

# **A BRIEF OVERVIEW ON THE RELATION BETWEEN TRADE AND ENVIRONMENT IN THE WTO (1996-2024)**

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**-Geneva, 24 June 2024-**

- I. **Sustainable development and environmental protection are fundamental goals of the WTO.** While there is no specific agreement dealing solely with the environment (with the exception of the WTO Fisheries Subsidies Agreement), WTO members can adopt trade-related measures to protect the environment, provided certain conditions are met (Article XX GATT). Overall, the WTO aims to balance trade and environmental concerns, fostering sustainable development while avoiding protectionism. Sustainable development is explicitly mentioned as one of the objectives of the WTO.
- II. **The WTO Trade and Environment Committee (CTE):** Established in 1995, this WTO body facilitates dialogue between governments on the impact of trade policies on the environment and vice versa. The CTE examines environmental measures' effects on market access, intellectual property, biodiversity, and labeling for environmental purposes. Recently, the WTO 12<sup>th</sup> Ministerial Conference called for a revitalization of the role of the CTE. UNCTAD participates actively at the CTE.
- III. **Doha Round negotiations on environmental goods and services (EGS):** In the Doha Round and in the Honk Kong Ministerial Declaration, WTO members received a mandate to negotiate aspects of the link between trade and the environment, as well as market access for EGS. These negotiations discussed criteria, definitions and a list approach for EGS for about a decade without results. Issues such as dual use, how to assess potential beneficial environmental effects of EGS and lack of inclusion of natural products have been stumbling blocks to get consensus. UNCTAD proposed the definition of environmentally preferable products at the WTO since 1995 to approach the issue.
- IV. **The Environmental Goods Agreement (EGA):** This was a separate plurilateral negotiation that involved 46 WTO members seeking to reduce tariffs on environmental goods. The goal was to promote trade in products that contribute to environmental sustainability. These negotiations failed due to

lack of agreement between US, EU and China over certain goods such as bicycles.

- V. **WTO jurisprudence:** Over the last two decades, environmental provisions have become increasingly relevant within the multilateral trading system. This development occurred through the incorporation of certain environmental provisions into new WTO agreements and a broader interpretation of the GATT Article XX exceptions. Trade-environment disputes have played a significant role in shaping this jurisprudence. So far there has never been a conflict between a WTO Agreement and a multilateral environmental agreement. WTO Members face legal uncertainty regarding how to address and regulate environmental process and production methods (PPEs). If a government introduces a regulation that distinguishes traded products along the lines of PPMs, WTO law comes into play—regardless of whether respective requirements are linked or de-linked from products’ physical characteristics. Nowadays, it has become well established that such regulatory distinctions based on PPMs are not a priori illegal under WTO law. At the same time, recent WTO decisions tend to increasingly favor sustainability-oriented PPMs under the coverage of Article XX of the GATT (general exceptions). These measures should be context-sensitive, non-arbitrary, equally applied, and proportional to achieve legitimate objectives to pass the Article XX GATT test. Border adjustments, PPMs and differential treatment for “clean and safe” production methods will be a central issue regarding recent internal regulations with extra-territorial effects, such as carbon border adjustments mechanisms, deforestation and due diligence regulations.
- VI. **The emergence of the green and ocean/blue economy:** For concepts were proposed by the UN as options for new forms of sustainable economics for development at the Rio + 20 Conference (2012). The green economy aims to reduce environmental risks and ecological scarcities while promoting sustainable development without degrading the environment. The ocean economy encompasses sustainable economic activities related to oceans and seas including shipping, fishing, aquaculture, coastal tourism, offshore wind, and marine biotechnology. In both cases, the UN has been advising countries on how to do this economic shift at the national and regional level. New multilateral environmental agreements such as Paris Agreement or the treaty on Marine Biodiversity Beyond National Jurisdiction as well as negotiations for a UN legally binding instrument to address plastic pollution are meant to contribute to green, carbon free and blue economies.

- VII. **The emergence of Sustainable Development Goals (SDGs) and impacts of trade policy:** The adoption of SDGs gave a significant impulse to the incorporation of sustainable development objectives across all levels of policy. Some consider that SDGs was a way to not fully embrace the concept of the green economy but to focus on specific sustainable objectives and targets. Among the 17 SDGs there are many that have specific trade-related targets. For example, by promoting sustainable development through a universal, rule-based open and non-discriminatory multilateral trade (SDG 17), promoting responsible consumption and production (SDG 12), phasing out distortive agricultural subsidies (SDG 2) and fisheries subsidies (SDG 14).
- VIII. **The WTO fisheries agreement on fisheries subsidies:** The WTO Agreement on Fisheries Subsidies, adopted at the 12th Ministerial Conference in June 2022, is a significant step toward ocean sustainability. It prohibits harmful subsidies that contribute to the depletion of global fish stocks such as subsidies to Illegal, Unregulated and Unreported (IUU) fishing, fishing on overfished stocks and fishing in unregulated areas of the high seas. The Agreement covers marine wild capture fishing and related activities at sea, such as packaging and processing. The agreement still is in the ratification phase (2/3 of Membership are need it) and outstanding negotiating items such as subsidies that contribute to overcapacity and overfishing still are ongoing.
- IX. **Recent informal processes:**
- a. **Trade and Environmental Sustainability Structured Discussions** (TESSD) TESSD supports the WTO's objective of a global trading system that protects the environment and contributes to climate change action.
  - b. **The Dialogue on Plastic pollution** seeks to propose trade related measures that contribute to tackle plastic pollution. In this area UNCTAD has proposed a focus on enabling trade of non/plastic substitutes and alternatives since 2022.
  - c. **Discussions on fossil fuel subsidies.**

These discussions complement the Trade and Environment Committee's work.

**In sum**, the discussion between trade and environment is an ongoing process that will be resolving a potential conflict on a case-by-case basis. Increase multilateral agreement and regulation on trade and environment will continue to be a great contribution to level the playing field and to generate the appropriate balance between economic growth, sustainable use and conservation objectives.

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