

Beiträge

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

4. Additional considerations

More generally, free trade promoted by world trade law can also contribute to greater climate protection. Uncomplicated market access promotes innovation and can thus lead to technical spillover effects. For example, the availability of energy-saving products can be made more global, thus enabling the widespread use of efficient technologies.¹ However, it is not enough to trade the relevant goods and know-how; technologies must also be transferred to enable independent use in developing countries. A distribution based purely on market mechanisms and thus financial incentives will thus occur through trade, but hardly to a sufficient extent.²

There are great opportunities here, especially in the energy market. Industrialised countries in particular could transfer technologies to developing countries, so that the ultimate goal is for trade in renewable energy to flourish from countries where it is available in large quantities to those that need energy.³ In this way, the potential of renewable energies would be better exploited, and trade could promote the replacement of fossil energies.⁴ In fact, the 2022 Ukraine conflict also deepened the discussion on “*how the global addiction to fossil fuels is placing energy security, climate action and the entire global economy at the mercy of geopolitics.*”⁵ As the EU and Russia reorientate their energy trade patterns to break their mutual dependency, the issue of trade in energy covered by the WTO may need to adjust to a future landscape that needs to increasingly address the question of energy security, where gaps and interests of energy deficit and energy surplus must be balanced.

Furthermore, free trade also contributes to simplifying adaptation. Especially with regard to food security, which threatens to become increasingly critical in the future, open market access is important in order to be able to guarantee supplies.⁶ But: international trade, while essential for food security⁷ for instance, also creates vulnerabilities through supply disruptions, growing unilateralism and competition especially over agricultural resources that can be both a cause and a consequence of geopolitical rivalry.⁸ Agricultural trade can play a role in responding and adapting to climate change, including by contributing to market stabilisation and by reallocating food from surplus to deficit regions.⁹

Agricultural commodities trade is subject to drastic changes, reflecting the uneven and disproportionate impact of climate change on agricultural sectors across the globe. With the ongoing conflict in Ukraine, we see an alarming example on how food availability can easily be threatened

in a trade system that encourages import dependence and export-oriented agriculture, but cannot require countries to export food, which could be detrimental to countries that depend on imported food.

Whereas the UNFCCC does not explicitly provide for specific trade measures, the parties to the Paris Agreement explicitly recognise the fundamental priority of safeguarding food security and ending hunger, and the vulnerabilities of food production systems to the adverse impacts of climate change, while Art. 2(1)(b) of the Paris Agreement provides for

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1 Cf. WTO, *The impact of trade opening on climate change* https://www.wto.org/english/tratop_e/envir_e/climate_impact_e.htm (accessed on 28 February 2022).

2 Even though imports and international economic relations have been shown to lead to technology transfer and learning effects and to reduce costs and efforts for innovations in other countries, cf. Tamiotti et al at 61 f.

3 Leal-Arcas/Morelli, *Georgetown Environmental Law Review* 2018 “The Resilience of the Paris Agreement: Negotiating and Implementing the Climate Regime” 41.

4 Leal-Arcas/Morelli, 41.

5 Cf. <https://news.un.org/en/story/2022/03/1113882> (accessed on 15 March 2022).

6 Tamiotti et al, 62; more detailed on the impact of climate change and the blessing of trade barriers through world trade law on agribusiness and food security: Smith/Glauber *Agricultural Economics* 2020 Vol. 51 (1) “Trade, policy and food security” 159 (165 f).

7 More detailed regarding the relationship between food security and global climate governance, Ruppel (2021) *International Journal of Environmental Policy and Law* Vol. 51(1-2) “Soil Protection and the Right to Food for a Better Common Future” 57 (59 f).

8 Zhou et al *Insights on Peace and Security*, No. 11, Stockholm International Peace Research Institute (SIPRI) 2020 “The Geopolitics of Food Security: Barriers to the Sustainable Development Goal of Zero Hunger”, 1.

9 Hepburn et al, *International Institute for Sustainable Development* 2021 “How Could Trade Policy Better Address Food System Shocks?”, 23, available at <https://www.iisd.org/system/files/2021-04/trade-policy-address-food-system-shocks-en.pdf> (accessed on 28 February 2022).

[i]ncreasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production [...].

Where sufficient space for policy discussions needs to be pursued at the intersection of the WTO and the Paris Agreement, we need to identify transformative policies for climate change adaptation and mitigation to make agriculture meet contemporary challenges.¹⁰ How can the WTO trading system help with the implementation of the Paris Climate Agreement, mitigate climate change and contribute to food security? The WTO has tremendous potential to contribute to decarbonisation and, relatedly, has significant potential to help mitigate climate change. This hypothesis raises the question: How can progressive trade liberalisation be reconciled with the protection of non-economic interests where the trading system can contribute to mitigating climate change, shifting from trade as a major cause of environmental harm to trade as a tool for environmental protection? And what does this mean for the promotion of food security in the context of climate change, which is likely to affect agricultural production more and more across various sectors?¹¹ We need to find effective answers to these questions and in the words of UN Secretary-General António Guterres “*we must do everything possible to avert a hurricane of hunger and a meltdown of the global food system.*”¹²

The legal framework of the WTO also promotes contributions to climate protection through the dismantling of trade barriers alone, but it must be politically adjusted in such a way that the possible effects are not prevented by purely monetary interests. At the same time, this potential therefore entails the risk of conflicting goals. These can be counteracted in the globalised world and in the asymmetric enforcement potential of law by including sustainability clauses in agreements by states that envisage more progressive climate protection measures.¹³ This can help ensuring that the outsourced economy does not take on exploitative dimensions with less stringent regulation.¹⁴

5. WTO and carbon border tax

As a national measure, the carbon border tax does not fall directly under the auspices of global climate governance, but it is nevertheless a direct result of the common climate goals and is intended to contribute to the mitigation of emissions as a measure under trade law. Behind the mechanism is the goal of pricing the carbon emissions inherent in a product. On the level of world trade law, it is questionable to what extent such taxes are compatible with WTO law. Due to the detailed nature of tax and customs issues, the following is merely an overview of possible collisions with the GATT and the compatibility with its principles.

Carbon border taxes could have a negative impact on free trade by being misused as a protectionist measure.¹⁵ This could fuel trade conflicts and disrupt global value chains. In principle, it should be noted that the GATT, pursuant to Art. II:1(a) does not permit the exceeding of fixed tariff rates, other forms of charges on goods when crossing borders violate Art. II:1(b) also violate the GATT. However, anti-dumping duties do allow additional burdens at the

border, provided “dumping” as defined by the GATT, i. e., the difference in price of a good between the exporting country and the export price.

The fact that production costs are cheaper in one country than they are in a country with corresponding measures due to the lack of environmental measures taken is therefore not to be assessed as dumping.¹⁶ Accordingly, carbon taxes cannot be regarded as a permitted restriction on trade under Art. 6:1(a) GATT. Nor are carbon border taxes permitted under GATT rules as countervailing duties based on subsidies, cf. Art. VI:3 GATT. This would require the exporting country to forego revenue, which is not the case for climate protection measures that simply do not exist in the exporting country.¹⁷ Climate protection *tariffs* are not compatible with world trade law. So-called *carbon border tax adjustments* are therefore under discussion as a form of trade-related environmental measures (TREM). In this case, CO₂ emissions are priced using emissions certificates. An importer must either present these at the border in accordance with the emissions of his/her goods or pay an amount corresponding to the emission certificates that would have been necessary for domestic production.¹⁸ Thus, domestically produced goods should not be subject to heavier burdens than foreign imported goods.¹⁹ Under WTO law, this border adjustment would be possible under GATT, Art. II:2(a) in connection with Art. III:2.²⁰

While the border adjustment neither restricts imports nor exports of products, nor leads to quantitative restrictions, there is no violation of Art. XI GATT and the prohibition of non-tariff trade barriers.²¹ The carbon adjustment can also be designed in accordance with the prohibition of discrimination (most-favoured nation principle and national treatment) for which certain adjusting screws must be turned. It should be noted that the EU, for example, plans to use Carbon Border Adjustments (CBAs) based on the manufacturing process of a product. This means that the production costs will be higher due to the certificates to be acquired and the associated border adjustment. The following therefore deals with measures based on the environ-

10 Cf. with further references, Ruppel International Journal of Environmental Policy and Law 2021 Vol. 51(1-2) “Soil Protection and the Right to Food for a Better Common Future”, 57 f.

11 Ruppel “Soil Protection and the Right to Food for a Better Common Future”, 57 f.

12 Cf. <https://news.un.org/en/story/2022/03/1113882> (accessed on 15 March 2022).

13 Cf. Winter, 139 f. using the example of the EU Biomass Directive 2009/28/EC.

14 Winter, 139 f.

15 Oharenko, IISD 2021 “An EU Carbon Border Adjustment mechanism: Can it make Global Trade Greener While Respecting WTO Rules?” available at <https://sdg.iisd.org/commentary/guest-articles/an-eu-carbon-border-adjustment-mechanism-can-it-make-global-trade-greener-while-respecting-wto-rules/> (accessed on 28 February 2022).

16 Merkel ZUR 2020, 658 (660) “Rechtliche Fragen einer Carbon Border Tax – Überlegungen zur Umsetzbarkeit im Lichte des Welthandels“.

17 Merkel, 660.

18 Merkel, 660.

19 Volmer, Forum Wirtschaftsrecht Band 8, Institut für Wirtschaftsrecht Universität Kassel 2011 “Border Tax Adjustments: Konfliktpotential zwischen Umweltschutz und Welthandelsrecht?” available at <https://www.uni-kassel.de/upress/online/frei/978-3-86219-120-8.voll-text.frei.pdf> (accessed 28 February 2022), 33.

20 Dröge et al, Stiftung Wissenschaft und Politik 2018 “Mobilising Trade Policy for Climate Action under the Paris Agreement”, available at https://www.swp-berlin.org/publications/products/research_papers/2018RP01_dge_et al.pdf (accessed on 28 February 2022).

21 Volmer, 34.

mentally harmful *production* and not on the environmentally harmful *product* itself, although CBAs are in principle worth discussing for both categories.²²

In order to ensure equal national treatment, there is the “*classic*” problem of assessing like-products under world trade law. Since this does not exclusively concern CBAs, it will only be addressed in the context of the specific issues. As regards the general assessment of *likeness*, it should only be said that this is basically based on nature, properties, quality, consumer preferences and use options, and that environmental risks *can* play a role in this assessment.²³ It remains questionable for CBAs whether the environmental compatibility of manufacturing registers can have an influence on the likeness of the end product. However, according to US-Shrimp²⁴ and US-Restrictions on Imports of Tuna,²⁵ a large influence of manufacturing processes on end-product likeness tends to be rejected. This is also supported by the fact that border tax equalisation is supposed to have a competition-preserving effect, which would not have to be an objective in the case of dissimilarity between environmentally friendly and environmentally harmful products.²⁶ Finally, it should be noted that the development of consumer preference as a criterion of similarity must be further observed. People’s growing awareness of products manufactured in a climate- and environmentally friendly manner could lead to this possibly being given greater weight in the assessment of likeness in the future.²⁷

Far more interesting in regards of national treatment is that taxes at the borders must correspond to the actual carbon footprint. The functioning of the mechanism depends on this technical issue. To be able to determine this as uniformly as possible globally, the carbon footprint is determined based on a benchmark. The so-called Best Available Technology (BAT) benchmark refers to the most resource-efficient production technology and the resulting emissions.²⁸ Although actual individual emissions are not calculated, the same emissions measurement applies to every importer.²⁹ For producers disadvantaged in this way, the possibility of individual emissions verification could serve as compensation in order to be able to price less emissions-intensive imports accordingly. In this case, only the administrative implementation of the carbon border adjustment would be costly. Here, it must be clarified which countries are to be included in the mechanism, how a uniform calculation can be made, and how BAT-benchmarks can be developed for as many production sectors as possible.

Violation of the Most-Favoured-Nation (MFN) Principle must also be avoided. This means that no distinction may be made according to whether another state has implemented certain environmental measures, as this would constitute a discriminatory *origin linkage*.³⁰ The starting point must always be the compensation of product-related costs that would be incurred *domestically* in terms of emissions offsetting. A uniform BAT-benchmark process also serves this purpose. In addition, it would have to be ensured under tax law that no double taxation occurs. Pricing the carbon footprint is thus possible in the form of a CBA under world trade law, provided that the requirements outlined above are met.

6. WTO and labelling

Labelling is another governance approach that can contribute to climate protection by informing consumers about certain characteristics of a product. A distinction should be made between governmental labels, labels of professional institutions that are linked to a sector of the economy and companies’ own marketing labels. There is a particularly large number of agricultural organic labels that provide information on pesticide use and cultivation methods, as well as those that declare sustainable timber management. In addition to these environmental labels, some countries are also considering the introduction of climate or CO² labels that would indicate the CO² footprint of a product. Initiatives exist in Europe and North America, for example the “Carbonfund” in the US or the originally British “Carbon Trust”.

Here too, however, there are legal frictions in relation to free trade, as shown for example by the US-Shrimp³¹ or US-Restrictions on Imports of Tuna³² cases. Eco-labelling can act as a protectionist measure and disadvantage weaker economic actors, especially if a comprehensive life cycle analysis of the product is the basis for certification.³³ Accordingly, they are only compatible with world trade law if they are voluntary, market-based and transparent and include all producers along the value chain.³⁴ Labels can also constitute technical barriers to trade and are thus covered by the Agreement on Technical Barriers on Trade (TBT) in addition to the CET and discussed by its committee. The agreement provides for standards for mandatory and non-mandatory environmental labelling; for voluntary environmental labelling there is the Code of Good Practice for the Preparation, Adoption and Application of Standards, which serves as a guideline for the design of labels in conformity with global trade law and is closely linked to the ISO/IEC standardisation institutes.³⁵ However, the tension with the TBT could be resolved, for example, by increasingly including labels in the agreement and thus no longer being considered a trade barrier in its sense.³⁶

22 Volmer, 36 f.

23 WTO Note by the Secretariat (1994) TRE/W/20, *Border Tax Adjustment*, para. 17; since *Japan – Taxes on Alcoholic Beverages*, Appellate Body Report WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R adopted on 11-01-2006, 21, the customs classification is also a criterion.

24 WT/DS58/23 *United States – Import Prohibition of Certain Shrimp and Shrimp Products* adopted on 11-21-2001 available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/58-23.pdf&Open=True> (accessed on 28 February 2022).

25 Panel Report circulated on 09-03-1991, not adopted, available at https://www.wto.org/english/tratop_e/envir_e/edis04_e.htm (accessed on 28 February 2022).

26 Volmer, 57.

27 Volmer, 56.

28 Sakai/Barrett, *Energy Policy* 2016, “Border carbon adjustments: Addressing emissions embodied in trade” 102, (106).

29 More detailed: Volmer, 73 f.

30 Volmer, 80.

31 WT/DS58/23 *United States – Import Prohibition of Certain Shrimp and Shrimp Products* adopted on 11-21-2001 available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/58-23.pdf&Open=True> (accessed on 28 February 2022).

32 Panel Report circulated on 09-03-1991, not adopted, available at https://www.wto.org/english/tratop_e/envir_e/edis04_e.htm (accessed on 28 February 2022).

33 WTO, *Labelling* available at https://www.wto.org/english/tratop_e/envir_e/labelling_e.htm (accessed on 28 February 2022).

34 WTO, *Labelling*.

35 Annex 3 Para C. Agreement on Technical Barriers on Trade.

36 Zengerling, 6.

VI. Better trade for better globalisation?

In a recent statement, WTO Director General Okonjo-Iweala noted “*sustainable development was a goal written into the WTO’s founding agreements in 1994*”, and that exciting initiatives are underway at the WTO to respond to sustainability challenges such as plastics pollution and climate change. She sees a “*better answer to the real problems in better trade – in a better globalisation, or, as she terms it, a re-globalization – one that brings marginalized people and countries into the economic mainstream, while helping us decouple human well-being from environmental impact.*” She advocates for “*different ways trade can contribute to curbing climate change, while ensuring a just transition for the countries that did the least to contribute to the problem*”.³⁷

It is in light of the aforementioned discussions and the statement of the DG worth to highlight the pressure that global trade law could exert on a more climate-friendly, innovative economy. But how can this gap be bridged? In different contexts, scholars have identified anticipation, reflexivity, inclusion and responsiveness as important characteristics of increased responsivity.³⁸ While anticipation involves systematic thinking aimed at increasing resilience, reflexivity, at the level of institutional practice, means holding a mirror up to one’s own activities, commitments and assumptions, being aware of the limits of knowledge and being mindful that a particular framing of an issue may not be universally held. Inclusion could mean taking the time to connect different stakeholders (UN and WTO) as to lay bare the different systemic impacts on different communities with a responsiveness to change shape or direction in changing circumstances. The precautionary principle should connect to these four dimensions giving direction to the future of international trade and global climate governance.

It has been stated, that “*if the multilateral trading system had to be reduced to a single sentence, it might be this: it receives its inspiration from economists and is shaped primarily by lawyers, but it must operate within the limits that the politicians set*”.³⁹ What is, however, missing here are both the human and natural elements that should guide the aforementioned inspiration.

While the trading system is undergoing a serious stress test, its future shape will be determined by the shifting definition of what trade means. This is spurred by disagreements over competition policy, international investment, currencies and international trade, trade finance, labour, climate change and trade, corruption and integrity, aid for trade, and the coherence of international economic rules.⁴⁰ Not only can the WTO sometimes come into conflict with UN bodies that deal with issues related to trade.⁴¹ The failure to conclude the first multilateral round of the DDA already had serious consequences, while the global economy has changed substantially in recent decades. The trading system needs to be made fit for the future and the current crisis offers such opportunity. Hopefully it will become a step in a transition towards a multilateral trade regime that is more adapted to the world of today and particularly the most pressing problems of tomorrow.⁴²

By recognising the importance of multilateralism in tackling the Earth’s triple planetary crisis – climate, nature, and pollution – there is a need to link international trade to the Sustainable Development Goals (SDGs), including the Paris Agreement on climate change, the post-2020 global Biodiversity Framework, and encourage the adoption of green post-COVID-19 recovery plans.⁴³

There are already numerous promising initiatives in this regard, all of which aim to promote trade in environmentally friendly goods and thus innovation in this area. This can only happen with preferential treatment for these goods. A climate waiver that temporarily relieves WTO members from their legal obligations under the WTO agreements when pursuing climate action would certainly be the most comprehensive approach with the greatest effect, as it *de facto* allows discrimination against goods that have a high GHG footprint. Of course, this would also be accompanied by practical regulatory difficulties, especially because the same economic pressure should not be exerted on developing countries as on industrialised countries. However, this should not be the reason for not advancing innovative solutions in world trade law.

In the context of the emissions-intensive cement industry, for example, the 10 largest exporting countries include only one Lower Middle-Income Country (Vietnam) and no Least-Developed Country (LDC) or Low-Income Country.⁴⁴ Climate waivers would deprive world trade law of its function as a bulwark of free trade because of the exemption rule, which must be revised again and again. The negotiations on the EGA should be resumed as a matter of urgency because there is already a negotiating forum for this and thus at least a willingness to reach consensus. In this respect, the question of whether international climate law can make trade greener can be answered with a yes, it can certainly contribute to this. And although world trade law is in a certain tension with environmental and climate protection, it is not the decisive factor why the latter is implemented too slowly. Climate protection is economically profitable and by no means an obstacle to trade per se. However, international law can only be as good as the political will that creates it.

VII. Conclusion

The global trading system established as a response to Bretton Woods, and more so with the establishment of the

37 Cf. 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).

38 Stilgoe et al. Research Policy 2013 Vol. 42 No. 9 “Developing a framework for responsible innovation”, 1568 (1570).

39 Van Grassek (2013) *The history and future of the World Trade Organization*, WTO, 21.

40 Van Grassek, 555.

41 Van Grassek, 158.

42 Revitalizing Multilateral Governance at the World Trade Organization, Report of the High-Level Board of Experts on the Future of Global Trade Governance, Bertelsmann-Stiftung, available at https://www.wto.org/english/news_e/news18_e/bertelsmann_rpt_e.pdf (accessed on 28 February 2022).

43 Ruppel, “Soil Protection and the Right to Food for a Better Common Future”, 57.

44 Cf. Weltexporte (2020) *Top 10 Länder: Export von Zement* available at <https://www.weltexporte.de/zement-export/> (accessed on 28 February 2022); OECD DAC list of ODA Recipients (2020).

WTO, the international community envisioned a single set of global trade rules enforced by an effective multilateral dispute settlement system. While this has never fully materialised, the question whether the rules of the WTO from the 1990s are still compatible with the reality of the 21st century remains open.⁴⁵

WTO members should increase efforts through the international architecture to develop green trade agreements that facilitate and incentivise increased trade in commodities produced without conversion of natural habitats.⁴⁶ Yet, WTO reform to better accommodate climate change measures is largely still work in progress. Climate governance is largely still relegated to diplomacy, which depends on political agendas and thus elections. This inherent weakness of the system is reflected in vague formulations, such as those made in the current ministerial statements. Furthermore, the promising instrument of emissions trading, is far too little in the foreground of international climate governance negotiations and the WTO agenda. Globally accepted mechanisms would help to make the price tag given to GHG emissions in some places more internationally significant and promote savings projects worldwide.⁴⁷

The needed reform should entail legal changes, namely amending the WTO agreements to accommodate climate change measures; introducing the climate waiver; adopting an authoritative interpretation clarifying the scope of WTO rules in relation to climate policies; and introducing a time-limited peace clause pursuant to which WTO members will not challenge the climate policies of other members. A willingness to address this has been signalled by some WTO member states with the ministerial declarations on sustainability, plastic pollution, and fossil fuels. It is desirable and not improbable that the content of these declarations will continue to set the ball rolling for trade sustainability at the international level and herald the long-awaited hot phase for this. However, to really create a new dynamic in world trade law, it would be essential to specify the contents of the ministerial declarations and back them up with concrete timetables and measures.

Large emerging economies such as India or South Africa must be brought on board to ensure the effectiveness of the possible measures on the one hand and free world trade on a global and not fragmentary basis on the other. India had made it known in connection with the ministerial declarations that environmental protection must not become a pretext for enforcing illicit trade barriers and that the WTO had no mandate for international environmental policy.⁴⁸

COVID-19 raised the awareness levels of policymakers to ways in which global governance systems may be vulnerable to sudden shocks.⁴⁹ This offers a glimmer of hope in terms of more ambitious implementation of international environmental policy and a willingness on the part of the global community to reach consensus. In the interest of global climate governance and for the sake of the human environment, the challenge will be to bridge the gap where measures to protect the environment, or such claiming to implement the Paris mitigation commitments collide with present trade rules. Sustainable and green trade must be of common concern for humankind and

shape political priorities.⁵⁰ This in turn will require more commitment to overcome substantial barriers at various institutional (and conceptual) levels as well as adequate and corresponding regulatory frameworks.⁵¹ The absence of such commitment could reinforce some of the bottlenecks that delay the achievement of a wide range of SDGs, including SDG 13 on climate change. And while we must bring trade and environmental policies closer together, reducing barriers to trade in goods and services can help to make production and consumption greener and more sustainable.⁵² Ultimately, trade is of course only one of the solutions.

In the midst of the COVID-19 pandemic we – among other things no doubt – started to ask ourselves more seriously, what will happen when the pandemic is overcome while this will most certainly not be the status quo ante.⁵³ Inspiringly, Indira Gandhi, the late Prime Minister of India, in her speech on ‘Man and Environment’ during the Plenary Session of United Nations Conference on Human Environment, Stockholm on 14 June 1972 *inter alia* stated as follows:

The feeling is growing that we should re-order our priorities and move away from the single-dimensional model which has viewed growth from certain limited angles, which seems to have given a higher place to things rather than to persons and which has increased our wants rather than our enjoyment. We should have a more comprehensive approach to life, centred on man not as a statistic but an individual with many sides to his personality. The solution of these problems cannot be isolated phenomena of marginal importance but must be an integral part of the unfolding of the very process of development.

In this light, the better protection of the human environment and a transition to climate neutrality and decarbonisation should be guided by the *leitmotiv* to place the greener

45 Ruppel/Hoppe, *Indian Journal of International Economic Law* 2021, Vol. 13 “Enforcement and Direct Effect of WTO Law under European and South African Law?”, 27 (51).

46 Cf. WTO (2018) *Mainstreaming trade to attain the Sustainable Development Goals* available at https://www.wto.org/english/res_e/booksp_e/sdg_e.pdf (accessed on 28 February 2022) 36.

47 Ruppel, *Journal for Soil Security* 2022, “Soil Protection and Legal Aspects of International Trade in Agriculture in Times of Climate Change: The WTO Dimension”, Art. 100038, 1 (7).

48 Carreño et al (2022), Fratini Vergano, available at http://www.fratini-vergano.eu/en/trade-perspectives/14-january-2022/#_WTO_Ministerial_Statements: (accessed on 28 February 2022).

49 Hepburn et al, 1.

50 Ginzky (2018) “The Sustainable Management of Soils as a Common Concern of Humankind: How to Implement It?” in: Ginzky, H. et al *International Yearbook of Soil Law and Policy* 2017, Vol. 2, 433-450 at 448.

51 Flasbarth (2017) “Soils Need International Governance: A European Perspective for the First Volume of the International Yearbook of Soil Law and Policy” in: Ginzky et al *International Yearbook of Soil Law and Policy* 2016, Vol. 1, 15-19 at 18; Ruppel/Shifotoka (2017) *Foreign Direct Investment Protection in Africa – Contemporary Legal Aspects between BITS and BRICS*, in: Yusuf (Ed.), *African Yearbook of International Law* Vol. 21, Issue 1, 5 (56); Ruppel/Borgmeyer (2018) “The BRICS Partnership from a South African Perspective: Sustainable Development Space in a New Global Governance” in: Ndulo, M. and Kayizzi-Mugerwa, S. (Eds.), *Financing Innovation and Sustainable Development in Africa*, 282 (306).

52 WTO (2018) *Mainstreaming trade to attain the Sustainable Development Goals*, 46.

53 Ruppel (2022) “Soil Protection and Legal Aspects of International Trade in Agriculture in Times of Climate Change: The WTO Dimension”, 7.

ning of trade and development at the centre of all future economic policy. Today, 50 years after the Stockholm Conference, it is important to assess where we stand and what still needs to be done. It may be relatively innocuous to agree on a least common denominator regarding the late Prime Minister of Sweden Olof Palme's statement in his historic speech during the Plenary Session of the United Nations Conference on Human Environment where he stated:

"The air we breathe is not the property of any one nation – we share it. The big oceans are not divided by national frontiers – they are our common property [...]."

Similarly, almost 80 years after Bretton Woods, we equally need to assess where we stand and what still needs to be done in terms of the economic order. On 22 July 1944, in his closing address, Henry Morgenthau, Jr, then US Secretary of the Treasury and Chairman of the Bretton Woods Conference, said that

"[...] the only enlightened form of national self-interest lies in international accord."

In the same speech he called for a *"revival of international trade"*, that *"will permit the realization of men's reasonable hopes"*.⁵⁴ It is exactly in this hope, this article humbly aims to contribute a fragmented attempt to bridge the 'conceptual apartheid' in the multilateral order between

international trade law, the protection of the human environment and global climate governance. This hope is exacerbated by the experience of more than two years of COVID-19, which stifled the global economy, a raging war in Ukraine and the looming Russian threat of World War III, which holds more than a warning for the existing world order. It has in this light been rightfully stated that the Ukraine can be *"viewed as a test for the survival of a 75-year-old idea: that liberal democracy [...] and free trade can create the conditions for peace and global prosperity."*⁵⁵

Lastly, and with regard to a greener and more sustainable common future, it will – *mutatis mutandis* – still need to be seen how we can avoid instability, conflict and wars in times of growing transformative energy insecurity, climate injustice and environmental distress coupled with accelerating complexity dynamics and emerging trade patterns that shape the future global agenda, not only in light of 'Stockholm+50' but also on the way ahead to 'Bretton Woods+80'. ■

54 Closing address is available at https://www.cvce.eu/obj/closing_address_by_henry_morgenthau_jr_22_july_1944-en-b88b1fe7-8fec-4da6-ae22-fa33edd08ab6.html (accessed on 7 March 2022).

55 Cf. New York Times (2022) available at <https://www.nytimes.com/2022/03/04/world/ukraine-russia-war-authoritarianism.html?referring-Source=articleShare> (accessed on 7 March 2022).