and the African Group on the contribution of the multilateral trading system to tackle environmental challenges*:<sup>6</sup> Highlighted the support of co-sponsors for coherent, open, member-driven, consensus-based, and inclusive discussion of trade and environment issues across WTO bodies. Encouraged 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 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.
- *Ministerial Declaration by the Least Developed Country (LDC) Group*:<sup>7</sup> Noted concern about the degradation of the environment. Urged members to refrain from adopting trade distorting measures inconsistent with WTO rules and underlined that measures taken to mitigate climate change do not serve as disguised barriers to trade. Further urged members to follow the Paris Agreement and other relevant international instruments to provide adequate financial support and technology transfer to LDCs to adapt to climate change.
- *Ministerial Declaration by the Organisation of African, Caribbean and Pacific States (OACPS)*:<sup>8</sup> Urged revitalizing the work of the CTE, focusing on the need to assist developing countries and LDCs in meeting their trade-related environmental

6. World Trade Organization, Ministerial Declaration on the Contribution of the Multilateral Trading System to Tackle Environmental Challenges of 29 February 2024, Communication From Argentina, Bangladesh, Barbados, Plurinational State Of Bolivia, Brazil, Cabo Verde, Colombia, Ecuador, Egypt, Honduras, Indonesia, Kazakhstan, Panama, Paraguay, Peru, South Africa, Uruguay, Bolivarian Republic Of Venezuela, And The African Group, WTO Doc. WT/MIN(24)/28 (2024).  
 7. World Trade Organization, Least Developed Country Group Ministerial Declaration of 18 January 2024, Priorities at the World Trade Organization, WTO Doc. WT/MIN(24)/2 (2024).  
 8. World Trade Organization, OACPS Ministerial Declaration on the Thirteenth WTO Ministerial Conference of 21 February 2024, WTO Doc. WT/MIN(24)/12 (2024).

**Box 1. (Continued)**

challenges and ensuring environmental measures taken by members do not constitute disguised restrictions to trade.

- *Ministerial Declaration by the Pacific Group:*<sup>9</sup> Supported the revitalization of the work in the CTE as well as the intensification of discussions to find tangible and mutually supportive trade policy solutions that contribute to climate change mitigation and adaptation, and environmental sustainability.
- *Ministerial Statement by Argentina, Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Panama, Paraguay, Peru, and Uruguay on the reform of the multilateral rules on agricultural trade:*<sup>10</sup> Affirmed the importance of multilateral cooperation in a context of multiple global environmental challenges and urged the avoidance of unilateral trade measures including trade-related environmental measures to address global issues.
- *Ministerial Declaration by the Landlocked Developing Countries (LLDCs):*<sup>11</sup> Recognized the increasing role of environmental sustainability in international trade and the impact of climate change on trade of the LLDCs. Called upon LLDCs to pay more attention to address their trade-related environmental issues, provide comprehensive review on this matter, and share their best practices based on their experiences.
- *Ministerial Declaration by the LDC Group on aid for trade dedicated to LDCs:*<sup>12</sup> Called for the

reinforcement of aid for trade dedicated to LDCs. Recognized the distinct needs of acceding LDCs that are also graduating and of those that remain far from graduation thresholds, with economic and environmental vulnerability increasing for all LDCs, and the need for dedicated support until sustainable graduation.

- *Ministerial Decision on Work Programme on Small Economies:*<sup>13</sup> Instructed the WTO Secretariat to provide relevant information and factual analysis for discussion among members in the Committee on Trade and Development's Dedicated Session on Small Economies 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.
- *Communiqué from the Coalition of Trade Ministers on Climate [issued on the sidelines of MC13]:*<sup>14</sup> Underlined "the importance of making the WTO more responsive to global environmental challenges," 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," and urged all WTO members to accept the Agreement on Fisheries Subsidies as soon as possible. The coalition's Menu of Voluntary Actions included "[a]ctively engag[ing] in the WTO on the nexus of trade, climate and sustainable development."

9. World Trade Organization, Pacific Ministerial Statement for the Thirteenth Ministerial Conference (MC13) of the World Trade Organization (WTO), 27 February 2024, WTO Doc. WT/MIN(24)/21 (2024).

10. World Trade Organization, Statement on the Reform of the Multilateral Rules on Agricultural Trade, 27 February 2024, WTO Doc. WT/MIN(24)/20 (2024).

11. World Trade Organization, Landlocked Developing Countries (LLDC) Ministerial Declaration of 5 March 2024, WTO Doc. WT/MIN(24)/41 (2024).

12. World Trade Organization, Least Developed Country Group Ministerial Declaration of 5 March 2024, Call for Reinforcement of Aid for Trade Dedicated to the LDCs, WTO Doc. WT/MIN(24)/40 (2024).

13. World Trade Organization, Ministerial Decision of 2 March 2024, Work Programme on Small Economies, WTO Doc. WT/MIN(24)/33, WT/L/1188 (2024).

14. World Trade Organization, Coalition of Trade Ministers on Climate, Communiqué from Coalition Ministers, 29 February 2024, WTO Doc. WT/MIN(24)/26 (2024).



## 2. How is the Environment Addressed in WTO Bodies and Processes?

To understand how the environment features at the WTO, it is useful to have an overview of the different WTO bodies dealing with environmental concerns and the functions they perform in the system. Figure 1 provides a schematic overview of those 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 (discussed in section 3).

The highest authority in the WTO is the Ministerial Conference, which involves representatives of the full WTO membership and generally meets every two years to take decisions on all matters under any of the multilateral trade agreements. In the interim, the General Council conducts this day-to-day work. The General Council also convenes in two particular forms: as the Dispute Settlement Body to adopt panel reports under the WTO's dispute settlement mechanism, and as the Trade Policy Review Body to review members' trade policies under the Trade Policy Review Mechanism (TPRM). The General Council delegates responsibility to three different councils dealing respectively with trade in goods, trade in services, and trade-related aspects of intellectual property rights (TRIPS). Under each council, specific committees or working parties meet regularly to review the implementation of different agreements.<sup>15</sup> Committees that are not related to particular WTO agreements, such as the CTE or the Committee on Trade and Development (CTD), report directly to the General Council.

Currently, the multilateral negotiating and rule-making function of the WTO is performed under the Trade Negotiations Committee (TNC) established at the

launch of the Doha Round in 2001. Under the TNC, different committees meet in “special sessions” indicating that they serve as the body to negotiate new rules. For example, negotiations aimed at developing new international disciplines on trade and environment-related issues have taken place under special sessions of the CTE.

The WTO's dispute settlement mechanism provides members with a legal framework for resolving trade disputes that arise between them in implementing WTO agreements. As described in section 2.3, a number of GATT and then WTO disputes have addressed environment issues. Under the dispute settlement system, each member can request the establishment of a panel to settle a particular dispute. The panel then issues a report, which can subsequently be appealed before the WTO's Appellate Body on questions of law. In 2017, after multiple complaints about alleged judicial overreach and violations of certain procedural rules, the United States started blocking the appointment process of new judges to the WTO Appellate Body, rendering it unable to hear appeals after December 2019.<sup>16</sup> At MC12, ministers outlined their aim to establish a “fully and well-functioning dispute settlement system accessible to all members by 2024” and reaffirmed their commitment at MC13.<sup>17</sup> This has led to the creation of an informal process, currently underway, aimed at reforming procedures governing disputes in the WTO.

Finally, Figure 1 includes three member-led initiatives on the environment, which are providing an additional space for members to foster cooperation. In December 2021, three separate ministerial statements were issued by interested members with a diverse range of

15. For example, the Committee on Agriculture oversees the implementation of the WTO Agreement on Agriculture. Other committees deal with subsidies and countervailing measures, market access, sanitary and phytosanitary (SPS) measures, and technical barriers to trade.

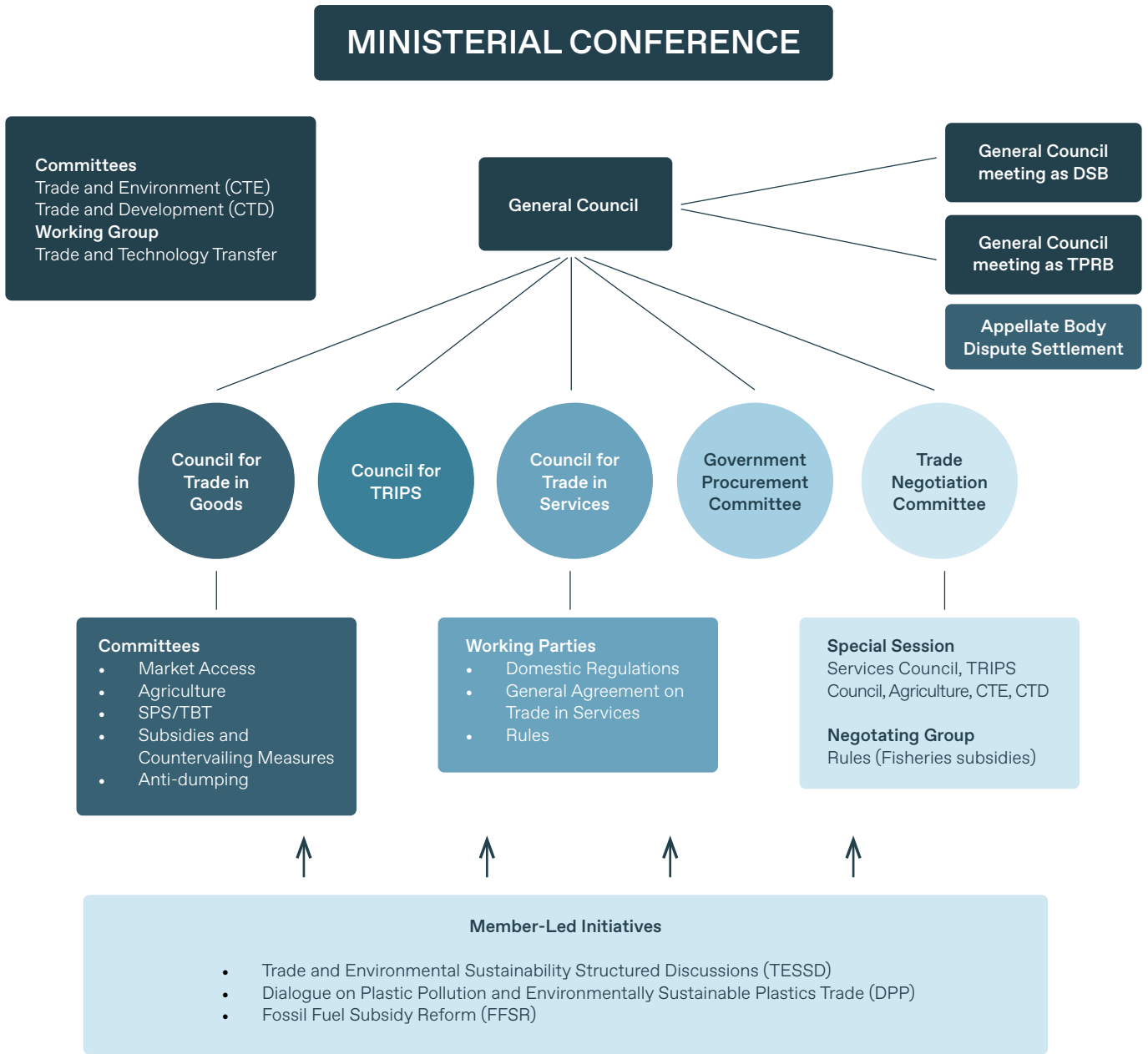
16. To preserve access to an independent appeal process, a subset of WTO members set up a separate appeal system for trade disputes in March 2020 known as the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). Launched by a group of 20 members under Article 25 of the Dispute Settlement Understanding, the MPIA process offers disputing members, who are also MPIA participants, to settle their disputes through an appeal arbitration mechanism.

17. World Trade Organization, Ministerial Decision of 2 March 2024, Dispute Settlement Reform, WTO Doc. WT/MIN(24)/37, WT/L/1192 (2024).

co-sponsors on environmental sustainability (76 WTO members), plastic pollution (78 WTO members), and fossil fuel subsidy reform (48 WTO members).

The following sections provide an update on the state of play on environment-related topics under these bodies and processes.

**Figure 1. 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: Authors' elaboration based on WTO (n.d.-q).

## 2.1 Ongoing Trade Negotiations and Rule-Making

Environment issues feature in several of the negotiations launched in 2001 under the Doha Round of multilateral trade negotiations (also known as the Doha Development Agenda). Although the momentum behind many aspects of the Doha Round negotiations has dwindled, several WTO negotiating groups established under the TNC address some environmental topics, including the Rules Negotiating Group, the CTE in Special Session (CTE-SS), the Council for Trade in Services in Special Session (CTS-SS), and the Committee on Agriculture in Special Session (CoA-SS).

### *The Rules Negotiating Group*

The Rules Negotiating Group is tasked with addressing anti-dumping, subsidies and countervailing measures, and provisions applying to regional trade agreements. From an environmental perspective, the most important topic dealt with by the group to date has been the fisheries subsidies negotiations.

Since the late 1980s, global fisheries have suffered from overfishing and increased instances of illegal, unreported, and unregulated (IUU) fishing, with direct consequences not only on the sustainability of fish stocks but also on food security and the livelihoods of coastal communities. Fisheries subsidies that reduce the cost of fishing operations or artificially enhance revenues directly contribute to the build-up of excessive fishing capacity and, in the absence of effective management measures, can lead to the depletion of fish resources. To address this challenge, WTO negotiations have been underway since 2001 to “strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing” with appropriate flexibilities for developing countries (i.e. special and differential treatment) being an integral element of the negotiations.<sup>18</sup> The United Nations (UN)

Sustainable Development Goals (SDGs) also call for the prohibition, by 2020, of certain forms of fisheries subsidies that contribute to overcapacity and overfishing and for the elimination of subsidies that contribute to IUU fishing (Target 14.6).

In a historic move, at MC12 members adopted the WTO Agreement on Fisheries Subsidies. This marked the first instance of a WTO agreement dedicated to environmental concerns since the inception of the WTO. The agreement introduces new disciplines on fisheries subsidies to (i) IUU fishing activities, (ii) overfished stocks, and (iii) fishing in the unregulated high seas. The agreement also incorporates provisions aimed at addressing challenges faced by developing and least developed countries in implementing the prohibitions, including a new WTO voluntary funding mechanism. A detailed description of the key elements agreed during the first phase of negotiations is provided in Box 2.

Despite its historical significance, the agreement reached at MC12 constituted a partial agreement. Faced with strong divergences, ministers ultimately decided to limit the scope of the agreement to those areas noted above where consensus could be achieved, postponing more controversial elements of the draft text for conclusion later. To address unfinished business, the Ministerial Decision adopting the agreement tasked the WTO Rules Negotiating Group with continuing to work on outstanding issues, including subsidies that contribute to overfishing and overcapacity, with the aim of making recommendations to MC13.<sup>19</sup> In an unprecedented move, ministers also included a sunset clause in Article 12 of the agreement stating that if “comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated.”

At MC13, discussions under the second wave of negotiations focused on three main aspects: (i) a general prohibition of subsidies that contribute

18. The negotiations are based on an original mandate subsequently refined at the 2005 Hong Kong Ministerial Conference. See World Trade Organization, Ministerial Declaration of 18 December 2005, Doha Work Programme, WT/MIN(05)/DEC (2005).

19. World Trade Organization, Ministerial Decision of 17 June 2022, Agreement on Fisheries Subsidies, WTO Document WT/MIN(22)/33, WT/L/1144 (2022).

to overcapacity and overfishing, including a list of subsidy types that are presumed to do so; (ii) possible exceptions to the general prohibition where a demonstration can be made that fisheries management measures are in place to maintain the targeted stocks at biologically sustainable levels; and (iii) special and differential treatment for developing country members, with ongoing discussions focusing on different transition periods but also exemptions to the general prohibition for LDCs, small-scale and artisanal fishing, or for countries accounting for a small share of global marine capture. The

proposed disciplines also included prohibiting subsidies “contingent upon or tied to” fishing beyond the subsidizing member’s jurisdiction, as well as additional transparency requirements (Irschlinger, 2024). However, despite sustained efforts, ministers were unable to close the outstanding gaps in negotiating the three aspects.

The agreement, adopted in 2022, will come into force when two thirds of the WTO membership (i.e. 110 members) accept the Protocol of the agreement. At the time of writing, 72 members had formally presented their “instruments of acceptance.”

## Box 2. Key Elements of the WTO Agreement on Fisheries Subsidies

1. *Subsidies contributing to IUU fishing:* The agreement prohibits subsidies for fishing or fishing-related activities when an IUU determination is made by a coastal member, a flag state member, or a relevant Regional Fisheries Management Organization/ Arrangement (RFMO/A).
2. *Subsidies regarding overfished stocks:* (a) The agreement prohibits subsidies for fishing or fishing-related activities regarding a stock in an overfished condition as determined by a coastal member or a relevant RFMO/A. (b) A member can continue to provide subsidies for fishing an overfished stock only if the subsidy is for rebuilding the stock, or other measures are implemented for this purpose.
3. *Subsidies provided to fishing and fishing-related activities in the unregulated high seas:* The agreement prohibits subsidies provided to fishing or fishing-related activities outside the jurisdiction of a coastal member or a coastal non-member, and outside the competence of a relevant RFMO/A (i.e. in areas and for species not covered by that RFMO/A).
4. *Special and differential treatment:* Developing and least developed country members benefit from a peace clause, exempting them from dispute settlement for two years after the agreement’s entry into force regarding subsidies contributing to IUU fishing and overfished stocks. Additionally, a call for due restraint is emphasized when raising matters involving LDC members, with solutions tailored to the specific situations of the LDC members concerned. Further, developing country members with a global fish catch share below 0.8% and LDCs have the option to submit fisheries-related notifications every four years instead of the standard two. To facilitate the implementation of the agreement, targeted technical assistance and capacity building will be provided to these members, supported by a WTO voluntary funding mechanism. The fund is operated by the WTO with three partner organizations, namely the Food and Agriculture Organization of the United Nations, the World Bank Group, and the International Fund for Agricultural Development.

## *Committee on Trade and Environment in Special Session*

The Doha Development Agenda provided a mandate for negotiations on trade and environment in the CTE-SS on three issues:

- The relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs);
- Procedures for regular information exchanges between MEA secretariats and the relevant WTO committees, and the criteria for the granting of observer status; and
- The reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.<sup>20</sup>

Discussions on the first two points in the CTE-SS have largely been procedural in nature. In 2011, a draft ministerial text on the first two topics was developed. Although it represented a diversity of member views and perspectives, it did not constitute an agreed text and was never adopted. On environmental goods, there have been some 78 submissions from WTO members and additional inputs by the Chair and the WTO Secretariat proposing numerous products as well as key environmental goods sectors for liberalization. However, the talks have been stalled since 2011 due to differences among WTO members on the definition and scope of environmental goods (what to liberalize) as well as on the negotiating modalities (how to liberalize). The stalemate was also affected by the larger breakdown of talks under the Doha Round following a lack of agreement on various other non-environment-related negotiating mandates.

Subsequently, attention shifted to a plurilateral initiative at the WTO with the launch in 2014 of

negotiations for an Environmental Goods Agreement by a subgroup of 46 WTO members.<sup>21</sup> In 2021, promoting and facilitating trade in environmental goods and services was one of the topics included in the Ministerial Statement on Trade and Environmental Sustainability,<sup>22</sup> and is also a theme of one of the four informal working groups of the member-led Trade and Environmental Sustainability Structured Discussions (TESSD) (see section 3).

While deliberations among members on environmental goods have mostly taken place in the CTE-SS, negotiations on environmental services have been taken up in the special sessions of the Council for Trade in Services (see below).

## *Council for Trade in Services in Special Session*

Discussions on trade in environmental services have taken place in the CTS-SS. As in the case of environmental goods, a particular challenge has been to agree on what constitutes “environmental services.” The sectoral services classification currently used in the WTO uses a definition of environmental services that focuses mostly on the collection, treatment, and disposal of liquid or solid wastes.<sup>23</sup> In light of the rapid evolution of the services sector, several members have highlighted the need to cover a broader range of environmental services, but consensus has so far not been reached on a revised definition.<sup>24</sup>

Due to persistent disagreements, negotiations on environmental services have been largely dormant. Over the past several years, however, exploratory discussions in the CTS-SS have regained momentum, with some members identifying specific services sectors where they deem liberalization and improved multilateral commitments could significantly contribute to advancing global action on environmental goals, such as engineering services, architectural services, construction services, distribution services, and consulting services.<sup>25</sup>

20. World Trade Organization, Ministerial Declaration of 14 November 2001, WTO Doc. WT/MIN(01)/DEC/1, 41 ILM 746 (2002) [hereinafter Doha Declaration].

21. The negotiations have been stalled since 2016 due to disagreements on the definition and scope of environmental goods to be included in the negotiations.

22. World Trade Organization, Ministerial Statement on Trade and Environmental Sustainability of 14 December 2021, Trade and Environmental Sustainability Structured Discussions (TESSD), WTO Doc. WT/MIN(21)/6/Rev.2 (2021).

23. The classification is based on a 1991 provisional version of the UN Central Product Classification (CPC) Division 94.

24. The European Union, for example, has proposed an approach centred around “core” environmental services under CPC Division 94, and a list of services with a clear environmental end-use but classified elsewhere. At the other side of the spectrum, India has proposed to link market access concessions to any services as long as they are imported in the context of clearly defined environmental projects.

25. Special Session of the Council for Trade in Services, *Exploratory Discussions on Market Access: Environmental Services*, Communication from Australia, Canada, Mexico, New Zealand, Switzerland, and the United Kingdom, WTO Doc. JOB/SERV/299/Rev.1 (October 5, 2020).

### *Committee on Agriculture in Special Session*

While not at the heart of ongoing WTO agricultural negotiations, environmental considerations are invoked in ongoing deliberations in the CoA-SS.<sup>26</sup> In particular, WTO members have drawn attention to so-called “non-trade concerns,” including environmental considerations, as a key consideration to be taken into account in the ongoing process of reform of agriculture.<sup>27</sup>

Such discussions have focused on the role of “green box” subsidies which are currently allowed without restrictions in the WTO. These include support measures that have no or minimal trade-distorting effects or effects on production, but which can help support public policy objectives such as environmental sustainability in agriculture. A particular concern that has arisen is to ensure that support for environmental goals provided under such programmes has no, or at most minimal, effect on the volume of production.<sup>28</sup> Climate change considerations or references to international commitments under SDG 2 (Zero Hunger) are also frequently mentioned in CoA-SS discussions as part of the rationale for further reforms in agriculture.

Overall, with the exception of a milestone 2015 ministerial decision to progressively eliminate export subsidies,<sup>29</sup> CoA-SS negotiations had largely been stalled since 2008. At MC12, members nonetheless adopted a landmark decision not to impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme. They also issued a Ministerial Declaration on the Emergency Response to Food Insecurity in reaction to the trade disruptions and excessive volatility resulting from the COVID-19 pandemic and the conflict in Ukraine.<sup>30</sup> The declaration calls for progress towards the achievement of a fair and market-oriented agricultural trading system, ending hunger, achieving food security and improved nutrition, promoting sustainable agriculture and food systems, and implementing resilient agricultural practices.

Beyond the MC12 outcomes, discussions in the CoA-SS have continued with a focus on finding convergence around possible ways forward on seven negotiating topics: domestic support to the farm sector; access to agricultural markets; a proposed new “special safeguard mechanism” (which would allow developing countries to raise tariffs temporarily in the event of a sudden surge in import volumes or drop in prices); export restrictions on food; export competition, covering measures that are seen as similar to export subsidies; cotton; and the procurement of food at government-set prices under developing countries’ public stockholding programmes for food security purposes.

In the run up to MC13, negotiations focused on a possible roadmap to relaunch the talks in these different areas. Some members had also proposed to establish a dedicated dialogue on sustainable agriculture production, productivity, and trade, as well as on resilient and sustainable food systems which would report to the General Council, including on any recommendations for future multilateral work at MC14. However discussions at MC13 proved inconclusive and consensus on future steps remained elusive. While the general mandate to continue the reform process enshrined in Article 20 of the Agreement on Agriculture remains valid, after two consecutive ministerial conferences where ministers failed to agree on guidance for future talks, the lack of outcome at MC13 generates renewed uncertainty about the future of these negotiations.

## 2.2 Monitoring Implementation of WTO Agreements

Trade-related environmental policies are routinely discussed under WTO bodies charged with monitoring implementation and compliance with existing WTO agreements. These bodies include a range of thematic committees and a dedicated mechanism for reviewing the trade policy landscape. A core purpose of these WTO bodies is to receive and review notifications of trade-related measures taken by members and allow members

26. For a discussion of trade and sustainability in the agricultural sector in the context of multilateral trade rules see Bellmann (2022).

27. See Article 20 of the Marrakesh Agreement and in the Doha Declaration.

28. For further details, a survey of the specific proposals discussed over this period is contained in Special Session of the Committee on Agriculture, *Negotiations on Agriculture*, WTO Doc. TN/AG/6 (December 18, 2002).

29. World Trade Organization, Ministerial Decision of 19 December 2015, Export Competition, WTO Doc. WT/MIN(15)/45, WT/L/980 (2015).

30. World Trade Organization, Ministerial Declaration on the Emergency Response to Food Insecurity, 26 June 2022, WTO Doc. WT/MIN(22)W/17/Rev.1 (2022).

to raise questions regarding existing or upcoming trade-related measures adopted by WTO members. In doing so, they provide a multilateral space to exchange information and address trade frictions in a pre-emptive, non-litigious, and cooperative manner.

Figure 2 provides an overview of trade-related environmental measures notified to the WTO between 2009–2022 under all WTO agreements and compiled in the WTO’s Environmental Database (EDB). Overall, 8,661 environment-related notifications were submitted by members during this period, referring to 18,197 environment-related measures. The number of measures notified has increased constantly since 2009, with developing and least developed countries accounting for nearly half of the total measures notified in recent years. Most of these measures are in the form of subsidies followed by technical regulations, standards, conformity assessment procedures, import licensing, and bans or prohibitions. The main sectors targeted include agriculture, manufacturing, and chemicals. In terms of environmental objectives, members have invoked a large range of justifications for such measures, including the management of chemicals, toxic, and hazardous substances, energy efficiency and renewable energy generation, sustainable production methods in agriculture, biodiversity and ecosystem conservation, and water and waste management. In the context of the member-led Dialogue on Plastic Pollution (DPP), the WTO Secretariat has presented analysis of the growing number of trade-related environmental measures that relate to plastic pollution, which is not otherwise one of the main categories of measures used in the EDB.<sup>31</sup>

### *The Committee on Trade and Environment*

Beyond transparency and notifications, WTO committees also provide a deliberative space to discuss specific aspects of the trade and environment nexus.

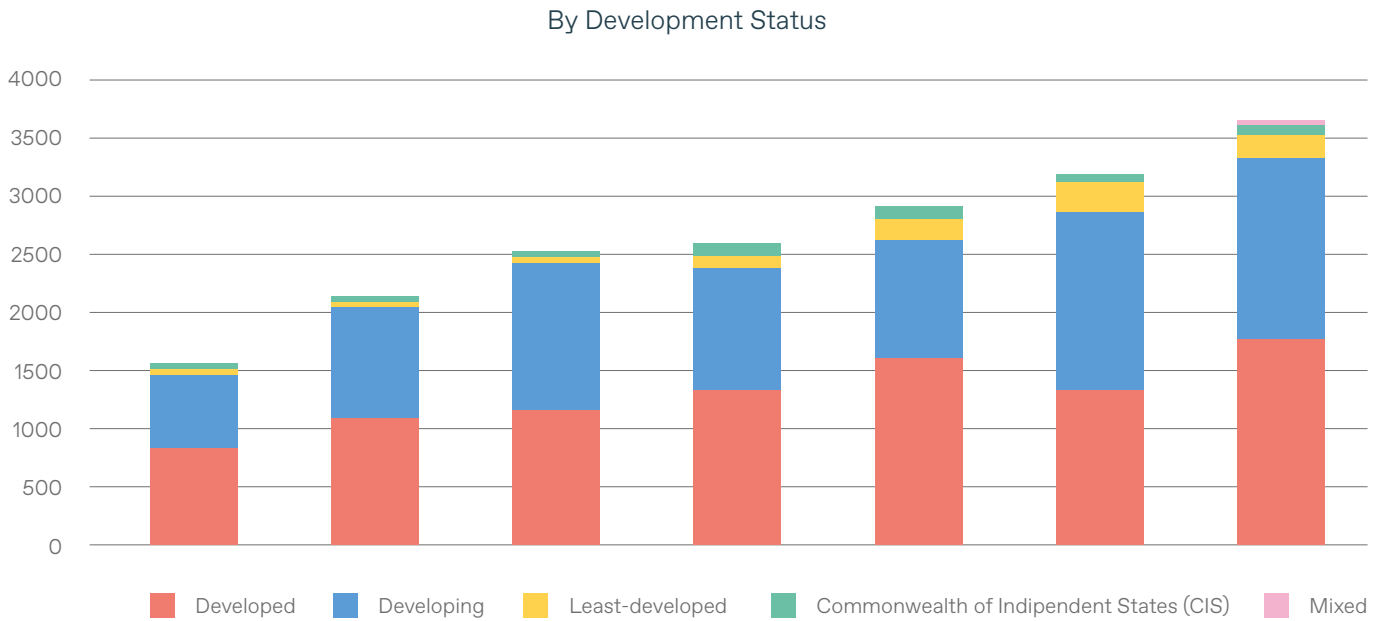
The regular CTE is the primary WTO mechanism for discussing environmental issues. The committee was established in 1994 and has formed an integral part of the WTO since the creation of the organization. Its mandate is to identify the relationship between trade and environmental measures in order to promote sustainable development and to make recommendations for possible modifications of the provisions of the multilateral trading system (WTO, n.d.-I). The role of the CTE as a standing forum dedicated to dialogue among members on the relationship between trade measures and environmental measures was also reaffirmed in the MC12 Outcome Document.<sup>32</sup>

The CTE’s official work programme was defined when the committee was established and has remained unchanged since. It consists of 10 specific thematic areas including, for example, exploring the intersection between international rules for trade and for the environment, identifying interlinkages between international trade rules and domestic policies, and providing guidance on environmental issues vis-à-vis the WTO and other international organizations (see Box 3). The process of taking these thematic areas forward varies, with some of them having become part of ongoing trade negotiations under the Doha Round (see section 2.1) and some forming items of focus on the CTE agenda.

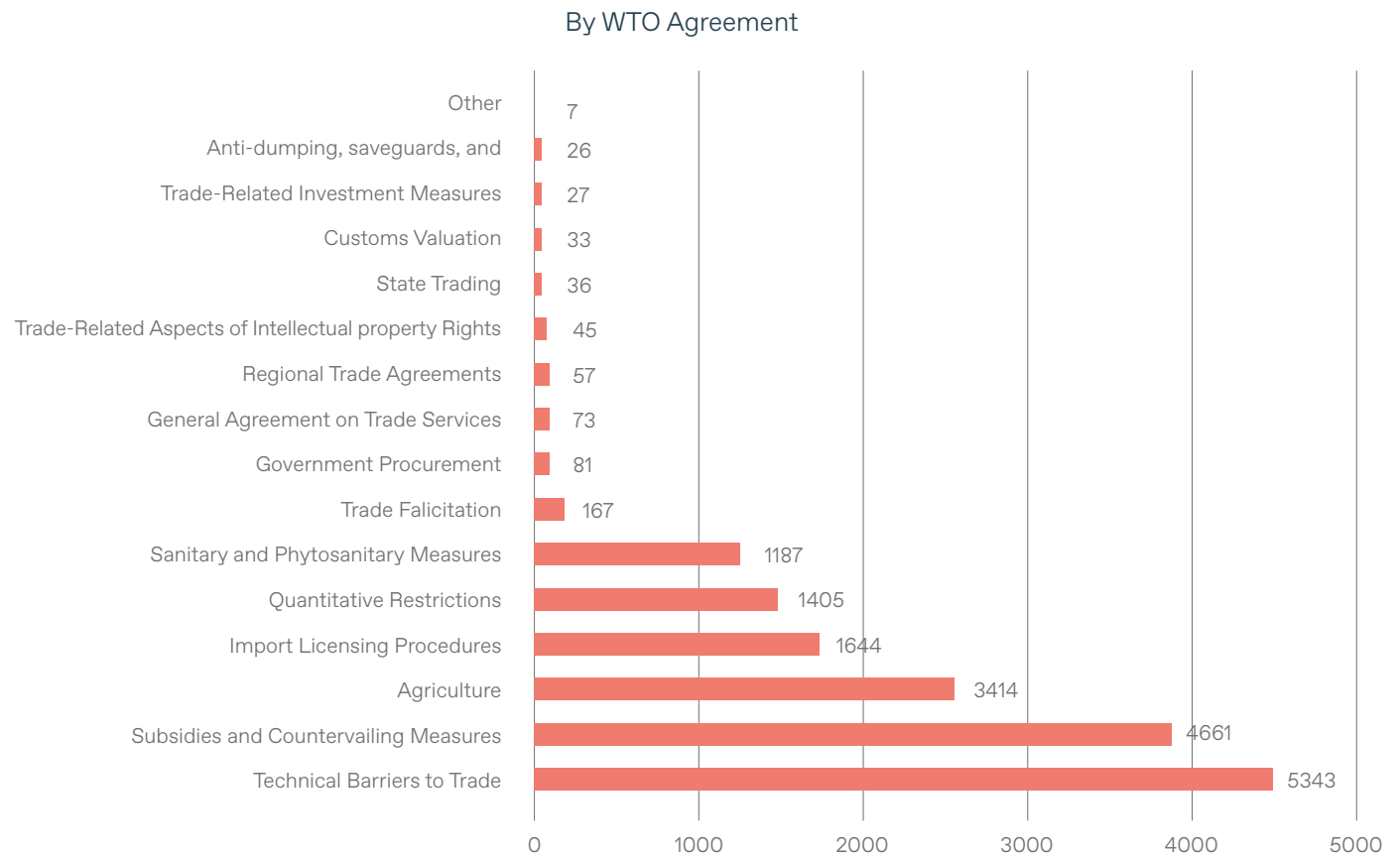
31. Between 1993–2023, the WTO EDB captured 223 trade-related plastic measures from 85 different WTO members from different regions. Out of these, the majority of measures target waste management and leakage avoidance. See Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade, *Factual Report of the Trade-Related Plastic Measures (TRPMS) Survey*, WTO Doc. INF/TE/IDP/W/11 (October 4, 2023).

32. World Trade Organization, MC12 Outcome Document of 17 June 2022, WTO Doc. WT/MIN(22)/24, WT/L/1135 (2022).

**Figure 2. Environmental Measures Notified to the WTO (2009–2022)**



Note: “Mixed” refers to measures notified by several members (e.g. as part of regional groupings) involving a mix of developed, developing, or least developed countries.

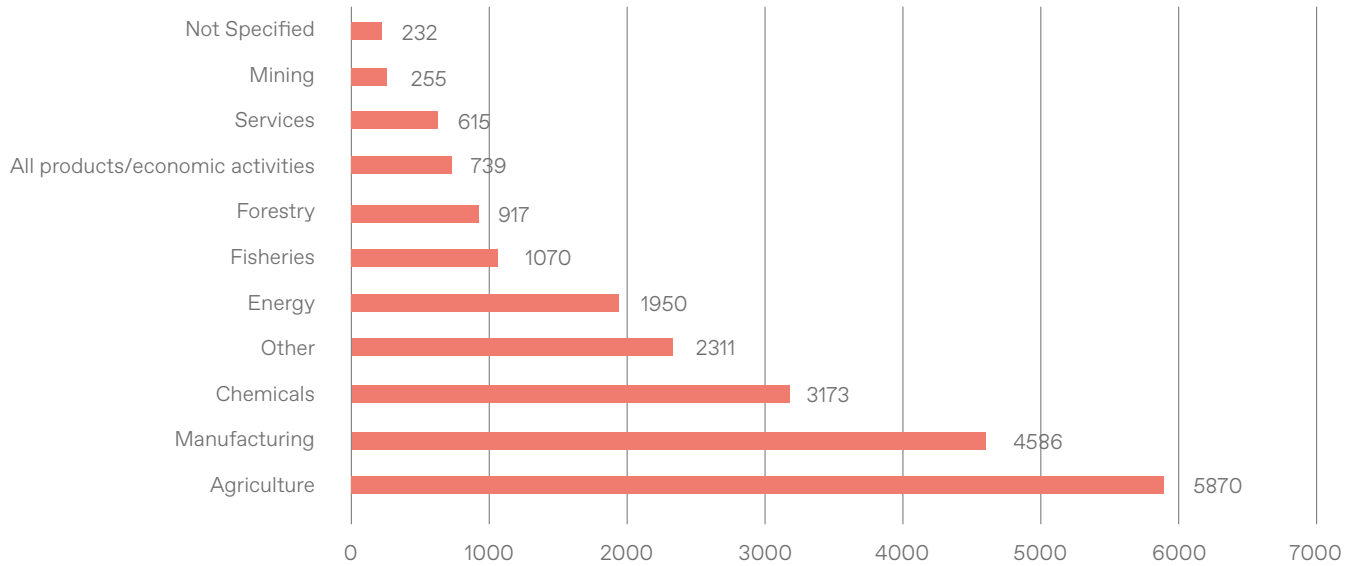


Source: Authors’ elaboration based on the WTO EDB (WTO, n.d.-b).

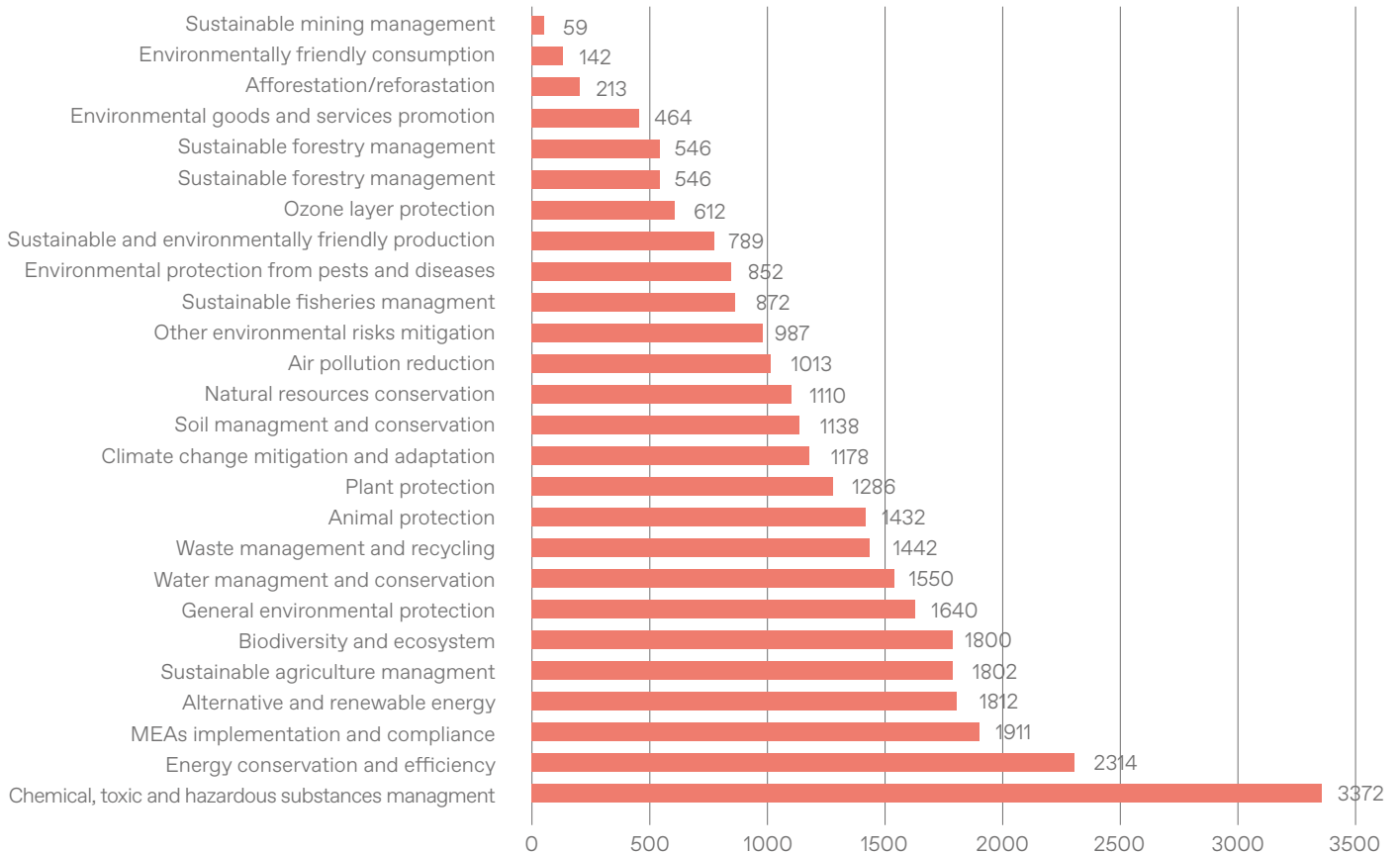


**Figure 2. Environmental Measures Notified to the WTO (2009–2022) (Continued)**

By Sector



By Environmental Objective



Note: Numbers do not necessarily add up to the total of 18,197 measures as certain measures may target multiple sectors and pursue several environmental objectives. Some measures are also notified to more than one WTO agreement.

Source: Authors' elaboration based on the WTO EDB (WTO, n.d.-b).

### Box 3. Areas of Work of the Committee on Trade and Environment

1. *Trade rules, environment agreements, and disputes (in negotiations)*: The relationship between the rules of the multilateral trading system and the trade measures contained in MEAs, and between their dispute settlement mechanisms.
2. *Environmental protection and the trading system*: The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system.
3. *Taxes and other environmental requirements (item of focus)*:<sup>33</sup> The relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes; and (b) requirements for environmental purposes relating to products, such as standards and technical regulations, and packaging, labelling, and recycling requirements.
4. *Transparency of environmental trade measures (ongoing since 1998)*: The provisions of the multilateral trading system dealing with the transparency of trade measures used for environmental purposes.
5. *The relationship between WTO and MEA dispute settlement mechanisms* (incorporated under item 1, also in negotiations).
6. *Environment and trade liberalization (item of focus)*: How environmental measures affect market access, especially in relation to developing countries and LDCs; and the environmental benefits of removing trade restrictions and distortions.
7. *Domestically prohibited goods*: The issue of exports of domestically prohibited goods, in particular hazardous waste.
8. *Intellectual property (item of focus)*: The relevant provisions of the TRIPS Agreement.
9. *Services*: The work programme envisaged in the Decision on Trade in Services and the Environment under the GATT (1994).
10. *The WTO and other organizations (in negotiations)*: Input to the relevant WTO bodies on appropriate arrangements for relations with intergovernmental and non-governmental organizations (NGOs).

Source: WTO (n.d.-f)

33. Item of focus refers to items on the original 1995 mandate that have received particular focus in the regular CTE following the 2001 Doha Ministerial Conference.

Engagement and deliberations in the CTE have regained momentum in the past few years, with a wide range of members circulating submissions on a variety of topics. In 2023, these ranged from submissions and discussions on border carbon adjustment, deforestation, food security, or transfer of technology to principles of international trade and environmental law relevant to the design and implementation of trade-related environment measures (a summary of recent CTE submissions is presented in Box 4).

The committee has also been exploring options to improve its functioning and revitalize its discussions. In this regard, several members put forth recommendations in 2023, including proposals to enhance participation of developing and least developed countries in the committee's work,<sup>34</sup> enhance transparency,<sup>35</sup> and encourage dialogues and sharing of experiences regarding environmental measures and policies with trade effects.<sup>36</sup> Some members have called for "active outreach and synergies with other relevant WTO bodies and WTO processes to develop coherent policy recommendations."<sup>37</sup> In line with these efforts to revitalize its work, several members urged the CTE to hold more thematic discussions on topics such as

supply chains and biodiversity, climate-resilient economies, circular economy, the use of environmental subsidies, approaches to carbon leakage, or methodologies for calculating carbon content of internationally traded goods.<sup>38</sup>

In November 2023, the CTE hosted its first thematic session on trade contributions to energy transition efforts concerning climate adaptation and mitigation. The session focused on the role of trade and trade policies in supporting a transition towards and scale up of various forms of renewable energy, with several WTO members highlighting regional and national perspectives (WTO, 2023h).

Through its work, the CTE also plays a role in improving information exchange and coordination on trade and the environment, providing clarity on how rules and policy frameworks for trade and the environment interact in different contexts, and improving shared understandings of the implementation and interpretation of multilateral trade rules vis-à-vis the environment. Deliberations in the CTE have also spurred a number of requests for support from the WTO Secretariat (e.g. reports, inventories, reviews).

34. Committee on Trade and Environment, *Functioning of the Committee on Trade and Environment*, Communication from Paraguay, WTO Doc. WT/CTE/W/257 (October 30, 2023).

35. To promote transparency, members have called for, among others, regular updates by the Chair of the CTE to the Chair of the General Council during regular or informal sessions open to all members, increased deliberation on trade and global environmental challenges, and the promotion of early and voluntary information exchange.

36. Committee on Trade and Environment, *Transparency and Experience Sharing*, Communication from Paraguay, WTO Doc. WT/CTE/W/256 (October 30, 2023); General Council, *Reinforcing the Deliberative Function of the WTO to Respond to Global Trade Policy Challenges*, Communication from the European Union, WTO Doc. WT/GC/W/864 (February 22, 2023).

37. Committee on Trade and Environment, *A Proposal for Dedicated Multilateral Discussions on the Trade Aspects and Implications of Certain Environmental Measures*, Communication from the Samoa on behalf of the African, Caribbean and Pacific Group of States, WTO Doc. WT/CTE/W/259 (February 9, 2024).

38. Committee on Trade and Environment, *Revitalizing the Committee on Trade and Environment*, Communication from the United Kingdom, WTO Doc. WT/CTE/W/252 (June 2, 2023).

#### Box 4. Sample of the Diversity of CTE Submissions from WTO members in 2023–24

*Border Carbon Adjustments:* Submissions circulated on issues related to border carbon adjustments included an explanation by the European Union of its carbon border adjustment mechanism (CBAM).<sup>39</sup> China in its submission called for attention to examining CBAM in conjunction with principles like common but differentiated responsibilities and provided considerations for the design of CBAM.<sup>40</sup>

*Deforestation:* A European Union submission outlined its regulation on deforestation.<sup>41</sup> A group of Latin American countries (Argentina, Brazil, Colombia, Ecuador, Guatemala, Honduras, Mexico, Paraguay, and Peru) in a collective submission called, among other issues, for the need for clarity on the criteria determining the level of risk used in the proposed risk assessments and sought clarification on the criteria used to classify countries in the assessment process.<sup>42</sup>

*Trade-related environment measures:* A submission by China emphasized the importance of fostering dialogue on trade-related environment measures and outlined the role of the CTE in facilitating discussions.<sup>43</sup> India and South Africa also circulated a submission raising concerns about the introduction of such measures and addressing their systemic and developmental implications.<sup>44</sup> The submission also underscored the role of the CTE and other WTO bodies in promoting cooperation and safeguarding the interests of developing countries concerning trade-related environmental challenges. India and South Africa jointly proposed a set of themes for the CTE discussions,

emphasizing the need for cooperative efforts in addressing environmental challenges and their nexus with trade.

*Principles on trade-related environment measures:* An Africa Group submission expressed concerns about trade-related environment measures adopted by Africa's trading partners, emphasizing the potential disruption to existing trade patterns and the need for policy space for green industrial policies in developing countries.<sup>45</sup> In another submission, Colombia highlighted the importance of addressing climate challenges through the lens of developing countries' interests and suggested initial discussions on principles and parameters related to the design and implementation of trade-related environmental measures.<sup>46</sup>

*Trade and transfer of technology:* An Indian submission highlighted the importance of various trade policy tools, institutional arrangements, and financial instruments to facilitate the transfer of technologies.<sup>47</sup> The submission also proposed the adoption of a stand-alone paragraph in an MC13 Outcome Document that emphasizes the promotion of environmental technologies to assist developing and least developed countries in achieving sustainable development and addressing climate change. On the same topic, an Africa Group submission outlined considerations for discussions on trade and technology transfer at MC13, emphasizing the need for the integration of development dimensions.<sup>48</sup>

39. Committee on Trade and Environment, *Carbon Border Adjustment Measures*, Communication from the European Union, WTO Doc. RD/CTE/236 (December 1, 2023).

40. Committee on Trade and Environment, *Policy Issues for Dedicated Multilateral Discussions on Border Carbon Adjustment*, Communication from China, WTO Doc. WT/CTE/W/258, G/C/W/839, G/MA/W/184, G/TBT/W/777 (November 10, 2023).

41. Committee on Trade and Environment, *Regulation on Deforestation*, Communication from the European Union, WTO Doc. RD/CTE/237 (December 1, 2023).

42. Committee on Trade and Environment, *European Union Regulation on Deforestation and Forest Degradation-Free Supply Chains*, Communication from Argentina, Brazil, Colombia, Ecuador, Guatemala, Honduras, Mexico, Paraguay and Peru, WTO Doc. WT/CTE/GEN/33 (November 10, 2023).

43. Committee on Trade and Environment, *A Proposal for Dedicated Multilateral Discussions on the Trade Aspects and Implications of Certain Environmental Measures*, Communication from China, WTO Doc. WT/CTE/W/251 (March 13, 2023).

44. Committee on Trade and Environment, *Concerns on Emerging Trend of Using Environmental Measures as Protectionist Non-Tariff Measures*, Communication from India and South Africa, WTO Doc. JOB/TE/78/Rev.1 (May 31, 2023).

45. General Council – Committee on Trade and Environment – Council for Trade in Goods – Council for Trade-Related Aspects of Intellectual Property Rights – Committee on Agriculture, *Principles Guiding the Development and Implementation of Trade-related Environment Measures*, Communication from the African Group, WTO Doc. WT/GC/W/894, WT/CTE/W/255 G/C/W/830, IP/C/W/703 G/AG/W/239 (July 13, 2023).

46. Committee on Trade and Environment, *The Principles and Parameters That Should Guide and Support Policies and Measures on Trade and the Environment*, Communication from Colombia, WTO Doc. RD/CTE/221 (March 9, 2023).

47. Working Group on Trade and Transfer of Technology – Council for Trade-Related Aspects of Intellectual Property Rights – Committee on Trade and Environment, *Reinvigorating Discussions on the Relationship Between Trade and the Transfer of Environmentally Sound Technology*, Communication from India, WTO Doc. JOB/WGTTT/2, JOB/IP/70, JOB/TE/82 (October 11, 2023).

48. General Council – Committee on Trade and Environment – Committee on Trade and Development, *The Role of Transfer of Technology in Resilience Building: Climate Change Mitigation and Adaptation*, Communication from the African Group, WTO Doc. WT/GC/W/886, WT/CTE/W/254, WT/COMTD/W/280 (July 5, 2023).

### *The Council for Trade-Related Aspects of Intellectual Property Rights*

The TRIPS Council is responsible for administering and monitoring the operation of the WTO TRIPS Agreement, which provides for minimum standards of protection of intellectual property. With respect to the environment, a key area of focus has been the TRIPS Agreement requirement to review its Article 27.3(b), which deals with patentability or non-patentability of plant and animal inventions, as well as the protection of plant varieties. The TRIPS Council is also mandated to examine the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by members.

In the late nineties and noughties, a number of developing countries tabled submissions to the TRIPS Council for stronger provisions to prevent “bio-piracy” of their genetic resources and to ensure prior informed consent and fair and equitable sharing of benefits arising from the use of biodiversity and associated traditional knowledge. In light of continued differences of opinions, discussions have been largely dormant since 2011. Although the review of Article 27.3(b) has featured as a standing agenda item in all meetings of the TRIPS Council, the number of interventions on this topic have decreased over time and a conclusion of the review process has yet to emerge.<sup>49</sup>

The relevance of intellectual property rules to the transfer of environmental, particularly climate-friendly, technologies has also been raised in the course of regular TRIPS Council meetings, with several delegations advocating the need for “flexibilities” in the TRIPS Agreement to promote transfer and access to green technologies. These discussions were particularly active from 2013–14 and revealed diverging perspectives among developed and developing countries on the role of intellectual property in the transfer of environmentally sound climate-related technologies.<sup>50</sup>

### *The Working Group on Trade and Technology Transfer*

The Working Group on Trade and Technology Transfer was established to examine the relationship between trade and the transfer of technology and identify “possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.”<sup>51</sup> The working group has seen submissions from various countries on the issue. While the environment has been neither a focus nor a priority area of discussion, environmental topics have been raised in recent years in discussions and in submissions by WTO members—such as in a 2023 submission by the African Group on the role of transfer of technology in resilience building.<sup>52</sup>

### *Committees for Technical Barriers to Trade and Sanitary and Phytosanitary Measures*

The WTO’s TBT and SPS agreements aim to strike a balance between members’ right to regulate for legitimate policy objectives, including for the protection of the environment, and the requirement under the multilateral trade regime to avoid arbitrary or unjustifiable discrimination. They aim at ensuring that national regulations, standards, and risk assessment and conformity assessment procedures do not create unnecessary barriers to trade, while at the same time leaving adequate regulatory discretion to members to protect human, animal, and plant life or health and preserve the environment.

The TBT and SPS committees provide a multilateral platform for WTO members to exchange information on existing or nascent national regulations, develop guidance to support implementation, and discuss specific trade concerns raised by other members. Beyond its regular mandate, the TBT Committee holds regular thematic sessions fostering discussions on specific topics among governments and invited experts. In 2023, two of the thematic sessions

49. The latest concrete development in the discussions on TRIPS and the Convention on Biological Diversity was the Director-General Pascal Lamy’s report in 2011. General Council – Trade Negotiations Committee, *Issues Related to the Extension of the Protection of Geographical Indications Provided for in Article 23 of the TRIPS Agreement to Products other than Wines and Spirits and those Related to the Relationship between the TRIPS Agreement and the Convention on Biological Diversity*, Report by the Director-General, WTO Doc. WT/GC/W/633, TN/C/W/61 (April 21, 2011).

50. Council for Trade-Related Aspects of Intellectual Property Rights, *Contribution of Intellectual Property to Facilitating the Transfer of Environmentally Rational Technology*, Communication from Ecuador, WTO Doc. IP/C/W/585 (February 27, 2013). The submissions and extracts of minutes from the associated discussions in the TRIPS Council can be accessed at WTO (n.d.-a).

51. Para. 37 of the Doha Declaration.

52. General Council – Working Group on Trade and Transfer of Technology – Committee on Trade and Development – Council for Trade-Related Aspects of Intellectual Property Rights, *The Role of Transfer of Technology in Resilience Building: Reinventing the Discussions in the WTO on Trade and Transfer of Technology*, Communication from the African Group, WTO Doc. WT/GC/W/883, WT/WGTT/W/34/Rev.1, WT/COMTD/W/277, IP/C7W/700 (July 5, 2023).

organized by the TBT Committee centred on regulatory cooperation on the nexus of trade and plastic pollution, and trade and climate change (see Box 5 for more details). At MC13, through a ministerial declaration, members reaffirmed the relevance of the TBT Agreement to tackle “modern global trade challenges and emerging policy concerns, including measures taken to address climate change.”<sup>53</sup> The declaration further urged the TBT Committee to “promote its Member-driven work on immediate and emerging regulatory challenges, including but not limited to the areas of climate change, sustainable development” and others.

Over the past decade, both committees have provided a space for WTO members to discuss trade-related frictions arising from measures put in place for environmental protection purposes and to address these in a pre-emptive manner before they reach the WTO formal dispute settlement.<sup>54</sup> Over recent years, the number of environment-related measures included

in the notifications under the TBT or SPS agreements has continuously increased, reflecting the growing efforts by a range of WTO members to further their environmental regulatory and policy frameworks.

At the time of writing, TBT measures related to the protection of animal, human, and plant health or life and the protection of the environment accounted for nearly 55% of all TBT notified measures to date. Beyond objectives related to health and safety concerns, the most frequently cited environmental objectives include soil and water pollution abatement, energy conservation, and plant and forestry conservation (WTO, n.d.-b). Specific trade concerns have been mostly raised with respect to measures related to the protection of human health and safety followed by requirements related to environmental considerations such as hazardous substances, air pollution control, energy efficiency of equipment, waste, and electrical and electronic products.

### Box 5. TBT Thematic Sessions on Trade and Environment Issues

*Thematic Session on Trade and Plastic Pollution:* The TBT Committee organized a thematic session on “Regulatory cooperation between members on plastic regulation” in March 2023. Participants shared experiences and good practices in the area of plastic regulation and policy. Among the topics explored were current approaches to prevent and manage plastic waste and to promote reuse, recycling, and innovation to address plastic pollution (WTO, 2023g).

*Thematic Session on Trade and Climate Change:* Another thematic session was organized by the

TBT Committee in March 2023 on “Regulatory cooperation between members on climate change.” Participants discussed the role of technical regulations, standards, and conformity assessment procedures in contributing to members’ strategies to address climate change. They also shared experiences and good practices on the adoption of technical regulations and standards that contribute to achieving the goals and principles of the United Nations Framework Convention on Climate Change and its Paris Agreement, while adhering to the disciplines of the TBT Agreement (WTO, 2023f).

### *The Committee on Market Access*

The Committee on Market Access operates under the Council for Trade in Goods to supervise the implementation of concessions relating to tariffs and non-tariff measures and to provide a forum for

consultation on matters relating to tariffs and non-tariff measures (WTO, n.d.-g). While environmental considerations have not been at the heart of discussions in this committee, the body has provided a space for members to raise issues related to market access barriers imposed for environmental purposes. As an

53. World Trade Organization, Ministerial Declaration of 2 March 2024, Strengthening Regulatory Cooperation to Reduce Technical Barriers to Trade, WTO Doc. WT/MIN(24)/35, WT/L/1190 (2024).

54. See OECD and WTO (2019b) for a detailed description of how the SPS and TBT committees operate.

example, in 2021–22, meetings of the Goods Council and the Committee on Market Access saw discussions on the potential trade impacts of the measures taken by the European Union in relation to its Green Deal strategy, unveiled in December 2019, and in particular its CBAM. The committee provides a space for WTO members to seek and provide greater clarification and information on such measures, and also to express their perspectives and concerns (WTO, 2020a).

### *The Trade Policy Review Mechanism*

One of the WTO's core tasks is to conduct regular reviews of the national trade policies of its members with a view to enhancing transparency and improving the functioning of the multilateral trading system. This work is carried out under the TPRM, which was set up in the early stages of the Uruguay Round under the GATT in 1988 and before the establishment of the WTO in 1994 (WTO, n.d.-h). The reviews are carried out in the Trade Policy Review Body, which is the WTO General Council composed of all its members, operating under special rules and procedures for the purpose of the review process. In practice, this means that the TPRM is a peer review process by WTO members, supported by the WTO Secretariat.<sup>55</sup> Since the establishment of the TPRM, over 450 reviews have been carried out (WTO, n.d.-o). In 2009, with a view to strengthening the TPRM, biennial reports that capture trends across the WTO membership were initiated (WTO, n.d.-p).

All WTO members are subject to a regular review, with the frequency depending on a country's share of world trade.<sup>56</sup> While environmental issues do not feature explicitly in the TPRM mandate or process, a review of trade policy review documents over the years reveals that a mapping of environment-related trade measures forms an integral part of the TPRM process, with the details recorded in the WTO EDB. Between 2009–22, the EDB documented 12,274 environment-related trade policy review entries (WTO, n.d.-c).

Trade policy reviews provide an important insight into how the relationship between trade and environment

is evolving over time in the trade policies of members, including in terms of the sectors involved, instruments most frequently used, and issues and challenges arising. The question-and-answer element of the TPRM process also enables the exchange of information between WTO members, including opportunities for members to seek and provide clarity on environmental measures in place or under consideration.

By improving the overall transparency of trade policies across the entire WTO membership, the information provided by the TPRM can help members identify environmental measures with relevance to trade and vice versa, and indirectly support the consideration of environmental concerns in trade policy deliberations.

## 2.3 Settling Disputes

Disputes related to the environment have featured prominently in the history of the WTO, leading to a rich and evolving jurisprudence. Two of the most prominent environment-related disputes in the multilateral trading system were the “tuna-dolphin” case (1991)<sup>57</sup> and the “shrimp-turtle” case (1998).<sup>58</sup> Core issues at dispute in both cases were whether or not governments can discriminate between imported products based on how they were produced when this would not be reflected in the final characteristics of the product. In 2009, the Appellate Body considered that general exceptions under multilateral trade rules (GATT Article XX) could justify a trade-restricting measure based on the production processes and methods of a product if the measure aims at protecting an “exhaustible natural resource.”<sup>59</sup>

Several high-profile dispute settlement cases involving environmental considerations have been brought to the WTO on topics ranging from sustainability requirements concerning the import of palm oil and crop-based biofuels, bans on imports with animal welfare concerns (e.g. seal products), and packaging requirements for human health concerns (e.g. tobacco products). Over the last decade, a series of cases have also involved climate-

55. The process consists of three elements: a report prepared by the WTO Secretariat, a report prepared by the government of the country in question, and a question-and-answer procedure whereby WTO members can pose questions based on the findings of the two reports.

56. The 20 WTO members that have the largest share of world trade are reviewed most frequently, with the top traders (the European Union, United States, Japan, and China) being subject to reviews every three years and the 16 next largest traders subject to a review every five years. The other WTO members are reviewed every seven years, with the possibility of a longer review period for LDC members.

57. Panel Report, *United States – Restrictions on Imports of Tuna*, DS21/R-39S/155 (September 3, 1991) (not adopted).

58. Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R (adopted November 6, 1998).

59. See WTO (2021b) for further analysis of the jurisprudence under GATT Article XX.

related considerations with several WTO members challenging the discriminatory or trade-distorting aspect of certain clean energy-related policies. These included traditional trade remedy cases against allegedly subsidized or dumped clean energy products as well as subsidy cases involving, for example, complaints about local content requirements.<sup>60</sup>

Overall, WTO jurisprudence has consistently reaffirmed that non-discriminatory environmental policies are consistent with WTO obligations.<sup>61</sup> WTO dispute settlement panels have mostly refrained from questioning the environmental legitimacy of measures challenged in the trade context. Instead, they have focused on whether those measures have been applied in a manner that constituted disguised trade protectionism or an unjustifiable discrimination between countries where the same conditions prevailed. In practice, failing to pass this non-discrimination test has been the main reason why certain environment-related measures have been declared as WTO incompatible.

At a time when there is growing action among a diversity of countries to implement stronger environmental policies to tackle pressing global challenges like climate change, pollution, and biodiversity loss, there is political and legal uncertainty about the extent to which various trade-related environmental measures will be deemed WTO compatible. This generates concern among environmental advocates that countries will refrain from environmental action due to concerns about potential trade disputes. Alongside, there is also concern that the growing range of environment-related trade measures, including trade-related measures to advance climate action, may undermine the open, non-discriminatory principles of the multilateral trading system and generate significant trade tensions and a growing number of disputes. A range of proposals are emerging to encourage cooperation to avoid this latter risk.<sup>62</sup>

In the meantime, the Appellate Body of the WTO has ceased to function (see introduction to section 2). This blockage has created important uncertainties about the future of the judicial arm of the system and the evolution of WTO jurisprudence. Efforts to restore the functioning of the Appellate Body are at the heart of ongoing WTO reform discussions among WTO members. A ministerial declaration by the LDC group ahead of MC13 called on “Ministers to agree to expeditiously begin the process of appointing Appellate Body members and to ensure establishment of the necessary rules to build trust in the procedures and operation of this pillar.”<sup>63</sup> At MC13, members committed “to accelerate discussions in an inclusive and transparent manner, build on the progress already made, and work on unresolved issues, including issues regarding appeal/review and accessibility to achieve the objective by 2024.”<sup>64</sup>

## 2.4 Technical Assistance, Capacity Building, and Aid for Trade

The technical assistance provided by the WTO Secretariat aims to enhance the institutional capacities of developing countries to fully leverage the benefits of the rules-based multilateral trading system, meet their obligations, enforce their rights as members, and deal with emerging trade-related challenges and opportunities. At the WTO, around 300 technical assistance activities are organized annually, training over 14,000 government officials.<sup>65</sup> Some of these activities also cater to representatives from civil society, journalists, and academia as well as private sector representatives from developing and least developed countries.

WTO activities in this area are pursued in the context of biennial technical assistance and training plans. While these plans cover a wide range of emerging challenges, there has been an increased interest in addressing issues pertaining to trade and environment. According to the latest biennial plan,

60. Appellate Body Report, *Canada — Measures Relating to the Feed-in Tariff Program*, WTO Doc. WT/DS412/AB/R (adopted 6 May, 2013); Request for the Establishment of a Panel, *India — Certain Measures Relating to Solar Cells and Solar Modules*, WTO Doc. WT/DS456/20 (January 29, 2018) (Mutually agreed solution notified July 13, 2023).

61. Appellate Body Report, *European Communities — Measures Affecting Asbestos and Products Containing Asbestos*, WTO Doc. WT/DS135/AB/R (adopted April 5, 2001).

62. See, for instance, Bacchus (2017) and Deere Birkbeck (2021).

63. World Trade Organization, Least Developed Country Group Ministerial Declaration of 10 January 2024, Priorities at the World Trade Organization, WTO Doc. WT/MIN(24)/2 (2024).

64. World Trade Organization, Ministerial Decision of 2 March 2024, Dispute Settlement Reform, WTO Doc. WT/MIN(24)/37, WT/L/1192 (2024).

65. Examples of training activities include seminars, workshops, online courses, lectures, presentations, roundtables, meetings with experts, simulation exercises, and attendance at WTO meetings. See WTO (n.d.-s).



developing country beneficiaries have, for instance, expressed a desire to broaden the range of issues covered, indicating trade and environment and the impact of climate change-related response measures on international trade as priority areas.<sup>66</sup> The WTO has also conducted advanced courses, regional and national seminars, and workshops on trade and environment tailored to requests from members.

Over recent years, there have also been growing calls for greater attention to sustainability considerations in aid for trade.<sup>67</sup> The WTO-led Aid for Trade Initiative was launched at the Sixth WTO Ministerial Conference in Hong Kong in 2005 “to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO agreements and more broadly to expand their trade.”<sup>68</sup> Aid for trade is provided by individual governments or through multilateral agencies, but is guided by biennial work programmes defined through the WTO CTD and monitored and evaluated through regular global reviews.<sup>69</sup>

Discussions at the WTO on aid for trade have featured growing attention to the importance of aid for sustainable trade. Analysis conducted in 2022 for the Eighth Aid for Trade Global Review revealed that a growing share of the \$48.7 billion disbursed by WTO members as aid for trade, around half noted some climate-related objectives, such as the transition to a low-carbon economy (WTO, 2022b). The latest aid for trade work programme adopted by the CTD for the period of 2023–24 is based on the theme of “Partnerships for Food Security, Digital Connectivity and Mainstreaming Trade.”<sup>70</sup> The Ninth Global Review in June 2024 aims to provide an opportunity to update aid for trade priorities and work plans along these three

core thematic areas, including through “mainstreaming trade” into national development strategies with a view to identifying opportunities for sustainable economic and export diversification as well as supply chain resilience. Meanwhile, both the CTD and the CTE offer members and stakeholders venues to identify priorities, opportunities, and challenges related to aid for sustainable trade and to develop concrete proposals for next steps.

A number of proposals have been put forward for boosting aid for trade’s contribution to climate resilience-building, environmental goals, and sustainable trade in line with wider sustainable development priorities (UNEP, 2020; Deere Birkbeck, 2022; Sugathan, 2022). In its work, for instance, the UN Environment Programme (UNEP) has noted that “while some Aid for Trade programs contain explicit environmental objectives, a coherent framework to mainstream environment into all Aid for Trade projects and programs is required to enhance resilience and better enable countries to seize sustainable trade opportunities” (UNEP, 2020). The growing attention to sustainability considerations in aid for trade discussions was also highlighted by a partnership between the Enhanced Integrated Framework (which is responsible for trade-related support to LDCs), the Standards and Trade Development Facility (which focuses on increasing sustainable SPS capacity in food safety and animal and plant health in developing countries), the Overseas Development Institute, and the International Institute for Environment and Development, which aims to equip graduated or in-transition LDCs with the evidence, networks, and platforms to effectively align and secure their climate and trade strategies in international negotiations (ODI, 2021; Keane et al., 2021).

66. Committee on Trade and Development, *Biennial Technical Assistance and Training Plan 2024–2025*, WTO Doc. WT/COMTD/W/273/Corr.1 (June 26, 2023).

67. Examples of proposals for green aid for trade include: mainstreaming environmental considerations across existing aid for trade support; adding new and additional support for environment-related activities that simultaneously support developing countries’ economic diversification goals; ensuring that efforts to green aid for trade are linked to wider efforts to support a green global economy and promote international environmental cooperation; ensuring aid for trade monitoring systems accurately capture and report information about green aid for trade projects; and advancing complementary efforts to green trade rules in ways that address developing countries’ priorities and constraints (Deere Birkbeck, 2022).

68. World Trade Organization, Ministerial Declaration of 18 December 2005, Doha Work Programme, WT/MIN(05)/DEC (2005).

69. Over the initiative’s first decade, more than three quarters of aid for trade total disbursements went to four sectors: transport and storage, energy generation and supply, agriculture, and banking and financial services (OECD & WTO, 2019a), the first three of which have clear environmental dimensions.

70. Committee on Trade and Development, *2023–2024 Aid-For-Trade Work Programme, Partnerships for Food Security, Digital Connectivity and Mainstreaming Trade*, WT/COMTD/AFT/W/95 (February 10, 2023).

## 2.5 Role of the WTO Secretariat

The WTO Secretariat plays a significant role in facilitating information flows that support multilateral cooperation on trade and environment, both among WTO members and with a broad array of stakeholders.

The Trade and Environment Division of the Secretariat services the CTE and CTE-SS (as well as the TBT Committee), and produces information and reports at the request of members in those committees. This includes the EDB, which contains all environment-related notifications submitted by WTO members as well as environmental measures and policies mentioned in the trade policy reviews of WTO members.

The Secretariat also undertakes a range of environment-related outreach and cooperation activities, including support for topic-specific side events led by WTO members around the meetings of the CTE and for what has become known as the WTO Trade and Environment Week (WTO, 2023j). Further efforts to foster multistakeholder dialogue, transparency, and experience-sharing include events to coincide with World Environment Day and a UNEP-WTO partnership, which has produced a number of joint events and reports (e.g. WTO & UNEP, 2018). The Secretariat has also produced staff working papers as well as reports targeting a broad public audience (e.g. WTO, 2022c; Steinfatt, 2020).

In addition, the Secretariat liaises and cooperates with a range of international organizations including,

but not restricted to, those for which WTO legal texts explicitly mandate cooperation (e.g. UNEP, United Nations Conference on Trade and Development, Food and Agriculture Organization of the UN, and the World Bank) (WTO, n.d.-e; WTO, n.d.-m). Information exchange with the secretariats of MEAs is an important part of that cooperation. In this regard, the Secretariat's Trade and Environment Division has developed a WTO matrix on trade-related measures pursuant to selected MEAs (see Box 6). Beyond contributions to the WTO's technical assistance activities, the division also participates in joint technical assistance and capacity building on trade and environment issues with several MEAs and international organizations (WTO, n.d.-r). The Secretariat further liaises on an ongoing basis with a range of stakeholders, providing specialized information and engaging in webinars and discussions.

The top leadership of the WTO has been increasingly active on issues of trade and environment, including through participation in a range of international processes and events in which the relevance of the WTO to tackling global environmental challenges has been emphasized. This engagement has included speeches that have highlighted both the trade impacts of a range of environmental challenges and measures as well as the role that trade and trade policies can play in supporting the efforts of governments to tackle environmental challenges, from climate change to pollution and biodiversity loss (WTO, 2021a; WTO, 2022a; WTO, 2023a).

## Box 6. Examples of WTO Secretariat Activities Related to Trade and Environment

*WTO at COP28:* The WTO participated in the 2023 UN Climate Change Conference (COP28), including in the first ever “Trade Day”. The WTO also co-hosted a Trade House Pavilion, which offered a series of dialogues over the course of the conference, collaborating with a range of partners on a diversity of climate and trade issues. At COP28, the WTO Secretariat launched a series of reports, including “Trade Policy Tools for Climate Action” (WTO, 2023k), a joint report with the International Renewable Energy Agency on “International Trade and Green Hydrogen” (WTO, 2023d), and “Steel Standards Principles” endorsed by the WTO Secretariat and International Energy Agency Secretariat (WTO, 2023e).

*Research Paper on Trade, Agriculture, and Environment:* In November 2023, a working paper was released by the Secretariat on the “Impact of Agricultural Support on Environmental and Climate Objectives” (WTO, 2023b). The paper synthesizes the available literature examining the impact of agricultural support on greenhouse gas emissions as well as its impact on water, biodiversity, and land.

*WTO Public Forum:* The 2023 edition of the WTO Public Forum was hosted in September 2023. It focused on the role of trade in contributing to a “greener, more sustainable future” and how the services sector, digitalization, and inclusive trade policies can support global environmental goals and help combat the climate crisis (see section 4).

*WTO Trade and Environment Week:* In June 2023, the WTO Secretariat organized the fourth edition of trade and environment week comprising a series of events and workshops led by WTO members on the theme of “collective approaches” in addressing climate change (WTO, 2023j).

*Joint Initiative by the WTO, World Bank, and World Economic Forum on Climate and Trade:* April 2023 saw the launch of a new joint initiative “Action on Climate and Trade” by the WTO, World Bank, and World Economic Forum. The initiative aims to help participating developing

economies, including LDCs, use trade to meet their climate change mitigation and adaptation goals. In the first phase of activities, the initiative will focus on working with participating developing economies to develop climate-related analysis specific to their trade circumstances (WTO, 2023i).

*Session on Trade and Biodiversity:* The WTO, UNEP, Secretariat of the Convention on Biological Diversity, and TESS jointly organized a session on “Nature-Positive Trade for Sustainable Development” in March 2023. The session explored how trade-related policies and measures support the implementation of the Kunming-Montreal Global Biodiversity Framework (WTO 2023c).

*Forum on Trade and Decarbonization:* The WTO Secretariat hosted a “Trade Forum for Decarbonization Standards” on 9 March 2023. The session explored the role of trade-related cooperation to harmonize environmental standards in the steel sector and trade policy instruments that could support greater coherence (WTO, 2023i).

*WTO Matrix on Trade-Related Measures Pursuant to Selected Multilateral Environmental Agreements:* The matrix includes information on trade-related measures of MEAs, notably requirements or restrictions on imported or exported products, as well as supportive measures, such as technology transfer, and financial or technical assistance under the provisions of the MEA (WTO, n.d.-r).

*Environmental Database:* The WTO EDB was established in 1998 under the CTE area of work focused on improving transparency on environmental trade measures. It is an electronic database that registers information on environment-related measures taken in the context of global trade, as notified by WTO members and as identified in the trade policy reviews conducted by the WTO Trade Policy Review Body (see section 2.2). The database is updated annually and is a key digital resource for informing environment-related discussions at the WTO (WTO, n.d.-b).

### 3. Member-Led Initiatives on Trade, Environment, and Sustainable Development

Trade and environment discussions at the WTO have seen renewed momentum over the past three years, spearheaded by three separate member-led initiatives on trade, environment, and sustainable development. These initiatives bring together different subsets of members working to enhance cooperation on global environmental challenges within the framework of the WTO.

In December 2021, three ministerial statements were issued by co-sponsors on environmental sustainability, plastic pollution, and fossil fuel subsidy reform—each of which aim to spur enhanced cooperation and dialogue as a complement to work under way in other WTO committees, including the CTE (Lim et. al., 2022). Notably, these statements have attracted traction from a broad diversity of the WTO’s membership, with a total of 84 members (representing more than 85% of world trade) co-sponsoring at least one of the ministerial statements. Of those members, more than half are developing countries, including several LDCs. Each of the statements recognizes the importance of addressing the needs of developing countries and the importance of a just transition (Lim et. al., 2022). The statements also recognize the contribution that stakeholders can make to their work.

In each case, participation in the work of the initiatives is open to all WTO members, and the co-sponsors actively encourage more members to join them. The initiatives also propose work plans or roadmaps to support the development of concrete outcomes, targeting WTO ministerial conferences as milestones.

#### 3.1 Trade and Environmental Sustainability Structured Discussions

In 2020, a group of 53 WTO members co-sponsored the launch of the Trade and Environmental Sustainability Structured Discussions at the WTO to bolster information-sharing and dialogue on environment-trade intersections, nurture possible ways forward, and spur more focused attention on these issues in the work of the WTO’s regular committees (WTO, 2020b). This initiative emphasizes the importance of ongoing discussions at the CTE and of complementing and supporting work in that process, including through regular reporting of their discussions. As of March 2024, TESSD had garnered the support of 76 co-sponsors from a diverse range of WTO members, including the world’s three largest trading powers—the European Union, China, and the United States (WTO, n.d-n).<sup>71</sup>

In December 2021, TESSD released a Ministerial Statement recognizing that “international trade and trade policy can and must support environmental and climate goals and promote more sustainable production and consumption, taking into account the importance of a just transition and making progress towards achieving the Sustainable Development Goals (SDGs).”<sup>72</sup> In 2022, the co-sponsors adopted a work plan and established four thematic working groups focused on trade-related climate measures; environmental goods and services; circular economy – circularity; and subsidies.

71. Co-sponsors of TESSD as of March 2024: Albania; Australia; Austria; Bahrain, Kingdom of; Barbados; Belgium; Brazil; Bulgaria; Cabo Verde; Canada; Chad; Chile; China; Colombia; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Ecuador; Estonia; European Union; Fiji; Finland; France; the Gambia; Germany; Greece; Honduras; Hong Kong, China; Hungary; Iceland; Ireland; Israel; Italy; Japan; Kazakhstan; Korea, Republic of; Latvia; Liechtenstein; Lithuania; Luxembourg; Macao, China; Maldives; Malta; Mexico; Moldova, Republic of; Montenegro; Netherlands; New Zealand; North Macedonia; Norway; Panama; Peru; Poland; Portugal; Romania; Russian Federation; Saudi Arabia, Kingdom of; Senegal; Singapore; Slovak Republic; Slovenia; Spain; Suriname; Sweden; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Tajikistan; Türkiye; Ukraine; United Arab Emirates; United Kingdom; United States; Uruguay; Vanuatu.

72. World Trade Organization, Ministerial Statement on Trade and Environmental Sustainability of 14 December 2021, Trade and Environmental Sustainability Structured Discussions (TESSD), WTO Doc. WT/MIN(21)/6/Rev.2 (2021).

At MC13, TESSD presented an outcome package that included a statement from the co-conveners (Canada and Costa Rica) recognizing the progress and evolution of discussions at TESSD since MC12 and welcoming the achievements of the four thematic working groups.<sup>73</sup> The package also included an updated work plan providing guidance on future discussions towards concrete actions or recommendations by MC14 along with formats of formal plenary and informal working group meetings envisaged for 2024.<sup>74</sup> A third element of the package covered the outcome documents of the four informal working groups, including: a compilation of member practices in the development of trade-related climate measures;<sup>75</sup> an analytical summary on environmental goods and services and renewable energy;<sup>76</sup> a mapping of the trade aspects of circular economy along the product lifecycle;<sup>77</sup> and a compilation of member experiences and considerations regarding subsidy design.<sup>78</sup>

### 3.2 Dialogue on Plastic Pollution

In November 2020, a group of 16 WTO members led by China and Fiji co-sponsored the launch of the Informal Dialogue on Plastic Pollution and Environmentally Sustainable Plastic Trade at the WTO; now known in short-hand as the Dialogue on Plastic Pollution. The co-sponsors announced that the DPP would “explore how improved trade cooperation, within the rules and mechanisms of the WTO, could contribute to domestic, regional and global efforts

to reduce plastic pollution and transition to a more circular and environmentally sustainable global plastics economy.”<sup>79</sup> From the outset, the co-sponsors have emphasized the importance of pursuing cooperation at the WTO that complements and does not duplicate work on plastic pollution underway in other international processes, and that the work of the DPP seeks to complement and support discussions in the CTE.

In early 2021, the group agreed that its work would be led by six co-conveners: Australia, Barbados, China, Ecuador, Fiji, and Morocco. In 2021, the co-sponsors of the DPP focused their discussions on improving transparency, monitoring trade trends, promoting best practices, strengthening policy coherence, identifying the scope for collective approaches, assessing capacity and technical assistance needs, and cooperating with other international processes and efforts. In December that year, a diverse group of 67 WTO members issued a Ministerial Statement on Plastic Pollution and Environmentally Sustainable Plastics Trade.<sup>80</sup> In the statement, ministers agree to identify actions that participating members could take collectively to support global efforts to reduce plastic pollution. As of February 2024, 78 WTO members were participating in the dialogue (WTO, n.d-i).<sup>81</sup>

Topics noted in the 2021 statement include improving transparency of trade flows and supply chains and sharing best practices and experiences on a range of topics, including on reducing unnecessary or

73. World Trade Organization, Statement by the TESSD Co-Conveners of 19 February 2024, Trade and Environmental Sustainability Structured Discussions (TESSD), WTO Doc. WT/MIN(24)/11 (2024).

74. World Trade Organization, Statement by the TESSD Co-Conveners of 19 February 2024, Trade and Environmental Sustainability Structured Discussions (TESSD), Addendum, TESSD Work Plan – Update, WTO Doc. WT/MIN(24)/11/Add.1 (2024).

75. World Trade Organization, Statement by the TESSD Co-Conveners of 19 February 2024, Trade and Environmental Sustainability Structured Discussions (TESSD), Addendum, Informal Working Group on Trade-Related Climate Measures, WTO Doc. WT/MIN(24)/11/Add.2 (2024).

76. World Trade Organization, Statement by the TESSD Co-Conveners of 19 February 2024, Trade and Environmental Sustainability Structured Discussions (TESSD), Addendum, Informal Working Group on Environmental Goods and Services, WTO Doc. WT/MIN(24)/11/Add.3 (2024).

77. World Trade Organization, Statement by the TESSD Co-Conveners of 19 February 2024, Trade and Environmental Sustainability Structured Discussions (TESSD), Addendum, Informal Working Group on Circular Economy – Circularity, WTO Doc. WT/MIN(24)/11/Add.4 (2024).

78. World Trade Organization, Statement by the TESSD Co-Conveners of 19 February 2024, Trade and Environmental Sustainability Structured Discussions (TESSD), Addendum, Informal Working Group on Subsidies, WTO Doc. WT/MIN(24)/11/Add.5 (2024).

79. Committee on Trade and Environment, *WTO Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade*, Communication from Australia, Barbados, Canada, China, Fiji, The Gambia, Jamaica, Kazakhstan, Morocco, New Zealand, Switzerland and Thailand, WTO Doc. WT/CTE/W/250 (December 15, 2020).

80. World Trade Organization, Ministerial Statement on Plastic Pollution and Environmentally Sustainable Plastics Trade of 10 December 2021, Informal Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade (IDP), WTO Doc. WT/MIN(21)/8/Rev.2 (2021).

81. Co-sponsors of the DPP as of February 2024: Albania; Angola; Australia; Austria; Barbados; Belgium; Bolivia, Plurinational State of; Bulgaria; Cabo Verde; Cambodia; Cameroon; Canada; Central African Republic; Chad; Chile; China; Colombia; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Ecuador; Estonia; European Union; Fiji; Finland; France; Gambia; Germany; Greece; Honduras; Hong Kong, China; Hungary; Iceland; Ireland; Italy; Jamaica; Japan; Kazakhstan; Korea, Republic of; Latvia; Lithuania; Luxembourg; Macao, China; Maldives; Malta; Mauritius; Mexico; Mongolia; Morocco; Netherlands; New Zealand; North Macedonia; Norway; Panama; Paraguay; Peru; Philippines; Poland; Portugal; Romania; Russian Federation; Samoa; Saudi Arabia, Kingdom of; Singapore; Slovak Republic; Slovenia; Spain; Suriname; Sweden; Switzerland; Thailand; Tonga; United Kingdom; United States; Uruguay; Vanuatu.

harmful plastics and plastic products, with special attention to issues and challenges arising for developing members. The statement also provides for strengthening cooperation with other international processes focused on reducing plastic pollution. Ministers also agreed to identify actions to address trade-related capacity building and technical assistance needs of developing countries, including by considering plastic pollution in aid for trade and access to technologies.

Like TESSD, DPP meetings are open to all WTO members. The DPP coordinators have also invited a number of stakeholder groups to provide inputs to their discussions. In 2022, the DPP established a work plan that combines a series of three plenary sessions over the course of the year, with three work streams on: crosscutting issues related to international cooperation, promoting trade to tackle plastic pollution, and circularity and reduction to tackle plastic pollution.

There has been significant technical work and substantive discussions on various issues within these three work streams. These are reflected in an open, illustrative, non-exhaustive, and evolving factual compilation of suggestions, practices, options, and opportunities prepared for MC13.<sup>82</sup> A Ministerial Statement, accompanied by these factual compilations, was issued by the DPP coordinators at MC13.<sup>83</sup> The statement is significant in that it reflects the engagement of a diversity of countries in fostering consensus on the substance of the statement, maintains a balanced approach that advances work across the three workstreams, addresses the full life cycle of plastics, recognizes the relevance of trade-related cooperation to tackling plastic pollution, affirms support for complementary work underway to negotiate a new multilateral environmental agreement on plastic pollution, and commits to work towards

further concrete, pragmatic, and effective outcomes by MC14 (Deere Birkbeck & Bellmann, 2024a).

The statement also highlights the “enhanced, close, and constructive cooperation with other international and regional efforts and institutions,” such as with the Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment, and the World Customs Organization (WCO), among others. Ongoing cooperation with the WCO was initiated pursuant to a communication of 8 June 2022 sent to the WCO,<sup>84</sup> where discussions are taking place on options for reform of Harmonized System codes to support efforts to address plastic pollution.

The Ministerial Statement further sets out shared principles that could guide future work at the DPP, lists a set of six actions related to the three DPP workstreams that could be followed individually or collectively on a voluntary basis, and highlights the importance of international cooperation on these actions. These include, among others, “promoting cooperative and effective trade-related policies or measures implemented to support efforts to reduce plastics and plastic products that are harmful to the environment or human health, or unnecessary single-use plastics and plastics packaging, associated with international trade that are non-essential for medical or sanitary purposes.” The statement commits to updating a work plan post MC13 to “seek further concrete, pragmatic, and effective outcomes” on the listed actions and understandings at the latest by MC14.

An insight into the detailed discussions under two of the DPP work streams can be gathered from a Factual Summary of Discussions on Reduction and Circularity to Tackle Plastic Pollution<sup>85</sup> and a Factual Summary of Discussions on Sustainable and Effective Alternatives

82. Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade (DPP), *Compilations Attached to the MC13 Statement*, WTO Doc. INF/TE/IDP/RD/146/Rev.1 (January 19, 2024).

83. World Trade Organization, Ministerial Statement on Plastic Pollution and Environmentally Sustainable Plastics Trade of 23 February 2024, Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade (DPP), WTO Doc. WT/MIN(24)/14 (2024).

84. Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (IDP), *Communication to the World Customs Organization (WCO) on the Work of the IDP in Support of Efforts to Address Plastic Pollution*, WTO Doc. INF/TE/IDP/W/6/Rev.1 (June 8, 2022).

85. Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade, *Factual Summary of Discussions on Reduction and Circularity to Tackle Plastic Pollution*, WTO Doc. INF/TE/IDP/RD/125 (May 3, 2023).

and Substitutes<sup>86</sup> prepared by the WTO Secretariat. Two significant outputs arising out of DPP work since MC12 also include factual reports drawn from two surveys launched by the DPP in June 2022: one on trade-related plastics measures,<sup>87</sup> and another on the Aid for Trade Global Review and needs assessment.<sup>88</sup>

### 3.3 Fossil Fuel Subsidy Reform

At the Eleventh WTO Ministerial Conference in 2017, 12 countries led by New Zealand issued a joint Ministerial Statement on Fossil Fuel Subsidy Reform (FFSR), arguing that governments should harness the multilateral trading system to support greater transparency of fossil fuel subsidies, share national experiences of reform, and foster dialogue on how trade disciplines could support reform efforts.<sup>89</sup> To continue building a supportive international setting for a multilateral response, a Ministerial Statement on Fossil Fuel Subsidies was released in December 2021 and subsequently revised in June 2022.<sup>90</sup> Through this statement, co-sponsors committed to improved information-sharing to advance discussion “aimed at achieving ambitious and effective disciplines on inefficient fossil fuel subsidies, [...] including through enhanced WTO transparency and reporting.” Members also agreed to pursue “the rationalization and phase out of inefficient fossil fuel subsidies that encourage wasteful consumption along a clear timeline.” In addition, the Ministerial Statement establishes a process for dialogue, transparency,

learning, and experience-sharing vital to spurring national reforms and enhanced international cooperation. In so doing, the initiative intends to shed light on the kinds of reforms that are possible and ways to ensure that reform does not harm the most vulnerable communities. The statement explicitly recognizes that FFSR “needs to take fully into account the specific needs and conditions of developing countries and minimize the possible adverse impacts on their development in a manner that protects the poor and the affected communities.”

At MC12, the members adopted a high-level work plan for 2022-23 that set up “a forum to take stock of international efforts and key updates on FFSR, to consider the development and social aspects of FFSR, and to discuss next steps towards MC13.”<sup>91</sup> At MC13, co-sponsors issued an updated Ministerial Statement outlining a set of concrete options to advance fossil fuel subsidy reform focusing on three areas for follow-up action: (i) enhancing transparency by making fuller use of the TPRM; (ii) developing practical guidelines to help ensure that crisis support measures introduced to address the energy crises remain targeted, transparent, and temporary; and (iii) examining current forms of fossil fuel subsidies to identify the characteristics of the most harmful ones to the environment and trade and considering possible pathways to reform them.<sup>92</sup> As of March 2024, the initiative had 48 WTO members as co-sponsors (WTO, n.d.-d).<sup>93</sup>

86. Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade, *Factual Summary of Discussions on Sustainable and Effective Alternatives and Substitutes*, WTO Doc. INF/TE/IDP/RD/88/Rev.1 (January 27, 2023).

87. Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade, *Factual Report of the Trade-Related Plastics Measures (TRPMS) Survey*, WTO Doc. INF/TE/IDP/W/11 (October 4, 2023).

88. Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade, *Factual Report of the Aid for Trade (AFT) Global Review and Needs Assessment Survey*, WTO Doc. INF/TE/IDP/W/12 (October 4, 2023).

89. World Trade Organization, Fossil Fuel Subsidies Reform Ministerial Statement of 12 December 2017, WTO Doc. WT/MIN(17)/54 (2017). The co-sponsors of the statement were Chile, Costa Rica, Iceland, Liechtenstein, Mexico, the Republic of Moldova, New Zealand, Norway, Samoa, Switzerland, Taiwan, and Uruguay.

90. World Trade Organization, Ministerial Statement on Fossil Fuel Subsidies of 14 December 2021, WTO Doc. WT/MIN(21)/9/Rev.1 (2021); World Trade Organization, Ministerial Statement on Fossil Fuel Subsidies of 10 June 2022, WTO Doc. WT/MIN(21)/9/Rev.2 (2022).

91. World Trade Organization, Ministerial Statement on Fossil Fuel Subsidies of 20 June 2022, High-Level Work Plan, WTO Doc. WT/MIN(22)/8 (2022).

92. World Trade Organization, Ministerial Statement on Fossil Fuel Subsidies of 26 February 2024, WTO Doc. WT/MIN(24)/19 (2024).

93. Co-sponsors of the FFSR initiative as of March 2024: Albania; Austria; Belgium; Bulgaria; Chile; Colombia; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Estonia; European Union; Fiji; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Latvia; Liechtenstein; Lithuania; Luxembourg; Mali; Moldova, Republic of; Montenegro; Netherlands; New Zealand; North Macedonia; Norway; Panama; Paraguay; Poland; Portugal; Romania; Samoa; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Tonga; United Kingdom; Uruguay; Vanuatu.

## 4. Stakeholder Participation

As a member-driven intergovernmental organization, non-state actors are generally not invited to participate in the WTO's deliberative processes. Members increasingly recognize, however, the contribution of stakeholders to different aspects of their work.<sup>94</sup> Since the creation of the WTO, for instance, members have given the WTO Secretariat the authority to establish direct contacts with NGOs and have also allowed progressive steps in enhancing transparency and greater access to WTO documents through the WTO website.<sup>95</sup>

A key channel through which stakeholders—e.g. NGOs, representatives of intergovernmental organizations, business, and academia—can engage with WTO members and the Secretariat is the annual Public Forum, which provides a platform for public discussion across a wide range of WTO issues (WTO, n.d.-j). In September 2023, the Public Forum focused on how trade can contribute to a greener, more sustainable future and examined the role of the services sector, digitalization, and inclusive trade policies in supporting global environmental goals and combating the climate crisis. The event signalled an increased interest and engagement in dialogue on sustainability issues among a range of stakeholders and governments. Another opportunity for engagement is the WTO Environment Week, where a number of stakeholders are involved in the co-hosting of events or as speakers. In addition, some WTO committees host “informal sessions” where stakeholders are invited to present or participate, such as the first ever informal session of the CTE in November 2023, which focused on the role of trade

and trade policies in supporting a transition towards and scale up of various forms of renewable energy (see section 2.2, CTE).

Stakeholders, such as NGOs and businesses, can apply for accreditation to take part in some aspects of WTO ministerial conferences and at briefings held by the WTO Secretariat after major meetings. Stakeholders can also attend the public hearings of some dispute settlement proceedings, submit amicus curiae briefs related to some disputes, and share position papers and reports with the Secretariat on topics of relevance to the WTO. Uptake of input and suggestions from stakeholders remains at the discretion of WTO members, and stakeholder groups express varying levels of satisfaction or frustration about the degree of their access to and influence on WTO decision-making processes.

In an important development, the three member-led initiatives on trade, environment, and sustainable development each provide avenues for stakeholder engagement (see section 3). For example, in the ministerial statements related to the TESSD, DPP, and FFSR initiative, co-sponsors have committed to engaging with stakeholders, including by enabling some stakeholders to participate on a regular basis in some of their meetings (including with opportunities to take the floor), and also by inviting presentations on specific topics of interest to members. TESSD, for instance, includes sessions for WTO members that enable exchanges with external stakeholders, including intergovernmental organizations, NGOs, the business community, and academia.

94. See Article V.2 of the Marrakesh Agreement and the 1996 General Council Decision (WT/L/162), which still acts as the basis for WTO-NGO relations today. See World Trade Organization, Guidelines for Arrangements on Relations with Non-Governmental Organizations, Decision adopted by the General Council on 18 July 1996, WTO doc. WT/L/162 (1996).

95. World Trade Organization, Procedures for the Circulation and Derestriction of WTO Documents, Decision of 14 May 2002, WTO Doc. WT/L/452 (2002).



## 5. Conclusion

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In today's global economy, addressing transboundary environmental crises such as climate change, biodiversity loss, and pollution requires coherent and collaborative policy approaches across jurisdictions and between policymaking on trade, environment, and sustainable development.

The WTO offers a unique multilateral forum that governments can harness to foster inclusive discussion and action on the nexus of trade, environment, and sustainable development among the broad diversity of members. This policy brief has reviewed the range of entry points and processes that are relevant to work on these topics at the WTO.

The different WTO bodies described in this policy brief provide critical spaces to review existing policies, exchange information, discuss best practices, foster shared understandings, negotiate, solve problems,

and litigate when necessary. In addition, the member-led initiatives on environmental sustainability, plastic pollution, and fossil fuel subsidy reform provide important avenues to foster enhanced dialogue among interested members, identify and solve problems, and incubate stronger multilateral cooperation.

Looking forward, the key to harnessing the WTO as an effective arena for advancing cooperation on pressing trade, environment, and sustainable development challenges facing the global economy will be to foster a critical reflection on how global rules and new forms of cooperation can be developed to proactively support action on trade and sustainability. This will require not only high-level guidance from ministers, but also increased policy coherence at the national level and sustained engagement from stakeholders.

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