



REMAKING TRADE
FOR A SUSTAINABLE FUTURE

VILLARS FRAMEWORK FOR A SUSTAINABLE GLOBAL TRADE SYSTEM

SEPTEMBER 7, 2023



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AUTHORS' PREFACE

The reader will immediately realize that the ideas expressed in this Report are ambitious, perhaps audacious. We have not sought to moderate these ideas by limiting them to what is easy to achieve, or immediately politically feasible. We recognize that these ideas may not be welcomed by some in the trade or political community who think that trade should "stay in its lane" and not engage with sustainable development topics. As this Report reveals, we believe that separation is no longer possible, and we note also that the mandate to link trade with sustainable development is contained in the very [first paragraph of the 1994 Marrakesh Agreement establishing the World Trade Organization](#). Furthermore, throughout the course of this Project, we have observed a remarkable and deep desire for change, among diplomats, officials, and other experts. These people see the need and the potential for the trade system to contribute to addressing urgent global and local problems of sustainable development. Nonetheless, we recognize the limits of the trade system, in terms of expertise, mandate, national sovereignty, and governance mechanisms, and so we have tried to describe ways in which multiple international organizations, governments, NGOs, businesses, and others will need to pull together in novel and better-coordinated ways to achieve needed action. Our approach in this Report is to map a way for them – for you – to do so. We hope you will read our humble Report in that spirit, and that you will take your place as a leader in this effort.

There are a number of current initiatives – undertaken by international and regional organizations, civil society groups, academic centers, business groups and even individuals – that seek as we do to develop a trade lever for sustainable development. For example, the 2022 launch of a [Coalition of Trade Ministers on Climate](#), with support from Geneva-based Forum on Trade, Environment and SDGs (TESS), offers a potentially important means of beginning to address the gap between the global community's climate change ambition and the trade world's response.

Ongoing policy projects undertaken by many others have informed our work and are providing further depth to the effort to think through sustainable development reforms of the trade system, including: African Trade Policy Centre (UNECA), AfronomicsLaw.org, Brookings Institution, Centre for China and Globalization, Centre for Development and Environment (CDE), Centre for Policy Dialogue (CPD), Center for Inclusive Trade and Development (CITD), Center for Integration and Development Studies (CINDES), Center for International Governance Innovation (CIGI), Centre for Trade and Investment Law (CTIL), Chatham House, Climate Action Platform, Council on Energy, Environment and

Water (CEEW), Consumer Unity & Trust Society International (CUTS International), Europe Jacques Delors, E3G, German Institute of Development and Sustainability (IDOS), Global Trade Alert, Institute of Management Technology (India), International Institute for Sustainable Development (IISD), International Trade Centre (ITC), Overseas Development Institute (ODI), Organization for Economic Cooperation and Development (OECD), Oxford University Global Economic Governance Programme, Peterson Institute for International Economics, Silverado Policy Accelerator, South Centre, TESS, Trade Law Centre for Southern Africa (TRALAC), UN Economic Commission for Europe (UNECE), UN Economic Commission for Latin America and the Caribbean (UNECLAC), United Nations Conference on Trade and Development (UNCTAD), World Economic Forum (WEF), and the WTO itself.

We also gratefully acknowledge the enormous contributions of hundreds of people who have already advised and assisted us in this Project, including [White Paper](#) authors and Workshop participants, advisors, financial supporters, and others who have helped us to organize and carry out this work. We cannot name you all, and many cannot be named because in our workshops we followed the Chatham House Rule to encourage frank discussion. We wish especially to mention Elena Cima, Lauro Locks, Gabrielle Marceau, and Geraldo Vidigal, who provided expert comments on earlier portions of this Report; Pratyush Pranav, Sunayana Sasmal and Pieter Van Vaerenbergh who provided editorial assistance in finalizing this Report; and Meghan Kircher and Lillie Steinhauser, without whose steadfast support and wise counsel, this Project would not have been possible. This Project received much help, and while we have assembled lots of good ideas from others, we are solely responsible for this Report's contents. We also thank with enormous gratitude those that have supported the work of the Project: Open Society Foundations, Bezos Earth Fund, European Climate Foundation, Laudes Foundation, Skoll Foundation, Silverado Policy Accelerator, McCall MacBain Foundation, and the Villars Institute.

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LIST OF ABBREVIATIONS

Abbreviation	Definition
AoA	WTO Agreement on Agriculture
Basel Convention	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
BCA	Border Carbon Adjustment
BEPS	OECD Base Erosion and Profit Shifting
CBAM	Carbon Border Adjustment Mechanism
CBDR-RC	Common but Differentiated Responsibilities and Respective Capabilities
CTE	WTO Committee on Trade and Environment
DPP	Dialogue on Plastics Pollution
EEZ	Exclusive Economic Zones
EGA	Environmental Goods Agreement
EU	European Union
FAO	Food and Agriculture Organization
FSC	Forest Stewardship Council
GATS	WTO General Agreement on Trade in Services
GATT	WTO General Agreement on Tariffs and Trade
GHG	Greenhouse Gas
GSP	Generalized System of Preferences
ICAO	International Civil Aviation Organization
IEA	International Energy Agency
IGO	Intergovernmental Organization
ILO	International Labor Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IPCC	Intergovernmental Panel on Climate Change
IRENA	International Renewable Energy Agency
ISO	International Organization for Standardization
ITAM	Instituto Tecnológico Autónomo de México
ITC	International Trade Centre
ITO	International Trade Organization
ITU	International Telecommunications Union
JSI	Joint Statement Initiatives
LDC	Least Developed Countries

LMIC	Low and Middle Income Countries
MC12	12th WTO Ministerial Conference
MC13	13th WTO Ministerial Conference
MNF	Most-Favored Nation
MRV	Measurement, Reporting and Verification
MSME	Micro-, Small, and Medium-Sized Enterprises
NDC	Nationally Determined Contributions
NGO	Non-Governmental Organizations
NTB	Non-Tariff Barriers
NTM	Non-Tariff Measures
OECD	Organization for Economic Cooperation and Development
PIC	Prior Informed Consent
PPM	Production or Process Method
SDC	Sustainable Development Commission
SDGs	UN Sustainable Development Goals
SDIA	Sustainable Development Impact Assessment
SDSGS	Agreement on Sustainable Development-Supporting Goods and Services
SDT	Special and differential treatment
SIDS	Small island developing states
Six Principles	Technical Barriers to Trade Committee's Principles for the Development of International Standards, Guides and Recommendations
SCM Agreement	WTO Subsidies and Countervailing Measures Agreement
TBT Agreement	WTO Agreement on Technical Barriers to Trade
TESS	Forum on Trade, Environment and SDGs
TESSD	Trade and Environmental Sustainability Structured Discussions
TNA	Technology Needs Assessments
TPRM	WTO Trade Policy Review Mechanism
TRIPS	Agreement on Trade-Related Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
WHO	World Health Organization
WTO	World Trade Organization

POLICYMAKERS SUMMARY

Today's trade system – centered on the World Trade Organization (WTO) but also including the United Nations Conference on Trade and Development (UNCTAD) and the International Trade Centre (ITC) at the multilateral level and many different initiatives at the regional and other plurilateral levels – has come under assault from many directions and for a number of reasons. In this regard, the trade regime stands at a watershed moment – requiring careful understanding of the challenges being posed and the potential for transformative change to better align the system with today's political realities and perceived policy needs. This Report seeks to respond to this need for fresh thinking, careful analysis, and thoughtful reform – with the *Villars Framework for a Sustainable Trade System* generated by a broad-based coalition of scholars, researchers, and other thought leaders operating under the banner of the [Remaking Global Trade for a Sustainable Future Project](#).

Why Trade Matters

Trade has long created opportunities for economic specialization based on comparative advantage that provides consumers with access to a wider variety of goods, lower prices, and other benefits – including economies of scale, greater innovation, quality improvements, and protection against supply disruptions. These gains have contributed significantly to the flourishing of humanity over centuries. International trade has thus been an important driver of economic growth, a source of good jobs, and an engine for poverty alleviation and economic resilience. More broadly, international trade and economic integration create a sense of common economic destiny and potential shared prosperity, which tend to encourage cooperative international relations, peace, and greater security.

What's Wrong with the International Trade System

At its best, the international trade system contributes in important ways to uplifting the lives of people across the world and to strengthening economies. But the trade regime cannot hope to optimize its contributions to social welfare, or even to continue those contributions without backlash if it operates in isolation from the broader challenges of the society in which it exists. In this regard, globalization and trade liberalization have become the subject of pervasive political pushback in many countries. At the core of the critique now widely circulating is the suggestion that the rules and procedures of the

WTO have been too narrowly targeted on opening markets and clearing obstacles to international trade, leading to disproportionate benefits to some countries and interests and not others. Many observers perceive this focus as inattentive to the needs of certain countries, micro-, small-, and mid-sized businesses, emerging entrepreneurs, small-scale farmers, and individuals in their roles as workers, and citizens, which might outweigh any gains that they have experienced from trade as consumers.

Other critics fault the current structure of the trade system for ignoring environmental threats and planetary boundaries, including climate change but also the risks arising from a worldwide loss of biodiversity, increased air and water pollution, contamination of the oceans, improper waste disposal, and the despoilment of the land through extractive industries and unsustainable agricultural practices. Yet others highlight the fact that the WTO has not taken seriously its mandate to promote sustainable development (embedded in the Preamble to the 1994 Marrakesh Agreement that launched the World Trade Organization). Simply put, the trade system is widely perceived to have failed to fulfill its potential to address critical environmental issues or to advance progress on the social dimensions of sustainability including inequality, poverty, gender parity, labor rights, and shared public health challenges.

But a sharper critique has also been leveled based on the very fact that the trade regime's capacity to take commerce to ever greater scale risks harming people and the planet if the economic activities it enables are carried out in an unsustainable manner. And indeed, many of the enterprises that have thrived in international trade have business models that entail spillovers of pollution or other harms that undermine progress toward a sustainable future rather than supporting action on climate change and other fundamental challenges such as those highlighted in the UN Sustainable Development Goals (SDGs). To recast the problem in the framework of economics, if the global system permits uninternalized negative externalities to persist with enterprises and states failing to take sufficient account of the social costs of their actions – then the promise of welfare gains to society from trade cannot be assumed.

Remaking Global Trade for a Sustainable Future

The Remaking Global Trade for a Sustainable Future Project seeks to address the full scope of these problems. For the past two years, the Project team has conducted a series of [10 workshops](#) on critical issues at the interface between the trade system and the 21st century [sustainability imperative](#). Each workshop brought together 30-40 issue experts for multiple days of intensive discussion and problem solving – involving in total more than 400 thought leaders from a diverse set of geographic, disciplinary, professional,

and political perspectives. The Remaking Global Trade for a Sustainable Future Project also commissioned over 50 [White Papers](#), seeking to illuminate the critical trade-sustainability tensions and possible paths toward better alignment between the trade regime and a sustainable future. These workshops covered topics like:

- climate change
- elements of a just transition to a clean energy future
- digital and information technology opportunities to promote sustainability
- circular economy
- social dimensions of sustainability including poverty alleviation, inequality, public health, labor rights, worker impacts, gender parity, and indigenous people rights
- difficult-to-decarbonize industries – including engagement of producers in developing countries
- finance, innovation, and investment for sustainable development
- air and maritime transport – with a focus on shipping
- sustainable agriculture and food systems
- oceans and the emerging Blue Economy
- governance and institutional reform of the trade regime

Path Forward

As a result of the tensions highlighted above and the difficulty that the trade system has had over some time in delivering progress on critical issues, it is now widely perceived that the WTO and the trade system more broadly are in danger. It is clear that the trade regime needs fundamental change to meet the needs of the current moment and to be seen as fit for purpose in the decades ahead.

The Remaking Global Trade for a Sustainable Future Project has thus developed a proposed series of reforms – the *Villars Framework for a Sustainable Trade System* presented at a September 2023 gathering of thought leaders in Villars-sur-Ollon, Switzerland under the auspices of the Villars Institute – designed to revitalize the trade system to make it more sustainable, people-centered, effective, inclusive, transparent, and digital. The reform package recognizes the need to move away from the narrow view of the WTO's role as merely clearing obstacles to trade, to the wider goal of promoting sustainable development. This shift in emphasis offers the promise of broader public and political support – and thus restored legitimacy and relevance in global governance and the management of international economic interdependence.

New Priorities

In addition to arguing that sustainable development must become the new core mission for the trade system, a further recommendation of the Remaking Global Trade for a Sustainable Future Project centers on the need for the trade system to do its part to deliver the global public goods required to promote a sustainable future across all three pillars of sustainable development: economic, environmental, and social progress.

Proposed Sustainable Trade System Reform Agenda

In support of this reconceptualization of the trade system, the Remaking Global Trade for a Sustainable Future Project team proposes a comprehensive reform agenda for consideration by the WTO Members including the following action items (the full list of which can be found in [Section 12](#) of the Report):

1. Commit to net-zero greenhouse gas (GHG) emissions in international trade by 2050, ensuring that any enterprise permitted to engage in international trade has net-zero GHG emissions across its value chain by 2050 – covering extraction of raw materials, production/manufacturing, shipping, and distribution, as well as the consumption/use and end-of-life disposal of goods
2. Launch workstreams to establish agreed foundations for border adjustment mechanisms that provide scientifically rigorous and equitable underpinnings to ensure internalization of environmental externalities including:
 - measurement protocols for GHG emissions embedded in traded goods
 - processes for gauging the equivalence of climate change policies and strategies and supporting their interoperability to reduce trade frictions

- new mechanisms for ensuring equity in this process and paving the way for a just transition to a clean energy future
3. Restructure the WTO approach to subsidies based on their sustainability impact
 - go beyond the present focus on whether subsidies are trade-distorting to consider whether they are harmful or helpful to sustainable development
 - ensure that non-protectionist national subsidy programs that enhance sustainable development are permitted
 - expand disciplines on sustainability-harming subsidies
 4. Establish an inclusive process for setting sustainability standards for traded goods
 - clarify the legality of the importing state's application of process and production method standards designed to promote sustainable development
 - promote international sustainability standards that advance sustainable development in cooperation with responsible specialized entities such as the International Organization for Standardization (ISO), United Nations Environment Program (UNEP), International Maritime Organization (IMO), and the United Nations Framework Convention on Climate Change (UNFCCC)
 5. Create conditions that allow developing countries to thrive in the emerging sustainable development-oriented trade system
 - ensure that new sustainable trade measures are paired with policy initiatives to enable less industrialized countries or vulnerable communities to transition to the new marketplace expectations
 - motivate trade-based investment, trade finance, and technology transfer in developing countries for sustainable development

- recharter the International Trade Centre as the Sustainable Trade Center with an expanded capacity-building mandate and resources
 - create a Global Sustainable Trade Fund to allocate funds to developing countries for trade-related sustainable development purposes
6. Identify and promote digital tools and information technologies that can advance sustainable production and engagement by developing countries in e-commerce
 7. Consider the potential for a revitalized sustainable goods/services/technology initiative to eliminate tariffs and other barriers to trade on factors essential to sustainable development
 - based on carefully defined sustainability standards
 - designed to promote expanded and resilient supply chains
 - structured to promote a sustainable private sector in developing nations
 8. Initiate a WTO governance and institutional reform process to:
 - enhance the agility of trade system deliberation and decision-making
 - support a more inclusive, people-centered sustainability agenda, including the creation of new processes and mechanisms such as:
 - WTO Trade Policy Reviews that include a sustainability review section
 - Sustainable Development Impact Assessments to ensure full consideration of sustainable development and impacts on marginalized communities in connection with trade agreements and decisions
 - launch of a Sustainable Development Commission made up of independent experts drawn from sustainability fields to assist in evaluating sustainability impacts and supporting WTO dispute resolution

- facilitate new modes of negotiation that reflect the nature of global public goods (going beyond the mercantilist and zero-sum bargaining undertaken in the context of tariff reductions)
- promote inclusiveness and *learning by doing* through existing Member-led initiatives like the Trade and Environmental Sustainability Structured Discussions (TESSD), the Dialogue on Plastics Pollution, and the Fossil Fuel Subsidy Reform Initiatives

While this agenda is ambitious and will take significant processing and discussion to advance, the Remaking Global Trade for a Sustainable Future Project team believes that many of these action items could be advanced at the WTO's 13th Ministerial Conference (MC13) to be held in Abu Dhabi from February 26–29, 2024. Some elements of the reform agenda could be ready for definitive action, while others should be embedded in a commitment to a new set of workstreams designed to operationalize the WTO's sustainable development mandate.

The reform proposals put forward in this Report are meant to launch a conversation and to stimulate discussion and debate. In this regard, the Remaking Global Trade for a Sustainable Future Project team will be conducting extensive outreach over the coming months to get feedback on this preliminary agenda, obtain suggestions about how to refine or reframe the reform proposals, and seek guidance on the political path forward. This process will include questions about who might play a leadership role in delivering the transformative change required to establish a trade system that delivers on the sustainable development mandate and meets the needs of the global community for improved international economic cooperation.



SECTION 1:

Project Motivations, Background, Principles, Processes and People

The multilateral trade system¹ is at a critical juncture: it needs to take stock and evolve. It is no longer enough for the trade system simply to get out of the way of national and international sustainable development policies and initiatives; rather it is time for the trade system to pivot to be – and to be seen to be – part of the solution to the sustainability dilemma facing our world.

Against this background, the central question that the team for the Remaking Global Trade for a Sustainable Future Project (Remaking Trade Project) set out to investigate is: How can the multilateral trade system contribute to sustainable development?

The Remaking Trade Project began in June 2021 with the aim of re-examining the foundations of international trade policy and identifying how it can better contribute to what we see as the sustainability imperative of the 21st century – and the [sustainable development mandate contained in the World Trade Organization's \(WTO\) own 1994 Marrakesh Agreement](#). The result of this work is the framework for trade system reform that we preliminarily set out in this *Villars Framework Report* (or the "Report").² While this Report is not directly tied to the United Nations Sustainable Development Goals (SDGs), it maps a structure for the trade system to provide support for achievement of a number of those goals including climate action (SDG 13); no poverty (SDG 1); reduced

¹ By reference to the multilateral trade system, we intend to refer to the full institutional ecosystem, sometimes referred to as the "regime complex" of multilateral trade. While we focus on the multilateral system, we do not mean to exclude preferential trade agreements, regional or plurilateral arrangements, and other non-multilateral initiatives, which we believe are amenable to similar analysis. Indeed, there is much to learn from how regional arrangements in North and South America, Europe, Asia, Africa, the Pacific, and the Caribbean handle sustainability issues.

² This preliminary Report is intended to provoke discussion and feedback. We look forward to robust review and debate over the recommendations advanced by this Report in preliminary form. We expect to prepare a final Report in 2024.

inequalities (SDG 10); affordable and clean energy (SDG 7); zero hunger (SDG 2); gender equality (SDG 5); responsible production and consumption (SDG 12); life below water (SDG 14); and partnerships for the goals (SDG 17).³ The Remaking Trade Project reform agenda promises to reinvigorate the WTO, create an international trade system that is fit for purpose in the 21st century, better connect to today's public values and priorities, and thereby demonstrate the trade system's legitimacy and rebuild political support for trade.

1. Core Principles

The Remaking Trade Project is built around the following core principles:

- The international trade system has been and should continue to be seen as a mechanism for shared prosperity among nations – providing, in turn, a strong sense of common economic destiny and incentives for cooperative relations and peace.
- Trade has long provided an important engine for the economic pillar of sustainable development – including economic growth, good jobs, poverty alleviation and resilience. It is also clear, however, that the benefits of trade have not been evenly distributed.
- Progress on trade will require more concerted attention to, and action on, the economic, environmental, and social pillars of sustainable development.
- The trade system must be re-engineered to support the SDGs and the promise of human flourishing they provide. To advance this alignment of the trade system with sustainable development, the WTO and the broader international trade system must work in partnership with national governments, regional communities, and other international organizations, as part of an "all of multilateralism effort."⁴

³ For an indicative list of trade-related SDG targets, see [Appendix C](#).

⁴ Amb. George Mina, in [comments on Remaking Trade Project Trade Presentation at WTO Trade and Environment Week](#), 12 June 2023.

- For the trade system to support – and not undermine – sustainable development, businesses and governments must bear the costs of the environmental and social harms they cause.
- Restructuring the trade system to achieve sustainability must ensure that the reforms are fair to developing countries and vulnerable people and communities.
- The process of reform must be inclusive and take account of voices and interests that have been and continue to be marginalized. To fulfill its potential as a valued element of global governance, the trade system must be more people-centered.

2. Process

To develop the actionable trade reform agenda described in this Report, we designed a process to hear and reflect a wide range of ideas and perspectives from a diverse set of stakeholders including from the worlds of trade, environmental protection, public health, labor, business and the private sector, civil society, social welfare, and a range of other fields. From September 2022 to September 2023, we organized a series of 10 carefully curated workshops on critical topics at the interface of trade and sustainable development. These workshops brought together over 400 people, comprising public officials, international organization officials, business executives and entrepreneurs, environmental advocates, Non-Governmental Organization (NGO) leaders, researchers, and other sustainability thought leaders. Each workshop focused on understanding the distinct sustainability challenges and opportunities relating to the global trade system – and on generating a reform agenda. For a list and description of the workshops see [Appendix A](#) and for our authors' notes and observations from the process see [Appendix B](#).

We had the privilege of presenting the Project's emerging recommendations at the WTO Trade and Environment Week in June 2023. The video of that presentation can be found [here](#). The event was attended by numerous WTO ambassadors, trade diplomats, and international organization and NGO representatives, and generated significant discussion about how to align the international trade system with sustainability and climate change goals.

This Report will be released during the September 2023 WTO Public Forum and shortly thereafter discussed at our Villars Summit in Villars-sur-Ollon, Switzerland – opening a new phase of the Project's work focused on outreach events and robust review and

debate over the recommendations advanced by this Report in preliminary form. Events are planned around the world spanning the Fall of 2023 and throughout 2024. These events aim to gather feedback on the proposed reform agenda from a diverse set of stakeholders, further develop the pathway to a sustainable future for the international trade system and refine the proposed political strategy for advancing the reform agenda. We see this extensive set of conversations that will bring the Remaking Trade Project to South and North America, Africa and the Middle East, Asia and the Pacific, as well as Europe, as essential to build support for a more inclusive and sustainable global trade system.

One of the problems that the Project identified early was the failure of trade communities – government officials, diplomats, think tanks, and scholars – to interact systematically and effectively with their counterparts in the world of sustainable development, including but not limited to the climate change community. In response to concerns about this siloed approach to international governance, the Remaking Trade Project team has sought to foster communication and cooperation – integration – between these different areas of global concern. We found early on that different professional groups with distinctive disciplinary backgrounds adopt divergent conceptual frameworks, use distinct vocabularies, make assumptions that others do not share – and perhaps not surprisingly come to conclusions that often do not align with the views of others. Words like externalities⁵ and acronyms like PPM⁶ are used casually in the world of trade and economics but not in other circles. For that reason, we have tried in this Report to define terms of art, limit professional jargon, and spell out (or eliminate) acronyms as much as possible. We intend this Report to be accessible to people of varying backgrounds and levels of expertise, recognizing that every one of us is a layperson in some areas that lie at the intersection of trade and sustainable development.

3. The People involved in The Remaking Trade Project

The Remaking Global Trade for a Sustainable Future Project has been spearheaded and driven by a team of dedicated sustainable development and trade experts. The team is led by a consortium of academics from three Universities: Professor Dan Esty at the Yale School of the Environment and Yale Law School; Professor Joel Trachtman and Dean

⁵ *Externalities* are harms or benefits created by the actions of one person, but experienced by another person. For harms – negative externalities – the acting person might fail to take account of the full social cost of action.

⁶ In trade use, *PPM* refers to a production or process method. It refers to the important question in the trade arena about the extent to which importing countries can regulate the production processes or methods of those who export goods to them, including sustainability.

Emerita Rachel Kyte of the Fletcher School of Law and Diplomacy at Tufts University; Dr. Jan Yves Remy, Director of the Shridath Ramphal Centre for International Trade Law, Policy, and Services at the Cave Hill Campus of the University of the West Indies; and Professor Diana Van Patten at the Yale School of Management. Professional and administrative support is provided by Trevor Sutton (Research Director, Remaking Trade Project), Meghan Kircher (Associate Director, Yale Center for Environmental Law and Policy) and Lillie Steinhauser (Program Assistant, Yale Center for Environmental Law and Policy).

The Remaking Trade Project has been advanced through a consortium of collaborating research centers, academic institutions, think tanks, and individual sustainability thought leaders from across the world including: the Oxford University Global Economic Governance Programme, the Indian Institute of Technology Management, the Centre for Trade and Investment Law, the Africa Climate Fund, Instituto Tecnológico Autónomo de Mexico (ITAM), the National University of Singapore, the University of Copenhagen Centre for International Law and Governance, United Nations Conference on Trade and Development (UNCTAD), Singapore Management University, the Forum on Trade, Environment and SDGs (TESS), the Villars Institute, the Silverado Policy Accelerator, and the United Nations Foundation (UN Foundation).

The Project is guided by a Steering Committee made up of a diverse group of thought leaders drawn from both the founders of the trade community and a "next generation" of trade leaders as well as a wide-ranging group of sustainability experts. The Project [website](#) provides a full list of the Steering Committees.

The main sponsors of the Project include: The Skoll Foundation, the Open Society Foundations, the European Climate Foundation, the Laudes Foundation, the McCall MacBain Foundation, the Bezos Earth Fund, the Villars Institute, and the Yale Planetary Solutions Innovation Fund.

We recognize that remaking the trade system requires not just a reform agenda but also a reform spirit – one that engages policy, business, and civil society leaders and the general public with a compelling vision of the future of trade and globalization. We further recognize that this Framework will need to be refined over time and perhaps even fundamentally altered as circumstances change. And while the Project has been launched at a moment of profound challenge to the trade system, the current circumstances also represent a unique opportunity to bring about transformative change.

Indeed, the WTO's Director-General, Dr. Ngozi Okonjo-Iweala, has signaled a broad interest in reform of the trade system and enthusiasm for bringing sustainability more fully into the WTO. The G20 Trade and Investment Ministers' Meeting of August 2023 Outcomes Document included the following affirmations:

We are committed to reinforcing cooperation on international trade and investment to avoid unnecessary disruptions and to achieve Sustainable Development Goals (SDGs). We underscore the need for accelerating progress towards inclusive trade, by also including women's empowerment, gender equality and other socio-economic aspects of equality, and by expanding development opportunities for all our people.

We reaffirm the essential role of the multilateral trading system with WTO at its core. We also acknowledge the challenges the multilateral trading system is facing. In this regard, we remain committed to work constructively towards necessary WTO reform to improve its functioning and to strengthen trust in the multilateral trading system, while reaffirming the foundational principles and objectives set out in the Marrakesh Agreement Establishing WTO (Marrakesh Agreement).

A central mission of the Project is to cultivate the next generation of leaders – coming from the trade community, national governments, the business world, environmental groups, public health organizations, universities, and other entities – to critically shape the reform strategy and then carry out the transformational game plan in the years and decades ahead. The Remaking Trade Project has therefore been deliberate in identifying and engaging young persons who have helped to shape the dialogue in all of the workshops through their participation as team members, workshop participants, speakers and presenters, and authors of subject-specific White Papers.





SECTION 2:

Conceptual Building Blocks of a Reformed Trade System

1. Introduction

Trade has improved the human condition in large measures through greater and cheaper consumption choices, specialization, economies of scale, growth, and the operation of comparative advantage. Trade between countries and civilizations has been at the core of international relations and global engagement from time immemorial. Today, the world is more interconnected than ever before because of technological change, deepening economic integration, and the much-expanded movement of people and data across national boundaries.

Because of these many interconnections, countries need to interact more extensively to deal with global problems, from pandemics to pollution spillovers. While trade is one of the mechanisms for transmitting these harms, it can also be used to ameliorate these problems by facilitating the necessary flows of goods, services and technologies, as well as regulatory negotiations to address them.⁷

This Project began from the premise that global environmental and social harms need to be addressed so that the actors that cause and have caused those harms pay for them – reflecting the full environmental and social costs of their actions. For example, those emitting greenhouse gas emissions (GHG) should pay the full social cost of the climate change they cause, to incentivize reduced harm, ensure economic efficiency, spur innovation, and ensure fairness so that those who cause harm do not profit at the expense of victims.

Because different people and different countries have different goals and concerns, the social cost must be determined through a political process of negotiation and

⁷ See [James Bacchus, Sustainability and the WTO Trading System](#), White Paper for the Remaking Trade Project.

rulemaking. It is not possible to say that, for example, the social cost to Australia of climate change is the same as the social cost to Zimbabwe. In addition, the climate problem is based on aggregate emissions over time, with the developed world contributing more to the stock, even if the developing world is catching up in the flow of GHGs. Therefore, while an appropriate response to climate change might be globally uniform emissions pricing, difficult negotiations, equity considerations, and trade-offs will be required to achieve that policy.

The trade system should operate consistent with a commitment to sustainable development, as provided for in the World Trade Organization's (WTO) founding document, the [Marrakesh Agreement](#). There are three dimensions to sustainable development – social, environmental, and economic. Holistic integration of these dimensions is at the center of sustainable development. Focusing on the SDGs, we might consider two broad categories of goals: (i) those having to do with environmental and social goals, and (ii) those more traditionally identified as economic goals like poverty, inequality and growth. These all have to do with a broad measure of human welfare, not just in the monetary sense, and a concern for how that welfare is distributed.

Trade is best understood as an essential tool to increase human welfare. But it is not an end in and of itself. Sustainable development, on the other hand, in the sense used in this Report, is a broad term for a range of elements that promote human flourishing. It includes tools to increase human welfare in the broadest sense, such as environmental protection, social protection, and the provision of economic opportunities for countries and people that have been left behind. Social issues – including reducing inequality, protecting labor rights, and enhancing the positions of disadvantaged or marginal populations – are goals in themselves, but they are also necessary to establish political stability in general, and support for the trade system.

In this Section, we set out some of the historical and intellectual causes of the failure of the trade system thus far to fully integrate sustainable development in its structure; explain why it is necessary for the trade system now to do so; map the linkages between trade and sustainable development; and suggest principles we consider essential to overcoming the institutional and negotiation difficulties for appropriate integration.

2. From Bretton Woods to the Washington Consensus

Trade, which expands opportunities for specialization, economies of scale, and the operation of comparative advantage beyond the borders of a single country, has been correctly recognized as a [source of great welfare benefits](#). Trade has also assisted

development for many countries, by virtue of export-led growth, in which persons who receive low wages in less industrialized countries obtain market access and therefore opportunities to compete with higher wage earners in wealthier countries. Export opportunities also lead to investment, which provides capital that makes workers more productive, and therefore able to command higher wages. Development is also supported by opportunities to purchase imported raw materials and intermediate product inputs at lower prices. Modern supply chains make protectionism self-defeating.

Since Cordell Hull (United States Secretary of State during World War II) as well as Jean Monnet and Robert Schuman (who together led European integration in the 1950s) highlighted the value of economic integration, political leaders have hoped that increased trade would help bring peace: the French concept of *doux commerce*. Rationally, once economies are integrated and people develop a sense of shared economic destiny, war becomes more costly and a less attractive way to solve problems. Since that time, political leaders have also recognized that trade is multi-dimensional and cannot be separated from other political and social arrangements. Indeed, the history of the U.S. federation and of the European Union demonstrate that trade relations must be integrated with other government priorities and responsibilities.

The Bretton Woods negotiations held in New Hampshire in 1944 produced the World Bank and the International Monetary Fund, and initiated negotiations for an International Trade Organization (ITO). These negotiations were continued in Havana in 1947 and 1948 at the United Nations Conference on Trade and Employment. The resulting agreement, called the Havana Charter, would have also addressed several non-trade issues, such as fair labor standards, restrictive business practices, and commodities control. The ITO was intended to be a specialized UN agency and to make decisions by majority vote. But it never came into being. Instead, the General Agreement on Tariffs and Trade (GATT 1947), which was intended as a placeholder until states could ratify the broader treaty, became the foundational multilateral agreement on trade in 1947.

As is well known, the number of parties to the GATT grew, especially during the period of decolonization. As former colonies joined, disparities of economic position became greater. By the 1960s, the issue of development, and of *special and differential treatment* (defined in more detail below) became salient and an area of contention.

The original focus of the GATT was on reducing tariffs, but later, in the context of successive rounds of negotiations, there was also work to address non-tariff barriers that might also reduce trade. It contained exceptional provisions in Articles XX and XXI, which expressed its limits: it would not restrain states in connection with their regulation of

public morals, health, exhaustible natural resources, and essential national security interests. Importantly, these provisions allowed the WTO to avoid engaging with these issues – and to remain focused on trade liberalization. This focus on economic integration and open markets – and disengagement from issues deemed domestic – was never complete. Indeed, in the 1979 Tokyo Round, the GATT expanded to address several additional non-tariff barriers.

Beginning in the 1970s, the market-prioritizing Chicago School approach to economic policy – which highlighted the capacity of markets to address social problems and minimized the role of government – became influential. Under the sway of this market fundamentalism (more recently termed *neoliberalism*), the trade system focused on trade liberalization. The prevailing view was that the trade system should not address non-trade issues. These ideas influenced development economics, and by 1989, John Williamson coined the term *Washington Consensus* to refer to a set of market-oriented development prescriptions imposed by the International Monetary Fund (IMF) and World Bank on insolvent states as a condition for financial assistance. The Washington Consensus included as two of its prescriptions reducing trade restrictions and reducing anti-competitive regulation.

While markets have important social uses, and in modern times have been an important engine of increasing human welfare, the neoliberal Chicago School idea of market fundamentalism has been discredited in academic and policy circles due to its failure to recognize market failures, its limited understanding of the limits on the rationality of human decision-making, and a fundamental lack of empirical testing of its principles, often relying instead on mathematical models that made questionable assumptions. The prescriptions of the Washington Consensus were seen by many to fail to achieve their development purposes, and indeed in some contexts to set development back.

With the 2008 financial crisis, the market fundamentalism of the Chicago School was further discredited in policy circles. Despite the collapse of the Washington Consensus and fundamental shifts in the prevailing view of what the goals of trade policy should be, efforts to develop a new focus for the trade system and to bring sustainable development into trade policy have so far met with limited success. This Report is premised on the idea that with proper collateral policies at the national and international level, trade is still an important engine for development and for global betterment.

3. The Sustainable Development Imperative

The Uruguay Round of GATT negotiations began in 1986 and concluded in 1994 with the World Trade Organization launched on the first day of 1995. The WTO extended the GATT approach to liberalization of commerce to services and also supported intellectual property-based businesses by adopting the Agreement on Trade-Related Intellectual Property Rights (TRIPS Agreement).⁸

Even before the establishment of the WTO, there were concerns about the relationship between trade and sustainability. These were prompted in part by the 1989 and 1991 GATT Tuna-Dolphin cases, where sustainability-motivated import restrictions were at stake. In 1994, Dan Esty published the seminal book, *Greening the GATT*, offering "new international rules and principles to help make trade and environmental policies work together to better achieve sustainable economic progress." At the end of 1994, the Marrakesh Agreement included explicit recognition – in the very first recital of the founding document of the WTO – that sustainable development should be a core objective of the new WTO. In the following year, the WTO created a Committee on Trade and Environment (CTE) and began to think much more systematically about how the trade system should interact with environmental challenges. In 1999, the push for a trade system that brought other values into the conversation spilled into the streets of Seattle as 40,000 protesters disrupted the WTO's Third Ministerial Conference in what became known as the *Battle of Seattle*.

Management of the interface between trade and sustainable development has not proceeded as far as some might have hoped in 1999. Preferential trade agreements include provisions requiring partners to adhere to certain multilateral environmental agreements, but have broken limited new ground in critical areas such as greenhouse gas emissions reduction, while making some advances on labor, gender, e-commerce. While in 2020, the WTO commenced a series of Trade and Environmental Sustainability Structured Discussions (TESSD) among some interested WTO Members, little has been done at the multilateral political level to manage this interface. For example, it has taken years to achieve a limited [agreement regarding certain Fisheries Subsidies](#) or even to begin discussions on the scourge of fossil fuel subsidies. [See Section 4.](#)

⁸ The GATT 1947 was replaced by the GATT 1994, which incorporates GATT 1947 without textual modifications, to compel GATT 1947 members that otherwise did not wish to accept the TRIPS Agreement to join the WTO. The WTO Agreement included the GATT 1994 and, as a "single undertaking," required acceptance of the TRIPS Agreement.

Despite these developments, today's trade system seems locked in the 20th century view that its role is simply to get out of the way of national government efforts to address environmental and social problems and other sustainable development challenges. Some trade law, economics, and policy experts (particularly in the Geneva trade community) cling to the notion of a trade system that is narrowly focused on removing barriers to global commerce and therefore separate from sustainable development. For them, the WTO's comparative advantage lies in the areas in which it initially had competence, namely, trade liberalization and promoting market access.

Perhaps as a result, the WTO has not made great strides to implement its 1994 sustainable development aspirations and has done very little to contribute directly to prospects for a sustainable future.⁹ But today, the world is in the grips of a struggle for survival that has brought a sharp focus on the policies required to preserve a livable climate and a diverse biosphere. In this context, while there have been some important strides by the WTO leadership, much of the WTO membership appears to be sitting on the sidelines in the face of an existential threat. This is partly due to its governance structure.¹⁰ [See Section 11.](#)

More recently, the global community has expressly advanced a commitment to sustainable development with a detailed structure of 17 Sustainable Development Goals, including poverty alleviation, clean energy, and sustainable food systems – all of which implicate the trade system. Thus, trade is increasingly understood as an essential tool of sustainable development.¹¹ This reality suggests that the world needs an integrated approach to trade, sustainability, and development. (See [Appendix C](#) for an indicative list of the trade-related SDG targets.)¹²

For example, SDG Goal 2 aspires to "end hunger, achieve food security and improved nutrition and promote sustainable agriculture." Food – sustenance – is at the core of sustainability, and the production of food – agriculture – is a leading sector of international trade.¹³ The modern system of subsidies for agriculture was established to

⁹ See Patrick Low & Gabrielle Marceau, "The Interface between the Trade and Climate Change Regimes: Scoping the Issues" (2011) WTO Staff Working Paper ERSD- 2011-1.

¹⁰ See James Bacchus, *Trade Links: New Rules for a New World*, Cambridge University Press, 2022.

¹¹ See Elena Cima, *From Exception to Promotion: Re-Thinking the Relationship between International Trade and Environmental Law*, Brill, 2021.

¹² See also Christophe Bellmann and Alice Tipping, *The Role of Trade and Trade Policy in Advancing the 2030 Development Agenda* (International Development Policy, 2015). Marie-Claire Cordonier Segger, *Crafting Trade and Investment Accords for Sustainable Development* (Athena's Treaties) (2021).

¹³ See James Nedumpara, [Food Security for a Sustainable Future](#), White Paper for Remaking Trade Project.

promote food security. A central issue in international trade is the distortions and harms to sustainability that these subsidies can cause.¹⁴ Food security can be threatened by export restrictions that states impose in reaction to shortages. Finally, agricultural production practices can be environmentally harmful, and states increasingly impose import standards relating to these practices.¹⁵ These issues are addressed in [Sections 4, 5, and 8](#) of this Report.

A fundamental conclusion of this Report is that the WTO could provide an important venue, perhaps among others, for negotiations to carry out this integration process and to produce a new framework for global commerce that addresses trade and sustainable development in an integrated and effective manner.¹⁶

If instead, WTO Members abstain from addressing sustainable development, the trade system may be undermined bureaucratically and politically. It would be undermined bureaucratically if the critical sustainability issues are addressed outside the trade system, where experience shows that trade considerations may be neglected. It would be undermined politically, because all over the world, the political consensus in favor of free trade has been challenged by failure to take care of sustainable development needs. Moreover, the objective of human welfare must encompass both monetary value in terms of wages, jobs, and economic opportunities – and the non-monetary human welfare value of achieving the sustainable development goals that support the flourishing of individuals and communities across the world.

Furthermore, trade offers a tool by which to enhance the global capacity to address urgent sustainability issues. Individual national action to make life on earth sustainable seems manifestly ineffective. Indeed, national responses to global problems such as climate change and biodiversity loss are moving much more slowly than the science suggests is necessary. The matching theory of public goods¹⁷ reinforces this conclusion

¹⁴ See Valeria Piñeiro and Joseph Glauber, [The Potential of Trade Policy to Enhance Sustainable Farm Productivity](#), White Paper for the Remaking Trade Project; Doaa Abdel-Motaal, [Insights from the WTO Trade Dialogues on Food and Outreach to the Agri-Food Business Sector](#), White Paper for the Remaking Trade Project.

¹⁵ See Stefano Rettore, [Global Agri-Business and Sustainable Food Systems](#), White Paper for Remaking Trade Project.

¹⁶ See Syed Munir Khasru et al., *Environmental Sustainability and International Trade: Roadmap for Sustainable Development*, Institute for Policy, Advocacy, and Governance (2020).

¹⁷ Public goods are goods that are not excludable and non-exhaustible in the sense that one person's use does not diminish its availability for others—like a benevolent climate. Economic theory suggests that public goods will be underprovided because of incentives to free-ride on the efforts of others. An important response is governance to induce persons to contribute to the production of the public good.

– suggesting that coordination or governance will be required at the scale of the harm to be addressed.

But collective action across national boundaries can be very difficult given divergent national values, goals, traditions, and levels of development. Combined with the dynamic of free-riding that defines public goods, this makes it difficult to mobilize an ambitious global response to problems such as climate change.¹⁸

Although some leading states or economic blocs may act unilaterally, it is unlikely that their efforts will be sufficient, given the nature of the global public goods that are needed and related incentive problems. Even if some leading states may aspire to launch an extraterritorial cascade of positive action, through carbon border adjustments or climate clubs, or through sustainability standards imposed on all imports, these unilateral acts might well be seen as failing to respect the agency of other states – and thus lacking in legitimacy. They could even result in a backlash that destroys the trade system as it exists today.

Trade and sustainable development have both natural linkages and constructed linkages. Natural linkages involve identifiable causal connections between trade and sustainable development issues, and include the following:

- Trade can intensify certain types of production and consumption, causing environmental degradation.
- Economic actors can seek competitive advantage by externalizing the costs of environmentally or socially harmful action, including international externalization such as greenhouse gas emissions.
- Subsidies can have distortive trade effects and also adverse effects for sustainability through intensification of unsustainable production methods.
- Trade can cause leakage in response to national regulation, whereby production shifts to other locations with lower regulatory costs and the associated environmental harms are simply shifted rather than reduced or eliminated.

¹⁸ See Joel P. Trachtman, *The Future of International Law: Global Government*, Cambridge, 2013.

- Trade can put pressure on national environmental or labor regulation that imposes costs on domestic producers that might competitively disadvantage them in the international marketplace.
- In response to leakage and related political pressure, national governments may impose sustainability standards or border adjustment tariffs on imported goods or services that do not meet their regulatory requirements.
- These production standards can have adverse effects on developing countries.
- Trade in goods requires transportation, which causes significant emissions of greenhouse gases and other pollutants.
- Trade can generate waste through linear methods of production and make recycling and reuse more difficult.
- Trade can make green/sustainable goods and services cheaper, reducing environmental degradation.
- Trade can privilege the production of certain environmental goods and services in places where subsidies/finance are available.

Constructed linkages arise where negotiators find it useful to make cross-functional exchanges between trade and sustainable development, even in the absence of natural linkages. For example, developing countries for which greenhouse gas emissions reduction commitments might not otherwise be attractive due to the costs of the transition required (and in the face of other pressing demands for their limited resources) could be convinced to reduce emissions based on the promise of capacity building, innovation initiatives, and financial support for their efforts to launch new and globally competitive enterprises.

This Report addresses all these types of linkages. Addressing these linkages will inevitably involve interaction across the trade-sustainability frontier and sometimes compromise between traditional trade policy priorities and sustainable development aspirations.

4. Trade in Support of Sustainable Development

This Report addresses overarching, sectoral, and specific areas in which reform is required to manage the interface between trade and sustainable development,¹⁹ to better achieve sustainable development goals. [Section 11](#) addresses governance and institutional reform issues specifically.

At a fundamental level, sustainable development is an area in which different countries, with different levels of development, different economic models, and different preferences as to health and environmental protection versus monetary wealth may have different policies: different ways of integrating these diverse policy goals. Absent international effects, including trade effects, subsidiarity would counsel that countries should make their own tradeoffs, and without international intervention. But the international effects, mediated through trade or by virtue of physical externalities like global warming or biodiversity loss, are significant, making it appropriate and imperative for countries to negotiate together to determine how to manage these differences.

The trade system has functioned to manage this international regulatory interface in the past.²⁰ But globalization itself, and global sustainability challenges, demand even greater effort to negotiate at the interface for coherence and interoperability that can achieve sustainable development without unnecessary loss of the benefits of trade. We propose specific governance and institutional reforms to advance a people-centered approach in [Section 11](#) below.

The neoliberal model prioritized market solutions to a wide range of problems. This market fundamentalism translated into deregulatory policies in a number of circumstances, the effect of which allowed firms to externalize environmental and social costs onto governments, citizens, or nature. The move away from market fundamentalism has included a more realistic approach to the role (and limits) of markets that has rehabilitated the role of government as a regulator and as the institution that reconciles competing policy goals.²¹

¹⁹ See Max Gruenig, Eunjung Lee, and Ignacio Arroniz Velasco, [Aligning Climate, Trade and Development Through Cross-Cutting Frameworks](#), White Paper for the Remaking Trade Project.

²⁰ The late John Jackson, a leader in the early study of trade law, noted this interface role of trade law. See John H. Jackson, *The World Trade System: Law and Policy of International Economic Relations* 218 (1989).

²¹ See Gary Gerstle, *The Rise and Fall of the Neoliberal Order: America and the World in the Free Market Era*, Oxford University Press, 2022.

This shift has created a demand for government intervention in support of sustainable development,²² and we have thus seen a recent resurgence and rehabilitation of national industrial policy, especially to promote the development and adoption of green/sustainable technologies. But the trade system has not yet evolved in parallel.²³ Increasingly, it is becoming clear that the market alone will not fully address peoples' needs, and that a trade system that supports sustainable development must allow states an appropriate "*right to regulate*" for sustainable development, and take a more deliberate approach to enhancing public welfare.

ACTION

We suggest that WTO Members move to rectify the long neglect of the sustainable development mandate contained in the 1994 Marrakesh Agreement and better align the WTO with global commitments to respond to climate change in the Abu Dhabi Ministerial Declaration which should:

- reiterate the 1994 sustainable development mandate contained in Recital 1 of the Preamble to the WTO Marrakesh Agreement and declare sustainable development to be the overarching goal of the trade system – consistent with the UN Sustainable Development Goals to which all WTO Members have committed;
- outline a set of workstreams to be undertaken within the WTO to promote the operationalization of sustainable development as a core principle of the trade system.

5. Justice and Rights in the Trade System

The international system is characterized by great disparities of wealth, in terms of natural resources, and in terms of capital that makes certain workers more productive. There are also disparities of environmental adversity: global warming and biodiversity loss [tend to hurt the less industrialized more than they hurt the developed world](#). These disparities make it difficult to negotiate at the interface of trade and sustainable development when some have less negotiating power: trade negotiating power still comes largely from

²² See Thomas Hale and Kennedy Mbeva, [Paradigm Shift: A New Era for Trade, Sustainability, and Development](#), White Paper for Remaking Trade Project.

²³ See Ilaria Espa, [Green Industrial Policy and International Trade](#), White Paper for Remaking Trade. Also see, Mark Wu & James Salzman, The Next Generation of Trade and Environment Conflicts: The Rise of Green Industrial Policy, 108 Northwestern University Law Review 401-474 (2014).

market wealth, and the power to deny access to a lucrative market. While power will demand its due, it is also important to follow a moral compass – a sense of justice or equity – in international negotiations. In her welcome address to participants at our Bridgetown Workshop that focused on the Global South, Prime Minister Mia Mottley of Barbados noted that:²⁴

The day of reckoning will demand that when we deconstruct and reconstruct, that we do so with a moral compass, that we do so with a recognition that there has to be fairness and equity.

Justice and equity are powerful concepts that have recently been invoked in international negotiations, especially those linked to climate change. For example, the most recent IPCC report acknowledges that colonialism enabled the global industrial expansion that is, in large part, responsible for climate change and its associated impacts.²⁵ In the context of trade, some would argue that the concept of special and differential treatment (SDT) and its articulation through various provisions and approaches in the WTO Agreements and negotiating processes reflect the trade system's concern with justice and equity.

It is worthwhile at this stage to refer to some relevant concepts.

Special and Differential Treatment (SDT). Development at the WTO has traditionally been couched in the language of "special and differential treatment," a principle that was reaffirmed in the 2001 Doha Ministerial Declaration, which began the Doha Development Agenda negotiations of the WTO. SDT has appeared in a number of forms over the years: developing countries are excused from certain liberalization commitments; granted special market access in other markets; and granted additional time to come into compliance with new obligations, or granted funding to assist in transitions. There is little evidence that special and differential treatment has supported growth in developing countries.²⁶

²⁴ See [Bridgetown – Sustainable Development, May 2023 – Remaking the Global Trading System for a Sustainable Future Project \(remakingtradeproject.org\)](#)

²⁵ See [Intergovernmental Panel on Climate Change 2022](#), p. 12.

²⁶ On SDT generally, see for instance Nicolas Lamp, The 'Development' Discourse in Multilateral Trade Lawmaking, 16 *World Trade Review*, p. 475–500, 2017; Vineet Hegde and Jan Wouters, Special and Differential Treatment Under the World Trade Organization: A Legal Typology, 24:3 *Journal of International Economic Law*, 2021; James Bacchus and Inu Manak, [The Development Dimension: Special and Differential Treatment in Trade](#), Routledge, 2021; [LDCs and the Multilateral Trading System: Looking Forward, A Collection of Essays](#), World Trade Organization, 2023.

Sustainable Development. Sustainable development is a more all-encompassing pursuit and refers to "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."²⁷ Although sustainable development has a broader domain than the trade system, the trade system is intended to support both development and sustainability.²⁸

Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC). The principle of CBDR-RC is used in international environmental law and policy, and holds that countries should bear different levels of responsibility for environmental degradation and have different capabilities to contribute to environmental protection. It is often cited as part of sustainable development law but its relevance to WTO law is contested.²⁹

Just Transition. While the term *just transition* emerged from the labor movement, and was originally advanced by organizations keen to ensure that the process of decarbonization did not leave people behind,³⁰ it has moved into more general sustainability vocabulary to mean that the costs and benefits of change must be allocated with justice, so that, for example, less industrialized countries and vulnerable communities are not harmed by policy changes.

Justice in this context is rooted in equal moral worth. Injustice in general, and in the trade system in particular, often takes the form of barriers that are inconsistent with equal moral worth. As described by Professor Christina Hicks during her presentation at our Sustainable Ocean Economy workshop, these barriers generally relate to three interdependent dimensions:

- barriers to the distribution of material resources, including opportunities, capabilities, and outcomes;
- barriers to the recognition of diverse social or cultural values and identities; and

²⁷ World Commission on Environment and Development, *Our Common Future*, I.3, para. 27.

²⁸ See Ernst-Ulrich Petersmann, *Transforming World Trade and Investment Law for Sustainable Development*, Oxford University Press, 2022.

²⁹ See Report of an International Legal Expert Group. Forum on Trade, Environment, & the SDGs (TESS), [Principles of international law relevant for consideration in the design and implementation of trade-related climate measures and policies](#), 2023

³⁰ See Thomas Hale and Kennedy Mbeva, [Paradigm Shift: A New Era for Trade, Sustainability, and Development](#), White Paper for Remaking Trade Project

- barriers to political representation of different social groups or countries. Where political barriers, such as unequal power dynamics or the lack of inclusive processes exist, decisions are made that do not reflect the interests of the most vulnerable, resulting in distributional injustices.

A broader engagement with justice, beyond distribution, and also addressing recognition and representation, is needed to address the root causes of injustice in the trade system. Trade, at its best, breaks down barriers, and creates opportunities for all. Without prejudice to the existing provisions on SDT and the ongoing WTO reform discussions on the topic, we hope for a trade system that is more responsive to the call for greater justice and fairness in international relations through for instance the creation of frameworks that appraise negotiated outcomes based on whether they advance the three strands of justice mentioned above.

Justice is linked to, and often instantiated in, rights. In addition to the right to development, and other rights and SDGs that relate to the concept of justice expressed above, Dan Esty has pointed out in a recent article³¹ that the concept of environmental rights has evolved considerably in recent decades. Indeed, the importance of a healthy environment to human flourishing is now widely recognized such that more than 100 countries now recognize environmental or climate rights in their constitutions. In many jurisdictions, courts have begun to vindicate these rights in creative and innovative ways in the context of cases brought often by young persons.³²

6. People-Centered Trade: Inclusiveness

The Remaking Trade Project has been keen to affirm that a reformed trade system must, for its own political protection, "change the way people think about globalization so that it becomes easier for the mass public to understand and support it."³³ The new sustainable development agenda requires us to rethink the idea that social aspects of trade, and distributive and social justice must be left only to the state and domestic institutions.

³¹ Daniel C. Esty, *Should Humanity Have Standing? Securing Environmental Rights in the United States*, *Southern California Law Review*, 95:1345, 2022.

³² See for instance the August 14, 2023 [landmark ruling](#) in the United States where a judge in Montana found that young people have a constitutional right to a healthy environment and that the state must consider potential climate damage when approving projects.

³³ Nita Rudra, [Globalization, Workers, and Inequality in Developing Economies](#), White Paper for the Remaking Trade Project.

A people-centered approach to trade and sustainable development is emerging that requires a greater emphasis on the well-being of workers and not just corporations, including wages, labor rights, and the other social and environmental effects of trade.³⁴ Likewise, policy agendas that advance environmental protection, consumer welfare, and public health have emerged as components of the people-centered approach.

The people-centered approach this Report advances also requires inclusion of long marginalized groups, including women,³⁵ economically disadvantaged communities, indigenous peoples, and ethnic minorities.³⁶ But it also suggests more emphasis on the needs of small producers and micro and small and medium enterprises (MSMEs).

Inclusiveness will also require ensuring opportunities for these groups, and providing transitional assistance where new sustainability standards or reductions of otherwise harmful subsidies may disrupt their livelihoods. [See Section 5](#). A first principle must be that reforms of the international trade system should avoid harm to people in precarious circumstances.

In its recent report "A Breakthrough for People and Planet," the High-Level Advisory Board on Effective Multilateralism appointed by the UN Secretary-General stated that:

To be people-centered, [the multilateral system] must be radically and systematically inclusive, offering meaningful opportunities for participation in global decision-making by all States, civil society, private sector actors, local and regional governments, and other groups that have been traditionally excluded from global governance ...

... inclusive multilateralism makes room for representatives of these communities in global governance. Inclusive, effective multilateralism is more than merely adding seats around a table. It requires a fundamental transformation towards more distributed, networked decision-making for our collective well-being.³⁷

³⁴ See Anthea Roberts and Nicolas Lamp, *Six Faces of Globalization: Who Wins, Who Loses, and Why It Matters*, Harvard University Press, 2021.

³⁵ Amrita Bahri and Katrin Kuhlmann, [International Trade Policy: A Blessing or a Curse for Women?](#), White Paper for the Remaking Trade Project.

³⁶ See Sergio Puig and Andrew Shepherd, [Indigenous Peoples and International Trade](#), White Paper for the Remaking Trade Project.

³⁷ [High-Level Advisory Board on Effective Multilateralism, A Breakthrough for People and the Planet: Effective and Inclusive Global Governance for Today and the Future](#), 2023.

The SDGs that we all strive for will not be achieved if access to decision-making and consultation processes remains restricted to a privileged few. Effective governance and ultimate legitimacy of outcomes proceeds from a shared sense of ownership and participation in the very processes where major decisions are taken. In the trade system, many groups feel excluded, with the perception that power is confined to states (the WTO is seen as a *member driven organization* of states) and powerful business (producer) interests who have the most influence on states.

Although there is an increasing recognition of the concerns of these marginalized groups, and dedicated negotiations in WTO Joint Statement Initiatives or through recent plurilateral initiatives – many would like more formal access to negotiations where they can represent their own interests. We heard complaints from members of indigenous communities that despite some strides being made in climate and environment negotiations, access to WTO negotiations has remained restricted.

But even those with formal access to the system have complained. Among the WTO Members, there remains a hierarchy of interests that get traction. Our Project engaged with many small island developing states (SIDS) and regions – with small shares of world trade, and limited negotiating resources – who expressed frustration that their agendas are sometimes not prioritized.³⁸ In the midst of the highly politicized discussions at the WTO as to which countries qualify as developing ones and which do not, as Jan Yves Remy has argued, there can be no doubt that SIDS are among the most vulnerable to climatic and economic shocks and therefore should be recognized as a sub-category within WTO negotiations, just as they are in climate negotiations.³⁹ Even in the recent fisheries subsidies negotiations, the pillar on overfishing and overcapacity were not successfully negotiated even though this is by far the most important to SIDS.⁴⁰ Similarly, in agriculture negotiations, food security is of central interest to net food importing countries, but these concerns are often sidelined and overlooked. The international trade

³⁸ We are grateful in particular to participants at the [Workshop on the Ocean/Blue Economy](#) – co-organized by the Remaking Trade Project team, David Vivas Eugui (UNCTAD) and Kerlene Wills (UN Foundation) – many of whom hail from Pacific, African and Caribbean SIDS. Much of the work on the Blue Economy/trade interface is being carried out under the auspices of the UN (see [Fourth Oceans Forum on trade-related aspects of SDG 14](#) held in Geneva and the [Second United Nations Ocean Conference](#) held in Lisbon) and by UNCTAD in particular (e.g. the 2023 [Trade and Environment Review](#), and the [Bridgetown Covenant](#) aimed inter alia at preserving a healthy ocean economy in line with the SDGs).

³⁹ See Jan Yves Remy, [Trade-Related Climate Priorities for CARICOM at the World Trade Organization Forum on Trade, Environment, & the SDGs \(TESS\)](#) and Shridath Ramphal Centre (SRC).

⁴⁰ See Mustaqeem De Gama, [Fisheries Subsidies, the WTO and Sustainability](#), White Paper for the Remaking Trade Project.

system has a disproportionately large impact on the smallest, most open and vulnerable states, and climate, health and other global crises threaten not just their economic livelihoods but their very existence. This Project sees as one of its tasks to ensure that their concerns and voices are amplified within the sustainable trade agenda.

For many Small Island Developing states (SIDS) or *large ocean states*, the ocean provides a large source of their livelihoods and food security, forms part of their self-identity and holds (unrealized) promise. The ocean is one of Earth's most valuable natural resources. It covers 70 percent of the planet, absorbs 90 percent of heat from global warming, sequesters 30 percent of carbon dioxide released, and produces over 50 percent of the oxygen we breathe. Although the WTO does not (yet) have a clear negotiating mandate for the *Blue Economy*, there are ongoing sectoral negotiations at the WTO that impact the sustainability of the ocean, and many national, regional and international organizations have begun creating entire workstreams and programs on the Blue Economy.

Although business is often seen as a privileged group, many private sector participants do not think that their perspectives and expertise are being considered and taken on board systematically in the sustainable development agenda. In many cases, they are at the cutting edge of the technologies, investments, practices, standards and creative solutions needed to drive and support sustainability. In some contexts, their business models and methods are outpacing and outperforming government policies, and yet they are often not involved in the decisions being taken to regulate them.

ACTION

WTO Members should reaffirm the need for an inclusive and people-centered approach and policy at the WTO, and develop a workstream to adopt and implement the recommendation of the High-Level Advisory Board on Effective Multilateralism appointed by the UN Secretary-General stated to "be radically and systematically inclusive, offering meaningful opportunities for participation in global decision-making by all States, civil society, private sector actors, local and regional governments, and other groups that have been traditionally excluded from global governance."



SECTION 3:

Moving to Net Zero Greenhouse Gas Emissions in International Trade

1. Background

Across the world, the effects of climate change have emerged as an overarching and existential sustainability concern. For example:

- [2022 floods in Pakistan killed 1700 people and inflicted an estimated \\$15 billion \(USD\) in damage and even more in economic losses;](#)
- [devastating wildfires in 2023 inflicted a huge toll in terms of human life, forest destruction, and greenhouse gas emissions on Canada, Hawaii, Greece, Italy, Chile, and Kazakhstan;](#)
- [a decades-long trend of increasing frequency and intensity of tropical storms \(hurricanes in the Atlantic Ocean and typhoons in the Pacific\) caused ever greater damage;](#)
- [sea level rise damaged infrastructure and creating salt water intrusion of farmland and natural habitats alike;](#)
- [record-setting floods and heat waves around the world followed each other year after year.](#)

The evidence of real risk and mounting costs seems ever clearer. It is no wonder that the public is demanding a more robust response to climate change in countries from North to South and East to West.

Climate science supports this call for ramped-up efforts to reduce greenhouse gas (GHG) emissions and the move toward a clean energy future. The [2023 Intergovernmental Panel on Climate Change \(IPCC\) Synthesis Report](#) declares, for example, that human activities "have unequivocally caused global warming" and concludes with "high confidence" that "climate change is already affecting many weather and climate extremes in every region across the globe ... [leading] to widespread adverse impacts and related losses to nature and people."

In response, governments have started to act. Notably, the [2015 Paris Agreement](#) galvanized action toward a clean energy transition with all 193 signatory countries now having produced Nationally Determined Contributions (NDCs) to climate change action. And with the 2021 Glasgow Climate Pact, the world community committed to a goal of net-zero carbon dioxide emissions by mid-century.

With this challenging target in mind, regional communities and countries (as well as sub-national governments) around the world have advanced a diverse set of policy approaches to induce companies, communities, and families to improve their energy efficiency, reduce their consumption, and shift to clean energy sources. In addition, governments have put forward a wide range of incentives for technology development and broader innovation meant to inspire progress toward a clean energy economy.

International organizations have also responded. The International Monetary Fund ([IMF](#)) [has declared that](#) "climate change presents a major threat to long-term growth and prosperity" and produced a sweeping climate change strategy that offers policy guidance for its membership on GHG mitigation and adaptation, and the transition to a low-carbon future. It has developed a carbon pricing proposal and a climate change indicators dashboard that provides a basis for benchmarking national policy efforts.

Likewise, the World Bank has adopted [a Climate Change Action Plan that promises](#) "transformative public and private investments" in (1) energy; (2) agriculture, food, water, and land; (3) cities; (4) transport; and (5) manufacturing. Declaring that "climate change, poverty, and inequality are the defining issues of our age," [the Bank's new leadership team has promised](#) to "double down" on its climate efforts with an aim of lifting annual investments in the green transition to "trillions of dollars" from a mix of funding sources. Specifically, [President Ajay Banga has asked the Bank staff](#) to "maximize resources and write a new playbook, to think creatively, take informed risks, and forge new partnerships." With a similar recognition that business as usual is no longer acceptable, other international organizations – including United Nations Environment Program

(UNEP), United Nations Development Program (UNDP), and International Maritime Organization (IMO) – have also adopted broad-based climate strategies.

By comparison, the commitments made by Members in the WTO context look modest. The [2022 12th Ministerial Conference Declaration](#) merely "recognize[d] global environmental challenges including climate change." Some have mocked this outcome as the equivalent of recognizing that a house is on fire, and then failing to look for a hose or even to pull an alarm.

As set out in [Section 2](#), the world community expects more from the international trade system. The scale of the threat posed by the build-up of GHGs in the atmosphere, combined with the competences and capabilities of the trade system to support climate efforts, renders such a passive response insufficient. Moreover, all institutions – including the WTO – must understand their responsibilities in context. Today's world and the challenges it presents are very different from the global circumstances of 1947 when the modern trade regime came into being.

As the WTO's own [2022 World Trade Report on Climate Change and international trade](#) highlights, there is a great deal that the trade system can do to promote the dissemination of clean energy technologies, projects, and infrastructure at speed and scale and to facilitate a just transition to a low-carbon future. But to get credit for these positive contributions, the WTO must actively support the world community's climate change agenda – and refine the trade system's rules and procedures to meet the moment. Anything less threatens the organization's legitimacy and ultimately its relevance as part of the structure of global governance.

This Section first describes how the global trade system can support achievement of the goal of net-zero GHG emissions by 2050. It then describes several workstreams that can be initiated to support reduction of GHG emissions, including agreement on policy equivalence and interoperability among national emissions reduction programs, a measurement protocol for embedded GHG emissions in traded goods, GHG pricing, appropriate border carbon adjustment methods, and a just transition. Finally, this Section examines the shipping sector, which is one of the most important sources of GHG emissions, and therefore critical to a net-zero emissions trade system.

2. Towards a Net-Zero Emissions Trade System

To demonstrate their commitment to integrating trade and sustainable development, we suggest that the WTO Members gathered at the upcoming 13th Ministerial

Conference in Abu Dhabi in February 2024 (MC13) make a clear commitment to an international trade system with net-zero GHG emissions by 2050, in line with the Glasgow Climate Pact target to which all 164 WTO Member States have committed.

Such a commitment is essential to fulfilling the overarching mandate provided by the WTO's founding document, the 1994 Marrakesh Declaration, which specifies that "trade ... should be conducted ... in accordance with the objective of sustainable development." In light of the express climate change commitments of all the Member States of the WTO, this core principle should be read as a net-zero GHG emissions mandate. We thus further recommend that the Abu Dhabi Conference set in motion a process of advancing a set of trade system sustainability reforms that will produce a net-zero trade system by mid-century.

Exactly what a net-zero GHG international trade system looks like remains to be worked out. But we propose here some possible starting points/elements, with due recognition of the need to ensure a just transition to the needed clean energy economy of the future. Fundamentally, a net-zero trade system should be aligned with the goal of net-zero emissions globally by 2050. This might mean that, as of 2050, all companies participating in international trade should be held to a net-zero emissions target on an enterprise-wide basis. This commitment would require accountability for how internationally traded goods are produced, transported, shipped, distributed, and consumed – and would almost certainly require significant emissions mitigation efforts as well as some investment in GHG offsets to ensure net-zero emissions of GHGs.

ACTION: WTO Members should

- Declare that while advancing a just transition to the clean energy future, they will act to ensure a net-zero emissions global trade system by 2050, noting that in adhering to the 2021 Glasgow Climate Pact, Members have already committed themselves to creating a net-zero GHG emissions world by mid-century.
- Charge the Committee on Trade and Environment (CTE) with developing a Net-Zero Trade System Action Plan with work streams, implementation strategies and interim targets for reaching the net-zero emissions goal through a process to be led by the CTE. The Plan should map the ways trade can contribute to meeting this goal – including by advancing: (1) clean and renewable energy to power the global economy, (2) sustainable agriculture, fisheries and food systems, (3) net-zero manufacturing processes and movement toward a circular economy with dramatically reduced waste, and (4) new decarbonized modes of power/energy in transportation (and particularly shipping) that allow freight to be moved without emissions.

3. Policy Equivalence and Interoperability

The emergence of widely divergent national strategies to address climate change should be recognized and respected within the trade system.⁴¹ For example, the EU has focused on emissions pricing, while the U.S. has adopted a policy emphasis on subsidies as the primary tool for reducing emissions.

Work to establish some degree of equivalence across divergent policies and a strategy for promoting policy interoperability would be preferable to a cascade of trade disputes with countries challenging each other's climate change policies as violations of WTO law. Important methodological analysis needs to be done on how to gauge policy impacts (emissions reductions) and effectiveness. This coordination is essential to maintaining free trade, while permitting states policy flexibility to address climate change in ways that work best given their circumstances. An agreed-upon framework would help to set the stage for climate change cooperation rather than division.

ACTION

The WTO should undertake (in cooperation with others including the United Nations Framework Convention on Climate Change (UNFCCC) and the Organization for Economic Cooperation and Development (OECD) Inclusive Forum for Climate Mitigation Approaches) to develop a mechanism to assess climate change policy equivalence – and to call on WTO Members to take account of equivalence in border GHG adjustments.

4. Measurement Protocol for Embedded GHG Emissions in Traded Goods

Beyond mutual recognition and interoperability, a second area of foundational work might center on measurement protocols that would provide an agreed way to gauge the embedded GHG emissions in traded goods, including monitoring and verification. Once again, the WTO is well positioned to convene this technical work in partnership with others (perhaps including the United Nations Conference on Trade and Development (UNCTAD), the International Organization for Standardization (ISO), the International Energy Agency (IEA) and the International Trade Centre (ITC)) – and particularly with

⁴¹ See Goran Dominioni and Alessandro Monti, [Internalizing Climate Externalities from Internationally Traded Goods: Challenges and Way Forward to Border Carbon Adjustment Mechanisms](#), White Paper for the Remaking Trade Project.

industry associations as well as company representatives, insofar as sector-specific knowledge will often be essential. The WTO's existing Steel Dialogue demonstrates the potential in this regard as well as the value of beginning this process on a sectoral basis.

ACTION

The WTO should undertake to partner with relevant international organizations to develop a scientifically valid methodology for measuring embedded GHG in traded goods.

Priority initiatives might be launched for GHG-intensive sectors in which considerable trade occurs or the opportunities for progress are significant, including: shipping, steel, cement, aluminum, chemicals, timber, textiles, and banking.

5. GHG Pricing

In addition to the need for a protocol setting out agreed methods for measuring embedded emissions in traded goods, a workstream aimed at establishing a global social cost of GHG emissions is necessary. While it seems unlikely that all nations can be convinced to adopt GHG pricing regimes in parallel, an agreed global social cost of GHG emissions with carbon equivalence established for other GHGs to bring all emissions into a common pricing framework would be very helpful as the WTO seeks to reconcile different climate change policy approaches.

We recognize that there are divergent views about how to establish an appropriate GHG price, but the starting point should be recognition that every unit of emissions that goes into the atmosphere causes the same measure of damage – arguing for a single global pricing framework. While it might be difficult to achieve an agreed GHG social cost, to do so would provide a less unilateral and more legitimate basis for border GHG adjustment processes – and help to ensure that such approaches have underpinnings that reflect sound science, analytic rigor, and the goal of net-zero by 2050.⁴²

⁴² See Thomas Singh, [An Upstream Carbon Tax at the Wellhead in Guyana](#), White Paper for the Remaking Trade Project.

6. Border GHG Adjustments: A Transitional Technique

During the period prior to effective and uniform GHG pricing in all countries, border GHG adjustment mechanisms are inevitable. During this transition period, border adjustments are conceptually essential for a sustainable trade system in which competitive advantage based on under-performance against the goal of net-zero emissions by 2050 cannot be allowed to persist. But while there is value in the concept, many of the border adjustment approaches being put forward have serious structural or methodological flaws. Each of the three work streams outlined above would help to ensure a more inclusive approach to integrating climate change concerns into the trade system – and offer a more fair and appropriate foundation for border adjustment policies.

Any Border Carbon Adjustment (BCA) should include a facility to remit border adjustment proceeds to the relevant country of origin for use in approved climate change management activities, especially for developing countries.

ACTION

WTO Members should develop principles for any GHG border adjustment mechanisms that include equivalence arrangements, a scientifically valid embedded GHG measurement protocol, appropriate arrangements to remit border adjustment proceeds to the country of origin for approved climate change management activities, and suitable arrangements to reflect just transition principles.

7. Just Transition Concerns

Even more fundamental to the legitimacy of border GHG adjustment strategies, as well as to global GHG pricing more broadly, is the need for fairness across countries at different levels of development. We have referred above to the concept of justice and equity and in particular Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) in the environmental law and policy context. In the trade world, developing countries are accorded special and differentiated treatment. Whichever term is used, what is important is not how the concept is framed but rather how a commitment to fairness is operationalized. In this regard, we propose that the WTO launch discussions on how to ensure that efforts to bring into the WTO sustainability considerations in general and climate change alignment in particular be operationalized without imposing additional burdens on less industrialized countries or economically disadvantaged people.

To achieve effective progress toward net-zero emissions and avoid possible leakage, a global GHG emissions price is needed and therefore less industrialized countries cannot generally be accorded exemptions. However, we note that Article 4(6) of the Paris Agreement recognizes the special circumstances of least developed countries, and recognize that political realities and the give-and-take of negotiations might result in some minor emitters in the least developed nations and SIDS being exempted in limited circumstances.

Alternatives to general exemptions from standards (which tend to dull incentives for innovation and the push to adopt cutting-edge production processes), would require that producers in less industrialized countries be accorded substantially increased technical assistance, technology transfer and financial support so that they can meet global requirements. [See Section 6](#). We imagine a structure of much greater capacity building, support for innovation (and the development of technologies appropriate to local economic opportunities), and funding for clean technologies, projects, and infrastructure – all of which would help producers in the developing world to move toward more attractive and competitive product offerings and achieve greater export success.

In particular, it will be necessary to make arrangements to provide appropriate transition assistance to less industrialized countries and disadvantaged people.

In this context, trade and finance must go hand in hand to deliver a just transition to a sustainable future global economy – and thus we welcome the redoubled efforts of the World Bank and the IMF to expand the financing available for the transition that is now unfolding. Similarly, we believe the trade system should embrace the Bridgetown 2.0 Initiative with its call for reform of the global financial architecture including an SDG stimulus package providing considerable new resources for climate change mitigation and adaptation. [See Section 6](#).

8. Shipping

The shipping industry – the backbone of the global trade system – remains a carbon-intensive sector.⁴³ Today, virtually all ships and planes that carry traded goods are

⁴³ See Goran Dominioni, [The WTO and the Decarbonization of International Shipping: How Can the WTO Support the Equitable Energy Transition?](#), White Paper for the Remaking Trade Project.

powered by fossil fuels that are both more polluting and more carbon-intensive than those used in automobiles; as a consequence, international shipping currently contributes 3% of GHG emissions.⁴⁴

The shipping industry will only grow in importance in the coming decades as demand from low- and middle-income countries increases and a greater number of global actors participate in international value chains.⁴⁵ Maritime transport accounts for around [90% of world trade](#) and plays a particularly important role in the economies of many developing countries, where it is closely linked to food security and availability of essential goods and medical products. Aviation, while representing a smaller percentage of goods shipped, contributes to 30% of shipping-related greenhouse gas emissions on account of the carbon intensity of air transport. [According to the OECD](#), maritime trade volumes are expected to triple by 2050. To achieve a net-zero future and a sustainable trade system, the transport sector must be transformed.

The pathway to transport decarbonization lies primarily in the hands of two institutions that hold primary regulatory authority over international maritime and air transportation – the IMO and International Civil Aviation Organization (ICAO) respectively – both of which have fallen far short of their potential to expedite decarbonization. This concentration is both an opportunity – decarbonization efforts can be focused on a relatively small number of actors and venues, in particular the IMO – but also as an obstacle – the industry is comparatively insular, poorly understood by outsiders, and less susceptible to external influence campaigns than other sectors.

There is cause for optimism that this inertia is giving way to action. At the most recent IMO Marine Environmental Protection Committee meeting in July 2023, the [Organization adopted its first high-ambition GHG reduction plan](#) that set a target to reach net-zero GHG emissions from international shipping close to 2050, and a commitment to ensure an uptake of alternative zero and near-zero GHG fuels by 2030. Although implementation of this plan will fall on the IMO and the industry it regulates, the WTO and other actors in the global trade system have an important supporting role to play in ensuring the pledges in the IMO action plan translate to real-life results.⁴⁶

⁴⁴ Jasper Faber et al., Fourth IMO GHG Study 2020, International Maritime Organization, 2021.

⁴⁵ See Stella A. Ebbersmayer, [Shipping through the Arctic: Sustainability and Trade Challenges](#), White Paper for the Remaking Trade Project.

⁴⁶ See Tristan Smith, [Pathways to Net-Zero Transport](#), White Paper for the Remaking Trade Project.

Such a role would reflect a significant departure for the WTO and other multilateral institutions that do not have express mandates to oversee maritime and air transportation. Until recently, the dominant role of the IMO (and to an extent also the ICAO) in regulating shipping has led other actors to deemphasize the sector even where it in principle should be a part of their broader sustainability mandate. For example, the UNFCCC did not include a clause for shipping in the Paris Agreement, and national governments have generally done little to regulate international shipping even when they in principle have regulatory competence to do so. Yet in the past few years, several influential actors have moved away from this deferential approach. One example is the EU, which is slated to add shipping to its emissions trading system.⁴⁷ Another is the UNFCCC, whose Executive-Secretary exhorted the IMO in July 2023 that "this body has to do more on climate change now."

The WTO should follow these examples and use its unique convening power to break down the existing silos around shipping, and work to incorporate maritime (and perhaps air cargo) transportation into the strategies of other institutions and policy communities. A key element of this effort should be ensuring that the concerns of developing countries are recognized and integrated into decarbonization strategies for maritime and air transportation. Developing countries in general, and small island developing states (SIDS) in particular, because many of them are located at a greater distance from shipping lanes, will experience disproportionate costs from increased costs of shipping due to climate reforms.

ACTION

WTO Members should charge the Secretariat to facilitate exchange between the shipping and trade communities, both at the expert level and at the level of heads of the International Maritime Organization (IMO), and WTO; encourage consideration of just transition and common but differentiated responsibilities and respective capabilities (CBDR-RC) dimensions in discussions on shipping.

WTO Members should adopt an authoritative interpretation of WTO rules as they apply to a fee on greenhouse gas emissions in shipping, including appropriate exemptions.

⁴⁷ See Aixa Pérez, Beatriz Martínez Romera, and Bernardo Busel Niedmann, [Regional Actors and Trade: The Inclusion of Shipping in the EU ETS](#), White Paper for the Remaking Trade Project; Victor Weber, Daniel C. Esty and Beatriz Martínez Romera, [Border Carbon Adjustment in Shipping](#), White Paper for the Remaking Trade Project.

9. Steel and other Carbon-Intensive Sectors

Achieving mid-century net-zero emission targets requires deep decarbonization of heavy industry, including hard-to-abate sectors such as steel, aluminum, cement, and petrochemicals. By some estimates, the iron and steel sector alone accounts for around [8% of global greenhouse gas emissions, with 70% of global production](#) of primary steel relying on carbon-intensive blast oxygen furnaces.

The WTO has already started convening discussions on a sector-specific basis and recently hosted a [Trade Forum for Decarbonization Standards: Promoting Transparency and Coherence](#) in the iron and steel sector, which brought together officials and business leaders from the world's largest steel-producing economies for a dialogue on coherent and transparent standards in accelerating the global scale-up of low-carbon steelmaking.

The trade-exposed character of such high-carbon sectors has led national and regional regulators to consider – and in the case of the EU, implement – measures to ensure industrial decarbonization does not result in carbon leakage or loss of competitiveness. Yet, as demonstrated by the international reaction to the EU's Carbon Border Adjustment Mechanism (CBAM), many in the Global South view unilateral imposition of tariff and non-tariff barriers relating to the environmental attributes of imported goods as a form of green protectionism that unfairly shifts the burden of decarbonization and other sustainability goals to developing countries.⁴⁸

As with the shipping sector, there are lessons for leveraging the global trade system to move the industrial sector towards greater sustainability in a way that encourages the participation of the Global South and greater consideration of equity concerns. Moreover, as explained in [Sections 5 and 6](#), sectoral standards and sustainability-linked fee schemes will be most effective at driving sustainability gains when they are interoperable with a varied set of economic and regulatory systems, derive legitimacy from a multistakeholder design process, and acknowledge the just transition concerns of developing countries.

⁴⁸ Kasturi Das and Kaushik Ranjan Bandyopadhyay, [Deep Decarbonization Ambition and Equity: A Case Study of the Steel Sector in India in the Context of the EU's CBAM and Other International Developments](#), White Paper for the Remaking Trade Project.



SECTION 4:

Distinguishing Between Harmful and Beneficial Subsidies

1. Background

As noted in [Section 2](#), the recent movement away from a market fundamentalist approach and the recognized need for government intervention to achieve urgent sustainability goals has highlighted the potential value of subsidies as a policy tool.⁴⁹ The global trade system has long recognized that there is a role for states in providing financial and other incentives and in regulating economic affairs – this is part of the right to regulate, – and incentives have important applications in sustainable development policy.

However, the trade system also long recognized that national subsidies can have competitive spillover effects on other countries. The spillover effects that the system has recognized have been trade distorting mercantilism or protectionism: they promote outbound exports or impair market access opportunities. Fossil fuel subsidies and harmful agricultural and fisheries subsidies require different treatment, because, as will be explained below, in addition to trade-distorting effects, they [have deleterious international sustainability-impairing effects](#).

The trade law system has been designed to address trade-distorting subsidies,⁵⁰ not sustainability-impairing subsidies, such as fossil fuel subsidies, certain harmful agricultural subsidies and fisheries subsidies. This narrow focus is not consistent with the WTO sustainable development mandate. The trade system could, however, be

⁴⁹ See Jennifer Hillman and Inu Manak, [Rethinking International Rules on Subsidies](#), Council on Foreign Relations, September 2023.

⁵⁰ International trade law prohibits certain subsidies, requires that certain subsidies be eliminated, or their trade distortive effects be removed, and allows importing states to impose countervailing duties in relation to certain subsidies. Countervailing duties are additional tariffs designed to charge the ratable amount of a foreign governmental subsidy on the import of a product produced with that subsidy, subject to certain conditions.

repurposed to address sustainability-impairing subsidies, as it already contains some of the negotiation techniques, legal mechanisms, and expertise needed to do so. The trade system must also be revised to recognize that some sustainability-enhancing subsidies should be permitted even if they have incidental trade-distorting effects. At the same time, it will be critical to ensure that international disciplines on subsidies are not weakened through greenwashing, where protectionist intent may be disguised as sustainability concern. This Section describes why and how to do so.

This Section benefits from a recent *World Bank Report, Detox Development: Repurposing Environmentally Harmful Subsidies* (2023),⁵¹ and suggests contributions that the trade system can make to the initiatives proposed in that report. As stated in that report:

The magnitude of subsidies for fossil fuels, agriculture, and fisheries is vast and likely exceeds US\$7 trillion per year in explicit and implicit subsidies – or approximately 8 percent of global GDP. Explicit subsidies are direct fiscal expenditures from governments or taxpayers to producers or consumers; they cost about US\$1.2 trillion per year – more than the GDP of Mexico – in these three sectors. Implicit subsidies are measured as unpriced externalities and account for the rest of the burden of subsidies on society and the economy.

This Section analyzes the possibility of extending the trade system to address harmful subsidies, beginning in the areas of fossil fuel subsidies and harmful agricultural and fisheries subsidies. It then turns to the question of how to ensure that proportionate subsidies that enhance sustainable development are permitted. Next, it analyzes the problem of implicit subsidies that arise when enterprises are not required to bear the full social cost of their activities. This Section then examines three critical areas of harmful subsidies: fossil fuels, agriculture, and fisheries subsidies. Next it turns to the problem of transition, and the need to protect less industrialized countries and vulnerable communities from disruption. Finally, it examines institutional issues, including the needed expertise to support a regime for eliminating harmful subsidies.

⁵¹ Richard Damania, Esteban Balseca, Charlotte de Fontaubert, Joshua Gill, Kichan Kim, Jun Rentschler, Jason Russ, and Esha Zaveri, [Detox Development: Repurposing Environmentally Harmful Subsidies](#) (World Bank 2023) (Detox Development).

2. From Trade-Distorting to Sustainable Development-Enhancing Subsidies

The existing WTO disciplines on subsidies were not designed – and are not fit – for the purpose of reducing environmentally harmful subsidies. In light of the current sustainability imperative, the first question should be: are the subsidies enhancing sustainable development or diminishing it? This shift of focus requires an examination of the anticipated effects of the subsidy – and separate treatment of those that promote sustainability from those that diminish sustainability. Subsidies that enhance sustainable development must be encouraged, and subsidies that undermine sustainable development must be discouraged.

Some subsidies may be easier to characterize than others, so it would be appropriate to structure a discrete rule prohibiting certain types of subsidies more likely to be harmful, unless the subsidizing state shows that their beneficial impact outweighs their distortive or adverse impact. This can be achieved through a "proportionality" test.

While the subsidies disciplines contained in General Agreement on Tariffs and Trade (GATT), including permission for importing states to apply countervailing duties and prohibition of certain limited types of subsidies, are subject to the exceptional provisions of Articles XX of GATT, which some might consider imposes a proportionality test, two problems arise. First, many harmful subsidies would not be prohibited by GATT, so no proportionality test would apply to qualify for an exception. Second, it is uncertain whether the WTO Subsidies and Countervailing Measures Agreement (SCM Agreement) obligations are eligible for these exceptions. Article 8(2)(c) of the SCM Agreement provided a very limited environmental exception but expired after five years.⁵²

A proportionality or cost-benefit analysis approach to distinguishing between acceptable versus harmful subsidies would entail complex and necessarily imprecise estimation of a number of costs and benefits. WTO Members might decide not to assign these determinations to ordinary dispute settlement, but instead to utilize specialized panels of economic and sustainability experts to determine whether a particular purported sustainable subsidy meets the qualification that its trade distortion is not disproportionate in light of its sustainability contribution.

⁵² See generally, Aaron Cosbey and Petros Mavroidis, A Turquoise Mess: Green Subsidies, Blue Industrial Policy and Renewable Energy: The Case for Redrafting the Subsidies Agreement of the WTO, *Journal of International Economic Law*, 17, p. 11–47, 2014.

In combination with the traditional WTO focus on the degree of trade distortion (on a spectrum from de minimis to significant) this new sustainability analytical framework can be described in a 2x2 matrix and applied to subsidies in agriculture, fishing, and manufacturing.

Sustainable/Trade Distorting Subsidies Matrix

	More positive sustainability impact	More negative sustainability impact
Less trade distortion	Allowed	Rebuttable presumption of inconsistency with WTO law
More trade distortion	Rebuttable presumption of consistency with WTO law	Prohibited – obligation to end immediately/countervailable

Source: Cima and Esty, Making International Trade Work for Sustainable Development: Toward a New World Trade Organization Framework for Subsidies (forthcoming 2023).

In the framework above, as denoted by the green box, where a particular subsidy promotes sustainability and has relatively little trade impact, it should be deemed to comply with WTO law, and be non-countervailable— that is, not subject to countervailing duties in the importing state.

In the yellow box, where a subsidy creates a more significant disruption to trade but has a positive sustainability impact, it should be considered presumptively permissible, subject to the following disciplines:

- The policy logic for the subsidy is transparent and compelling, and fully explained in a published document with its parameters provided.
- Data convincingly demonstrating the anticipated positive sustainability effects have been advanced – eliminating the risk of governmental greenwashing or the

prospect that sustainability has merely been asserted as a cover for protectionist policies or disguised barriers to trade.

- The subsidy meets a proportionality test such that the trade disruption/losses are not significantly disproportionate to the sustainability gains.

In the upper right red box, where the subsidy has significant negative sustainability effects but causes little trade disruption, we propose that the subsidy nevertheless be deemed presumptively inconsistent with the WTO framework – reflecting the trade system's core commitment to sustainable development. We would permit this presumption to be rebuttable through a demonstration that the policy goals underlying the government intervention (such as an overriding national security concern or the possibility that, while there are negative sustainability impacts in one area, other SDGs will be advanced significantly) justify the sustainability harm.

In the lower right double-red box, where the subsidies or other support in question causes both negative sustainability effects and significant trade distortion, we would require governments to withdraw the program on a short schedule and it would be countervailable. Industrialized countries would have 5 years to phase out such double-red subsidies/support and less industrialized countries would be permitted longer periods (8-15 years) to close out their harmful programs.

The proportionality analysis called for by this test would require some institutional support, and perhaps some prior identification of particularly harmful categories of subsidies. The institutional support might take the form of a Sustainable Development Commission (SDC) composed of independent experts who can evaluate the sustainable development contribution and trade distortion of particular subsidy programs for purposes of this matrix. [See Section 11.](#)

In addition, for each of the types of subsidies addressed in this Section, the SDC can be useful to identify in advance certain subsidy characteristics that can serve as proxies for harmfulness. Ranking the environmental and trade effects of subsidies should be informed by empirical studies and modeling, supervised by the SDC. For example, in connection with fossil fuel subsidies, it would be appropriate to develop categories based on subsidies and fuel combinations, ranging from those that cause the most combined environmental and trade harm, to those that cause the least. Subsidies that

increase coal production or consumption would likely be high on the list.⁵³ That could include, as in the recent UK-New Zealand Free Trade Agreement, ending immediately new direct financial support, such as officially supported export credits, for fossil fuel energy projects, with possible exceptions such as improving safety or environmental standards. Subsidies not linked to current or future production or consumption – such as early-retirement benefits for redundant coal miners – could probably be green-lighted.

In connection with agricultural subsidies, a hierarchy of measures might range from variable input subsidies and market price support which are potentially the most trade distorting and the most environmentally harmful, to targeted, decoupled payments, which are the least damaging across these dimensions. Decoupled subsidies that would support the transition to sustainable farming and would not be expected to maintain or increase capacity or production could be green-lighted.

We recognize that some governments may claim that ending their subsidy programs – even those judged to be double-bad based on negative sustainability effects and positive trade disruption – will be difficult or impossible because of domestic political realities. In this case, we would require the country claiming political impossibility to make payments into a Global Sustainable Trade Fund ([see Section 6](#)) which would support efforts in less industrialized countries to meet emerging sustainability standards. We propose that the scale of the payments be set in accordance with the level of development of the non-compliant country and the magnitude of the adverse effects of the disapproved subsidy program.

⁵³ This part draws on Ronald Steenblik, [Fossil Fuel Subsidies: Challenges for the International Trade System](#), White Paper for the Remaking Trade Project.

ACTION

WTO Members should revise the GATT, the SCM Agreement, and the Agreement on Agriculture to make clear that subsidies that are harmful to sustainable development are prohibited if they also cause major trade distortion or, if their trade effects are not significantly distortive, subject to the subsidizing state sustaining the burden of proof that the global sustainable development harms of the subsidy are not disproportionate in relation to the expected benefits. Prohibited subsidies would be countervailable until they are phased out.

Conversely, WTO Members should revise the GATT, the SCM Agreement, and the Agreement on Agriculture to make clear that subsidies that have positive expected sustainable development effects and little trade distortion effects are permitted, but if they have major trade distortion effects, they are prohibited if a complaining state sustains the burden of proof that the expected trade distortive effects are disproportionate in relation to the expected sustainable development effects. Permitted subsidies would not be countervailable.

3. Implicit Subsidies

The existing WTO definition of a "subsidy," contained in Article 1 of the SCM Agreement, includes "financial contributions by a government or public body." This definition does not include governmental failures to require producers to internalize the environmental costs of their activities; for example, to charge producers a social cost of carbon. While, as noted above, the explicit subsidies are very important, at over US\$ 1.2 trillion annually, if the implicit subsidy due to failure to cause producers to internalize the [social cost of use of carbon fuels](#), or of overfishing, or of unsustainable agricultural practices, were considered a subsidy, the size of the subsidy would be much higher. In order to calculate this implicit subsidy, it is necessary to establish a baseline of sustainable development, below which a subsidy would be deemed to exist: in the case of carbon emissions, a global carbon price.

Existing international trade law, which does not include implicit subsidies within its definition of actionable subsidies and does not consider non-trade damage in determining whether subsidies are actionable, provides two main types of remedies for actionable subsidization. First, trade law permits importing states to countervail subsidies on imported products in an amount equal to the subsidy. Countervailing duties of this type involve a kind of self-help by the importing state but are not necessarily an efficient

or ideal remedy. Second, trade law prohibits certain subsidies or in some cases requires that their harmful (trade) effects be removed.

Disciplines on these implicit subsidies might be a second-best way to reduce the effects of harmful subsidies where this type of self-help is needed; the more direct way to do so would be through mechanisms directly to charge a social cost of carbon or other impairment of sustainability, as suggested above in [Section 3](#), rather than to punish or countervail these subsidies. Another, probably more effective, form of price-based self-help would be through border adjustment charges – also discussed in Section 3; and a third form of self-help is in the form of product standards for manufactured, agricultural, or fisheries products, of the type addressed in [Section 5](#).

These self-help methods suffer from several problems. First, they are dependent on importation of the implicitly subsidized product. Second, they are unilateral measures which, like the EU's Carbon Border Adjustment Mechanism (CBAM), were not formulated to fully recognize other countries' different obligations and different methods of achieving their nationally-determined contributions (NDCs) under the Paris Agreement. See [Section 3](#). It is worth noting that a regime of identifying implicit subsidies and charging a countervailing duty in relation to those subsidies would be economically similar to a border adjustment mechanism.

ACTION

Based on internationally agreed standards for sustainable development, in cases where no other method of causing exporters to internalize the costs of non-compliance with those agreed standards is applicable, WTO Members should authorize importing states to impose countervailing duties in relation to the implicit subsidies provided by virtue of failure to meet international standards for sustainable development.

4. Fossil Fuel Subsidies⁵⁴

Fossil fuel use must be reduced to achieve net-zero greenhouse gas (GHG) emissions and thereby reduce climate change, so it rarely makes sense to subsidize fossil fuels, although we recognize that transitioning from fossil fuel subsidies will be difficult,

⁵⁴ This part draws on [Joel P. Trachtman, Fossil Fuel Subsidies Reduction and the World Trade Organization](#), ICTSD Issue Paper, 2017.

especially for vulnerable communities. States provide explicit subsidies for fossil fuel use, including direct subsidies and tax subsidies. They also provide implicit subsidies by failing to require market participants to bear the full social cost of the use of fossil fuels. In 2021, the explicit subsidies worldwide were about US\$577 billion.⁵⁵ [According to the International Monetary Fund \(IMF\)](#), in 2022, the implicit subsidies were \$7 trillion.

Article 2(1)(a)(v) of the 2005 Kyoto Protocol exhorts, but does not require, Annex 1 countries to:

implement and/or further elaborate policies and measures in accordance with [their] national circumstances, such as: ... (v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments.

As he was leaving his post as Director-General of the WTO in 2013, Pascal Lamy stated that the "discussion on the reform of fossil fuel subsidies has largely bypassed the WTO. This is a missed opportunity."⁵⁶

The discussion has begun. In 2022, the WTO began plurilateral negotiations for Fossil Fuel Subsidy Reform, toward reducing fossil fuel subsidies. These negotiations are promising, and it would be useful to multilateralize them and accelerate their agreement and implementation. They represent an important turning point for the trade system: addressing national measures that are internationally problematic not so much because they distort trade, but because they impair sustainability. Similar action should be taken for agricultural subsidies that increase use of fossil fuels, increase use of fertilizers and insecticides, increase deforestation, pollute fresh waters, and impair biodiversity. Eliminating fossil fuel subsidies as proposed below will provide an implicit boost to renewable energy.

Existing WTO subsidies rules generally fail to address fossil fuel subsidies, because (i) they are not specific (as required for actionability) since they are available throughout the economy, (ii) they do not involve traded goods, (iii) are not necessarily conferred by a public body, and (iv) the main harm they cause is not the type of competitive injury

⁵⁵ Detox Development, xxii.

⁵⁶ Pascal Lamy, [WTO, Remarks to the Workshop on the Role of Intergovernmental Agreements in Energy Policy](#), 29 April 2013 (audio recording).

addressed in WTO law. Therefore, a new agreement with new scope of coverage and new commitments would be required.

An agreement to reduce fossil fuel subsidies would require a great deal of information about the existing subsidies being provided, which is not yet available. Partnership with the Organization for Economic Cooperation and Development (OECD), IMF or International Energy Agency (IEA) may be appropriate in order to develop appropriate metrics and monitoring.⁵⁷

ACTION

The WTO should partner with other relevant international organizations to develop actionable information about existing fossil fuel subsidies.

In terms of the relevant institutional reforms to address fossil fuel subsidies, under current practice a remedial amendment of the GATT and SCM Agreement would be subject to the need for all WTO Members to agree. Even a new plurilateral agreement that only binds signatory states would require consensus for approval. While there is growing support for fossil fuel subsidies disciplines among WTO Members, critical nations (including the United States) appear likely to object to sweeping reforms in this arena. Here, a plurilateral agreement, regardless of whether it is accepted formally as a WTO plurilateral agreement, may be a useful way to proceed, provided that critical mass participation can be achieved. Again, this might be possible as part of a package deal but is unlikely as a stand-alone agreement. The negotiation of the Fisheries Subsidies Agreement might be a useful model. [See Section 11.](#)

The 1995 WTO Agreement on Agriculture (AoA), discussed below, represents an example of a mechanism to limit and reduce a specific category of subsidies, separately from the SCM Agreement. The AoA set country-specific enforceable limits on both export subsidies and domestic subsidies on agriculture. Its progressive reduction structure can serve as an example of negotiation and agreement for progressive reduction of fossil fuel subsidies. The experience in implementing the WTO AoA has many lessons for the development of a fossil fuel subsidies reform regime, including problems in reporting and surveillance, in the nature of commitments above actual implemented levels, and in enforcement.

⁵⁷ See e.g. [Subsidies, Trade, and International Cooperation, report prepared by staff of the IMF, OECD, World Bank, and WTO, 2022.](#)

One of the problems with fossil fuel subsidies is that they enhance the competitiveness of energy based on fossil fuels compared to energy based on renewables. [The amount of fossil fuel subsidies far exceeds that of renewable fuel subsidies](#). In order to promote renewables, it may be desirable to allow states to transfer their fossil fuel subsidies to renewable fuel subsidies, and provide that any resulting renewable fuel subsidies are deemed permitted under WTO law and not countervailable. This type of mechanism would have the added advantage of providing a facility for states to compensate existing recipients of fossil fuel subsidies, by replacing the fossil fuel subsidies with WTO-permitted renewable fuel subsidies.

ACTION

Conclude WTO negotiations for an agreement to eliminate fossil fuel subsidies, and repurpose them as renewable fuel subsidies.

5. Agricultural Subsidies

Agricultural subsidies may be motivated by important purposes in connection with food security and food production innovation.⁵⁸ However, many agricultural subsidies result in [harmful excessive intensity of production, or harmful excessive use of fossil fuels, fertilizers, insecticides, and herbicides](#). The application to agriculture of the matrix set out above is clear. Subsidies that support unsustainable practices should be eliminated, while subsidies that are non-distorting, promote sustainability (including carbon sequestration), or promote food security, should be broadly permitted, provided that they can meet a proportionality test. There is a spectrum of measures from variable input subsidies and market price support which are potentially the most trade distorting and the most environmentally harmful, to targeted, decoupled payments which are found to be the least damaging across these dimensions.⁵⁹

Furthermore, as the Detox Development Report finds:

⁵⁸ See Sophia Murphy and Calvin Manduna, [Food Security and the Agreement on Agriculture: Old Wine in New Bottles](#), White Paper for the Remaking Trade Project; Sachin Kumar Sharma, [WTO Domestic Support Negotiations and Agricultural Sustainability: Issues and Concerns](#), White Paper for the Remaking Trade Project.

⁵⁹ See Carmel Cahill, [Reforming and Repurposing Agricultural Subsidies to Facilitate Trade and Sustainability](#), White Paper for the Remaking Trade Project.

Agricultural subsidies rarely achieve their stated purposes and often wreak havoc on forests, water supplies, and public health. Although agricultural subsidies are often intended to increase the efficiency of production, they usually have the opposite effect, making farming less efficient. A global analysis finds that, when countries increase their coupled subsidies, the technical efficiency of farming declines, even if output increases.⁶⁰

The motto "public money for public goods," adopted in the United Kingdom in repurposing agricultural subsidies, suggests that modern public goods requirements should be the focus of subsidies. Even green subsidies must be carefully structured to ensure that they do not impose excessive adjustment costs on marginal farmers in other countries.

ACTION

WTO Members should undertake that agricultural subsidies that are prohibited or reduced should be repurposed for non-distorting nutrition security, transitional assistance or compensation, or climate change costs.

6. Fishing Subsidies

The Fisheries Subsidies Agreement reached at the WTO 12th Ministerial Conference represented an important breakthrough. After two decades of impasse in the WTO fisheries subsidies negotiations – and nearly three decades after adoption of the WTO's Marrakesh Declaration's sustainable development mandate – Members came together on a prohibition of subsidies for illegal, unreported, or unregulated fishing or where stocks are overfished. This is consistent with the new subsidy matrix introduced above. This Agreement, the first in the WTO's history to address environmental concerns, represents an important step forward for ocean sustainability. But there is more work to be done to promote comprehensive sustainable development in the oceans and blue economy context. Indeed, the failure to conclude negotiations on the "overcapacity and overfishing" pillar was a missed opportunity from MC12 that could be addressed at MC13.

⁶⁰ Detox Development, xxvi.

ACTION

WTO Members should fulfill the mandate in point 4 of the Ministerial Decision of 17 June 2022 on the Fisheries Subsidies Agreement to adopt additional provisions to limit subsidies that contribute to overcapacity and overfishing.

As is the case with fossil fuel use and agricultural production, failure to regulate in this field also constitutes an implicit subsidy. With respect to international fisheries, like climate, an international common pool resource exists, and the failure of states, or of the international community, to manage that resource, allowing its exploitation without consideration of the overall effect on fish stocks and other sustainability concerns, provides an implicit subsidy to producers. As is the case with agriculture, these types of implicit subsidies are addressed, if at all, through sustainability standards of the type discussed in [Section 5](#) of this Report. That is, sustainability standards generally require production or processing methods that require producers to bear the costs of their actions as a condition for importation.

There is a risk that the costs of implementation of the Fisheries Subsidies Agreement will fall disproportionately on less industrialized countries and "maintain a status quo regarding current subsidies, which are already at an unsustainable level."⁶¹ In particular, the current Fisheries Subsidies Agreement will require investment in data collection and other evidence-based fisheries management and subsidies-related notifications that cannot be sustainably funded by the Fisheries Fund (as described below) being proposed under the Agreement. More generally, as proposed in [Section 6](#), the WTO should work to facilitate flows of investments into marine resources that allow Small Island Developing States (SIDS) and other coastal states to underwrite their development costs and commercialize their own marine and fisheries resources.

7. Special and Differential Treatment and Transitional Assistance for Vulnerable Populations

While harmful subsidies must be removed, the burden of the costs of transition from harmful subsidies should not fall on vulnerable communities or less industrialized states. It is also true that developing country subsidies that harm sustainability must be

⁶¹ Mustaqeem De Gama, [Fisheries Subsidies, the WTO and Sustainability](#), White Paper for the Remaking Trade Project.

addressed. One way to compromise in this context might be by providing longer transition periods for developing countries to phase out prohibited subsidies, in accordance with the principle of SDT.

A facility can be established to assist with the costs of transition, and on that basis more immediate reduction can be expected of developing countries. The WTO Trade Facilitation Agreement is an example of this type of mechanism, where wealthy countries agreed to support reforms in developing countries with technical and financial assistance.

Any plurilateral or multilateral agreements on harmful subsidies negotiated at the WTO would be expected to contain at least some arrangements for special and differential treatment, as do the SCM Agreement, the AoA, and the Agreement on Fishing Subsidies.⁶² Because the *raison d'être* for disciplining fisheries subsidies is more for sustainability than for trade reasons, however, the transition period for developing countries under the Fisheries Subsidies Agreement is much shorter than it is in the AoA. For example, in the AoA, developing country Members were accorded 10 years to implement their reduction commitments, and Least Developed Countries (LDCs) were not required to undertake any reduction commitments. By contrast, the Fisheries Subsidies Agreement accords both developing country members and LDC members just two years from the date of entry into force of the agreement to end any subsidies that support a vessel or operator engaged in illegal, unreported and unregulated fishing, or are targeting an overfished stock.

The case for a compressed implementation period for fossil fuel subsidy reform is just as strong as the logic for action on fisheries subsidies. Crucially, unlike agriculture and fishing, for which the ultimate environmental goal is not to shut down those industries but to make them more sustainable, the ultimate environmental goal for fossil fuels is to end their extraction and use. As for the other types of special and differential treatment provisions, it is hard to imagine an agreement succeeding without making technical and perhaps financial support available to help developing countries and least developed countries carry out their obligations. Again, the Agreement on Fisheries Subsidies sets an adaptable example. Article 7 of the Agreement establishes a voluntary WTO funding mechanism, in cooperation with other intergovernmental organizations such as the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development. An Agreement on Fossil Fuel Subsidies could similarly be

⁶² This part draws extensively from Ronald Steenblik, [Fossil Fuel Subsidies: Challenges for the International Trade System](#), White Paper for the Remaking Trade Project.

implemented in cooperation with Intergovernmental Organizations (IGOs) such as the IEA, the International Renewable Energy Agency (IRENA), and the United Nations Framework Convention on Climate Change (UNFCCC).

While swapping green subsidies in exchange for harmful subsidies in connection with consumption or production subsidies that benefit the vulnerable may be the most environmentally sound way to mitigate the effects of harmful subsidies reduction on the vulnerable, such swaps may not always be feasible or effective. Therefore, other measures to mitigate the impact of reduction of harmful subsidies may be appropriate. Cash transfers would be a simple method of mitigation.

8. Institutional Structures

The WTO has a number of features that may make it a desirable institutional home for new agreements on harmful subsidy reduction in connection with fossil fuels, agriculture, and fishing.

- First, for individual states to make progress on reducing harmful subsidies, they will need to coordinate with other states to reduce similar harmful subsidies in parallel, in order to avoid competitive distortion among producers.
- Second, the WTO has analytical, reporting, surveillance (including the Trade Policy Review Mechanism), and dispute settlement capabilities that fit well with the institutional needs of a harmful subsidies reduction mechanism. With respect to dispute settlement in particular, the possibility for cross-retaliation may be needed to preserve cross-sectoral bargains struck to induce states to agree to reduce harmful subsidies.
- Third, the WTO is the multilateral organization that regulates national trade distorting subsidies. Therefore, the WTO, and national representatives to the WTO, have broad experience in managing subsidies. In addition, the WTO already has experience with negotiation in special sectoral subsidies fields: agriculture and fisheries, and now fossil fuels.
- Fourth, different states will have different interests in connection with different harmful subsidies, and the WTO offers opportunities to induce states to change their policies in exchange for policy concessions in other fields by other states. The

WTO is a forum for exchange of diverse commitments, making negotiation through cross-sectoral bargaining more likely to reach agreement. Conversely, it may be difficult to reach agreement in a freestanding agreement in which other forms of consideration cannot be given in exchange for harmful subsidies reduction commitments.

One clear gap in WTO capabilities involves the ability to engage in proportionality analysis. WTO adjudicators have generally failed to engage in true proportionality analysis that weighs trade benefits against other goals, such as environmental protection or health. But national governments routinely engage in cost-benefit analysis that measures environmental or other benefits against reductions in efficiency. The core issue is expertise to evaluate different types of effects, and then to commensurate between them. While this commensuration must ultimately be a political decision, it would make sense to begin with experts, presumably from international organization secretariats with relevant expertise. An SDC, as discussed above, may be established to carry out this task. [See Section 11.](#)

Reform cannot wait the 20 years that it took between a negotiation mandate and a negotiated agreement in the case of the Fisheries Subsidies Agreement. The existing requirement of unanimity for new multilateral agreements makes for slow progress. Instead, it might be appropriate to seek agreement among states constituting a "critical mass" through an "open plurilateral," as implicitly suggested by the June 2022 Ministerial Statement on Fossil Fuel Subsidies.

Subsidies are politically persistent. Existing subsidies will be difficult to eliminate because the special interests who receive them will advocate for their maintenance. One of the roles of international negotiation and diverse commitments at the WTO and elsewhere is to enable new domestic political equilibria, by providing opportunities for reciprocal commitments that may benefit other constituencies. Narrow reciprocity in reduction of harmful subsidies will be a part of the political inducement but may not be sufficient in many countries. Instead, the WTO negotiation process is a process of discovery of diffuse reciprocity, in which, for example, one state might reduce fossil fuel subsidies in exchange for greater market access in a different product or service granted by another state.



SECTION 5:

Reforming the Sustainability Standard-Setting Process

1. Background

Product standards⁶³ are important in many areas of commerce, whether to set quality requirements to protect consumers, or to ensure that environmentally or socially harmful production processes are not used to produce goods. The latter types of standards – relating to processes or production methods (PPMs) can relate to agriculture, fisheries, manufacturing, labor rights, and other areas that affect sustainable development. We refer to these product standards intended to promote sustainability as "sustainability standards."

Some of these areas can present tensions between sustainability and development. For example, agricultural product standards that seek to protect biodiversity,⁶⁴ or greenhouse gas (GHG) border adjustment mechanisms, like the EU's Carbon Border Adjustment Mechanism (CBAM) ([see Section 3](#)), may also impose costs on developing country producers, or may limit their export opportunities, and thereby inhibit development. Increasingly, these standards address PPMs, as opposed to the intrinsic characteristics of products themselves, because importing countries see themselves as

⁶³ The [World Trade Organization's \(WTO\) Agreement on Technical Barriers to Trade](#) (TBT Agreement) governs standards and mandatory technical regulations for most goods, while the WTO Agreement on Sanitary and Phytosanitary Measures governs mandatory measures intended to protect health from certain biological risks. Within the TBT Agreement, standards are voluntary and technical regulations are legally mandatory. In this Section, however, standard is used as a generic term that includes product specifications with which compliance is either voluntary or mandatory. Technical regulation is used to refer to mandatory standards. [See the International Trade Centre's Standards Map](#). While there are similar standards that relate to trade in services, we focus here on product standards. This Section benefited from discussions with, and advice provided by, Lauro Locks.

⁶⁴ Elizabeth Petykowski, Talia Smith, Morgan Gillespy, and Alessia Mortara, [The Role of Trade in Mitigating Harmful Environmental Impacts of Global Food and Land Use Systems](#), White Paper for the Remaking Trade Project.

adversely affected – either through physical effects or through competitive effects (known as "leakage") by production processes that take place in the exporting country.

The question, then, is how to develop a suitable, and appropriately harmonized, set of product standards that both promote sustainable outcomes and provide trade opportunities for developing countries. [See Section 2.](#) This is not an easy task, because it requires the capacity to prepare, agree, and implement effective standards that will achieve sustainability goals in a balanced way. It also requires these standards to be prepared through an open and inclusive process involving a wide range of stakeholders to ensure they can appropriately reflect development and other needs and are not disproportionately costly to meet. Furthermore, each country will have different balances of these goals.

Unnecessary variety in sustainability standards increases compliance costs. Indeed, diverging standards may create challenges for both the protection of citizens and consumers (e.g., non-harmonized standards may be sub-optimal in terms of addressing their non-trade policy objectives) as well as unnecessary costs for businesses. As noted by the WTO-OECD, "[f]or traders in particular, regulatory divergences and lack of coherence across jurisdictions may result in a number of costs and frictions."⁶⁵ "Regulatory heterogeneity and associated costs may be justified by domestic public policy priorities and reflect variations in domestic conditions and preferences."⁶⁶

Problems may arise from a trade standpoint, however when adverse effects on trade stem from product specifications in standards that were adopted arbitrarily, unjustifiably, unnecessarily, or discriminatorily. In such cases, standards can result in market entry barriers that unjustifiably reduce export opportunities. The standard's disproportionality (which results in the undesirable trade effects) may be unintentional or may sometimes be by design. Sometimes it could be simply because the standard was designed without sufficient attention to development goals of exporting countries. Other times, it may be because the standard was designed so as to afford protection to domestically produced goods. It is important to note, in this respect, that standards may have a "dual purpose" in the sense that they may both address sustainability and protectionism goals.

Furthermore, with respect to global commons, as in the climate system, different countries may have different preferences and levels of concern, giving rise to differing

⁶⁵ WTO-OECD, [Facilitating Trade through Regulatory Cooperation: the Case of the WTO's TBT/SPS Agreements and Committees](#), p. 7-8 (footnotes omitted) 2019.

⁶⁶ *Id.*, p. 9; footnote omitted.

standards. So, while divergence may be legitimate otherwise, one country's preferences may stand in the way of the achievement of another country's goals to protect the global commons, or to protect itself from cross-border environmental and social harms (externalities).⁶⁷

Sustainability standards that address PPMs, which by definition take place in the exporting country, have proliferated as the world seeks more sustainable production and recognizes the importance of addressing externalities.⁶⁸ And yet, while there are many NGO or industry-produced private standards, there are fewer sustainability standards that are issued by international bodies open to all states. These standards can be prepared and adopted by international bodies engaging in international standardization such as the International Organization for Standardization (ISO), the World Health Organization (WHO)/Food and Agriculture Organization (FAO) Codex Alimentarius (Codex), or the Forest Stewardship Council (FSC). Governments also frequently adopt these standards from international bodies. In such cases, governments may decide to adopt them as voluntary national standards. But sometimes governments decide to make compliance with these documents mandatory as a matter of law, including sometimes as a condition for placing goods on the market of an importing country, so they become mandatory "technical regulations."

Finally, these sustainability standards can also be issued by individual companies or non-governmental organizations (NGOs) (sometimes called private standards). And it is the proliferation of these standards that can be even more troublesome for exporters.⁶⁹ These standards, while not legally mandatory, may be required by importers, distributors, or retailers as a condition for purchase. In turn, depending on how consumers perceive private standards in a given market, it may create informal market access barriers. Yet, it remains unclear if, and if so to what extent, the TBT Agreement disciplines private standards.

■ The wide range of private standards remains a source of confusion for many processors and exporters trying to decide which certification scheme will bring

⁶⁷ We note that the International Organization for Standardization (ISO) has developed a framework to provide "guiding principles and recommendations to enable a common, global approach to achieving net zero greenhouse gas emissions through alignment of voluntary initiatives and adoption of standards, policies and national and international regulation." [ISO Net Zero Guidelines](#).

⁶⁸ See Jason Clay, [Sustainable Agricultural Production Standards and Traded Goods Sustainability Certifications, Including the Effects on Small Holders](#), White Paper for the Remaking Trade Project.

⁶⁹ See Rodrigo C.A. Lima, [Standards and Regulations to Foster Sustainable Agriculture: Proposals to Rebalance the Global Trading System](#), White Paper for the Remaking Trade Project.

the most market returns, and buyers trying to decide which standards have the most credence in the market and will offer returns to reputation and risk management.⁷⁰

Traceability or conformity assessment requirements may be necessary in order to determine compliance with standards, but can also be inappropriately complex or costly to meet. Technological advances such as blockchain can help by providing better traceability capabilities that offer origin and ownership information. Similarly to standards themselves, the WTO may convene discussions to harmonize these requirements, as well as to call for technical financial assistance for developing countries to assist in complying with traceability or conformity assessment requirements.

This Section first describes the degree to which current WTO law permits proportionate standards and prohibits disproportionate standards. It then addresses the question of how to promote additional international sustainability standards, also addressing concerns about inclusiveness of standard-setting processes and the constraints on participation for developing countries. It addresses the institutional fragmentation issue that arises from the fact that the WTO is concerned with trade but does not internally have standard-setting capacities. Finally, it describes some of the special circumstances that relate to international labor standards.

⁷⁰ Lahsen Ababouch and David Vivas Eugui, [Ocean Health and Trade](#), White Paper for the Remaking Trade Project.

ACTION

- WTO Members should commit to an inclusive standards-setting process that promotes sustainable development, while avoiding harm to less industrialized countries (by providing them technical assistance, financial assistance, and extended transition periods).
- The process of making international standards must be revised to ensure that national technical regulations are formulated to (i) respect the special and differential needs of developing countries, (ii) respect the national right to regulate in different ways to achieve legitimate purposes, (iii) and avoid disproportionate barriers to trade.
- As international standards are developed, it is necessary to discourage application of diverse private standards that may not be made in an inclusive manner and that may, by their divergence among themselves and their divergence from international standards, impose disproportionate barriers to trade for developing countries.

2. Clarifying Permission for Proportionate Standards

Similar to the sustainable development analysis of subsidies described in [Section 4](#), it is important to consider the beneficial sustainable development effects of standards in comparison to any detrimental trade effects, and to permit proportionate sustainability standards, while invalidating greenwashed protectionist standards or standards that simply do not do enough good to justify their detriments. Proportionality may be enhanced by avoiding unnecessary divergence. A Sustainable Development Commission (SDC) comprising independent experts, as discussed in [Section 4](#), may be established to analyze sustainable development contributions in order to determine proportionality. [See Section 11.](#)

Governmental product requirements are regulated under the General Agreement on Tariffs and Trade (GATT) and TBT Agreement, and under similar provisions of preferential trade agreements. Technical regulations that directly address process and production methods (PPMs) are excluded from coverage of the TBT Agreement, unless they are "product-related." It is not clear what it means to be "product-related." For example, a production process that affects the quality of the product would be covered. Perhaps counterintuitively, if a technical regulation is not covered, it is subject to the

probably lesser restrictions of the GATT, which only requires non-discrimination, but not to the TBT Agreement. As a result, a non product-related PPM would be subject to lesser restrictions.

In addition, and importantly, labeling requirements relating to process and production methods seem to be covered by the TBT Agreement: the TBT Agreement applied to the U.S. labeling regulations relating to processes for protecting dolphins in connection with tuna fishing.⁷¹ The TBT Agreement could also apply to traceability requirements. Note that the GATT applies to all these measures.

Mandatory governmental product standards, termed technical regulations in the TBT Agreement, are required to be no more trade restrictive than necessary to achieve a legitimate objective, and WTO Members are required to use international standards as a basis for their technical regulations, except when they would be an ineffective or inappropriate means for the fulfillment of the legitimate objective pursued. However, for many areas of sustainability requirements, no relevant substantive international standard yet exists for purposes of the TBT Agreement.⁷² Furthermore, technical regulations should be based on performance, rather than design, which would suggest that technical regulations addressing for instance carbon emissions should focus on reductions, not on means of reduction.

The GATT also applies to mandatory technical regulations, and prohibits discrimination between imported and domestic products, and between imported products from different exporting countries. The WTO Appellate Body has defined discrimination broadly, utilizing a purely competitive basis for determining whether products are "like" (comparable), and also a competitive basis for determining whether like products are subject to less favorable treatment, and thus subject to illegal discrimination. Depending on consumer preferences, physically identical products where one group is produced using an unsustainable PPM, while another group is produced sustainably, would probably be considered like products, and therefore regulation that treats the unsustainably produced product less favorably is likely to be considered to violate these

⁷¹ [Making Trade Work for Climate Change Mitigation: The Case of Technical Regulations](#), UNCTAD, 2022.

⁷² The WTO Appellate Body determined in Tuna II that, for the purposes of the TBT Agreement, an "international standard" is one adopted by an "international standardizing body", which in turn can be defined as a "body that has recognized activities in standardization and whose membership is open to the relevant bodies of at least all Members." Appellate Body Report, United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/AB/R, adopted 13 June 2012, para. 359.

anti-discrimination obligations.⁷³ The GATT contains exceptional provisions in Article XX, and good faith sustainability provisions are likely to qualify for an exception, unless they are found to be unjustifiable or arbitrary.⁷⁴ The TBT Agreement, while it does not contain an exceptional provision similar to Article XX, does not find discrimination where the national technical regulation "[stems exclusively from a legitimate regulatory distinction.](#)"

Technical regulations to which the TBT Agreement applies may also be found to be WTO-inconsistent if they are more trade restrictive than necessary under TBT Agreement Article 2.2. In the [Tuna II](#) case, the Appellate Body interpreted Article 2.2 as requiring a balancing test: "the assessment of necessity involves a relational analysis of the trade-restrictiveness of the technical regulation, the degree of contribution that it makes to the achievement of a legitimate objective, and the risks non-fulfilment would create."

We have spent less time on the restrictions imposed by GATT, because, even though sustainability standards may be found to violate non-discrimination provisions, or provisions prohibiting quantitative restrictions on imports, good faith, justifiable, and non-arbitrary sustainability standards that address important sustainability issues are likely to be excepted under Article XX(b) if they are "necessary" to protect human, animal, or plant life or health, or if they "relate to" conservation of exhaustible natural resources. This analysis, also, would be subject to some degree of judicial balancing.

While judges engage in balancing in many circumstances in many legal systems, for important issues such as the relationship between trade and sustainability, political negotiators who are able to assess the value to their own societies of the different interests at stake may be better placed to conduct the balancing exercise and to make worthwhile cross-product or cross-sectoral trade-offs. Judicial balancing tests may leave states uncertain as to which sustainability standards are permitted and which are not.

This problem of uncertainty, and possible regulatory chill, can be resolved by a clarifying amendment to the WTO treaty, or by an authoritative interpretation under Article IX(2)

⁷³ For more on the role of PPMs in the likeness analysis, see: Steve Charnovitz, The Law of Environmental "PPMs" in the WTO: Debunking the Myth of Illegality, *Yale Journal of International Law*, Vol. 27, No. 59, p. 59-110, 2002. See also, Emily Lydgate, Consumer preferences and the national treatment principle: Emerging environmental regulations prompt a new look at an old problem, *World Trade Review*, 10(2), p. 165-188, 2011.

⁷⁴ See Andreas Oeschger and Elisabeth Bürgi Bonanomi, [PPMs Are Back: The Rise of New Sustainability-Oriented Trade Policies Based on Process and Production Methods](#), IISD, April 14, 2023; [Freya Baetens, Bernard Hoekman and Petros Mavroidis, Production Requirements and WTO Rules: The Case of Environmental and Labor Standards](#) (2023, forthcoming).

of the WTO Agreement, reversing the existing jurisprudence by stating that products are not "like" (and therefore cannot be comparable for purposes of finding discrimination) if they are distinguished according to a proportionate national regulatory rule implemented for a legitimate (sustainable) purpose, and that legitimate purposes under both the prohibitions of discrimination and the requirement of proportionality includes addressing externalities that significantly adversely affect the importing state.⁷⁵ One important benefit of such a change would be to shift the burden of proof so that regulating states would not have to justify their measures. Another would be to provide a broader range of legitimate purposes.

ACTION

WTO Members should amend or definitively interpret the GATT and the TBT Agreement to clarify permission for proportionate sustainability standards and technical regulations.

2.i. The Harmonizing Role of the TBT Agreement

Article 2.4 of the TBT Agreement, which applies only to certain technical regulations, requires WTO Members to use international standards as a basis for their technical regulations, unless the international standards are an inappropriate or ineffective means to achieve legitimate objectives; so deviations from international standards is discouraged. Thus, once an "international standard" is made as specified in the TBT Agreement, and in the relevant international body, Members have, in principle, a formal obligation to use the international standard as specified. This provision partially *hardens* the international standard, making its use as a basis for national technical regulations mandatory. Furthermore, under Article 2.5 of the TBT Agreement (second sentence):

Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

This provides an important incentive for WTO Members to establish their sustainability standards as technical regulations "in accordance with" relevant international standards. It encourages harmonization. The application of this incentive depends on whether the

⁷⁵ See Joel P. Trachtman, WTO Trade and Environment Jurisprudence: Avoiding Environmental Catastrophe, 58:2 Harvard International Law Journal, p. 273-309, 2017.

national measure would be a "technical regulation"--for most sustainability standards, they would need to qualify as product-related process or production methods, as discussed above.

Importantly, this kind of harmonization and partial preemption of divergent national standards would not necessarily apply to private standards.⁷⁶ It would be much more difficult for governments to agree to restrict the application of private standards than to agree to restrict the application of their own standards.

There is nothing similar to the TBT Agreement contained in the General Agreement on Trade in Services (GATS), although GATS contains in Article VI(5) a requirement of proportionality. In order to address standards in digital commerce effectively, along the lines described above, it would be useful to amend GATS to contain similar provisions to the TBT Agreement provisions discussed above.

3. Promoting Proportionate Standards

The types of disciplines and exceptions discussed above do not address the need to develop the kinds of specific and harmonized sustainability standards that are needed. Rather, the disciplines discussed above arise as an issue only in the context of a given dispute, and will tend to leave in place individual national standards or private standards that may unnecessarily diverge, and, more importantly, are made without sufficient consideration of the needs and perspectives of other countries, including especially developing countries. They also will fail to establish sufficiently broad adherence to sustainability standards.

More international standards addressing production process-based concerns are needed. Labor and human rights standards and sustainable production-based standards, applied to manufactured goods, agricultural products, and fisheries products are the leading categories of these types of import restrictions. Examples of individual national sustainability standards include the EU's CBAM⁷⁷ and the 2023 EU Deforestation

⁷⁶ See Rodrigo C.A. Lima, [Standards and Regulations to Foster Sustainable Agriculture: Proposals to Rebalance the Global Trading System](#), White Paper for the Remaking Trade Project.

⁷⁷ See for further discussion, Jennifer Hillman, *Changing Climate for Carbon Taxes: Who's Afraid of the WTO?*, Climate Advisers, 2013; Robert Howse, *Non-tariff Barriers and Climate Policy: Border-Adjusted Taxes and Regulatory Measures as WTO-Compliant Climate Mitigation Strategies*, *European Yearbook of International Economic Law*, 2015; Joost Pauwelyn, *U.S. Federal Climate Policy and Competitiveness Concerns: The Limits and Options of International Trade Law*, (Nicholas Institute for Environmental Policy Solutions, Duke University Working Paper), 2007; Joel P. Trachtman, *WTO Law Constraints on Border Tax Adjustment and Tax Credit Mechanisms to Reduce the Competitive Effects of Carbon Taxes*, RFF

Regulation.⁷⁸ These unilateral actions may be justifiable under GATT or the TBT Agreement, and may indeed be valuable stimulants for multilateral action, but multilateral action will be superior in terms of sustainable development: multilateral action can provide more effective sustainability results, improve developing country market access, and increase overall efficiency of production.

In addition, proportionate international sustainability standards will tend to be interoperable: they will avoid creating unnecessary obstacles to international trade simply by virtue of unnecessary differentiation. In this regard, they will be formulated in terms of performance rather than design specifications, as anticipated by Art. 2.8 of the TBT Agreement.

a. Identifying Needed International Standards

Effective sustainable development will require multilateral standards for a host of areas, including environmental sustainability, labor protection, and even digital commerce (including services). An important action item will be to identify and prioritize a list of areas that require multilateral standards. To formulate this list, it will be necessary to determine (i) the magnitude of the sustainability need that the relevant standard can address, and (ii) the need for multilateral standards to maximize export opportunities for developing countries and other countries. With respect to the latter criterion, the form of international standards can be selected from a spectrum from mandatory and preemptive specific rules that leave no room for national discretion, to rules that are not mandatory or rules that leave space for customization to local preferences.

Based on our Project workshops, we consider that an initial priority subject matter list for development of international standards includes the following:

1. GHG measurement
2. GHG gas pricing
3. Deforestation
4. Biodiversity
5. Fishing and marine products
6. Core labor rights
7. Circular commerce

Discussion Paper, 2016; James Bacchus, Legal Issues with the European Carbon Border Adjustment Mechanism, Cato Institute Briefing Paper No. 25, 2021.

⁷⁸ See for further discussion Emily Lydgate, Consumer Preferences and the National Treatment Principle: Emerging Environmental Regulations Prompt a New Look at an Old Problem, *World Trade Review*, 10(2), p. 165-188, 2011.

8. Digital commerce

Many other areas may be addressed.

ACTION

The WTO Secretariat, in collaboration with Members and other relevant international organizations and stakeholders, should identify needed sustainability standards, to establish a process to develop proportionate international standards to serve as a basis for international harmonization, perhaps using the proposed Sustainable Development Commission in this endeavor.

b. Creating Needed International Sustainability Standards

One reason why we see a proliferation of unilateral national and private sustainability standards is the difficulty of making international standards due to diverse national preferences. The international legal system makes it difficult to establish legally required standards, generally requiring each state to agree to be bound through a formal treaty. The international standardization system can create standards that are not themselves formally binding through a more informal process, but, as discussed above, the TBT Agreement lends additional formal force to these informally-produced standards that in their *home* institutional context (e.g., the IOS), do not have binding force.

3.i. Consensus and Majority Voting

Standard-setting bodies, such as the SO, generally act by consensus, but consensus is defined, [at least at ISO](#), as follows:

general agreement where there is no sustained opposition to substantial issues by any important part of the concerned interests, in a process that seeks to take into account the views of all parties concerned.

There is no right to veto (unlike in the WTO approach to consensus, which holds that no consensus is formed if any Member formally objects), and responsibility for assessing whether or not a consensus has been reached rests entirely with the committee leadership. This approach at ISO has served to promote agreement, but may be insufficient for more important and divisive types of standards. The attractiveness of making international standards without unanimity is dependent on the ability of developing countries to participate effectively.

While the ISO works by consensus, an explanatory note to Annex 1.2 of the TBT Agreement specifies that international standards can also be formulated by decision-making processes other than consensus. Thus, it is possible that a majority-voting mechanism could be established in an international standard-setting body, and the resulting standards would have the effect described above. A weighted-majority or other voting approach that serves to ensure that standards have a sufficient degree of acceptance, without allowing a *tyranny of the minority*, should be considered for adoption in international standard-setting bodies. We discuss these governance issues further in [Section 11](#).

ACTION

WTO Members should work to facilitate approval of needed sustainability standards.

3.ii. Inclusiveness and Special and Differential Treatment

International standards must be developed with the participation of developing countries, with appropriate technical assistance provided to promote effective participation, as reflected in Principle 6 of the Technical Barriers to Trade Committee's [Principles for the Development of International Standards, Guides and Recommendations](#) (Six Principles). It will be necessary to take further steps to ensure that sustainability standards are formulated through an inclusive process that takes full account of the costs and benefits accruing to micro or small or medium enterprises (MSMEs), marginal producers, and small economic actors.

Many developing countries have contributed little to certain global sustainability problems but are being asked to comply with significant new sustainability obligations that may become prerequisites for their market access. In these circumstances, special care will need to be taken to help those developing countries meet the new market expectations. Failure to provide capacity building, help in obtaining access to best practices and cutting-edge technologies, and support for country-specific innovation – all of which makes allowances for their different financial resources and circumstances, might well be seen as inconsistent with special and differential treatment and with the similar equity principles in the climate change context.

Costs of transition to new requirements may be substantial for some developing country producers, and they will require transition support. Some developing countries have trouble participating effectively in standard-setting at the ISO and other standard-setting bodies, and the [United Nations Forum on Sustainability Standards](#) is not sufficiently resourced to provide adequate support and technical assistance. It may be appropriate at the WTO to establish, as suggested in Principles 2 and 6 of the Six Principles, a facility for assistance in standards participation, transition, and compliance, in order to ensure continued market access for exports of developing countries. [See Section 6.](#)

ACTION

WTO Members should establish and fund a facility for assistance in standards development participation, transition, and compliance.

3.iii. Coordination and Convening

Trade can be preserved and made more efficient and sustainable by an appropriate standard-setting process. As the leading multilateral organization responsible for trade, the WTO may address this issue by setting an agenda and convening discussions among relevant international and national constituencies of international sustainability standards and technical regulations to ensure that these are set in a way that is not unnecessarily onerous or diverse: a *spaghetti bowl* of standards and technical regulations that itself is a barrier to trade. The WTO may also convene discussions to avoid unnecessarily complex or onerous private standards. The WTO Committee on Trade and Environment, together with the Committee on Technical Barriers to Trade, can take a leading role in this effort in order to promote coherence, as anticipated in Principle 5 of the [Six Principles](#).⁷⁹

Among these constituencies will be several international organizations, including the United Nations Conference on Trade and Development (UNCTAD), the International Trade Centre (ITC), the Organization for Economic Cooperation and Development (OECD), ISO, and additional sectoral and standard-setting organizations. But it will also

⁷⁹ Principle 5 entitled “Coherence” provides that: “In order to avoid the development of conflicting international standards, it is important that international standardizing bodies avoid duplication of, or overlap with, the work of other international standardizing bodies. In this respect, cooperation and coordination with other relevant international bodies is essential.”

be necessary to coordinate a multistakeholder process that includes NGOs and businesses.

In addition, it will become necessary for states to optimize their own organization for this type of multi-functional (sustainability, development, and trade) negotiation and cooperation. Furthermore, it will become useful if states establish appropriate structures for cooperation, including seeking to ensure that they have organizations that are sufficiently congruent with those of other states, and with relevant international bodies, to ease the bureaucratic inefficiencies that arise from different national structures for negotiation – states should voluntarily, but consciously, ensure that they are well-organized for the increasing need for international coordination of sustainability regulation.

The August 2023 G20 Trade and Investment Ministers' Meeting Outcomes Document called for an important initiative to convene relevant actors in relation to standards:

We welcome the Presidency's suggestion to hold a G20 Standards Dialogue in 2023 that will bring together members, policymakers, regulators, standard-setting bodies and other stakeholders to discuss topics of common interest such as good regulatory practices and standards. This event to be held in partnership with World Standards Cooperation, will seek to promote capacity building and exchange of best practices.

ACTION

- The WTO Secretariat should convene relevant international organizations, businesses, and NGOs to produce needed international sustainability standards within the structures of standard-setting bodies. Identify and apply best practices in multi-stakeholder diplomacy involving multiple organizations.
- WTO Members should identify and apply best practices in national inter-ministry or inter-functional coordination to produce sustainability standards that serve sustainable development purposes, and report on these practices within the Trade Policy Review Mechanism framework.

4. Labor Standards

One of the most difficult types of sustainability-based standards is labor standards, which are uncertain to be covered by the TBT Agreement, because they may not qualify as product-related process or production methods but are covered by GATT. Labor standards are production and processing method-based standards that do not have direct physical cross-border harms. Rather, the external harms of inadequate labor standards are confined to moral, competitive, and political effects. The political economy of labor standards in international trade is generally based on demands of organized labor in developed countries, such as the U.S. or the EU. These demands have some moral basis in solidarity but can also be designed to preserve competitiveness, and to avoid political pressure for reduced labor protection in the importing state.

As seen in current U.S. and EU preferential trade agreements, adherence to and enforcement of core labor standards are often required.⁸⁰ As with other sustainability standards, there are important questions of the agency of partner developing countries in connection with the formulation and application of these standards, as well as of the proportionality of these standards: are they motivated more by solidarity or by blue protectionism? Importantly, the blue protectionism shades into and is difficult to distinguish from solidarity: maintaining a united front for immobile labor against mobile capital. For example, protecting unionization affects the bargaining power of labor abroad, and its ability to capture a greater share of producer surplus.

As a practical political matter, appropriate labor rights, and resulting appropriate wages and other conditions of work, are essential to sustainable trade: liberalization must be *embedded* in a set of social relations that will support political equilibrium in its favor. This fact was certainly recognized in the early negotiations for the *International Trade Organization*, which is the broad trade agreement that never came into effect, but for which the GATT was a placeholder. As stated by one of our White Paper authors:

Karl Polanyi, writing toward the end of the Second World War, considered that the ILO's [International Labor Organization] role was in part to "equalize conditions of competition among the nations so that trade might be liberated without danger to standards of living." The understanding was not just in theory; it was at the core of the international economic architecture proposed through the 1948 Havana Charter that set out to establish an International Trade

⁸⁰ Kathleen Claussen, [Trade Law on the Factory Floor: Increased Firm-Centrism in Social Sustainability Trade Tools](#), White Paper for the Remaking Trade Project.

Organization as a specialized agency of the United Nations. The Havana Charter recognized that "all countries have a common interest in the achievement and maintenance of fair labor standards related to productivity, and thus in the improvement of wages and working conditions."⁸¹ (footnotes omitted)

The goal of managing this political equilibrium is not just a domestic goal: trade partners have an interest in the stability of trade liberalization commitments, and so will wish to see or require appropriate labor conditions in their trade partners. These may take the form of social safety nets, wage regulation, protection of unionization, or other social measures. Different countries with different economic and social structures, will utilize different tools to protect workers. Core labor rights may be the minimal *harmonized* standard.

As Blackett suggests, some of the work at the interface between trade and labor can be addressed regionally, where there may be greater ability to agree on labor rules. But labor protections are generally applicable across a country's production and so a broad range of importing countries will have interests in an exporting country's labor rules. Therefore, multilateral action will be important, but it has been clear since the 1996 Singapore Ministerial meeting that labor cannot be addressed by the WTO acting alone. The expertise, experience, and mandate of the ILO is critical to further trade-labor coherent action in this area.

ACTION

The WTO should cooperate with the ILO to convene discussions to develop an international approach to the relationship between trade and labor standards. This approach should include appropriate recognition of regional diversity.

⁸¹ Adelle Blackett, [Trade and Labour Standards: Sustaining Social Regionalism through Multilateralism](#), White Paper for the Remaking Trade Project.



SECTION 6:

Making the Trade System Work for Developing Countries

1. Background

The Global South risks being left behind in the transition to a sustainable economy as it experiences disproportionate costs of climate change, biodiversity impairment, and other sustainability crises, while the unilateral sustainability action of the industrialized countries may impose on the South disruptive costs of compliance and transition with sustainability standards, as well as competitive disadvantages of sustainability-focused subsidies.⁸² The shocks of the COVID-19 pandemic and the Ukraine war have further increased their debt burdens, narrowed government policy space, dwindled revenues, and exposed their dependence on fragile global value chains.

We have addressed specific needs of the Global South, and of vulnerable communities, in the above Sections on greenhouse gas (GHG) emissions, subsidies, sustainability standards, and do so also in subsequent Sections on technology and e-commerce and resilient supply chains. In this Section, we draw these points together, and in addition suggest ways that the developing world can engage in the trade system to overcome barriers and make use of its competitive advantage based on demography and strong labor forces, as well as natural access to renewable energy.

At the same time, the Global North is devoting unprecedented levels of public and private capital, and other government support, into their firms in welcome support of the energy transition and other sustainability goals, but in a way that may make it difficult for developing countries to remain competitive. A profound question for the international trade community at this critical juncture is: how can the multilateral trade system actively support the advancement of the development and sustainable development priorities of the Global South?

⁸² See Henry Gao, [Environmental Authoritarianism: Lessons from China's Climate Change Mitigation](#), White Paper for the Remaking Trade Project.

As the Global South negotiates for a place at the table, it will need to ensure that its contributions are recognized and valued. Power in international trade largely comes from wealth— the leading trade economics analytical framework, known as *terms of trade theory*, holds that economically large countries hold power because they can impose trade barriers that increase their wealth at the expense of others. Much of the developing world is therefore at a disadvantage in this narrow negotiating sense. Yet, there are potentially untapped sources of bargaining power that developing countries may leverage. One is the power of those countries that hold important resources, like critical minerals. Another is the carbon absorption capacity of developing countries. While the developing world should not overplay its hand, and developing countries share a strong interest in sustainability because many of them are at ground zero, they should ensure that their contributions are recognized in negotiations allocating responsibilities for future action. This is one meaning of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC).

This section focuses first on attracting investment in sustainable development to the Global South, through improved market access for sustainable goods and services, and through technology transfer, as well as through promoting engagement with global emissions markets. It proposes modifications to trade finance for sustainable investment, repurposing capacity-building and rechartering the International Trade Centre (ITC) to focus on investment for sustainable trade. It then develops initiatives for people-centered trade and for a Sustainable Development Impact Assessment facility to empower less industrialized countries and heretofore marginalized groups in international trade negotiations.

2. Attracting Sustainable Investment into the Global South

Trade has been a critical part of the development story for China and other leading developing countries. Even though the global economy has not been as strong a mechanism for development in important parts of the Global South as it might have been, developing countries want fair opportunities to share in the benefits offered by the new sustainable economy. As expressed by our workshop participants, James Mwangi and Carlijn Nouwen:

[Developing countries are] not looking for hand-outs. Yes, [they are] undoubtedly victim[s] of climate change [but they] can also be a sizable and essential part of the global solution, allowing the world to decarbonise its production and

consumption system by developing and deploying a global low-emission manufacturing hub.⁸³

Many developing countries have natural advantages that make them attractive places for investment: they have boundless sources of renewable energy, large forest and mangrove/seagrass areas that can help to meet GHG emission targets; large tracts of arable agricultural lands to address global food security problems; and rich marine resources and critical minerals within their *exclusive economic zones* (EEZs) needed to power digital and clean technologies. What many do not have are the requisite access to investment, finance, and technology to take advantage of these opportunities.

There is consensus in the international community that underinvestment in the developing world – including to fund the SDGs – constitutes a major barrier that locks them out of the sustainable economy. In calling for a Global Action Compact for Investment in Sustainable Energy for All, United Nations Conference on Trade and Development (UNCTAD) has pointed out that, at the midpoint of the 2030 Agenda for Sustainable Development:

The investment gap across all SDG sectors has increased from \$2.5 trillion in 2015 to more than \$4 trillion per year today. The largest gaps are in energy, water, and transport infrastructure. The increase is the result of both underinvestment and additional needs....⁸⁴

That same report notes that over 30 developing countries have not yet registered a single utility-sized international investment project in renewables, and that most of the manufacturing is taking place in the United States, Europe and a few large developing countries.⁸⁵ A key question for our Project is: how can the trade system make investing in the Global South more attractive and sustainable?

3. Market access to facilitate sustainable investment

Trade does not cause development directly. Trade causes development by providing market opportunities that attract investment. Opportunities for export-led growth have been essential for several countries' development. Developing countries have

⁸³ James Mwangi and Carlijn Nouwen, [Global Trade Can – and Should – Drive Equitable and Sustainable Development, Benefitting All](#), White Paper for the Remaking Trade Project.

⁸⁴ [World Investment Report, 2023: Key Messages](#).

⁸⁵ Id.

manufacturing and service capabilities that, if matched with export opportunities relating to sustainable production and utilization for sustainability, can attract greater investment.

3.a. Sustainable goods/services/technologies

Trade liberalization is one of the cornerstones of the WTO: it allows countries with a comparative advantage to gain access to overseas markets. To promote trade liberalization in environmental goods and services, the [Doha Ministerial Declaration](#) called for "the reduction or, as appropriate, elimination of tariff and non-tariff barriers (NTBs) to environmental goods and services," an outcome that has, to date, not been achieved. One of the reasons offered for the failure of these negotiations is that developing countries did not consider many products proposed as *environmental goods* to be of export interest to them.⁸⁶

In [Section 9](#) of this Report, we recommend renewed negotiations to promote trade in sustainable goods, services and technologies (in the green, blue, circular and digital sectors), and address tariff and non-tariff measures (NTMs) that may inhibit trade in these goods. We also call for a new independent system to reclassify goods/services/technologies based on their true sustainability impact. The NTMs (sustainability and other technical standards) and regulatory incoherence – which are the main issues affecting access of developing countries (as discussed above in [Section 5](#)) – may especially limit developing country access to developed country markets. Organizations such as UNCTAD and the ITC have helped developing countries to identify and develop sectors of export interest to them, and also promote fair and inclusive private sustainability standards (like the [Biotrade Principles and Criteria](#)).

To incentivize and lock in the necessary investments into sustainable sectors, developed countries can operationalize special and differential treatment by guaranteeing to offer developing countries preferential market access for their sustainable products/services (through their [Generalized System of Preference](#) (GSP) schemes or a special waiver like the [WTO Least Developed Country Services Waiver](#) negotiated by WTO Members at the Eighth Ministerial Conference). Developed countries can also provide enhanced market access in exchange for greater action on sustainability, including in exchange for acceptance of their border carbon adjustment schemes.

⁸⁶ Martin Khor, Manuel Montes, Mariama Williams and Vincente Paolo B. Yu III, [Promoting Sustainable Development by Addressing the Impacts of Climate Change Response Measures on Developing Countries](#), South Centre Research Paper 81, 2017.

ACTION

Members should offer preferential access for sustainable goods/services/technologies from developing countries (through GSP Schemes or by agreeing to a WTO waiver). Alternatively or additionally, the WTO should allow cross-sectoral reciprocal bargains that provide access to developed country markets in exchange for compliance with sustainable production standards.

4. Promoting Engagement with Carbon/GHG Emissions Markets

The [World Investment Report 2023](#) states that:

The nascent voluntary carbon market holds great potential for the funding of sustainable investment in developing countries. In contrast to most [domestic] compliance carbon markets, they can channel investment capital across borders to finance emissions reduction or avoidance projects. The record prices for a ton of CO₂ equivalent in 2022 also raise hopes that more realistic emissions costs can help accelerate the energy transition.

The developing world abounds with resources, which, if properly identified, valued, commercialized and marketed, could attract investment that will finance the implementation of sustainable development goals of developing countries, while meeting GHG mitigation targets in their United Nations Framework Convention on Climate Change (UNFCCC) Nationally Determined Contributions (NDCs). For small island developing states (SIDS) and other ocean states, for instance, seagrass meadows, salt marshes, mangroves and other coastal wetlands are powerful carbon sinks, and heavily-forested regions such as Latin American rainforests sequester carbon.

Article 6 of the [Paris Agreement](#) acknowledges that countries can pursue voluntary cooperation in the implementation of their NDCs to allow for higher mitigation ambition and to promote sustainable development. Article 6.2 in particular outlines the possibility of cooperative approaches and the transfer of Internationally Transferable Mitigation Outcomes (ITMOs) between different actors, including countries and private sector companies, through bilateral agreements. Many developing countries have stated their intentions to develop sovereign carbon markets to achieve the ambitions specified within

their NDCs.⁸⁷ In response, the UN Secretary-General has constituted a working group on carbon markets and credits, which, in preparation for the 28th United Nations Climate Change Conference (COP28), is working on structuring global carbon markets, recognizing alternative types of biocredits, and investment in nature by indigenous peoples and local communities.⁸⁸

Notwithstanding these positive developments, developing countries continue to face problems in accessing global markets for GHG emissions, in particular compliance markets, which remain limited and highly complex.⁸⁹ The absence of a focus on increasing quality and integrity of carbon or other GHG credits stifles investment in, and innovation from, the Global South.

As trade policies and measures become more integrated in NDCs (See Section 3), the intersection of GHG markets and trade commitments must be clarified. More systematic engagement between the WTO and UNFCCC processes and Secretariats is needed to define how (and whether) the WTO can support trade in GHG credits. That said, the WTO can already support developing countries' efforts to develop their GHG markets, by promoting common metrics and measurement, reporting and verification (MRV) systems. [See Section 3.](#)

ACTION

WTO Members and the WTO Secretariat should work closely with the UNFCCC to align countries' trade-related actions on Nationally Determined Contributions (NDCs) (including recognizing ambitions and action on carbon markets).

⁸⁷ Clara Brandi and Jodie Keane, [Carbon Markets: Leveraging the Interface Between Climate Policy and Trade Policy to Secure Climate Finance for Small Island Developing States](#), White Paper for the Remaking Trade Project.

⁸⁸ Nikola Simpson, [The Tides are Turning: Does the Ocean hold the Key for a New Blue Deal](#), White Paper for the Remaking Trade Project.

⁸⁹ James Mwangi and Carlijn Nouwen, [Global Trade Can – and Should – Drive Equitable and Sustainable Development, Benefitting All](#), White Paper for the Remaking Trade Project.

5. Technology Transfer for Sustainable Investment

Increasing market access opportunities for products from developing countries alone will not shift investments there. To attract foreign investment in the first place, and spur developing country industries and firms to innovate, produce more, retain a greater share of the value in global production chains, generate exports and in turn, create more jobs, it will be necessary for technology (including equipment, digital capabilities, and human capital) flow to the Global South.

The necessary transfer of technology in the green, blue, circular and digital sectors is not currently happening at needed levels.⁹⁰ A part of the problem is that many of the technologies are protected by patents, trademarks, trade secrets and other intellectual property rights held by owners in developed countries.

Article 66.2 of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) recognizes the need for flexibility and policy space for developing countries (by allowing compulsory licensing, parallel importation, exceptions to patentability, exceptions to patent rights and competition policy) and positively obliges developed countries to provide "incentives to enterprises and institutions" to encourage technology transfer to Least Developed Countries (LDCs). So far, WTO Members have succeeded in relaxing some intellectual property rights— through waivers in the context of health emergencies: the Doha TRIPS Public Health Waiver provided special rights to non-manufacturing developing countries to address the HIV epidemic; and at MC 12, eligible WTO Members were given permission to produce and supply vaccines until 2027 without the consent of the patent holder, to the extent necessary to address the COVID-19 pandemic.

These responses to emergency situations, however, are unlikely to spur the type of long-term investment and boost infant industries needed in developing countries. Here, mutually beneficial ventures promoted by trade agreements and rules are more likely to create lasting benefits.

⁹⁰ Martin Khor, Manuel Montes, Mariama Williams and Vincente Paolo B. Yu III, [Promoting Sustainable Development by Addressing the Impacts of Climate Change Response Measures on Developing Countries](#), South Centre Research Paper 81, 2017; Probst, B., Touboul, S., Glachant, M. et al. [Global Trends in the Invention and Diffusion of Climate Change Mitigation Technologies](#), 6 Nature Energy 1077–1086, 2021; Kuei-Jung Ni, Legal Aspects (Barriers) of Granting Compulsory Licenses for Clean Technologies in Light of WTO/TRIPS Rules: Promise or Mirage?, 14 World Trade Review, p. 701-719, 2015.

Under the Doha Development Agenda, WTO Members established a Technology Transfer Working Group to examine the relationship between trade and transfer of technology, and increase flows to developing countries. Pursuant to this mandate, WTO Members should promote information sharing and exchanges of best practice for driving innovation; discuss the provision of tax incentives and rebates to firms investing in developing countries;⁹¹ and draw on provisions in regional trade agreements that mainstream climate technology transfer. International investors should be encouraged to commit resources to training programs and capacity-building activities in developing countries and enter joint ventures as part of sectoral initiatives. Finally, the WTO should align its activities with the UNFCCC's technology transfer mechanism and Technology Needs Assessments (TNAs). [See Section 7.](#)

ACTION

WTO Members should use the Technology Transfer Working Group to reinvigorate discussions on how to increase technology transfers and innovation in developing countries.

WTO Members and the Secretariat should work closely with the UNFCCC to align countries' actions on NDCs (including recognizing ambitions and action on carbon markets) and Technology Needs Assessments

6. Making (Trade) Finance More Accessible for Sustainable Investment

The cost of, and access to, capital remains a key barrier to investment in developing countries for trade and sustainable development. Reforms to the international financial institutions that would increase private and public financing to developing countries, through initiatives like the [Bridgetown Initiative 2.0](#) and the [Paris Summit for a New Global Financial Pact](#), are to be welcomed. Conversely, it is an encouraging sign that the international trade system has been included in the [Bridgetown Initiative 2.0](#).⁹²

⁹¹ See, e.g., Thomas Cottier (ed), *The Prospects of Common Concern of Humankind in International Law*, p. 93 - 428, Cambridge, 2021.

⁹² The [Bridgetown Initiative 2.0 lists](#) among its six action items the creation of an international trade system that supports global green and just transformations through resilient supply chains that benefit countries with raw materials.

Trade and the Bridgetown Initiative 2.0

The series of dialogues sponsored by the Remaking Trade Project has made it very clear that the move to a sustainable future cannot move at speed and scale without a major trade initiative to support sustainable development. But it is equally clear that the trade system cannot deliver the required transition to a clean energy economy that responds to the SDGs alone. Indeed, good trade policies need to be supplemented by efforts to ensure access to affordable finance for development. Finance is needed to alleviate debt, finance achievement of SDG commitments, and invest for trade.

The Bridgetown Initiative 2.0 seeks to reform the global finance architecture to meet climate adaptation and mitigation priorities of developing countries—to increase access to affordable finance.⁹³ Championed by Mia Mottley, Prime Minister of Barbados, and others, including French President Emmanuel Macron, the Bridgetown Initiative 2.0 has evolved into a global movement supported by UN Secretary-General Anthony Guterres and World Bank President Ajay Banga who, together with other world leaders, signed a New Global Financial Pact in Paris in June 2023. The Remaking Trade Project team sees the trade component of the Bridgetown Initiative 2.0 (Action item 6) as a good example of the sort of shared responsibility across topics and institutions that will be required for real success in delivering sustainable development.

While the relationship among trade, debt, and finance has been addressed in WTO negotiations⁹⁴ and the WTO coordinates some donor funding through its Aid for Trade program, sovereign and private finance does not fall within the WTO mandate, and this Report cannot address finance generally. That said, trade finance is a critical enabler of climate action for projects involving the import and export of climate technologies that affect developing countries. Trade finance describes financial products and instruments – guarantees, credits, insurance schemes – that help companies manage the payment

⁹³ The Remaking Trade Project Barbados Workshop received a presentation on the Bridgetown Initiative by one of its architects, Avinash Persaud. For more, see his TED Talk: [The climate crisis is expensive – here's who should pay for it.](#)

⁹⁴ See Article 36 of the [Doha Ministerial Declaration](#). See also ACP proposal : WT/WGTDF/W/101, [Communication from Jamaica on behalf of the African, Caribbean and Pacific Group States](#), 7th October 2021.

and supply risks associated with international trade, through reconciling the divergent needs of importers and exporters.⁹⁵

ACTION

The WTO should work closely with the World Bank and International Monetary Fund on reform initiatives including increasing investment in technology and other material capacities of developing countries to produce traded goods and services in a sustainable manner.

The WTO has very few levers at its disposal to support greater access to trade finance for developing countries. The WTO Subsidies and Countervailing Measures Agreement (SCM Agreement) prohibits Members from providing export subsidies, which include below-market export finance. However, the SCM Agreement permits WTO Members' export credit agencies to offer below-market export credit interest rates if they comply with the provisions of the Organization for Economic Cooperation and Development (OECD) Arrangement on Officially Supported Export Credits.⁹⁶

Furthermore, in the context of climate change, the OECD has developed the [Climate Change Sector Understanding](#) which was modernized in 2021 to raise maximum local cost provisions to 40% of export contract value for high-income OECD countries and 50% for all other countries. This means that in addition to receiving financing for imported products, beneficiaries can also receive more financing to cover locally sourced products and services. In geographies where long-term lending is scarce, and where there are high costs for local labor or construction – such as in many developing countries – this change should help to accelerate the growth of climate projects and associated local benefits. In April 2023, [its scope was expanded](#) to include sustainable energy production; carbon capture, storage, and transportation; transmission, distribution, and storage of energy; clean hydrogen and ammonia; low-emissions manufacturing; zero and low-emissions transport; and clean energy minerals and ores.

⁹⁵ Jake Cusack, Marilia dos Reis Martins, and Kate Wharton, [Capital Availability or Capital Absorption? Unlocking Finance for Sovereign and Private Sector Trade-related Finance for Sustainable Climate Action in the Global South](#), White Paper for the Remaking Trade Project.

⁹⁶ Annex I, paragraph (k), [SCM Agreement](#).

The WTO could go even further and prohibit concessional export funding to fossil-fuel related exports (see the discussion of fossil fuel subsidies in [Section 4](#)), in line with the agreement by OECD members, in the lead up to COP26, to [end support for unabated coal-fired power plants](#) by banning officially supported export credits and tied aid for new coal-fired power plants without operational carbon capture, utilization, and storage facilities. The redirected funds can be used to provide concessional funding to promote investment in developing countries.

ACTION

WTO Members should issue a declaration ending concessional export credit financing for fossil fuel-related exports, and shifting credit financing up to US\$100 billion per year –through export credit, risk insurance, and related mechanisms – to invest in advanced technological capabilities in developing countries, and to fund and de-risk investment in sustainable production.

7. Repurposing and Increasing Capacity-Building Assistance and Institutions for Sustainable Investment

Effective participation in global trade requires regarding and repurposing trade-related processes and institutions that currently assist developing countries.

The WTO's Aid for Trade Program was first launched in 2005 at the Sixth WTO Ministerial Conference in Hong Kong "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." Since 2005, the sustainable development agenda has moved to the forefront of the development efforts, and the Aid for Trade agenda must reflect this change through a more holistic approach to sustainable development efforts.

UNCTAD has already proposed a Global Action Compact for Investment in Sustainable Energy for All and the WTO Director-General has in past remarks hinted at renaming Aid for Trade "Investment for Trade." The International Trade Centre (ITC) – which shares a mandate with the WTO and UNCTAD to enhance development– has an even more direct role to play here given its express mandate to increase access of developing countries to the international trade system. The ITC's [Strategic Plan](#) and recent initiatives have focused on promoting sustainable trade and investment and we consider that it should play a leading role in the coordination of support to the private sector in developing

countries. The leaders of the troika of Geneva-based multilateral trade organizations – the WTO, UNCTAD, and the ITC – should promote greater organizational coherence by joining their capacity-building mandates and rationalizing their technical capacity-building resources to promote greater sustainable development-focused investment in the Global South.

Finally, new streams of funding will have to be developed for this repurposed and revamped trade capacity-building effort. The developed world has proven difficult to

ACTION

The trade-related UN organizations and the WTO should jointly lead efforts to promote a trade system that encourages sustainable investment, with the ITC rechartered as the Sustainable Trade Center to play a pivotal coordinating role in technical capacity-building efforts of the WTO and UNCTAD, to support a sustainable private sector in developing countries.

convince to provide (voluntary) donations/grants. The WTO should work closely with other international organizations and with developed countries where agreement has been reached for funds, rebates and /or levies to be collected and redistributed to developing countries.

In this regard, it would be useful to establish a Global Sustainable Trade Fund, administered by the ITC in cooperation with the World Bank, to allocate funds for these trade-related sustainable development purposes. In identifying resources for the Global Sustainable Trade Fund, close attention should be paid to ongoing sectoral/country discussions for repurposing concessional export financing; reallocating subsidies (U.S. Inflation Reduction Act and EU Green Deal); providing rebates from border GHG adjustments; and charging levies on maritime shipping. See [Sections 3 and 4](#).

ACTION

WTO Members should collaborate with international organizations/developing countries to establish a Global Sustainable Trade Fund, administered by the ITC in cooperation with the World Bank and drawing resources from developed country donations, repurposed concessional export financing and other subsidies, and rebates from border GHG adjustments, to allocate funds for these trade-related sustainable development purposes.

8. Sustainable Development Impact Assessments

One area around which consensus emerged in our Mexico City workshop is that the trade system must find a way to ensure that the full social costs and benefits inherent in trade integration and implementing trade disciplines are fully analyzed and documented as we engage in negotiations for a more sustainable economy. Negotiations at the WTO must be informed by a clear analysis of the true costs and benefits, and distributive impacts, of trade agreements or decisions. Based on this analysis, developing countries and marginalized communities will have opportunities to assert their interests, whether in domestic politics or in international negotiations.

In this regard, we advance the concept of a Sustainable Development Impact Assessment (SDIA), developed in one of our White Papers by Sonia Rolland.⁹⁷ The SDIA could be prepared by officials of relevant multilateral institutions, including the WTO, UNCTAD, the IMF, the International Labor Organization (ILO) and the World Bank, in conjunction with other relevant institutions, to evaluate the overall and distributive effects of proposed trade agreements or decisions in a timely manner in order for those effects to be taken into account and addressed in negotiations and political approval. The SDIA would provide independent estimates of the true costs and benefits of trade integration for its Members, including the environmental, social, technological and economic effects.

The proposal for an SDIA proceeds from the assumption that an improved assessment of the costs of trade disciplines, particularly with respect to the impacts and effects on Members' development, could help to improve the outcome of trade negotiations as well as the implementation prospects of agreed-upon disciplines. Moreover, a reconsideration of the allocation of these environmental, developmental and implementation costs, particularly for the lowest-income and capacity WTO Members, and marginalized communities, could contribute to the overall legitimacy and effectiveness of the multilateral system.

The SDIA would be designed with the following features in mind:

⁹⁷ Sonia Rolland, [Sustainable Development and Poverty Alleviation: Towards Assessing and Equitably Allocating the Sustainable Development Costs of Trade Agreements](#), White Paper for the Remaking Trade Project.

- Timing: The SDIA is designed as a living model that informs the course of the negotiations, that is, assessments would be conducted ex-ante, during negotiations and ex post.
- Level of Granularity: The assessment could be done in the aggregate and/or by sector/region, by thematic issue, or by geography-specificity.
- Content: The SDIA would measure inter alia: impact of the measure by reference to sustainable development indicators (from the SDGs); the impact on development and fiscal consequences of loss of revenue from trade; impact on the informal economy; expected changes in patterns of trade and shifts in the localization of global value chains; impacts on traditionally vulnerable populations such as minorities, indigenous populations, youth, and women; effects on food security, access to water and energy; and administrative costs of implementing proposed disciplines.
- Process/Partners: WTO Secretariat staff or consultants should conduct a survey of existing impact assessment tools that could be utilized for a trade-related SDIA, seeking to identify relevant best practices and benchmarks. This process will also create an opportunity to identify potential partners in other organizations that could contribute data, know-how, modeling tools, etc.
- Stakeholder participation: SDIAs would be prepared based on wide/curated stakeholder participation involving state and non-state actors, and based on collaboration among various entities, including UN agencies (e.g., UNFCCC, ILO, ITC, UNCTAD), the World Bank, the IMF, the OECD.

ACTION

WTO Members should establish a Sustainable Development Impact Assessment mechanism to provide timely analysis to support transparency, participation, and effective negotiations in international trade agreements and decisions.



SECTION 7:

Sustainable Development Through Digital Technology and Commerce

1. Background

As the world is experiencing fundamental sustainability challenges, there is also an ongoing digital technology revolution, including breakthroughs in a number of related technologies that can provide pathways to a more sustainable future.⁹⁸ E-commerce and information technologies can reduce greenhouse gas (GHG) use in transportation, manufacturing, and agriculture.⁹⁹ Digital technologies can also facilitate regulation and international cooperation in setting and enforcing environmental and other sustainability standards. Sustainability might also be advanced using artificial intelligence or blockchain to monitor and certify GHG emissions or other environmental attributes of goods or services moving in commerce.¹⁰⁰

In developing countries, digital technologies can promote sustainable development by providing technology and attracting capital to enable production of goods and services, and by facilitating telecommuting to higher-paying jobs. However, data centers and some digital tools, especially blockchain when predicated on proof of work as opposed to proof of stake, have a significant carbon footprint themselves. And some digital technologies might undermine the advantages of developing countries, especially where digital technologies replace lower-cost labor with automation.

Maximizing these sustainable development benefits and minimizing the risks and burdens can only be fully achieved through an integrated approach to digital trade

⁹⁸ See Emmanuelle Ganne, [Blockchain for Sustainable Supply Chains](#), White Paper for the Remaking Trade Project.

⁹⁹ Mira Burri and Kholofelo Kugler, [Digitization, Regulatory Barriers, and Sustainable Development](#), White Paper for the Remaking Trade Project.

¹⁰⁰ See Jon Powell, [Business Perspectives on How trade and Digitization Can Align to Accelerate Sustainable Outcomes](#), White Paper for the Remaking Trade Project.

liberalization with collaborative efforts to promote appropriate regulation of privacy, cybersecurity, content moderation, competition, and other relevant regulatory fields.

This Section explores how the trade system may be harnessed to ensure the widest possible availability of digital opportunities to drive innovation and contribute to sustainable development. It first focuses on enhancing conditions for transfer of technology. It also examines the possibility of enhancing e-commerce as a path toward sustainable development through management of the complex structure of regulation of e-commerce, focusing on interoperability of regulation. Institutional innovation will be needed to ensure appropriate regulation while promoting trade. In order for developing countries to benefit from the growth of e-commerce, it will be necessary to bridge the digital divide.

2. Transfer of Technology

Transfer of technology cuts across all areas of sustainable development, including sustainability, development, e-commerce, and traceability for sustainability.¹⁰¹ Sustainable agricultural, manufacturing, and energy technology, as well as environmental technology and traceability and certification technology (green technology) will be essential to meeting sustainability goals.¹⁰² The issue of dissemination of information technology to developing countries is also an important area of sustainable development.

The requirements of the World Trade Organization's (WTO) Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement) to protect intellectual property rights has a dual character in this context. First, it can restrict the availability of technology for development. Second, as discussed in [Section 6](#), transfer of information technology will be critical to export-led growth based on investment and adoption of new technologies in developing countries, and effective protection of relevant intellectual property can facilitate transfer. With the rise of robotics and artificial intelligence (AI), developing countries will no longer be able to rely as greatly on labor cost advantages to grow, and will need to depend more on cross-border e-commerce for export-led growth.¹⁰³

¹⁰¹ Stephen Ezell and Stefan Koester, [Revolutionizing Global Trade and Development Through Digital Technologies](#), White Paper for the Remaking Trade Project.

¹⁰² Silvia Weko, Andreas Goldthau and Rainer Quitzow, [Climate Technology Diffusion and Transfer in the International Trade System](#), White Paper for the Remaking Trade Project.

¹⁰³ Richard Baldwin and Dmitry Grozoubski, [Out of the Factory and Into the Back Office: Globotics for Sustainable Development](#), White Paper for the Remaking Trade Project.

To promote greater transfer and adoption of relevant technologies that support green technology licensing, as well as cross-border e-commerce (e-commerce technology), mechanisms to promote licensing should be considered. These may take the form of reduction of trade and regulatory barriers, increased protection against appropriation of licensed technology, or subsidies or other financial incentives for licensing.

While there are no tariffs on technology licenses, host countries may charge withholding taxes or income taxes on royalty income, unless reduced by tax treaty. Home countries of technology licensors may charge income taxes on royalties received. Reduction of these taxes in the case of green technology e-commerce technology could provide incentives for greater licensing and dissemination of these technologies, in accordance with Art. 66.2 of the TRIPS Agreement.

As part of reinvigorated negotiations for a *Sustainable Goods, Services and Technology* agreement, as discussed in [Section 9](#), states should negotiate to reduce regulatory barriers to green services and e-commerce, as well as to promote transfers of green technology and e-commerce technology. This initiative might be combined with a further extension of the WTO Information Technology Agreement, extending elimination of tariffs to more information technology goods, with an emphasis on green information technologies and e-commerce technology.

As discussed in [Section 6](#), developing countries need increased investment to fund the transfer of technology for sustainability and development. Increasing technical capacity in developing countries will be important to drive investment. A carbon/GHG credit market (or other sustainability credit market) can provide an incentive for regulatory coherence and transfer of technology. It may be appropriate to establish a fund, such as the [GAVI](#) or [The Global Fund](#), to which governments and private donors may contribute, to support technology transfer to developing countries of green technology and e-commerce technology.

3. Regulation in E-Commerce

E-commerce is growing at a rapid pace, especially in the form of digital transfers of material otherwise transferred in physical form as goods, and in the form of digital services.¹⁰⁴ While the sustainability effects of e-commerce are somewhat ambiguous, it

¹⁰⁴ Victor do Prado and Yanis M. Bourgeois, [E-commerce and Sustainability: An Overlooked Nexus](#), White Paper for the Remaking Trade Project.

is expected to promote sustainability by reducing energy use, although it will be important to design e-commerce with sustainability in mind.

To promote e-commerce, it will be useful to minimize barriers based on differing regulation.¹⁰⁵ Areas of differing regulation include intellectual property protection, privacy, cybersecurity, competition, services regulation, consumer protection, amongst others. The adverse effects on e-commerce of differing regulation can be reduced through rules of proportionality, harmonization, *single passport* type rules of allocation of exclusive regulatory jurisdiction (either to the exporting state or to the importing state), or combinations of the two, like the internal European Union (EU) *essential harmonization* program. Private firms or non-governmental organizations (NGOs) may assist in developing trust data technical regulations that can be incorporated through the WTO Agreement on Technical Barriers to Trade (TBT Agreement) as international standards. See the discussion in [Section 5](#).

The WTO is capable of developing and applying rules of proportionality in the fields of goods and services trade. This is an important component of the discussions under the WTO Trade in Services Agreement, as well as in the Joint Statement Initiative on Services Domestic Regulation. However, the WTO has not developed as a body for negotiation of rules for allocation of jurisdiction or harmonization (other than in the field of intellectual property).

We discuss sustainability standards generally in [Section 5](#). As discussed there, while the WTO has little expertise or experience in harmonization or allocation of regulatory jurisdiction, the TBT Agreement provides a model for partially incorporating harmonization of regulatory measures developed in other fora. These models include treaty incentives for basing national regulation on international standards and requiring that more restrictive standards be justified appropriately. There is no equivalent in the services sector, and to promote e-commerce in services, it will be important to extend these types of incorporation and promotion of international standards from goods to services.

The WTO may use its convening power and apply a proactive approach to identifying and developing relationships with appropriate fora, as well as WTO rules for incorporating, in whole or in part, regulatory measures developed in such fora. It is important that these regulatory measures be developed in an inclusive and transparent

¹⁰⁵ See Mira Burri and Kholofelo Kugler, [Digitization, Regulatory Barriers, and Sustainable Development](#), White Paper for the Remaking Trade Project.

manner, and that they be developed in such a way as to not be more trade restrictive than necessary to achieve the regulatory goal. A *task force* on e-commerce and sustainability could include multiple international organizations, as well as NGOs and businesses.¹⁰⁶

ACTION

WTO Members should establish a *Task Force on E-Commerce and Sustainable Development* to combine the work of the Joint Statement Initiative on E-Commerce (JSI), the Trade and Environmental Sustainability Structured Discussions (TESSD), United Nations Conference on Trade and Development (UNCTAD), the Organization for Economic Cooperation and Development (OECD), the World Bank and the International Telecommunications Union (ITU).

National, regional or other plurilateral regulation must be applied in a transparent and interoperable manner. *Interoperability*, means that sub-multilateral standards should be harmonized to the extent possible while respecting diverse regulatory *appropriate levels of protection*, so that compliance with the most restrictive standards includes compliance with less restrictive standards. Transparency will be promoted by the establishment of a centralized one-stop-shop clearinghouse for standards so that exporters can identify all the relevant standards in a centralized database. See [Section 5](#).

ACTION

The WTO Secretariat should collaborate with the International Organization for Standardization (ISO), the ITU, and UNCTAD to promote inclusive, proportionate and interoperable regulatory standards for e-commerce, with attention to market access for developing countries.

The WTO's Trade Policy Review Mechanism should be adapted to include review of non-tariff measures that inhibit e-commerce, as well as efforts to reduce the *digital divide* in international trade.

¹⁰⁶ Victor do Prado and Yanis M. Bourgeois, [E-commerce and Sustainability: An Overlooked Nexus](#), White Paper for the Remaking Trade Project.

4. Digital Divide

The growing digitalization of commerce will present challenges and opportunities for developing countries.¹⁰⁷ While increasing automation of production of goods and services, reducing the labor component of production, will reduce their low labor price advantages, they will be able to utilize those advantages through e-commerce, including *tele-presence* to provide services. Electronic delivery of services may be seen as a catalyst to promote utilization of developing country human capital.¹⁰⁸

Measures to address the digital divide may be included in negotiations regarding the Joint Statement Initiative on E-Commerce. An important example is the [E-Commerce Capacity Building Framework](#) (JSI Conveners plus Switzerland). Private sector and NGO action can also reduce the digital divide in important ways. Investment in developing countries will be facilitated by legal regimes, including market access, that maximizes the value of investment in developing countries.

In addition to the transfer of technology through licensing discussed above, it is important to ensure that developing countries, and Micro and Small and Medium Enterprises (MSMEs) elsewhere, especially those representing opportunities for inclusivity from a gender, racial, or indigenous people's standpoint, have appropriate aid and technical assistance for capacity building to support their engagement in the global economy for export-led growth. This assistance should extend to the processes of international standard-setting and national standard compliance. This assistance should be administered to anticipate new technologies and new needs, in order to ensure that it keeps pace with change.

Efforts to develop appropriate technical assistance and capacity building in this field will benefit from the experience of the negotiation of the Trade Facilitation Agreement, with its associated [Trade Facilitation Agreement Facility](#). We may also learn from the experience of negotiations for the [Investment Facilitation Agreement](#) at the WTO. The concepts developed in the Trade Facilitation Agreement, and in Aid for Trade more generally, may be extended to e-commerce.

As discussed in [Section 6](#), developing countries will be able to secure more resources for investment in technology for e-commerce to the extent that their e-commerce

¹⁰⁷ Simon Lacey, [Digitech, Sustainable Development and Trade Rules to Bridge the Digital Divide](#), White Paper for the Remaking Trade Project.

¹⁰⁸ Richard Baldwin and Dmitry Grozoubinski, [Out of the Factory and Into the Back Office: Globotics for Sustainable Development](#), White Paper for the Remaking Trade Project.

exports have appropriate market access in other markets: export-led growth depends on export-focused investment. While special and differential treatment may distort investment decisions, in appropriate circumstances, special market access provisions may help to precipitate early investment in e-commerce capacity for developing countries. The LDC Services Waiver may provide a model in this context.

As more trade takes place through e-commerce, there will be both challenges and opportunities for developing countries to collect appropriate taxes, as well as to collect revenues through tariffs. To the extent that a tariff moratorium remains in place, developing countries, which rely on tariffs to raise revenues more than wealthy countries, will find it more difficult to secure sufficient funds to finance the government. Furthermore, e-commerce can be structured so that foreign firms can sell in a developing country market without effective tax presence (*permanent establishment* or subsidiary) or can facilitate transfer pricing that reduces the tax base. While these issues are being addressed through the OECD Base Erosion and Profit Shifting (BEPS) project, sustainable e-commerce will require technical assistance and rules reform to enable appropriate taxation, including possibly a digital services tax.

One area that will be especially important is assistance in supporting engagement and compliance with existing and emerging sustainability standards and traceability and certification requirements, as discussed in [Section 5](#). It may be possible to direct resources applied in existing areas of international trade to these efforts, where those areas are increasingly engaging e-commerce. It will be important for the development of these standards and requirements to be carried out in an inclusive format.

5. Institutional Innovations

To achieve the above sustainable development goals in connection with digital technology and e-commerce, it will be necessary to identify optimal institutional arrangements for managing these issues.

First, this is an especially dynamic set of issues, with capabilities of digital technologies advancing rapidly, and uncertainty regarding the economic and social effects of these advances. It will be important to recognize the dynamic role of the private sector, and to allow the private sector to operate to utilize and disseminate technologies as much as possible. The private sector and NGOs can serve important functions in promoting transparency in connection with non-tariff measures, and in developing and revising standards, as they do in product-related standard-setting bodies.

Second, in this field, as in other fields that connect sustainable development to trade, multiple international social values are at stake, and no single national ministry, nor any single international organization, contains all the relevant authority or expertise. Of course, some issues may be addressed satisfactorily at the national level, and others may be best addressed in regional or other plurilateral arrangements.

While some issues can be addressed by existing WTO rules and competences, other issues will require establishment of international regulation or other cooperation in fields that are not fully addressed by WTO laws or competences. However, the central role of trade in international economic relations suggests that in important ways the WTO can serve a convening function, in part because national trade ministries will be under pressure to identify and negotiate regarding market access. To ensure market access, though, it will be necessary for the WTO or perhaps another international forum to serve as convener – first identifying the salient issues, and then bringing together those with authority and expertise needed to address those issues. The WTO can also collect and serve as a clearing house of information about barriers to market access and other relevant information in this context.



SECTION 8:

Creating Resilient, Reliable, and Sustainable Global Supply Chains

1. Background

The global trade system as it exists today is composed of complex supply chains. While supply chains are not a new phenomenon, advances in technology and logistics and the opening of new markets following the Cold War have given rise to sophisticated, highly specialized systems that move raw materials, components, and finished goods around the world and ultimately to consumers with extraordinary efficiency.

It is now conventional wisdom that the COVID-19 pandemic and the Ukraine War have demonstrated that modern supply chains, while marvels of efficiency, are also highly fragile and in some cases lack resilience. This has prompted some policymakers in some major economies, correctly or incorrectly, to voice support for [onshoring, nearshoring, and friendshoring](#) of supply chains deemed critical to national security or economic vitality.

Concerns about food security sometimes prompt agricultural protectionism, including subsidies, to maintain local production due to perceptions of unreliable imported food supply. [See Section 4](#). The disruptions of the last three years have also in some cases been invoked to justify export controls of goods ranging from sugar to vaccines. The assumption underlying such rhetoric and policies is that the global trade system is too unreliable to be entrusted with the provision of certain essential materials and products and therefore some level of fragmentation or autarky is required.

A shift away from global supply chains is not a viable approach for many countries, especially those in the Global South that cannot meet their basic needs through domestic sources and that lack the economies of scale and market power to restructure existing supply chains to hedge against future disruptions. This North-South asymmetry became glaring in the year following the development of COVID-19 vaccines, which saw high income countries lock up nearly all global vaccine supply and precursors through

purchasing power, production capacity, and export restrictions. Developing countries, in particular low-income countries, were left to appeal to wealthy countries and multilateral bodies for donations. This outcome illustrated the highly inequitable character of existing income distributions, in which low levels of economic development are punished with inequitable access to essential goods in the event of an unexpected demand spike or volatility in global markets.¹⁰⁹

As the surging demand for critical minerals to support the green transition illustrates, both large and small economies will remain dependent on complex and shifting supply chains for the goods and materials assessed to drive economic growth, energy security, and climate change progress. Outside a few sectors with clear national security implications, restricting trading relationships to neighbors and geopolitical allies is not a workable solution to supply chain fragility even for large and influential economies, and certainly not for less developed ones.

A more durable and just response to supply chain fragility is to leverage the global trade system to promote cooperation, coordination, transparency, and sustainability around access to needed goods. Resilience also benefits when companies have multiple sources of supply. Thus, investments in diversification of suppliers across firms and geographies will be useful.

However, real and efficient resilience in supply chains will only be possible when countries overcome collective action challenges and hoarding incentives in the face of unanticipated volatility in global markets. With that in mind, we propose three major areas of reform aimed at aligning supply chains with a resilient, low-carbon, inclusive global economy: (i) coordinate crisis subsidies, (ii) reduce loopholes for export restrictions, and (iii) improve traceability of intermediate goods and raw materials.¹¹⁰

2. Coordinate and Encourage Supply Chain – Stabilizing Subsidies

In order to avoid hoarding and deal with supply chain crises, it will be necessary to transform rules and improve coordination in connection with subsidies and export controls to ensure equitable access to food, medicine, critical minerals, and other essential goods.

¹⁰⁹ Aashish Chandorkar and Suraj Sudhir, *Braving a Viral Storm: India's Covid-19 Vaccine Story*, Rupa Publications, 2023.

¹¹⁰ This Section draws significantly from Chad Bown, [The WTO and Public Health: Lessons from COVID-19 Vaccines](#), White Paper for the Remaking Trade Project.

The highly inequitable distribution of vaccines during the COVID-19 pandemic offers several critical lessons for supply chain resilience in essential goods. First, except for the United States and the United Kingdom, there was insufficient domestic subsidization of vaccine production. Second, there was almost zero coordination of subsidization of vaccines and [vaccine inputs](#) (i.e., items required for the production of vaccines). Third, countries were allowed to adopt export restrictions on vaccines in an ad-hoc unilateral fashion that significantly distorted trade. Finally, debates over intellectual property overshadowed these other market failures without yielding a solution that meaningfully increased the availability of vaccines to developing countries.

The World Trade Organization (WTO), as the international body with an explicit mandate to discipline trade distorting measures, is the institution best positioned to address these coordination failures and mercantilist practices. But it largely failed in this regard, despite strong engagement from the WTO Secretariat on the issue. A key reason for this failure is the inadequacy of existing WTO rules regarding subsidies and export restrictions to ensure broad access to essential goods in moments of crisis. Reforming these rules so they are fit for purpose in a future where climate change and sharpening geopolitical tensions increase the probability of exogenous shocks to markets is therefore an urgent priority element of a trade sustainability agenda.

As noted in [Section 4](#), the current WTO subsidies framework is tailored to address trade-distorting subsidies, rather than sustainability-impairing subsidies. A new approach, as also proposed in [Section 4](#), is needed to create policy space for subsidies that have positive sustainability impacts, even where they have incidental trade distorting effects.

ACTION

WTO Members should be permitted to subsidize supply chains of certain essential goods in response to exceptional events such as pandemics, natural disasters, or interstate conflict. Such non-actionable subsidies should be optimized by structured dialogue at the WTO aimed at coordinating public funding along entire supply chains. Such dialogue could be supported by information-sharing and transparency among the relevant suppliers of supply chain inputs and finished goods.

3. Tighten and Make Credible Prohibitions on Export Restrictions.

The WTO's current rules on export restrictions include exceptions for *essential* goods. Such an exception is ill-suited for major market disruptions that invariably create winners

and losers depending on an assortment of unpredictable factors, such as the path of a hurricane, the location of a land war, or the success rate of vaccine development efforts.

The WTO should seek to negotiate an ex-ante agreement limiting export restrictions of essential goods under certain contingencies. This agreement could be enforced using the long-established WTO mechanism of reciprocity: a country that imposes an export restriction in violation of the agreement would be subject to WTO-authorized retaliatory tariffs or reciprocal export restrictions by trading partners. Such retaliatory measures would hopefully be credible enough to remain unused. They could extend to a range of traded goods or be focused on the product for which the offending country has limited exports, or relevant inputs. As an example of the latter, a country that restricts export of a vaccine could be disciplined by losing access to vaccine inputs it needs to produce the vaccine in question. Similarly, a country that restricts export of equipment needed for sustainable production or consumption could be disciplined by losing access to critical materials necessary for that equipment.

ACTION

WTO Members should commit to establish an enforceable agreement limiting export restrictions of essential goods in emergencies, with appropriate incentives for compliance.

4. Strengthen Traceability

Planning for and mitigating supply chain disruptions requires granular knowledge of the movement of goods in real time (or as close as possible) which in turn necessitates sophisticated traceability mechanisms. Such mechanisms can also be used to strengthen the sustainability of supply chains and support efforts to align trade with net-zero emissions and other sustainability goals by providing a means to certify greenhouse gas emissions or other environmental attributes of goods or services moving in commerce. Blockchain technology and artificial intelligence technology have emerged as tools to make supply chain monitoring more efficient and inclusive but are costly to develop and make interoperable at a technical and operational level. Developing countries may lack the capacity to participate in multiple digital traceability and certification schemes required by trading partners.

The global trade system has traditionally treated cross-border data flows and data interoperability as secondary concerns relative to market access.

ACTION

The WTO Secretariat in conjunction with the International Organization for Standardization (ISO), the United Nations Environment Program (UNEP), and the Food and Agriculture Organization (FAO), or other international bodies, all as relevant, should promote regulatory coherence and global cooperation in data collection and data sharing across value chains at the product level. This effort could include:

- Mapping existing traceability schemes to identify gaps and conflicts;
- Establishing an international certification scheme of traceability solutions that includes criteria relating to interoperability and use of global open standards;
- Creating an international public registry of certified traceability schemes that businesses can use to improve monitoring of their supply chains; and
- Capacity-building, investing, and technology transfer for developing countries to ensure they can participate in digital traceability schemes.



SECTION 9:

Promoting Trade in Sustainable Goods/Services/Technology

1. Background

Many trade policy experts and government officials see significant opportunities to move toward a greener future by minimizing tariff and non-tariff barriers to the dissemination of environmental goods and services across the world at the greatest possible speed and the lowest possible cost. Some have suggested that such an initiative plays to the traditional tariff reduction focus of the trade system – and thus represents a first things first approach to building a World Trade Organization (WTO) sustainability agenda.¹¹¹

We believe that such an agreement makes sense and that an integrated global marketplace for goods, services and technology that promote sustainable development, with zero tariffs and minimized non-tariff barriers would be a substantial step forward from a global sustainability perspective and represent a notable accomplishment for the WTO as it seeks better alignment with the world community's commitments to climate change action and the UN Sustainable Development Goals (SDGs).

But an Agreement on Sustainable Development-Supporting Goods and Services (SDSGS) or even a more narrowly focused Environmental Goods Agreement (EGA) faces substantial political obstacles in the current political climate. The prospects for advancing even a very tightly focused Climate Change Technologies package seem limited based on the experience of the failed 2014-2016 EGA effort, which foundered as an 11th hour demand that a wide variety of additional products be included under the definition of environmental goods broke the consensus that seemed to be at hand.

This Section evaluates the possibility of renewed negotiations toward an agreement to liberalize trade in environmental goods and services. It begins by addressing the

¹¹¹ This section draws extensively from Maureen Hinman, [Environmental Goods](#), White Paper for the Remaking Trade Project.

problem of defining relevant goods and services, then turns to the need to involve negotiators with sustainable development expertise to negotiate criteria for inclusion in categories for liberalization. Finally, it addresses the problem of multilateral versus plurilateral agreements, and the relationship between a plurilateral agreement and the WTO principle of most-favored nation (MFN) treatment.

2. Defining Sustainable Development Supporting Goods and Services

The breakdown of the EGA negotiations was caused, in part, by the inability to discipline demands for inclusion of goods in the category of green goods. The negotiations were overcome by a type of green-washed mercantilism, where the traditional trade negotiations approach of seeking to defend home markets from imports while maximizing offense through reduced barriers abroad overcame the goal of achieving greater environmental protection. It may be that in the current period, with a greater sense of environmental crisis in connection with climate change and biodiversity loss, negotiators would be able to expand their concerns beyond mercantilism toward the global public good of sustainability. This expansion might be assisted by including representatives of environment ministries in negotiations, as discussed below and in [Section 11](#).

There is a need for agreed criteria as to which goods and services to include in a liberalization agreement.¹¹² In the EGA negotiations, negotiators utilized their own econometric estimates of probable economic effects of trade liberalization, alongside their own assessments of the environmental suitability of particular types of goods. These national determinations gave free reign to green-washed mercantilism.

Hinman proposes a move toward use of a more precise approach to determining which goods (and we extend this to services) to include for liberalization, by estimating probable environmental effects:

The scope and definition of "environmental goods and technologies" should be grounded in an empirical appraisal of trade's value as an engine of acquisition of goods or technologies that result in positive environmental outcomes. By focusing

¹¹² For example of suggestions on inclusions, see, Petros C Mavroidis and Damien J Neven, Greening the WTO Environmental Goods Agreement, Tariff Concessions, and Policy Likeness, *Journal of International Economic Law*, Volume 22, Issue 3, p. 373–388, 2019; Ronald P. Steenblik, Code Shift: The Environmental Significance of the 2022 Amendments to the Harmonized System, International Institute for Sustainable Development, 2020.

on only those products for which tariff reduction translates into more widespread adoption of that technology – and, as a function of tariff liberalization itself, result in positive environmental outcomes – countries can arrive at a workable and effective list of environmental goods.

This analysis would combine assessment of environmental effects of dissemination of the good or service at issue with assessment of the effects of proposed liberalization on the magnitude of adoption of the good or service.

The analysis of probable environmental effects could be carried out by international organization secretariat personnel with relevant expertise, perhaps seconded from the United Nations Environment Program (UNEP), United Nations Conference on Trade and Development (UNCTAD), the Organization for Economic Cooperation and Development (OECD), United Nations Framework Convention on Climate Change (UNFCCC), or elsewhere. Alternatively, it could be assessed by an independent commission such as the Sustainable Development Commission (SDC) of independent experts discussed in [Sections 4, 5, and 11](#). This independent assessment would insulate from mercantilist greenwashing the determination of which goods and services to include.

ACTION

WTO Members should mandate the Secretariat to work in combination with other relevant international organizations, begin a work program to develop objective criteria for determining probable environmental effects of liberalization of particular goods and services proposed for inclusion in an Agreement on Sustainable Development-Supporting Goods and Services.

3. Bringing Sustainable Development Expertise to the Table

As every area addressed in this Report shows, trade can no longer be addressed separately from other national and international public policies. The EGA negotiations were an early attempt to integrate trade and sustainability, and one lesson was that trade negotiators are not effective as environment negotiators. As Maureen Hinman explains,¹¹³

¹¹³ Maureen Hinman, [Environmental Goods](#), White Paper for the Remaking Trade Project.

The EGA was novel in that it sought to be both economically significant and environmentally credible. Tariff negotiators excel at understanding the economic implications of tariff adjustments and constructing complex packages of relief to yield dynamic changes in global supply chains, but their profession does not require the environmental science, engineering, and regulatory knowledge to effectively negotiate on the myriad of goods proposed for an environmental negotiation.

ACTION

WTO Members should call for inclusion of representatives of environment or other sustainable development-relevant ministries in negotiations toward an Agreement on Sustainable Development-Supporting Goods and Services.

4. Reciprocity, MFN, and Plurilateral Agreements: Special Rules for Climate, Health, Environment, Security, and Safety Commons Issues

One of the reasons why the EGA foundered was because it was negotiated as a plurilateral agreement, with the stipulation that, while liberalization would be plurilateral, tariff reductions would be applied on an MFN basis to exports from all WTO Members. This, of course, resulted in free-rider incentives, combined with narrowing of the willingness of plurilateral participants to include certain products that would provide market access to competitive non-participants. This is an attitudinal problem in trade negotiations, where mercantilist political mindsets tend to overcome concerns for economic welfare.

Introducing concerns about global commons, as well as negotiators from ministries of environment or other sustainable development-relevant government agencies, can help to overcome this attitudinal problem.

Hinman suggests going further, by negotiating for a general rule that global commons related issues relating to a number of sustainable development areas be excluded from MFN obligations, in order to promote plurilateral agreements in these areas. [See Section 11.](#)



SECTION 10:

Facilitating A Sustainable/Regenerative Circular Economy

1. Background

The crises of climate change and biodiversity loss, and more general environmental degradation, require a revolution in production and consumption habits that will reorient supply chains towards reuse, recapture, recycling, and overall sustainability – a transformation commonly described as a pivot to a circular economy. A circular economic model, in which end-of-life products are transformed into commodities or harvested for raw materials, has numerous advantages over prevailing linear production models, which perpetuate an unsustainable take-make-use-dispose cycle of finite resources. These advantages include less waste that must be disposed of, reduced harmful ecological impacts from manufacturing and extractive sectors, [creation](#) of new jobs to support reverse (i.e. recycled or reused) supply chains, and [increased availability of scarce minerals, particularly those essential to the green transition](#). Different goods and materials require different models of circularity, but in all cases the guiding principle is keeping those goods and materials in use for as long as possible.¹¹⁴

Biodiversity in particular is an area where a shift to a more circular economic model would align production with sustainability goals. Resource extraction and processing is a [major driver](#) of biodiversity loss. The reverse supply chains and production techniques that support circular economic activity have much lower impact on ecosystems than the land conversion, water stress, and pollution produced under linear supply chains. Greater consumption of recycled, re-used or otherwise repurposed goods and materials would therefore be a significant engine of biodiversity progress. Furthermore, as a recent report from the [World Circular Economy Forum](#) noted, circularity is not just about technical

¹¹⁴ See Henrique Pacini, Lorenzo Formenti, Glen Wilson, [Product Design and Circular Value Chains: Understanding Essential Component of Circular Commercial Metabolism](#), White Paper for the Remaking Trade Project.

cycles, but also biological cycles. Regenerative agriculture has tremendous potential to deliver more resilient and sustainable food systems with less harm to ecosystems.

It is difficult to envision a future in which loss of biodiversity is arrested or reversed if linear economic activity is allowed to increase in tandem with growing global demand linked to economic development. By contrast, a circular economy allows economic growth to proceed without necessarily expanding material use, by "closing, slowing, and narrowing material loops."¹¹⁵

The benefits of circularity are not confined to biodiversity. Circular supply chains are generally far less energy intensive than linear ones, with concomitant climate change benefits. [Recycling aluminum cans uses 5 percent of the energy required to process bauxite into aluminum](#), for example. Likewise, [recycled plastic bottles use about 75 percent less energy](#) than synthesis of new ones from fossil fuels. One analysis estimated that a transition to a fully circular economy among developed countries would reduce global greenhouse gas emissions by nearly half by mid-century.¹¹⁶

As the world's preeminent economic powers use investment and regulation to drive greater circularity in their domestic markets, it bears emphasizing that the economic logic that has long justified greater trade in goods and components used in the linear economy is equally applicable to the circular economy. A good that is produced or consumed in one country can be reprocessed, recycled, or otherwise incorporated into a reverse supply chain in another, potentially at greater cost efficiency and/or more sustainable production methods than would be the case in the originating country. This presents opportunities for specialization, comparative advantage, and economies of scale. These opportunities could take the form of, for example, a recycling hub that serves a region where overall recycling capacity is low, or one that specializes in recycling materials that are produced in small quantities such that on-site recycling is not

¹¹⁵ See Colette Van der Ven, [Overcoming the Circularity Divide: Towards a Circular Trade and Apparel Industry in Africa](#), White Paper for the Remaking Trade Project; Colette van der Ven and Marios Tokas, [Leveraging Trade Agreements for an Inclusive Circular Economy Transition: Options under the World Trade Organization and EU Regional Trade Agreements](#), July 2023; Karsten Steinfatt, [Trade Policies for a Circular Economy: What Can We Learn from WTO Experience?](#), WTO Staff Working Papers No. ERSD-2020-10, 2020; Chibole Wakoli, [Transition to a Circular Economy: Examples from Africa and the Caribbean](#), SRC Policy Brief #6, 2023.

¹¹⁶ Ellen MacArthur Foundation, [Completing the Picture: How the Circular Economy Tackles Climate Change](#), 2019.

commercially viable.¹¹⁷ At present most circular economic models are not economically competitive with linear ones, and bending the cost curve will likely involve economies of scale and diffusion of specialized technology, both of which are enabled by trade.

At the international level the circular economy lacks a champion or a lead institution. There has to date been little effort to deconflict or harmonize national regulations and standards relating to recycling and eco-design, which have been pursued ad-hoc by individual economies. What qualifies a product as eco-designed, recycled, remanufactured, secondhand, refurbished or other circular designation varies across countries and regions. See [Section 5](#) regarding standards. Such lack of coordination will likely stymie the full potential of the circular economy by creating barriers to trade in circular goods and to the development of transnational reverse supply chains.

The World Trade Organization (WTO) and other institutions in the global trade system can fill a critical policy void in circularity by promoting interoperability among circular economic systems, reducing barriers to trade in circular goods, creating policy space for national governments to ensure circular economic models are economically competitive, and facilitating capacity building and access to critical technologies and services in the Global South.

We identify several key reforms and initiatives the WTO and other critical actors could pursue to make trade policy fit-for-purpose in a global circular economy.

2. Promote Coherence in Waste Management Policies and Standards

Many national waste management frameworks, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), impede trade in circular goods by presumptively categorizing unwanted or discarded materials as waste or hazardous waste that cannot be traded or that must be treated and disposed of in a specific way. The Basel Convention imposes *notice and consent* or prior informed consent (PIC) requirements for export of certain waste. In 2019, the Basel Convention was extended to regulate exports of certain plastic recyclables and electronic wastes. Its purpose—to ensure safety—remains critical in promoting a circular economy.

¹¹⁷ Shunta Yamaguchi, [Circular Economy and Competitiveness: Businesses' On-the-Ground Reality](#), White Paper for the Remaking Trade Project.

These policy measures typically give insufficient consideration to those materials' circular potential, and thus do not take sufficient account of the needs and capabilities of recyclers. They result in barriers to trade in goods that feed reverse supply chains and recycling activities. The "ironic consequence" of such waste management policies is that "measures meant to protect the environment from harmful waste disposal inadvertently impair trade in goods destined for waste avoidance through repair, reuse, and recycling."¹¹⁸

To address this challenge, WTO Members should seek appropriate modifications of international environmental law, and identify ways "to create coherence between definitions in customs nomenclature, standards, and technical regulations relating to end-of-life products," as well as in international environmental law.¹¹⁹ This could include collaborating with the Secretariat of the Basel, Rotterdam, and Stockholm Conventions to address issues related to the Basel Convention, as well as with the International Organization for Standardization (ISO) and the World Customs Organization. Through an inclusive process (see [Section 5](#)), these organizations should develop necessary changes in international environmental law and an international standard for end-of-life products and materials that can be used in national regulations. Such a standard would complement the development of standards for circular goods, providing definitional coherence across a product's lifecycle.

ACTION

The WTO Secretariat should coordinate with the secretariats of the Basel Convention on Transboundary Movement of Hazardous Waste, the ISO, the World Customs Organization, and other relevant international organizations, to develop a plan to facilitate circular trade through the development of international standards.

3. Reforming Customs Nomenclature to Facilitate Trade in Circular Goods

Customs nomenclature, or the codes used to categorize imported goods, are an essential lubricant of trade. Such codes allow customs officials to determine if and on what conditions a good can be imported into a country. Current customs nomenclature

¹¹⁸ Maureen Hinman and Adina Renee Adler, [Trade Facilitation for Reverse Supply Chains](#), White Paper for the Remaking Trade Project.

¹¹⁹ Id.

contained in the Harmonized System maintained by the World Customs Organization offers no basis for distinguishing between, on the one hand, end-of-life goods and materials to be used in reverse value chains, and, on the other hand, those destined for disposal and treatment. Circularity may be designated by inputs, production methods, or end-use. This ambiguity poses an obstacle to reducing tariffs and non-tariff barriers relating to the circular economy. In order to facilitate differential tariff treatment, the WTO, in conjunction with the World Customs Organization, could initiate discussions to reform nomenclature so that "definitions in customs nomenclature ... comport with the products' destiny."¹²⁰

ACTION

The WTO should work with the World Customs Organization to reform the customs nomenclature system to promote circular trade.

4. Create Trade Policy Space for Circular Business Models

Lack of clarity regarding legal limitations on national policies that can rectify the misalignment between circular goods' social value and their market price have the potential to constrain countries' support for circular industries. For example, uncertainty over whether the General Agreement on Tariffs and Trade (GATT) allows reduced tariffs for goods based on how they were made may create reluctance to reduce tariff barriers for recycled and other circular goods. Specifically, in situations where circular goods are identical to non-circular goods except for the process by which they were made, it will be more difficult to establish that the circular good is "unlike" the non-circular good, which could make different tariff lines for the circular and non-circular goods discriminatory.¹²¹

As discussed in [Section 5](#), production or process methods (PPMs) and sustainable development characteristics should be permissible bases for finding products unlike, and therefore to clarify permission for these distinctions in national tariff schedules and

¹²⁰ Maureen Hinman and Adina Renee Adler, [Trade Facilitation for Reverse Supply Chains](#), White Paper for the Remaking Trade Project.

¹²¹ Colette Van der Ven, [Overcoming the Circularity Divide: Towards a Circular Trade and Apparel Industry in Africa](#), White Paper for the Remaking Trade Project.

domestic regulation.¹²² Furthermore, circularity should be a basis for determining whether a good is a sustainable good, or whether a service is a sustainable service, for purposes of an Agreement on Sustainable Development-Supporting Goods and Services, as discussed in [Section 9](#).

Similarly, the current WTO subsidies framework may inhibit sustainable development promoting subsidies (see [Section 4](#)), and could inhibit subsidies to circular supply chains to make them competitive with linear ones, or tax policies that favor recycled products. Creating clarity regarding these legal issues could be a powerful driver of support for, and investments in, circular businesses. The reforms suggested in [Section 4](#) would clear the way for subsidies that support circular sustainable development.

5. Enhance Traceability for Circular Supply Chains

Ensuring that products that claim to qualify as recycled, refurbished or otherwise the result of a reverse supply chain can be a dauntingly complex logistical endeavor. Similarly, recyclers and other actors engaged in circular economic activities may need information about a material's current and past lifecycles that would be onerous to reconstruct using conventional record-keeping. Strengthening and promoting innovation in traceability schemes relating to circularity will be an important part of globalizing the circular economy.¹²³ The European Union (EU) is already working to develop digital product passports that would create an electronic record of all events and transactions relating to a product's lifecycle. As with other areas of circular economic policy, there is risk in fragmentation and lack of interoperability between traceability schemes. The WTO could be a convener of discussions regarding the issue of circularity and traceability – as with other traceability mechanisms – to ensure the lifecycle of circular goods can be mapped and recorded across jurisdictions.

6. Development

A global shift towards circularity presents opportunities for developing countries, but also considerable risk of a North-South divide. Participation in circular industries such as recycling, repair, waste management and treatment, and associated services will be an

¹²² Gracia Marín Durán, NTBs and the WTO Agreement on Technical Barriers to Trade: The Case of PPM-Based Measures Following US-Tuna II and EC-Seal Products', 6 European Yearbook of International Economic Law, p. 87, 2015.

¹²³ See Emmanuelle Ganne, [Blockchain for Sustainable Supply Chains](#), White Paper for the Remaking Trade Project.

[important source of job creation](#) and economic growth in the coming decades. With investments in capacity and acquisition of technology, developing countries can move up the value chain in the circular economy and diversify their industries, in turn providing them a pathway to sustainable development. Circularity can create new income streams for producers, such as reprocessing of bio-waste, steel scraps, and cotton by-products. It can also help developing countries transform their current market position as end-consumers of secondhand goods into a source of economic growth and domestic production through development of recycling capacity.

Yet this circular future for the Global South is by no means a foregone conclusion. While some developing countries have established waste harvesting (waste pickers) systems in place, other aspects of a circular economy may be harder for the developing world to adopt. As noted in an [analysis](#) by Chatham House, only one percent of the total value of trade in secondary goods, materials, waste, scrap and residue is traded to or from low-income countries. High and middle-income countries account for 99 percent of trade in such commodities, with the lion's share attributable to Europe, the United States, and China. This represents a greater North-South disparity than in the linear economy, and points to a vast capacity and demand gap for circular goods between low-income countries and the rest of the world.

This gap is exacerbated by some developing countries' wariness of imported secondhand goods and waste, which are viewed – not unreasonably – as an impediment to developing domestic industry and a driver of "a deeply problematic circular fragmentation in which high-income countries consume and discard, and Low and Middle Income Countries (LMICs) are burdened with the waste."¹²⁴ These concerns have led African countries to [ban](#) all trade in secondhand textiles, and a number of Southeast Asian countries to [prohibit imports](#) of electronic waste and scraps.

7. Create an Inclusive Platform for Circular Economy Policy

The ad-hoc, unilateral character of circular economic policymaking has made the Global North the regulatory and commercial center of gravity for the circular economy. This has created a familiar scenario in which developing countries risk exclusion from an emerging field of economic growth because of capacity constraints and difficulties complying with standards and conditions set by developed economies. The WTO can rectify this marginalization of the Global South by creating a circular economy platform that includes

¹²⁴ Colette Van der Ven, [Overcoming the Circularity Divide: Towards a Circular Trade and Apparel Industry in Africa](#), White Paper for the Remaking Trade Project.

voices from a diverse range of economies. Potential issues for such a platform to address could include: circular standard setting (which could occur in the broader context of an inclusive standard setting process, as discussed in [Section 5](#)); enhancing access to recycling machinery and other circular technologies; reducing barriers to trade in circular goods; and regearing aid for trade and other capacity building initiatives to be more fit-for-purpose for a circular future.

8. Greater Collaboration between the WTO Dialogue on Plastics and Other Relevant Agencies to Address Plastic Pollution¹²⁵

WTO Members launched negotiations through an Informal Dialogue on Plastics Pollution in November 2020. Today, the renamed "[Dialogue on Plastics Pollution](#)" is co-sponsored by 76 members, representing over 75% of global trade in plastics. It is being coordinated by Australia, Barbados, China, Ecuador, Fiji, and Morocco, and has a mandate to foster trade cooperation on plastic pollution within the framework of the WTO's rules and mechanisms while complementing, supporting, and preventing duplication of efforts and processes in other international fora.

Efforts by the World Customs Organization to improve classification of plastics to help track plastics trade, and to facilitate advance data collection, have been important, as has been the work by United Nations Conference on Trade and Development (UNCTAD) to promote sustainable production and consumption in developing countries through life cycle analysis of plastics substitutes and data collection on plastics production and disposal. As noted above, more work needs to be done to coordinate so as to permit appropriate trade in compliance with restrictions on the transboundary movement of hazardous wastes under the Basel Convention.

Other organizations with interlocking agendas that are relevant to plastic pollution are the ISO, which has a broad array of relevant product and process standards, and the International Maritime Organization (IMO), which has a mandate to address marine plastic litter from ships and to achieve zero plastic waste discharges to sea from ships by 2025. UN Negotiations on a [global plastics treaty](#) were launched in 2022, with the objective of concluding negotiations by the end of 2024, providing another major thrust to galvanize the trade community to work together with others on a comprehensive approach to plastics.

¹²⁵ This part benefited greatly from Carolyn Deere Birkbeck and Mahesh Sugathan, [The Relevance of Trade and Trade Policies for Plastic Pollution](#), White Paper for the Remaking Trade Project.

ACTION

WTO Members should call for reduction of plastic pollution and greater collaboration among international fora to regulate trade in plastics, with commitments to action.



SECTION 11:

Governance and Institutional Reform for A Sustainable Trade System

1. Introduction

The central topic of this Report is the need for integrated policy at the intersection of trade and sustainable development. The world's capacity for integrated policy is hampered by an international governance system that is not fit for this purpose. The global governance system falls short because of its two-level horizontal structure.

- **Horizontal National Sovereignty.** First, the international legal system is a legacy system that developed before globalization and global challenges presented a need for extensive international regulatory cooperation. Therefore, the system has not developed sufficient supranational institutional capacity to address those challenges efficiently and effectively. Rather, treaties and international organization decisions generally depend on the consent of each state involved (the EU being a major exception), making the formation of new rules inefficient and ineffective. This state sovereignty-based horizontal structure is the opposite of supranational governance, in which international norms can be adopted without the specific consent of each state, through majority voting.
- **Horizontal International Organizations.** Second, the existing international organizations relevant to the intersection of trade and sustainable development operate in horizontal relation to one another: besides the United Nations (UN) which has broad authority and dedicated organizations in certain areas, there is no formal central authority to cooperate. Nor, as this Section explains, is there adequate informal cooperation. This horizontal structure is the opposite of a hierarchical international organization system that can coordinate efforts toward efficient and effective action.

This Section explores how these dual horizontal structures can be overcome in the context of trade and sustainable development. This Section seeks to delineate the governance and institutional reforms that will be required to make the governance of the international trade system fit for purpose.

We focus here on the governance of and around the World Trade Organization (WTO), because of its central role in this context. The governance capacity of the WTO, and of much of the multilateral trade system, is inadequate. The WTO governance system was built in the early 1990s, and has been degraded since by (i) the failure of its negotiating capacity to complete the Doha Development Agenda, (ii) the profligate use of the consensus principle (operating at the WTO as a veto for each Member) to cut off discussions of important topics or to block widely popular initiatives, (iii) a decline in the level of international trust, diplomacy, comity, and compliance, and (iv) by the abandonment of the WTO Appellate Body. At the same time, this Report demonstrates the need for expanded normative capacity in order to integrate sustainable development into the trade system.

The reforms advanced in this Report will not necessarily be effected within the WTO, through binding law, in a single undertaking, or in a multilateral agreement.

New norms to integrate trade and sustainable development may be made using several mechanisms. These include multilateral treaty amendments, plurilateral agreements, more informal discussions such as Joint Statement Initiatives that can give rise to normative state practice, and decision-making inside the WTO. In important areas, non-binding codes of conduct or discussion fora may be optimal means of coordination of policy.

While the WTO has a mandate and expertise that is focused on trade, as discussed in [Section 1](#), its effectiveness to achieve even a narrow trade mandate is dependent on the development of concomitant measures for sustainable development. These measures need not be housed inside the WTO, but the WTO offers negotiation, expertise, and institutional advantages that may make it an attractive forum for some sustainable development measures. Moreover, the WTO, and the trade system, require that these measures be taken in order for the trade system to flourish.

We have also learned that it is necessary to have a dynamic system that does not rely on periodic negotiation *rounds* for change, and so governance and institutional capacity to

revise, augment, interpret, and apply these reforms and the rest of the system over time is also needed.

2. Treaty Negotiations on Trade for Sustainable Development

The [August 2023 G20 Trade and Investment Ministers' Meeting Outcomes Document](#) emphasized the importance of rule-making:

We remain committed to strengthening the rule-making arm of the WTO by facilitating trade negotiations and by fostering the update of the global trade rulebook, and underscore the importance of the ongoing negotiations in WTO.

The main legislative tool in the international system is the treaty. Treaties only bind states that ratify them. States will generally only adhere to treaties that, on net, benefit them. In traditional tariff-focused trade negotiations, states (adopting an often erroneous mercantilist perspective) saw their own tariff reduction commitments as harmful, but accepted them in exchange for the tariff reduction commitments of other parties. There is no particular reason, however, to limit the types of issues that can be addressed in trade agreements, and expanding the scope of possible commitments can expand the possibility for agreement.¹²⁶ Of course, in contexts outside the international legal system, such as national systems or even the European Union (EU), people or states accept majority voting as a method of legislation.

Modern trade barriers include not only the traditional tariff and quota barriers, but also an array of non-tariff barriers, as well as barriers to trade in services, including digital services. At the same time, as this Report reflects, the trade system requires revision and extension, for example, in order to differentiate between good and bad subsidies both from a trade and from a sustainable development perspective ([Section 4](#)), to facilitate greater production of international standards and regulation for sustainable development that includes process and production method regulation while avoiding

¹²⁶ Robert Staiger, who argues for a "shallow" approach to international economic integration, nevertheless recognizes the need for the trade system to address standards regarding consumption externalities, and, at least in connection with digital trade (he does not provide a basis for distinguishing other trade), recognizes the need to address cross-border non-pecuniary externalities like pollution. He does not explain why these externalities cannot or should not be addressed in conjunction with trade negotiations. Robert Staiger, *A World Trade System for the Twenty-First Century* (Ohlin Lectures), 2022.

detriments to development and trade ([Section 5](#)), and to address other issues essential to harmonize trade policy with sustainable development policy.

It is important to recognize that the general treaty-making process for legislative action in the trade and sustainable development context is limited to voluntary participation. This process may be considered to block useful cooperation in areas where the weakest link can frustrate cooperation, or where there are strong temptations to free ride on the efforts of others, resulting in the non-production of public goods, or hold collective action hostage to achieving other concerns. The process for rule-making that exists in most federal systems and in other national contexts recognizes that it is beneficial to all if legislation may be made more easily, without according a veto to a minority.

For some areas of sustainable development, such as revised subsidy rules as discussed in [Section 4](#), treaty amendments or new treaties will be required. Under Article IX:3 of the [Marrakesh Agreement](#), these amendments may be accepted by a two-thirds majority, but only bind accepting Members. It also provides that non-accepting Members may be requested by a three-fourths majority to withdraw unless they receive the consent of the Ministerial Conference to remain in the WTO. This facility may be utilized carefully as part of a *reform by doing* movement, perhaps commencing in areas viewed as especially urgent and legitimate for majority action, including pressing areas of sustainable development.

ACTION

In areas motivated by bona fide sustainable development goals, WTO Members should establish a practice of amending the WTO agreements as provided under the Marrakesh Agreement through two-thirds majorities, while prudentially ensuring that there is sufficient legitimacy in terms of sustainable development and inclusive support to avoid undermining the trade system.

In response to concerns that international trade negotiations may not fully represent the interests of marginalized groups in society, including less industrialized countries, workers, women, indigenous people, as discussed in more detail in [Section 6](#), it would be appropriate to develop a Sustainable Development Impact Assessment facility that would prepare an analysis, sufficiently in advance of acceptance to be taken into account

in negotiations, of the sustainable development impacts—beneficial and harmful of the proposed terms of agreement on these groups.

ACTION

In consultation with United Nations agencies, including the United Nations Framework Convention on Climate Change (UNFCCC), United Nations Environment Program (UNEP), the International Labor Organization (ILO), and United Nations Conference on Trade and Development (UNCTAD), as well as with other relevant international organizations such as the Organization for Economic Cooperation and Development (OECD), the WTO Secretariat should establish a facility to provide Sustainable Development Impact Assessments in advance of new trade agreements and significant decision-making.

3. Linkage

Bargaining for treaties may be affected by the scope of issues addressed. One premise of this Report, as discussed in [Section 2](#), is that there are political and substantive causal connections – natural linkages – between trade and sustainable development. How can these matters be addressed synergistically? How can constructed linkages improve the possibility for agreement?

New or revised norms may be promoted through linkage that allows more diffuse reciprocity: tradeoffs in which a state accepts a norm that is not attractive to it in exchange for another norm or other consideration that is more attractive to it. Even pure tariff negotiations involve tradeoffs between export promotion and import protection interests. While the Uruguay Round is not necessarily a model, it involved a *grand bargain*, in which none of the Agreement on Trade-Related Intellectual Property Rights (TRIPS Agreement), the General Agreement on Trade in Services (GATS), or the Agreement on Agriculture could have been agreed on their own, but when bundled in a *package deal*, became possible.

While sustainability in areas such as reducing climate change and preserving biodiversity certainly promotes global welfare, there are still difficult distributive issues to address in determining how the costs of action will be allocated. Contention over the allocation of these costs can block agreement. These costs include not only direct costs, but also transition costs, for example in connection with changing product standards or reduced

fossil fuel subsidies. So, negotiations in the field of trade and sustainable development will have varying characteristics – in game theory, varying payoff structures. It will be important to be attentive to these dynamics as negotiations, and institutions for negotiations, are structured.

The payoff structures, and therefore the negotiation dynamics, will vary with the scope of the game – with the scope of negotiations. Negotiations limited to traditional trade topics have less scope for tradeoffs – inducements for states to agree to accept constraints they would not otherwise choose – than more extended negotiations that can link other topics.

For example, the kind of [climate club first proposed by Prof. William Nordhaus](#) involves a linkage between trade and greenhouse gas emissions reduction commitments.¹²⁷ That idea assumed that states retained unexpended bargaining power, and legal discretion, to impose a special tariff on goods exported by states that did not meet club-determined emissions goals. While those assumptions may not be valid, their invalidity can be resolved by adding bargaining power through the offer of new trade liberalization commitments on the one hand, and reaching legal agreement on new trade commitments exchanged for greenhouse gas emissions commitments.

This type of bargain would presumably have a win-win effect on global welfare: both reducing trade barriers and reducing greenhouse gas emissions.¹²⁸ These types of bargains may be replicated in other areas of sustainability, including deforestation, preservation of biodiversity, etc. These types of linkages may be seen as barter-type exchange: country A provides greater market access to country B in exchange for country B providing greater emissions reductions to country A. A more economically efficient (but not necessarily politically feasible) type of exchange is in the form of money, and in agreements such as the WTO Trade Facilitation Agreement and Fisheries Subsidies Agreement, we see financing facilities intended to make some kinds of commitments more attractive to states for which they might not otherwise be acceptable. See [Section 6](#). A more politically feasible type of exchange is at a higher level of generality, by agreeing ex ante to an easier legislative process that will streamline agreement.

¹²⁷ See Geraldo Vidigal, [Towards a Multilateral Climate Club?](#), White Paper for the Remaking Trade Project.

¹²⁸ For more on linkages, see Giovanni Maggi, [Issue Linkage](#), Handbook of Commercial Policy (2016); Robert W. Staiger, A World Trading System for the Twenty-First Century, MIT Press, 2022.

4. Plurilateral Initiatives

One avenue that has emerged in the last few years for promoting an inclusive and progressive agenda is negotiations at the plurilateral level – including fewer than all 164 WTO Members. Some see the growth of plurilateral initiatives as a silent *revolution* taking place within the WTO. In recent years, we have observed increasing activity in plurilateral forms, as well as resulting controversy regarding the circumstances under which new plurilateral agreements can be included in the WTO. Plurilateral agreements allow coalitions of the willing to proceed to agree on trade matters without unanimity. They allow states flexibility in the kinds of commitments they wish to undertake: variable geometry.

Multilateral agreement (all 164 Members) and multilateral most-favored nation (MFN)-based negotiation has a clear economic logic with respect to tariff negotiations: establishing and preserving a level playing field for trade, and thereby maximizing welfare. Certain areas addressed in this Report would also benefit from multilateral agreement, either because uniform global rules are efficient, or because non-participant states cannot in practical terms be excluded from benefiting from the obligations themselves. For example, if the obligation is to permit collective bargaining in labor relations, compliance by one state will benefit all foreign states similarly. In these types of contexts, there may be a free-rider problem that suggests a multilateral structure of agreement.

On the other hand, some sustainability commitments, such as elimination of fossil fuel subsidies, do not require multilateral agreement for effective action. There is no need to bind states that have no incentive or capacity to subsidize fossil fuels. Thus, a plurilateral agreement among big fossil fuel subsidizers can be effective. Alternatively, if trade linkage or other linkage is necessary to induce agreement, or to enforce agreement, then broader membership as indicated by the negotiation context may be indicated.

In some areas, such as labor standards, some degree of regional or other plurilateral differentiation may be appropriate, where different groups of states may have similarities in the structure of their economies or cultural perspectives. This type of approach may require some overall framework to assure minimum standards, in order for other regions or groups of states to ensure that standards will be at an acceptable level. This might be

understood as a kind of minimum level or essential harmonization, with broad discretion for variation.

At the WTO's 11th Ministerial Conference in December 2017, groups of WTO members issued joint statements on advancing discussions on e-commerce, developing a multilateral framework on investment facilitation, launching a working group on micro, small and medium-sized enterprises (MSMEs), and domestic regulation in services trade. The discussions emanating from these initiatives – known as Joint Statement Initiatives (JSIs) – are open to all WTO Members. JSIs have been criticized by some developing countries¹²⁹ and academics,¹³⁰ arguing that they promote developed country interests and are not permitted under rules of the WTO. But others note that many of the JSI dialogues are led by developing nations – who often have the most to gain by bringing the institutional force of a group together in support of action.

Another set of plurilateral initiatives aimed at promoting the sustainability agenda at the WTO are the: Trade and Environmental Sustainability Structured Discussions (TESSD); the Dialogue on Plastics Pollution (DPP) and the Fossil Fuel Subsidy Reform. These initiatives complement the work of the Committee on Trade and Environment and other relevant WTO bodies. Each has its own mandate and membership, and all are invariably led by *co-ordinators* comprising developed and developing countries.

There was widespread agreement among Workshop Participants across our Project that the plurilateral process provides fertile opportunities to advance the trade and sustainable development agenda. Participants saw them as viable avenues for:

- encouraging greater WTO stakeholder participation from a wider constituency than just states and extending access to businesses (big and small) and representatives of NGOs that promote civil society interests.¹³¹
- expanding the WTO's functions beyond its traditional *core* negotiating, monitoring, and dispute settlement pillars to a more inclusive forum where countries can share

¹²⁹ See WTO Communication by India and South Africa: The Legal Status of "Joint Statement Initiatives" and their Negotiated Outcomes, WT/GC/W/819, 19 February 2021.

¹³⁰ Jane Kelsey, The Illegitimacy of Joint Statement Initiatives and Their Systemic Implications for the WTO, 25 *Journal of International Economic Law* (2022); Daria Boklan, Olga Starshinova, Amrita Bahri, Joint Statement Initiatives: A Legitimate End to 'Until Everything is Agreed'?, 57 *Journal of World Trade* (2023).

¹³¹ See Joost Pauwelyn, Taking Stakeholder Engagement in International Policy-Making Seriously: Is the WTO Finally Opening-Up? 26 *Journal of International Economic Law* (2023).

best practices and discuss intersections between trade and other bodies of international law and governance.

- *learning by doing*, as an alternative to creating *hard law* by treaty rules and instead establishing new norms and customary international law through consistent practice.
- promoting greater outreach and alignment with other bodies and processes (in particular the Dialogue on Plastics Pollution).

Inside the WTO, new plurilateral agreements that would be included in Annex 4 to the Marrakesh Agreement (but not JSIs) are required to be accepted by consensus. While states may engage in plurilateral agreements outside the WTO, there are important limits.¹³² First, without agreement by other WTO Members, states entering into plurilaterals cannot violate the most favored nation (MFN) obligation, so they would have to address issues that are not covered by the WTO MFN obligation. Therefore, conditional MFN would generally not be permissible unless approved by other Members. Thus, the requirement to grant MFN rights, without concomitant obligations, allows non-adherents to *free-ride*, discouraging entry into plurilaterals relating to matters addressed by the MFN obligation. While many sustainable development-related agreements will require action that is not excludable in practical terms, so MFN treatment is not an issue, as discussed in [Section 9](#), it may be useful to clarify the possibility of *conditional MFN* plurilaterals, that do not allow free-riding, in sustainable development contexts.

ACTION

Members should recognize plurilateral negotiations as a means of encouraging broader stakeholder participation in the field of trade and sustainable development and related informal *learning by doing* as an alternative in some contexts or precursor to hard law making.

Members should amend Article X(9) of the WTO Agreement to permit majority approval of new plurilateral agreements that promote sustainable development.

¹³² See James Bacchus, [The Future of the WTO: Multilateral or Plurilateral?](#), Policy Analysis no. 947, Cato Institute, Washington, DC, May 25, 2023.

Another approach that might be considered in order to permit certain categories of plurilateral agreements would be to establish within the field of trade in goods a facility similar to that which exists in the WTO provisions for trade in services: a provision for open recognition of exporting country regulation similar to the permission contained in [Article VII of the GATS](#). This would provide a clear mechanism for national recognition of diverse sustainability standards, and also ensure that recognition arrangements will not provide an avenue of discrimination or other defection from WTO multilateral free trade principles. Today, it is not clear that any mutual recognition agreements are permitted, especially in connection with process or production methods regulation. Articles 2.7 and 6.3 of the [Technical Barriers to Trade Agreement \(TBT Agreement\)](#) encourage, but do not require, recognition of equivalent standards and conformity assessment procedures of other states. See [Section 5](#).

ACTION

Members should amend the TBT Agreement and GATT to establish a provision, similar to Article VII of the GATS, to promote open recognition of sustainability standards.

5. Preferential Trade Agreements

Preferential trade agreements (PTAs), especially within the programs of the EU and U.S., often contain sustainable development commitments, focusing on environment and labor. These agreements, largely including free trade agreements, but also including a few customs unions and some new trade agreements that do not address tariffs, can provide for different kinds of arrangements, and different kinds of reciprocity, than appears in the WTO system. Most often, they incorporate by reference or require partners to adhere to certain multilateral environmental agreements¹³³ or to protect core labor rights. Few PTAs provide for additionality beyond existing commitments in these existing environment or labor treaties. They also often include *non-regression* obligations that prohibit action to relax national sustainability regulation in order to encourage trade or investment.

¹³³ See Jose-Antonio Monteiro and Joel P. Trachtman, [Environmental Laws](#), in World Bank Handbook of Deep Trade Agreements (Aaditya Mattoo, Nadia Rocha, and Michele Ruta, eds, 2020).

These agreements can also serve as laboratories, and may offer useful guidance as to the types of sustainable development commitments states may link to their trade liberalization commitments. For example, the [EU approach to PTAs](#) calls for provisions to address several of the issues addressed in this Report.

Few PTAs address climate change, but recent EU and New Zealand PTAs have done so.¹³⁴ For example, the EU Green Deal calls for PTAs to provide for sanctions to be available in response to non-compliance with the Paris Agreement. In particular, the UK-EU Trade and Cooperation Agreement includes obligations to effective implementation of the Paris Agreement and commitments to climate neutrality by 2050.

Obviously, PTAs can be made among countries that are more like-minded or with similar abilities, to make it easier to move forward. Also, to the extent that the commitments are non-excludable, PTA negotiations may be subject to public goods or free rider problems. So, while these provisions cannot necessarily be extended to the multilateral system, these types of agreements may serve as pathfinders toward greater integration of trade and sustainable development.

6. Organizational Decision-Making Structures

While treaty-making is the main method of establishing new formal rules in international relations, some organizations are authorized to make rules within their mandates. In these cases, new rules can be made without treaty revision through decision-making mechanisms established by the relevant treaty.

Article IX of the [Marrakesh Agreement](#) specifically contemplates making decisions by consensus, defined as no objection, but then moving to ordinary majority voting, while authoritative interpretations and waivers require a three-fourths vote. And yet, for practical purposes, all decisions are taken by consensus, meaning that the decision cannot be taken if any Member formally objects. While there may have been a time during which Members were reluctant to exercise this veto power, its use has become common, blocking decisions to negotiate, as well as decisions to act. Some suggest that this enhances legitimacy. While that seems true for the decisions taken, it strongly undermines legitimacy in respect of the decisions not taken, or the limited scope of the

¹³⁴ See Emily Lydgate, [Beyond Non-Regression: Mainstreaming Climate Action into FTAs](#), Center for Inclusive Trade Policy Working Paper (2023).

decisions actually taken. This structure can result in a *tyranny of the minority* that disables legitimate action and encourages *hostage-taking* in decision-making.

The WTO already incorporates by reference into its legal structure, through the TBT Agreement, product standards made by a softer, easier to achieve, version of consensus. The definition of consensus used in the International Organization on Standardization (ISO) is: "general agreement where there is no sustained opposition to substantial issues by any important part of the concerned interests, in a process that seeks to take into account the views of all parties concerned," as determined by the committee chair. Based on this precedent, which has not been very contentious, it may be possible to adopt this softer consensus rule for similar types of decisions, including those relating to sustainability standards as discussed in [Section 5](#) of this Report.

It may also or alternatively be possible to identify specific areas in which decisions may be made by majority vote. This possibility already lies dormant in the Marrakesh Agreement establishing the WTO and could be effectuated through a *reform by doing* movement that uses existing treaty capacity, without the need for amendments. This action could begin with specified areas. For example, certain procedural issues that do not require any changes to national policy, such as agenda-setting, might be subject to a relaxed rule. After garnering support, a group of states could lead the community in calling for a vote in a specified area viewed as a legitimate field for majority action, such as an interpretative decision under Article IX:2 regarding the legal requirements for greenhouse gas border adjustments, or an interpretation of "like products" that is accommodating to importing state process or production method regulation addressing global sustainability for purposes of anti-discrimination rules. In addition or alternatively, Members might be required to provide a reasoned basis for blocking consensus, or other procedural requirements might be considered to restore balance to the use of the consensus requirement.

ACTION

Members should identify appropriate opportunities to establish a new reform by doing practice in WTO decision-making within the existing unused capacity of the Marrakesh Agreement, whereby within an initial limited group of sustainable development topics, decision-making can be made by a majority of WTO Members.

7. Sustainable Development Monitoring/Interpretation/ Enforcement Mechanisms

Different types of rules, with different incentives for compliance, will be appropriate as the trade system addresses sustainable development. Not all rules must be formal law, and not all formal law requires formal enforcement mechanisms. However, formal monitoring, definitive interpretation, and systems of remedies improve compliance, and can help induce some states to accept and reciprocate commitments that might otherwise be perceived as unreliable.

In this Report, we have suggested the need for mechanisms to evaluate sustainability standards applied to imported goods, to evaluate subsidies to determine whether their principal nature is beneficial or harmful, and to evaluate proposals for liberalization of green or other sustainable goods, services, and technologies. These factual evaluations, sometimes also calling for interpretation of agreed rules, should be made by independent bodies. Judicial bodies are often charged with this type of responsibility, but it can require expert knowledge.

ACTION

In consultation with relevant United Nations agencies, including the UNFCCC, United Nations Environment Program (UNEP), the International Labor Organization (ILO), and UNCTAD, as well as with other relevant international organizations such as the OECD, establish an independent Sustainable Development Commission (SDC) to carry out and assist with determining the magnitude of sustainable development concerns addressed in subsidies, sustainability standards, and proposals for liberalization of green or other sustainable goods, services, and technologies (as proposed in this Report) implementing a number of the proposals put forward in this Report.

The WTO Appellate Body ceased to function in 2020. While critics have lodged several complaints against it, some more valid than others, one underlying problem was that the adjudicative decisions made by the Appellate Body could not readily be reversed through treaty revision or decision-making by political bodies. Adjudication was not adequately balanced by legislative capacity. This was largely because of the legislative limitations discussed above, which must be resolved not only for the reasons already

discussed, but to have a viable system of governance that includes both legislative and adjudicative functions.

In fact, one way to consider preserving dispute settlement and expanding legislative capacity at the same time is in response to dispute settlement decisions. That is, an effective model of legislative reversal that provides for decision-making response, or authoritative interpretative response, by a majority or supermajority of WTO Members, triggered by a dispute settlement decision, would strengthen both branches by providing a welcome check on dispute settlement, while recognizing that dynamic systems may require legislative action in response to unexpected or changing circumstances. This also can be achieved through *reform by doing*. Article IX(2) of the [Marrakesh Agreement](#) provides for authoritative interpretations of WTO treaty provisions to be adopted by a three-fourths majority of WTO Members. This capability should be considered for use in response to dispute settlement decisions, especially where those decisions may conflict with bona fide sustainable development goals.

ACTION

Members should identify appropriate opportunities to engage in a process of reform by doing within the existing unused authority of Article IX(2) of the WTO Agreement, to establish a practice for legislative reversal of dispute settlement decisions, by adopting through acceptance by a three-fourths majority of WTO Members authoritative interpretations in response to a definitive dispute settlement decision.

The explicit integration of sustainable development concerns into the normative structure of the global trade system will require broader expertise in dispute settlement. There may be needs for expert economic, environmental, labor, or other analysis of particular measures and circumstances. The WTO dispute settlement process has facilities for including expert views in adjudication. Furthermore, deference to independent expertise could be formalized by setting parameters that would be subject to determination by experts or bodies from other international organizations that contain greater relevant expertise or possibly the Sustainable Development Commission proposed above. This is already the case for balance of payments issues, where the International Monetary Fund's input is relevant under [Article XV of the General Agreement on Tariffs and Trade \(GATT\)](#).

The [WTO's Trade Policy Review Mechanism \(TPRM\)](#) has been broadly viewed as a success, allowing collegial discussion of Members' trade policies in a non-litigious context. In order to combine concerns for trade and sustainable development, it will be appropriate to add to the TPRM selected topics relating to sustainable development, such as openness to green goods, services, and technologies, the relationship of sustainability standards to international standards, harmful subsidies, core labor rights protections, etc.

ACTION

Members should agree to add sustainable development analysis to the Trade Policy Review Mechanism.

8. Interfunctional Organization of National Representation

Trade negotiators are unlikely to be well-prepared environmental, health, labor, or technology negotiators.¹³⁵ Moreover, they may come to negotiations with a mercantilist offensive-defensive perspective instead of with a cooperative global public goods perspective. In behavioral science, focusing on individual behavior, *framing* of issues can have effects on decisions.¹³⁶ While psychology has only indirect analytical power in relation to national behavior, by framing issues as sustainable development issues, and perhaps assigning different negotiators with different mandates and habits of thought, negotiations toward sustainable development through trade may be eased. The negotiations in 2022 toward the Agreement on Fisheries Subsidies benefited in part from the influence of national ministries of environment.

As trade and sustainable development negotiations become more complex, making greater demands for expertise, states will need to revisit the organization of their teams for negotiation to ensure appropriate expertise and perspectives are applied. As these negotiations implicate increasing national policymaking prerogatives, states will need

¹³⁵ See, e.g., Maureen Hinman, [Environmental Goods](#), White Paper for the Remaking Trade Project.

¹³⁶ See Anne van Aaken, *Making Trade Agreements Contribute to Sustainability: The Potential of Behavioural Science*, August 2023.

also to revisit the means by which they participate in international fora in order to ensure continued legitimacy and democratic accountability. Limits on negotiation capacity will result in limits of the ability of the international system to respond to critical concerns: trade negotiators will be unable to negotiate effectively and agree to address these concerns.

9. Interfunctional Cooperation in International Organizations

The integration of sustainable development policies with trade policies presents novel difficulties in a global system of international organizations characterized by functionally separate organizations with functionally limited mandates and limited expertise. This separation of organizations, mandates, and expertise mirrors similar fragmentation at the domestic level, although one important difference is that at the domestic level, there is a central legislature and central head of state leading the executive branch, providing ready capacity to integrate different policies. This capacity is not yet fully developed at the international level. The international level experiences a double decentralization: there is no governmental authority above states, and there is no governmental authority above multiple international organizations. Both systems are horizontal in structure.

Current practices in coordination among international organizations include information-sharing, inclusion of observers, joint meetings, and joint projects. Yet coordination is often ad hoc, there is competition (turf wars) among international organizations for resources, recognition, and authority, and Members can strategically block action by asserting a lack of mandate for those organizations that seek to expand their mandates to deal with multi-faceted issues.

Within the United Nations system there is some degree of managerial authority in the hands of the Secretary-General over the different organs and specialized agencies. One relevant example of coordination is the [United Nations Alliance on Action for Climate Empowerment](#), in order to "maximize synergies and coherence of activities, avoid duplication of effort and utilize available expertise and resources in an efficient manner through enhanced coordination." Unfortunately, none of the components of this alliance have trade mandates. Neither the United Nations Conference on Trade and Development nor the WTO are included.

The WTO is not part of the UN system. However, the Director-General of the WTO participates in the [UN Chief Executive Board for Coordination](#), which is the UN-designated authority to promote coherence within the UN system and beyond, but which only meets twice each year and which seems to operate at a high level of generality. Outside the UN, but including many UN-related bodies, the OECD has convened a "[Partnership of International Organizations For Effective International Rulemaking](#)," which includes the secretariats of a number of relevant international organizations, but also seems to operate at a high level of generality.

International organization efforts with respect to climate change and sustainable development seem uncoordinated, resulting in ineffectiveness or inefficiency. What causes this failure to cooperate?

Scholars have identified multiple factors that help explain why international organizations often fail to cooperate effectively. Rationalist accounts stress resource dependence and insufficient environmental pressure. Constructivist and psychological accounts point to a lack of openness to cooperate due to diverging organizational cultures, incompatible identities and norms among organizations, adverse legitimacy assessments, antagonistic relationships, and distrust.¹³⁷

This problem seems acute in the relationship between trade and sustainable development. From a legal perspective, limited mandates may prevent the type of policy integration that seems necessary to integrate trade and sustainable development efforts. For example, the WTO, while it has a broad overall mandate (the first preambular paragraph of the Marrakesh Agreement sets the objective of sustainable development), is understood by some governments in terms of a narrower trade mandate, and, holding an effective veto over the WTO agenda, those governments can prevent discussion and action. The 2022 initiative for the [Coalition of Trade Ministers on Climate](#) is an important means of inter-functional policy coordination.

This structure may limit the ability of the WTO to address issues that challenge the viability of the trade system, such as interoperability of greenhouse gas emissions measures in connection with border adjustments, sustainability product standards, or the

¹³⁷ Rafael Biermann, [Designing Cooperation among International Organizations: The Quest for Autonomy, the Dual-Consensus Rule, and Cooperation Failure](#), 6:2 *Journal of International Organization Studies*, 2015, citations omitted.

adverse effects some subsidies have on sustainable development. And yet, climate change, biodiversity and other sustainable development challenges require an *all of multilateralism effort*.

We discussed above the difficulty of legislating through treaty-making, as well as the difficulty of legislating through decision-making by consensus within the WTO and other international organizations. Biermann (2015)¹³⁸ describes the problem of cooperation between international organizations as, in part, characterized by the greater barrier posed by a requirement of *dual consensus* – cooperation requires consensus both within and among organizations. States have the ability to block action by blocking consensus in any potentially cooperating international organization. Importantly, one rationale for blocking consensus may be that the issue addressed exceeds the mandate of one organization: exactly the reason for inter-organization cooperation.

10. Leadership and Goals for Interfunctional Cooperation

Achieving sustainable development, in connection with controlling climate change, preserving biodiversity, and achieving other critical global elements of sustainable development, is an all of multilateralism endeavor. Indeed, it is an all of governments – indeed, an all of world – endeavor. And yet, as we examine the international system, it seems poorly designed to meet these needs: it is not fit for purpose.

The international system suffers from institutional incapacity due to the dual horizontal structure noted at the outset of this Section. Horizontal national sovereignty may be addressed as set out above through legislative processes, or judicial processes that do not provide a veto power to each state. Horizontal international organizations could be addressed through revised structures that appoint a leader to coordinate action among international organizations, or through informal leadership among formal equals that is capable of coalescing sufficiently efficient and effective collective action among international organizations. Assuming that formal structures may not be revised, or may not be revised sufficiently, this section examines the role of leadership in interfunctional cooperation among international organizations.

In a rationalist sense, international organizations seek resources based on their performance toward their mandates, and they seek extended authority, perhaps at the

¹³⁸ Id.

expense of both states and other international organizations. From a constructivist perspective, international organizations have their own cultures, and their mandates and expertise shape their sense of who they are and what is important: their organizational goals and understanding of their place in the international system. They have distinct languages and methods of thinking. In order for them to cooperate, some inter-organizational understanding and communication – diplomacy – is required.

Napoleon is reported to have said "a leader is a dealer in hope." This idea is relevant here because in the horizontal international organizations context, the type of leadership that may emerge is that which can organize the different expertise, capabilities, and mandates of existing organizations, and demonstrate how those elements can be combined to achieve common goals – thus giving the group hope that they can achieve their common goals. This process of leadership should begin with a mapping exercise evaluating actors in each area of intersection of trade and sustainable development, inventorying work done, mandates, expertise and technical capacity, and decision-making procedures to identify gaps and plans of coordination.

The UN Sustainable Development Goals (SDGs) were expected to serve the important purpose of articulating with some degree of specificity and priority common goals to which most international organizations can adhere. However, Bogers et al (2022)¹³⁹ find, based on an analysis of websites, that some indicators of fragmentation actually increased after the SDGs were established. They find that silos are "increasing around the 17 SDGs as well as around the social, economic, and environmental dimensions of sustainable development." We might imagine that different international organizations have prioritized among, and interpreted, the SDGs in ways that established some continuity with their prior mandates and work. In fact, it may be bureaucratically natural to see in the SDGs validation of one's own work program.

¹³⁹ Bogers, M., Biermann, F., Kalfagianni, A., & Kim, R. E. Sustainable Development Goals Fail to Advance Policy Integration: A Large-N Text Analysis of 159 International Organisations, *138 Environmental Science & Policy*, p. 134–145, 2022.

These insights suggest that greater leadership is needed to articulate more focused goals and priorities within the trade aspect of sustainable development. Even more importantly, a leader in this domain needs to focus on how the relevant SDGs may specifically be advanced through trade-related mechanisms. This seems to be a task for an organization that has a trade focus, bringing together other relevant organizations to map a coordinated plan to achieve those SDGs amenable to trade-related action.

ACTION

The WTO should convene the leaders of trade and sustainable development-relevant international organizations to create a plan for better alignment and deployment of mandates and capabilities to maximize ambition and achievement of the trade system for sustainable development.



SECTION 12:

Bringing it All Together

In this final Section, we aim to bring together the major elements for action, as reflected in the action points found throughout this Report. Although there are many cross-cutting points (which we repeat as necessary), we have organized them under five main themes: the agenda for the 13th Ministerial Conference (MC13) of the World Trade Organization (WTO); sector-specific action; promoting the Global South; greater multi-stakeholder collaboration; and institutional and governance reforms.

While the action points throughout this Report have been formulated mainly with WTO Members in mind – in the current setup, they are the main decision-makers and agenda setters at the WTO – in the spirit of this Report, we invite all stakeholders to debate and use them as a basis for further discussion and action in your respective networks.

1. Actions Points for WTO MC13

At MC13, WTO Members should:

- a. reiterate the 1994 sustainable development mandate contained in Recital 1 of the Preamble to the WTO Marrakesh Agreement and declare sustainable development to be the overarching goal of the trade system – consistent with the UN Sustainable Development Goals to which all WTO Members have committed;
- b. reaffirm the need for an inclusive and people-centered approach and policy at the WTO as stated in the [High-Level Advisory Board on Effective Multilateralism](#)¹⁴⁰ and commit to processes in the WTO that reflect this approach;

¹⁴⁰ The [High-Level Advisory Board on Effective Multilateralism, A Breakthrough for People and the Planet: Effective and Inclusive Global Governance for Today and the Future](#) calls for a multilateral system that is "radically and systematically inclusive, offering meaningful opportunities for participation in global

- c. fulfill the mandate in point 4 of the Ministerial Decision of 17 June 2022 on the Fisheries Subsidies Agreement to adopt additional provisions to limit subsidies that contribute to overcapacity and overfishing;
- d. call for reduction of plastics pollution and greater collaboration among international fora to regulate trade in plastics;
- f. declare that while advancing a just transition to the clean energy future, they will act to ensure a net-zero emissions global trade system by 2050, noting that in adhering to the 2021 Glasgow Climate Pact, Members have already committed themselves to creating a net-zero GHG emissions world by mid-century. WTO Members should charge the Committee on Trade and Environment (CTE) with developing a Net-Zero Trade System Action Plan with work streams focused on: (1) the need for clean and renewable energy to power the global economy, (2) sustainable agriculture, fisheries and food systems, (3) net-zero manufacturing processes and movement toward a circular economy with dramatically reduced waste, and (4) new decarbonized modes of power/energy in transportation (and particularly shipping) that allow freight to be moved without emissions.

2. Sector – Specific Action Points

In the following sector-specific discussions and negotiations, WTO Members should:

- a. Greenhouse Gas Emissions (GHG) Emissions:
 - i. undertake (in cooperation with others including the United Nations Framework Convention on Climate Change (UNFCCC) and the Organization for Economic Cooperation and Development (OECD) Inclusive Forum for Climate Mitigation Approaches) to develop a mechanism to assess effective policy equivalence – and to call on WTO Members to take account of equivalence in border GHG adjustments;

decision-making by all States, civil society, private sector actors, local and regional governments, and other groups that have been traditionally excluded from global governance."

- ii. undertake to partner with relevant international organizations to develop a scientifically valid methodology for measuring embedded GHG in traded goods;
- iii. develop principles for any GHG border adjustment mechanisms that include fair equivalence arrangements, a scientifically valid embedded GHG measurement protocol, fair arrangements to remit border adjustment proceeds to the country of origin for approved climate change management activities, and suitable arrangements to reflect just transition principles;
- iv. In the shipping sector in particular, facilitate exchange between the shipping and trade communities, both at the expert level and at the level of heads of the International Maritime Organization (IMO), and WTO; encourage consideration of just transition and common but differentiated responsibilities and respective capabilities (CBDR-RC) dimensions in discussions on shipping; adopt an authoritative interpretation of WTO rules as they apply to a fee on greenhouse gas emissions in shipping, including appropriate exemptions.

b. Subsidies:

- i. revise the General Agreement on Tariffs and Trade (GATT), the WTO Subsidies and Countervailing Measures Agreement (SCM Agreement), and the Agreement on Agriculture to create a framework for disciplining subsidies that are harmful to sustainable development and promoting subsidies that have positive expected sustainable development effects;
- ii. revise the GATT and SCM Agreement to authorize importing states to impose countervailing duties in relation to the implicit subsidies provided by virtue of failure to meet international standards for sustainable development;
- iii. accelerate negotiations for an agreement to eliminate fossil fuel subsidies and repurpose them as renewable fuel subsidies;

- iv. allow for the repurposing of agricultural subsidies that are prohibited to non-distorting nutrition security, transitional assistance or compensation, or climate change costs.
- c. Sustainability Standards:
- i. commit to an inclusive standards-setting process that promotes sustainable development, while avoiding harm to less industrialized countries (by providing them technical assistance, financial assistance, and extended transition periods);
 - ii. commit to revising the formulation of national technical regulations to (a) respect the special and differential needs of developing countries, (b) respect the national right to regulate in different ways to achieve legitimate purposes, (c) and avoid disproportionate barriers to trade;
 - iii. commit to discouraging application of diverse private standards that may not be made in an inclusive manner and that may, by their divergence among themselves and their divergence from international standards, impose disproportionate barriers to trade for developing countries;
 - iv. amend or definitively interpret the GATT and the TBT Agreement to clarify permission for proportionate sustainability standards and technical regulations;
 - v. identify areas in which sustainability standards are needed and cooperate with relevant international bodies to establish a process to develop proportionate standards to serve as a basis for international harmonization, perhaps using the proposed SDC in this endeavor;
 - vi. work to facilitate approval of needed sustainability standards. ;
 - vii. establish a work program to develop specific standards needed to facilitate e-commerce;

- viii. convene discussions to develop an international approach to the relationship between trade and labor standards.
- d. Global Supply Chains:
- i. permit subsidization of supply chains of certain essential goods in response to exceptional events such as pandemics, natural disasters, or interstate conflict;
 - ii. commit to establish an enforceable agreement limiting export restrictions of essential goods in emergencies, with appropriate incentives for compliance.
- e. Trade in Sustainable Goods/Services/Technologies
- i. initiate negotiations toward an Agreement on Sustainable Development-Supporting Goods and Services that includes representatives of the environment and/or other sustainable development-relevant ministries.

3. Action Points to promote sustainable development interests of the Global South

In order to encourage the flow of investments into developing countries, WTO Members should:

- a. offer preferential access for sustainable goods/services/technologies from developing countries (through Generalized System of Preferences (GSP) Schemes or by agreeing to a WTO waiver). Alternatively or additionally, the WTO should allow cross-sectoral reciprocal bargains that provide access to developed country markets in exchange for compliance with sustainable production standards;
- b. extend the Technology Transfer Working Group mandate to engage in discussions that promote best practices on technology exchange and greater work alignment with the UNFCCC;

- c. end concessional export credit financing for fossil fuel-related exports, and shift credit financing up to US\$100 billion per year –through export credit, risk insurance, and related mechanisms – to invest in advanced technological capabilities in developing countries, and to fund and de-risk investment in sustainable production;
- d. establish a Global Sustainable Trade Fund, administered by the ITC in cooperation with the World Bank and drawing resources from developed country donations, repurposed concessional export financing and other subsidies, and rebates from border GHG adjustments, to allocate funds for these trade-related sustainable development purposes;
- e. establish a Sustainable Development Impact Assessment (SDIA) mechanism, in conjunction with the SDC, to provide timely analysis to support transparency, participation, and effective negotiations in international trade agreements and decisions.

4. Action Points for greater outreach to stakeholders (including international organizations, businesses and NGOs) on sustainable development

- a. The WTO Secretariat should:
 - i. work closely with the World Bank and International Monetary Fund on reform initiatives including increasing investment in technological and material capacities of developing countries to produce traded goods and services in a sustainable manner;
 - ii. convene trade and sustainable development-relevant international organizations to create a plan for better alignment and deployment of mandates and capabilities to maximize ambition and achievement of the trade system for sustainable development;
 - iii. initiate discussions among the trade-related UN organizations to promote a trade system that encourages sustainable investment, with a repurposed International Trade Centre (ITC) playing a pivotal coordinating role in technical capacity-building efforts of the WTO and

United Nations Conference on Trade and Development (UNCTAD), to support a sustainable private sector in developing countries.

- iv. partner with relevant international organizations to develop a scientifically valid methodology for measuring embedded GHG and for ensuring policy comparability across border adjustment policies;
- v. partner with other relevant international organizations to develop actionable information about existing fossil fuel subsidies;
- vi. work closely with the UNFCCC to align countries' trade-related actions on Nationally Determined Contributions (NDCs) (including recognizing ambitions and action on carbon markets) and Technology Needs Assessments;
- vii. in consultation with relevant United Nations agencies, including the UNFCCC, United Nations Environment Program (UNEP), the International Labor Organization (ILO), and UNCTAD, as well as with other relevant international organizations such as the OECD, establish an independent Sustainable Development Commission (SDC) to assist with determining the magnitude of sustainable development concerns addressed in subsidies, sustainability standards, and proposals for liberalization of green or other sustainable goods, services, and technologies (as proposed in this Report) implementing a number of the proposals put forward in this Report;
- viii. convene relevant international organizations, businesses and NGOs, and national ministries to produce needed international sustainability standards;
- ix. convene discussions with the ILO to develop an international approach to the relationship between trade and labor standards. This approach may include recognition of regional diversity;

- x. in conjunction with other international bodies such as the International Organization for Standardization (ISO), UNEP, Food and Agriculture Organization (FAO) and other international bodies, all as relevant, promote regulatory coherence and global cooperation in data collection and data sharing across value chains at the product level;
- xi. establish a *Task Force on E-Commerce and Sustainability* to combine the work of the Joint Statement Initiative on E-Commerce (JSI), the Trade and Environmental Sustainability Structured Discussions (TESSD), UNCTAD, the OECD, the World Bank and the International Telecommunications Union (ITU);
- xii. coordinate with the secretariat of the Basel Convention on Transboundary Movement of Hazardous Waste, the ISO, the World Customs Organization, and other relevant international organizations, to develop a plan to facilitate circular trade through the development of international standards;
- xiii. work with the World Customs Organization to reform the customs nomenclature system to promote circular trade and regulate trade in plastics.

5. Action Points for reformed institutional and governance mechanisms to support sustainability

- a. WTO Members should create the following new mechanisms/institutions/processes:
 - i. Sustainable Development Commission (SDC) made up of independent experts drawn from sustainability fields to assist WTO Members, policymakers and Committees in measuring and evaluating sustainability impacts for a number the proposed reforms in this Report;
 - ii. Global Sustainable Trade Fund to allocate funds to developing countries for trade-related sustainable development purposes.
 - iii. new sustainability section in Trade Policy Reviews;

- iv. SDIA mechanism (see above) to provide timely analysis to support transparency, participation, and effective negotiations in international trade agreements and decisions (and possibly supported by the SDC);
 - v. International Trade Centre rechartered as a Sustainable Trade Centre, playing a pivotal coordinating role in technical capacity-building efforts of the WTO and UNCTAD, to support a sustainable private sector in developing countries.
- b. WTO Members should agree to reformed decision-making by:
- i. in areas motivated by bona fide sustainable development goals, establish a practice of amending the WTO agreements as provided under the Marrakesh Agreement through two-thirds majorities, while prudentially ensuring that there is sufficient legitimacy in terms of sustainable development and inclusive support to avoid undermining the trade system.
 - ii. amending Article X(9) of the WTO Agreement to permit majority approval of new plurilateral agreements that promote sustainable development;
 - iii. amending the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and GATT to establish a provision, similar to Article VII of the General Agreement on Trade in Services (GATS), to promote open recognition of sustainability standards;
 - iv. identifying appropriate opportunities to establish a new *reform by doing* practice in WTO decision-making within the existing unused capacity of the Marrakesh Agreement, whereby within an initial limited group of sustainable development topics, decision-making can be made by a majority of WTO Members.
 - v. encouraging the use of plurilateral discussions for new areas;
 - vi. identifying appropriate opportunities to engage in a process of *reform by doing* within the existing unused authority of Article IX(2) of the WTO Agreement, to establish a practice for legislative reversal of dispute

settlement decisions, by adopting through acceptance by a three-fourths majority of WTO Members authoritative interpretations in response to a definitive dispute settlement decision.

Appendix A: Remaking Trade Project Workshops

Our first workshop, held in Talloires, France, in September 2022, centered on aligning the global trade system with climate change action and a just transition to a clean energy future. We discussed proposals for border carbon adjustment mechanisms, carbon clubs, elimination of fossil fuel subsidies, renewable fuel subsidies within trading rules, and the elimination of tariffs on environmental goods and services.

The second workshop, hosted in Villars-sur-Ollon, Switzerland in March 2023, explored how the trade system can promote digital opportunities for sustainable development while mitigating potential environmental impacts. Topics included technology transfer, e-commerce regulation, traceability and certification, and addressing the digital divide.

In collaboration with the Silverado Policy Accelerator, our third workshop in April 2023 in Taormina, Sicily, delved into challenges and opportunities in aligning the global trade system with circular production methods, reduced waste and materials reuse and recycling. Discussions focused on shared definitions for circular economic activities, subsidization of reverse supply chain logistics, and creating a circular trade platform within the WTO.

In May 2023 we held our fourth workshop in Bridgetown, Barbados, where we emphasized the concerns of developing countries in ensuring a sustainable and just global trade system. Prime Minister Mia Mottley of Barbados delivered a keynote address, and discussions centered on finance for the green transition efforts in the Global South – including the Bridgetown Initiative for restructuring the global financial architecture, technology transfer and innovation, carbon markets, subsidies and industrial policy and regional approaches to sustainable trade.

Later that month, in Copenhagen, Denmark, we hosted our fifth workshop on trade and sustainable transport in collaboration with the University of Copenhagen. There, we explored the decarbonization of the transport sector, particularly maritime shipping. Discussions included the role of the International Maritime Organization and carbon

border adjustment mechanisms in creating incentives for transformative change in how goods move across the world.

Our sixth workshop was held once again in Talloires, France, in June 2023. There, we delved into the topic of trade and sustainable agriculture and food systems. The discussion covered a range of challenging aspects of agriculture and food policy, including export bans and food security. Participants included WTO ambassadors, former CEOs of major agri-business firms, and senior officials responsible for agricultural issues.

In June 2023, we held our seventh workshop in Geneva, Switzerland, in collaboration with the UN Commission on Trade and Development (UNCTAD) and the UN Foundation. The workshop, hosted by the Geneva Graduate Institute, focused on the stewardship of ocean resources or "Blue Economy" for a sustainable and resilient future. Representatives from diverse small island developing states (SIDS) nations participated, spanning the Caribbean Basin, Indian Ocean, and Pacific Islands.

A July workshop in Mexico City on Trade and the Social Dimension of Sustainability – our eighth – explored trade's relationship to economic inequality, worker displacement, labor rights, gender equality, the rights of indigenous peoples, and public health cooperation.

Finally, at our ninth workshop, we held a series of face-to-face and virtual sessions on the WTO governance and institutional reform necessary to achieve the goals of this framework spanning June, August, and September 2023.

We also organized a two-part workshop in India on trade's role in promoting the transition in difficult-to-decarbonize sectors including a case study on steel decarbonization in India, and an online webinar on the Just Transition as a precursor to our Barbados Workshop in May.¹⁴¹

¹⁴¹ Full descriptions of each workshop, including summaries of the proceedings and accompanying White Papers, can be found on the Remaking Trade Project [website](#).

Appendix B:

Authors' Note

Having successfully conducted a series of international workshops intended to bring together thought leaders from around the world, as leaders of the Project, we take the opportunity to highlight some important lessons that we hope will assist others in their planning of other global events and Projects.

First, we were gravely disappointed that some participants from developing countries, in particular African countries and India, were unable to secure visas in time to travel to our workshops. We understand that this is not an issue specific to only our Project. We reiterate the importance of participation by all participants at meetings of this nature and call on those responsible to promote immigration policies and procedures that promote timely responses and travel for experts from the Global South to be able to attend meetings at which their contributions are crucial.

Second, we considered it important to conduct almost all of our workshops in person and in locations so that Project participants could focus exclusively on the subject matter for at least two full days. The importance of the subject matter and our desire to build a true *community* of sustainable development and trade activists in our view warranted the effort and expense. While the irony is not lost on us that conducting *sustainability* workshops across the globe necessitated global travel that came at a substantial cost to the environment, we believe – and hope – that the effort was worth it. We applaud the great efforts made by some participants to travel conscientiously and with the least carbon emissions possible, and look forward to a time when the technology will allow for online interactions and decarbonized transport that promote the kind of humanity and camaraderie that this Project aspires to.

Finally, we were humbled throughout our workshops by the massive amount of work that others have already done, and are doing, in the trade and/or sustainability space. This Project is relatively new in this space and we have tried to ensure that our efforts are additive, inclusive and complementary to the work of others. (See [Authors' Preface](#)) We take this opportunity to express our sincerest gratitude to you for your support of this Project as we continue to work together in the trenches towards a more inclusive, fair, diverse – sustainable – world.

Appendix C: Trade-Related SDG Targets



Target 1.a: Ensure significant mobilization of resources from a variety of sources, including through enhanced development cooperation, in order to provide adequate and predictable means for developing countries, in particular least developed countries, to implement programmes and policies to end poverty.



Target 2.b: Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round.



Target 3.b: Support the research and development of vaccines and medicines for the communicable and noncommunicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of developing countries to use to the full the provisions in the Agreement on Trade Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all.



Target 4.b: By 2020, substantially expand globally the number of scholarships available to developing countries, in particular least developed countries, small island developing States and African countries, for enrolment in higher education, including vocational training and information and communications technology, technical, engineering and scientific programmes, in developed countries and other developing countries.

Target 4.c: By 2030, substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially least developed countries and small island developing States.



Target 5.a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

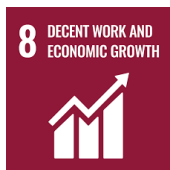


Target 6.a: By 2030, expand international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies.



Target 7.a: By 2030, enhance international cooperation to facilitate access to clean energy research and technology, including renewable energy, energy efficiency and advanced and cleaner fossil-fuel technology, and promote investment in energy infrastructure and clean energy technology.

Target 7.b: By 2030, expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, in particular least developed countries, small island developing States, and land-locked developing countries, in accordance with their respective programmes of support.



Target 8.2: Achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labor-intensive sectors.

Target 8.a: Increase Aid for Trade support for developing countries, in particular least developed countries, including through the Enhanced Integrated Framework for Trade-related Technical Assistance to Least Developed Countries.



Target 9.5: Enhance scientific research, upgrade the technological capabilities of industrial sectors in all countries, in particular developing countries, including, by 2030, encouraging innovation and substantially increasing the number of research and development workers per 1 million people and public and private research and development spending.

Target 9.a: Facilitate sustainable and resilient infrastructure development in developing countries through enhanced financial, technological and

technical support to African countries, least developed countries, landlocked developing countries and small island developing States.

Target 9.b: Support domestic technology development, research and innovation in developing countries, including by ensuring a conducive policy environment for, inter alia, industrial diversification and value addition to commodities.

Target 9.c: Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020.



Target 10.a: Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with World Trade Organization agreements.



Target 11.c: Support least developed countries, including through financial and technical assistance, in building sustainable and resilient buildings utilizing local materials.



Target 12.a: Support developing countries to strengthen their scientific and technological capacity to move towards more sustainable patterns of consumption and production.

Target 12.c: Rationalize inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts, taking fully into account the specific needs and conditions of developing countries and minimizing the possible adverse impacts on their development in a manner that protects the poor and the affected communities.



Target 13.a: Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly \$100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and

fully operationalize the Green Climate Fund through its capitalization as soon as possible.



Target 14.6: By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation.



Target 15.6: Promote fair and equitable sharing of the benefits arising from the utilization of genetic resources and promote appropriate access to such resources, as internationally agreed.



Target 16.7: Ensure responsive, inclusive, participatory and representative decision-making at all levels.

Target 16.8: Broaden and strengthen the participation of developing countries in the institutions of global governance.



Target 17.10: Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda.

Target 17.11: Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020.

Target 17.12: Realize timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access.