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From Stockholm+50 to Bretton Woods+80: Greening Trade Law for Global Climate Governance? ** Part I

Defeat is certain for him who has neglected to take the necessary precautions in time [...] Roald Amundsen (1872–1928)¹

Where do we stand, 50 years past the Stockholm Conference and almost 80 years past Bretton Woods? What is the role of international trade in the contemporary systems design that has emerged from these two historic events in the turn of times? Climate change is a global human and environmental challenge that calls for more coherent action to achieve shared climate goals in times of climate emergency. It is thus argued, that international trade must become more systemically integrated, greener and more sustainable for that matter. The focus lies on the World Trade Organization and its potentially bridge-building function between distinct legal and political fields, which have long been perceived irreconcilable, but which are by their very nature inherently connected.

I. Introduction

In 2022, Stockholm+50 will commemorate the 1972 United Nations Conference on the Human Environment (also known as the Stockholm Conference) and celebrate 50 years of global environmental action. The Stockholm Conference was the first world conference to make the environment a major issue. The Conference adopted the Stockholm Declaration and Action Plan for the Human Environment and

several resolutions. The Stockholm Declaration, which contained 26 principles, placed environmental issues at the fore-

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¹ Norwegian explorer known as being the first person to reach both the North and South Poles.

front of international concerns and marked the start of a dialogue between industrialised and developing countries on the link between economic growth, the pollution of the air, water, and oceans and the well-being of people around the world. A major results of the Stockholm conference was the creation of the United Nations Environment Programme (UNEP).²

In 2024, it will also be 80 years that the 1944 Bretton Woods Conference (formally United Nations Monetary and Financial Conference) was held at Bretton Woods during World War II. The purpose of Bretton Woods was to agree on a system of economic order and international cooperation that would help countries recover from the devastation of the war and foster long-term global growth.³ The result was the creation of the International Monetary Fund and the World Bank at the July 1944 Bretton Woods Conference and eventually in 1947,⁴ the signing of the General Agreement on Tariffs and Trade (GATT) in the expectation that it would soon be replaced by a specialised agency of the United Nations (UN) to be called the International Trade Organization (ITO). Although the ITO never materialised, the GATT proved remarkably successful in liberalising world trade over the next five decades. By the late 1980s there were calls for a stronger multilateral organisation to monitor trade and resolve trade disputes. Following the completion of the Uruguay Round (1986–94) of multilateral trade negotiations, the World Trade Organization (WTO) began operations on 1 January 1995.⁵

The World Trade Organization (WTO) is not the product of just one idea, however, or even one school of thought. It instead represents the confluence of, and sometimes the conflict between, three distinct areas of theory and practice. Law, economics and politics have each inspired and constrained the capacity of countries to work together for the creation and maintenance of a rules-based regime in which members with widely different levels of economic development and asymmetrical political power work together to reduce barriers to trade.⁶

Both Stockholm+50 and Bretton Woods+80 will commemorate major achievements and shortfalls. Unfortunately, so far, the two “processes” that were kick-started with the two respective historic events, have so far not corresponded with each other despite their congruent global significance and potential complementarity. This article intends to bridge this historic and systemic gap by asking whether greening international trade in the anthropocene would not be utmost necessary for an improved human environment and global climate governance?

II. Trading in the Anthropocene

Hardly any living creature has changed planet Earth as permanently as mankind, and hardly any other age has shaped it as much as the Anthropocene. Global trade and consumption have played a major role in this. China is building a new Silk Road, nearly 19,000 ships⁷ pass through the Suez Canal every year, and even in the Corona Year 2020, Europe’s largest commercial port in Rotterdam handled 436.8 million⁸ tons of goods. Globalised trade is booming. Since the invention of the steam engine, steamship and railroad, the seemingly endless increase in demand for goods has resulted in ever finer and longer value chains.⁹ From raw material producers to processing manufacturers, intermediaries, processors, refiners and sellers, there are often many stations through which the raw material passes to the end

product. Moving away from local producers and products to relocations of production abroad and the effective use of economies of scale, almost any product is now available almost anywhere there is a market. Since the 1980s, this has been driven forward by improved information and communication technologies, which made complex production, processing and logistics processes easier to monitor and coordinate.¹⁰ It is not without reason that transportation is one of the fastest growing service sectors of international trade, holding together the unbundling of value chains.¹¹

III. Environmental and climate impacts of trade

However, products “made in the world” also increasingly lead to considerable climate and environmental impacts. Long transport routes and emission-intensive mining and processing methods, as well as environmentally harmful massive resource extraction, lead to the emission of GHG emissions at every link in the value chain in both the upstream and downstream industries. These GHG are largely responsible for extreme global warming that has occurred since the middle of the 20th century due to their accumulation in and destruction of the earth’s atmosphere.¹² For example, the entire fashion value chain generates around 2.1 billion¹³ metric tons of CO₂ emissions per year, toxic and radioactive substances are used in rare earth mining,¹⁴ and in 2018 alone, trade-related maritime shipping was responsible for 1076 metric tons¹⁵ of greenhouse gas emissions. The transportation sector as such was responsible for 23% of total energy-related CO₂ emissions worldwide in 2010.¹⁶ Lastly, at the end of each product’s life cycle is its entry into the circular economy, which is often accompanied by high emissions as well.

- 2 Cf. UNEP, available at <https://www.un.org/en/conferences/environment/stockholm1972> (accessed on 28 February 2022).
- 3 Cf. World Bank, available at <https://www.worldbank.org/en/archive/history/exhibits/Bretton-Woods-and-the-Birth-of-the-World-Bank> (accessed on 28 February 2022).
- 4 Cf. United States of America, Department of State, *Bretton Woods-GATT, 1941-1947*, available at <https://history.state.gov/milestones/1937-1945/bretton-woods> (accessed on 28 February 2022).
- 5 Cf. Anderson, Britannica, *World Trade Organization*, available at <https://www.britannica.com/topic/World-Trade-Organization> (accessed on 28 February 2022).
- 6 Van Grastek, World Trade Organization 2013, *The history and future of the World Trade Organization*, 3.
- 7 Statista, *Suezkanal* available at <https://de.statista.com/statistik/daten/studie/453778/umfrage/suezkanal-anzahl-der-schiffe-zeitreihe/> (accessed on 28 February 2022).
- 8 Port of Rotterdam available at <https://www.portofrotterdam.com/en/our-port/facts-figures-about-the-port> (accessed on 28 February 2022).
- 9 Scherk et al, Austrian Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology 2017, *Global Value Chains – Arbeitsteilung in internationalen Wertschöpfungsketten*, 16.
- 10 Scherk et al, 4.
- 11 World Economic Forum (2016), *Competitive Cities and their Connections to Global Value Chains*, 4.
- 12 IPCC (2015), *Climate Change 2014: Synthesis Report, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* at 4.
- 13 Berg et al, Mc Kinsey & Company 2020, *Fashion on Climate – How the Fashion Industry can urgently act to reduce its Greenhouse Gas Emissions*, 3, available at <https://www.mckinsey.com/~media/mckinsey/industries/retail/our%20insights/fashion%20on%20climate/fashion-on-climate-full-report.pdf> (accessed on 28 February 2022).
- 14 Fraunhofer Lighthouse Project *Critical Rare Earths* <https://www.fraunhofer.de/en/research/lighthouse-projects-fraunhofer-initiatives/fraunhofer-lighthouse-projects/fraunhofer-rare-earths.html> (accessed on 28 February 2022).
- 15 International Maritime Organisation (2021) *Fourth IMO GHG Study 2020 – Full Report*, 1.
- 16 Sims et al, “Transport” In: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, 2014, 603.

To effectively address this problem, global climate governance demands a holistic approach to drive the decarbonisation of every single emission-intensive step along the value chain. The first and second part of the 6th Assessment Report of the United Nations Intergovernmental Panel on Climate Change (IPCC) published in August 2021 and February 2022 demonstrate with impressively precise data that this must happen quickly and that corresponding measures must be taken on a very ambitious scale – a “code red for humanity” in the words of UN Secretary-General António Guterres.¹⁷ Even if it states that some effects of global warming and in particular extreme weather events are already irreversible.¹⁸ The temperature increase to be expected will no doubt affect trade in its production, which then needs to be adapted to these consequences. International trade, currently more of a polluter than a climate protector, will therefore increasingly have to face up to its responsibility to protect the human environment and in the interest of the changing climate significantly reduce emissions. Therefore, within and above existing (legal and political) frameworks of networks and partnerships, the WTO needs to play a more decisive role in future global climate governance.

IV. Global Climate Governance

When this paper speaks of the WTO as part of “climate governance”, the first step is to identify a tangible definition of the term. The broad term can be roughly divided into two categories. Private-societal climate governance and government climate governance. In both cases, what is meant is the regulation, influence and control of all actors to make their actions more climate-friendly and to counteract climate change. In terms of the private sector and society, a further distinction can be made between two broad categories: the corporate side and citizens’ initiatives and NGOs. In business, private climate governance is carried out through voluntary standards and self-commitments, for example with regard to requirements for suppliers along the supply chain. This is important because legal obligations and voluntary commitments shake hands in this area. The OECD Guidelines for Multinational Enterprises, for example, are not legally binding, nor are the sector-specific due diligence guides that follow on from them.¹⁹ Nevertheless, on the one hand, they are part of state governance, and, on the other hand, they create reputational and factual pressure to raise a company’s own internal standards.

Legally *binding* supply chain laws can also have an additional direct influence on private climate governance by providing impetus for companies to *voluntarily* adopt stricter standards. Civic engagement also takes place in consumer behaviour and preferences, NGOs and initiatives. Protests like *Fridays for Future* not only put pressure on legislation. Civil engagement also generates pressure on trade, both on the private economy and on organisations like the WTO. Private and public governance therefore influence each other and cannot be viewed in isolation.

V. Scope: The world trade law side of climate governance

In this paper, special focus is placed on the interconnectedness of climate governance and world trade law. The question arises whether climate governance under international law is compatible with world trade law at all, or whether these two distinct legal regimes merely coexist, are somewhat at odds with each other or completely incompatible. Yet, it is also conceivable that trade and international trade

law can contribute much more to global climate governance with a faster effect due to monetary interests than would be the case outside a direct economic reference.²⁰ What has, however, become more and more apparent is that effective and binding approaches to decarbonising trade should have been in place since yesterday. In light of this, the ultimate question remains whether world trade law can really “green” trade?

1. Dovetailing WTO law and climate protection

The WTO has been instrumental in paving the way for the existence of products “made in the world” and liberal trade policy by removing trade barriers. As an organisation that was created to ultimately contribute to more economic growth and global prosperity, the WTO was not designed as a climate protection organisation.²¹ However, as it is evident today what impact global trade has on the climate, the question arises to what extent the WTO can also flank the UN’s climate governance while global trade law was never meant to promote climate protection.

The mere fact, that trade affects the human environment and its climate must, however, be considered based on the Preamble to the Marrakech Agreement where it is stated that the aim of the agreement is to promote global economic growth “[...] while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment [...]”.²² These concerns must also be taken into account under the annexed agreements of the General Agreement on Tariffs and Trade (GATT) (for goods), the General Agreement on Trade in Services (GATS) and Trade-Related Aspects of Intellectual Property Rights (TRIPS).²³ For example, trade-restrictive measures by a state are permissible under the conditions of Art. XX(b, g) GATT by way of exception. This includes measures adopted by a state to protect human, plant or animal life or health or to preserve exhaustible natural resources. The former exception also exists in the GATS, Art. XIV(b) GATS while Art. 27(2) TRIPS allows exceptions to patentability in this sense:

Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morali-

17 Secretary-General’s statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment (2021) available at <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment> (accessed on 28 February 2022); cf. Ruppel/Dobers, Daily Maverick 2021, “Hesitation price tag: the humanitarian costs of failing to act on the climate crisis while we enter ‘code red’” available at <https://www.dailymaverick.co.za/article/2021-08-18-hesitation-price-tag-the-humanitarian-cost-of-failing-to-act-on-the-climate-crisis-while-we-enter-code-red/> (accessed on 28 February 2022).

18 IPCC (2022) *Climate Change 2022 – Impacts, Adaptation and Vulnerability, Working Group II, Summary for Policymakers* available at https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf (accessed on 2.3.2022).

19 E.g. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict – Affected and High Risk Areas or OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, available at <http://mneguidelines.oecd.org/guidelines/> (accessed on 28 February 2022).

20 More detailed: Ruppel “International trade and sustainable development” in Strydom et al. *International Law*, 2015, 437 (441 f).

21 Ruppel “International trade and sustainable development”, 444.

22 Agreement Establishing the World Trade Organisation (Marrakesh Agreement), preamble.

23 WTO, *The multilateral trading system and climate change: introduction*, available at https://www.wto.org/english/tratop_e/envir_e/climate_intro_e.htm (accessed on 28 February 2022).

ty, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provide that such exclusion is not made merely because the exploitation is prohibited by their law.

2. Current developments within the WTO

While the postponed 12th Ministerial Conference (MC12) of the WTO is expected to take place during June 2022 in Geneva it is promising that a diversity of WTO Members already aim to address more effectively and promote at such occasion dialogue and information sharing on issues where trade, environmental and climate policies intersect, including on circular economy; natural disasters; climate change mitigation and adaptation; fossil fuel subsidies reform; plastic pollution; combatting illegal, unreported and unregulated fishing and ensuring legal and sustainable trade in wildlife; the conservation and sustainable use of biodiversity; sustainable oceans; facilitating access to green technology; sustainable tourism; sustainable agriculture as well as trade in environmental goods and services.²⁴

a) Ministerial Statements

The fact that sustainable development and the protection of the environment are fundamental goals of the WTO is emphasised by ministerial declarations published in December 2021, which advocate that the WTO takes its influence on international environmental protection more seriously and to use trade as an instrument for greater sustainability. The *Statement on Trade and Environmental Sustainability*²⁵ is the result of the *Trade and Environmental Sustainability Structured Discussions (TESSD)* held during the WTO's Trade and Environment Week. The TESSD, which counts 71 WTO members as co-sponsors, aims to address dedicated discussions on trade-related climate measures and policies; promoting and facilitating trade in environmental goods and services; achieving a more resource-efficient circular economy; promoting sustainable supply chains and addressing challenges and opportunities arising from the use of sustainability standards and related measures, in particular for developing members challenges and opportunities for sustainable trade – capacity building and technical assistance (Aid for Trade) environmental effects and trade impacts of relevant subsidies.²⁶ The format of the forum allows for a comprehensive exchange of information on meaningful trade regulations and multidisciplinary approaches to this topic through the involvement of stakeholders and demonstrates how critical the incorporation of sustainability in world trade law actually is,²⁷ also in promoting Multilateral Environmental Agreements (MEAs, see further below).

The aim of the *Statement on Trade and Environmental Sustainability* is to use trade to achieve environmental and climate goals and to promote sustainable production and consumption.²⁸ It is supported by 71 countries, including the US, China, the EU and Japan and the only one of the three declarations to include concrete timelines and actions, such as discussions in the TESSD, where concrete dates for the creation of a work plan are already foreseen.²⁹ The declaration further aims to explore opportunities for sustainable circular economy and supply chains in addition to environmentally friendly goods.³⁰

Secondly, the *Ministerial Declaration on Plastic Pollution and Environmentally Sustainable Plastics Trade*,³¹ which recognises the impact of plastic pollution on the environment, is supported by 67 countries. Compared to the first

statement, the US, for example, are not a supporting member state. It is the result of another round of discussions, the *Informal Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade (IDP)*, which was formed by seven WTO members to facilitate the coordination of measures and the contribution of global trade to fight plastic pollution. This statement calls for the development of effective approaches to resource-efficient and environmentally sustainable plastics trade, the sharing of experience in this regard, technical assistance to developing countries on these issues and the reduction of unnecessary plastic products.³² The fact that this issue is being taken more and more seriously is also reflected by the negotiations recently initiated by the United Nations Environment Assembly (UNEA) on a legally binding global plastics agreement.³³

Lastly, the third declaration on fossil fuel subsidies³⁴ recognises the importance of the WTO in reducing trade distortions created by fossil fuel subsidies. It declares that the elimination of such subsidies would effectively contribute to the achievement of the temperature targets set forth by the Paris Agreement.³⁵ These recent developments demonstrate how sustainability and climate change is increasingly moving into the focus of international trade policy, where trade can be seen as part of the solution rather than the problem.³⁶

b) Committee on Trade and Environment

The Committee on Trade and Environment (CTE), which has been in existence since 1994, is of particular importance in the environmental policy role of the WTO. It provides a forum bringing members together for policy dialogue on trade and environment issues³⁷ and serves as a focal point for information exchange, coordination and cooperation between the WTO and MEAs, including the United Nations

24 WTO, WT/MIN(21)/6, TESSD Ministerial Statement on Trade and Environmental Sustainability (2021), available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN21/6.pdf&Open=True> (accessed on 28 February 2022).

25 WTO, WT/MIN(21)/6, TESSD Ministerial Statement on Trade and Environmental Sustainability (2021), available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN21/6.pdf&Open=True> (accessed on 28 February 2022).

26 Cf. WTO, Participants discuss work plan for new trade and environmental sustainability talks available at https://www.wto.org/english/news_e/news22_e/tessd_07feb22_e.htm (accessed on 28 February 2022).

27 WTO, Trade and environmental sustainability, available at https://www.wto.org/english/tratop_e/tessd_e/tessd_e.htm (accessed on 28 February 2022).

28 WTO, WT/MIN(21)/6.

29 WTO, WT/MIN(21)/6, Annex.

30 WTO, WT/MIN(21)/6.

31 WTO, WT/MIN(21)/8, MC12 Ministerial Statement on Plastic Pollution and environmentally sustainable Plastics Trade (2021) available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN21/8.pdf&Open=True> (accessed on 28 February 2022).

32 WTO, WT/MIN(21)/8, MC12 Ministerial Statement on Plastic Pollution and environmentally sustainable Plastics Trade (2021).

33 UNEP, 2022, available at <https://www.unep.org/news-and-stories/press-release/historic-day-campaign-beat-plastic-pollution-nations-commit-develop> (accessed on 2.3.2022).

34 WTO, JOB/GC/264/Rev. 3, Proposed Fossil Fuel Subsidies Ministerial Statement (2021) available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/GC/264R3.pdf&Open=True> (accessed on 28 February 2022).

35 WTO, JOB/GC/264/Rev. 3, Proposed Fossil Fuel Subsidies Ministerial Statement 2021.

36 Francis, Borderlex, Interview with Jean-Marie Paugam 2022 available at <https://borderlex.net/2021/10/05/wtos-jean-marie-paugam-trade-is-part-of-the-environmental-solution/> (accessed on 28 February 2022).

37 Ruppel, Journal for Soil Security, Article 100038, 2022 "Soil Protection and Legal Aspects of International Trade in Agriculture in Times of Climate Change: The WTO Dimension" 1 (7).

Framework Convention on Climate Change (UNFCCC).³⁸ The CTE examines the effects of environment-related measures on, for example, market access or the TRIPS Agreement,³⁹ while discussing effects of environmentally protective taxes and technical regulations such as labels or standards on trade. The CTE monitors the relationship between trade law and the MEAs,⁴⁰ which expanded mandate was already agreed under the Doha Development Agenda (DDA).⁴¹ Currently, the European Green Deal including the Carbon Border Adjustment Mechanism (CBAM) and the Agreement on Climate Change, Trade and Sustainability (ACCTS), which recently started negotiations, are being discussed in the CTE.⁴² In this respect, the CTE can be seen as playing a diplomatic role in clearing up ambiguities between members and bringing trade, environment and climate protection more closely together.

c) Multilateral Environmental Agreements

The fact that trade and the environment are intrinsically interlinked is demonstrated by numerous MEAs. Many of these agreements have a direct impact on trade, for example by prohibiting trade in certain goods or imposing environmental requirements on goods. This can be done through import or export restrictions, certification and notification systems, or control of subsidies. Here, too, the question arises to what extent world trade law allows this contribution to greener trade. The DDA established the basic principle of mutual supportiveness, according to which trade and the environment should promote each other synergistically.⁴³ For this purpose, the MEA secretariats and the CTE are in close exchange with each other.⁴⁴ In this way, possible conflicts with WTO law, in particular with the prohibition of discrimination or the prohibition of quantitative restrictions, can be balanced out. At the legal collision level, it should be noted that sectoral tensions, such as between environmental/climate law and economic law, can be resolved in two ways. On the one hand, through practical concordance, as described here by the mutually reinforcing effect. On the other hand, the separation of the areas of protection of both legal regimes is in principle an effective means of avoiding collisions.⁴⁵ The example of chemicals law and patent protection illustrates this: The latter protects exploitation by *excluding* third parties from it but does *not guarantee* it.⁴⁶ The exploitation itself must comply with other legal regimes, such as chemicals law.

3. Opportunities for trade and trade law to contribute to climate protection

Can trade and the WTO really be part of the solution to climate change?⁴⁷ The extent to which this is the case can be shown by different approaches to environmental law that pursue the integration of climate and environmental protection into world trade law. First, a WTO climate waiver to simplify the promotion of climate friendly goods. Second, there are two initiatives which, as multilateral agreements, are supposed to be the first of their kind to specifically link climate or environmental protection and trade. These are, first, the Environmental Goods Agreement (EGA) negotiated under the WTO and, second, the Agreement on Climate Change, Trade and Sustainability (ACCTS) initiated outside the WTO. Lastly, free trade itself offers opportunities to contribute to a greener economy.

a) Climate waiver

One option to resolve the undoubted tensions between free trade and climate protection are so-called climate-waivers.

Legally as an exceptional measure in the sense of Art. IX:3 WTO Agreement, they have great potential to quickly make trade greener. A waiver would mean that states could take advantage of the possibility of environmentally protective trade measures that would be incompatible with WTO rules without such waiver.⁴⁸ This would have the advantage that the WTO rules could remain untouched and would not have to be revised.⁴⁹ It should be noted that according to Art. IX:4, the waiver could be designed for a maximum of one year, whereby the Ministerial Conference can decide on an extension and thus a revision. The acute challenges of climate change could constitute exceptional circumstances within the meaning of Art. IX:3. The aim would be to make measures that discriminate against goods on the basis of their greenhouse gas footprint possible and thus promote carbon pricing.⁵⁰ Taxes on carbon could be understood as border tax adjustments in the derogation. At best, the measures should meet the definition of a climate measure to prevent disguised trade restrictions.⁵¹ Moreover, such waivers should not isolate developing countries from global trade by making the “good” discrimination work to their disadvantage.⁵² From a practical point of view, an agreement on such waivers seems rather difficult regarding the few far-reaching waivers that exist.⁵³

b) Environmental Goods Agreement

In 2014, 18 WTO members, consisting of 17 countries and the EU, started negotiations for an EGA.⁵⁴ This is intended to abolish tariffs for certain environmentally relevant prod-

38 Hoffmann, GTI “WTO: Umweltschutz im internationalen Handel” available at <https://www.gtai.de/gtai-de/trade/zoll/zollbericht/wto/wto-umweltschutz-im-internationalen-handel-560898> (accessed on 28 February 2022).

39 WTO, *Items on the CTE’s Work Programme*, available at https://www.wto.org/english/tratop_e/envir_e/cte00_e.htm (accessed on 28 February 2022).

40 Ruppel “International trade and sustainable development”, 451.

41 Doha WTO Ministerial, Ministerial Declaration WT/MIN(01)/DEC/1 (11-14-2001) Para 31 ff. available at https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#tradeenvironment (accessed on 28 February 2022).

42 IISD, *WTO Committee on Trade and Environment Discusses Efforts to Address Climate Change, Improve Sustainability*, available at <https://sdg.iisd.org/news/wto-committee-on-trade-and-environment-discusses-efforts-to-address-climate-change-improve-sustainability/> (accessed on 28 February 2022).

43 Tamiotti et al, WTO, UNEP “Trade and Climate Change – WTO-UNEP Report” 2009, 82, available at https://www.wto.org/english/res_e/booksp_e/trade_climate_change_e.pdf (accessed 28 February 2022).

44 WTO, *The Doha mandate on multilateral environmental agreements (MEAs)*, available at https://www.wto.org/english/tratop_e/envir_e/envir_neg_me_a_e.htm (accessed on 28 February 2022).

45 Winter, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 2012 “Zur Architektur globaler Governance des Klimaschutzes” 103 (126).

46 Example according to: Winter, 126.

47 WTO, *Keynote Address by WTO Director-General Ngozi Okonjo-Iweala* (2021) available at https://www.wto.org/english/news_e/spno_e/spno20_e.htm (accessed on 28 February 2022).

48 Bacchus, Centre for International Governance Innovation, CIGI Papers No. 24 2018 “The Content of a WTO Climate Waiver”, 3, available at <https://www.cigionline.org/static/documents/documents/Paper%20no.204web.pdf> (accessed on 28 February 2022).

49 Bacchus, 3.

50 Bacchus, 1.

51 Bacchus, 7.

52 Häberli, FAO, 2018 “Potential conflicts between agricultural trade rules and climate change treaty commitments” 16, available at <https://www.fao.org/3/CA2345EN/ca2345en.pdf> (accessed on 28 February 2022).

53 Häberli, 32.

54 WTO, *Environmental Goods Agreement (EGA)*, available at https://www.wto.org/english/tratop_e/envir_e/ega_e.htm (accessed on 28 February 2022).

ucts so that the environment, trade and development benefit as it was set as the goal of the Doha Round.⁵⁵ This should make them more affordable and increase innovation through more competition.⁵⁶ Environmentally relevant products should include key technologies that are useful for achieving the climate goals of the countries and for mitigating GHG emissions.⁵⁷ These include, for example, goods such as solar panels and wind turbines that serve to generate renewable energy, those that improve energy efficiency, and those that make the circular economy more climate-friendly.⁵⁸ The agreement is to be made legally binding and the results after the conclusion of the negotiations, in particular the negotiated economic benefits, are to be shared by all WTO members.⁵⁹ However, since the last round of negotiations in 2016, the EGA appears to have fallen asleep, and negotiations have not continued since then. Currently, the continuation is also not officially pending. The possible failure of the EGA could be due to the planned binding nature of the agreement, as well as the conflicting interests of the many negotiating countries.⁶⁰ The countries are currently missing an opportunity to push the green economy considerably through trade measures. Such measures can also be adopted on a smaller scale, but the effect would be much more effective with an agreement that applies to all WTO member states.

c) Agreement on Climate Change, Trade and Sustainability

The initiative for the ACCTS, a new MEA, for example, shows that green trade is becoming more widely recognised by countries and holds opportunities to generate economic growth in an ecological way. This would be the first trade-related agreement to focus exclusively on climate change and sustainable development. The progressive initiative was launched by five rather small states that are not major GHG emitters.⁶¹ However, should additional and large countries with higher GHG emissions join the negotiations, the agree-

ment would represent a major step towards greener, decarbonised trade.⁶² Among other things, the agreement shall include binding rules to eliminate fossil fuel subsidies and develop guidelines for eco-labelling processes.⁶³ In addition, trade barriers regarding trade in environmental goods and services are to be abolished at the same time, which would also be a novelty.⁶⁴

55 WTO, *Activities of the WTO and the challenge of climate change*, https://www.wto.org/english/tratop_e/envir_e/climate_challenge_e.htm#nego (accessed on 28 February 2022).

56 WTO, *Activities of the WTO and the challenge of climate change*.

57 WTO, *Activities of the WTO and the challenge of climate change*.

58 Other product examples: office of the United States Trade Representative, *Environmental Goods Agreement* <https://ustr.gov/trade-agreements/other-initiatives/environmental-goods-agreement> (accessed on 28 February 2022).

59 Hoffmann.

60 Hoffmann; cf. Zengerling, *Wissenschaftlicher Beirat der Deutschen Bundesregierung Globale Umweltveränderung "Stärkung von Klimaschutz und Entwicklung durch internationales Handelsrecht" (2020)*, available at https://www.wbgu.de/fileadmin/user_upload/wbgu/publikationen/hauptgutachten/hg2020/pdf/Expertise_Zengerling.pdf, 6; Industrie- und Handelskammer Nordschwarzwald *Schwierige Diskussion zum Umweltgüterabkommen* <https://www.nordschwarzwald.ihk24.de/innovation/umweltschutz-umwelt-akademie/umweltschutz/news-umweltschutz/wto-umweltgueterabkommen-2016-3516740> (accessed on 28 February 2022).

61 Initial grouping of countries to negotiate ACCTS: New Zealand, Costa Rica, Fiji, Iceland, Norway, Switzerland <https://www.mfat.govt.nz/en/trade/free-trade-agreements/trade-and-climate/agreement-on-climate-change-trade-and-sustainability-accts-negotiations/#bookmark2> (accessed on 28 February 2022).

62 Cf. Zengerling, "Stärkung von Klimaschutz und Entwicklung durch internationales Handelsrecht", 14.

63 van Asselt (2019) *Small Countries Punching Above their Weight: The New Initiative for an Agreement on Climate Change, Trade and Sustainability (ACCTS)*, International Institute for Sustainable Development available at <https://sdg.iisd.org/commentary/guest-articles/small-countries-punching-above-their-weight-the-new-initiative-for-an-agreement-on-climate-change-trade-and-sustainability-accts/> (accessed on 28 February 2022).

64 van Asselt (2019) *Small Countries Punching Above their Weight: The New Initiative for an Agreement on Climate Change, Trade and Sustainability (ACCTS)*.