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20 Years of Debate on Environment, Trade and Sustainable Development at the WTO:

A Literature Review (1995–2015)

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Abstract

In 1995, the launch of the WTO provoked a chorus of criticism from environmental advocates. After 20 years, how has the trade and environment debate evolved at the WTO and where does it currently stand? Although much has been written over the past two decades on the politics of trade and environment issues at the WTO, this paper is the first review of the literature over that full period. The review traces the evolution of debate and action at the WTO on trade and the environment from 1995 to 2015, drawing on scholarly work, NGO policy papers, media reports, submissions by stakeholder groups, WTO Secretariat documents, and government statements in WTO Ministerial meetings. The review concludes with some preliminary findings. To inform future work on environment and sustainable development at the WTO, it calls for an assessment of progress and lessons learned, drawing on the review to propose some of the research questions that should guide such efforts.

This working paper is a preliminary output of a book project on the politics and lessons learned from 20 years of debate on trade, environment and sustainable development at the WTO. Comments and suggestions are invited at: carolyn.deerebirkbeck@bsg.ox.ac.uk.

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Introduction¹

In 1995, the launch of the WTO provoked a chorus of criticism from a broad spectrum of NGOs, think tanks, and civil society groups fearful that the WTO threatened environmental protection. Warning that expanded trade flows could exacerbate pollution and the unsustainable use of natural resources, they argued that WTO dispute settlement proceedings could ‘chill’ environmental regulation and that the new trade rules that had emerged from the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) did not adequately address environmental priorities.

The official line of WTO Member States was more optimistic; the Preamble to the Marrakesh Agreement conveyed the notion that trade, environment and sustainable development goals can and should be mutually supportive. In the Preamble, governments stated that trade relations should be conducted with a view to increasing standards of living, income, demand, employment, production and trade, 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 and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.”² Importantly, this text arose from an intentional effort from a handful of key supporters to craft language that would facilitate recognition in the WTO of environmental and sustainable development priorities. However, its inclusion in the Preamble was a negotiated, political outcome. Member States were well aware of the challenge of balancing trade goals with sustainable development’s multiple dimensions – environmental, social and economic – and many were unconvinced. At the time the WTO was created, and in the subsequent two decades, the Preamble’s aspirations and the positive discourse inspired heated debates about which goals are “most important, and who is empowered to decide.”³ Nonetheless, the Preamble established the concept of mutual supportiveness, and across the subsequent two decades the WTO Secretariat has frequently invoked it, as have many Member States.

In 2015, the WTO Secretariat seized the organization’s 20th anniversary as an opportunity to reiterate that “upholding and safeguarding the multilateral trading system and acting to protect the environment and promote sustainable development can be mutually supportive goals.”⁴ The Secretariat reported that although environmental challenges have arisen, the

¹ This working paper is a preliminary output of a book project on the politics and lessons learned from 20 years of debate on trade, environment and sustainable development at the WTO. Comments can be sent to the author at carolyn.deerebirkbeck@bsg.ox.ac.uk.

² In the text of the Preamble, Member States recognise that “their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, 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 and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.”

³ Lydgate, E. (2012) “Sustainable Development in the WTO: From Mutual Supportiveness to Balancing,” *World Trade Review*, 11(4), pp. 621-639.

⁴ WTO (2015) *Trade and Environment: Building Pathways to Sustainable Development*. WTO: Geneva, https://www.wto.org/english/thewto_e/20y_e/wto_environment_e.pdf.

WTO had helped governments to address these and will continue to pursue practical solutions to the new inter-linkages and challenges likely to arise.⁵

Although many environmental advocates concede that some of their worst fears about the WTO have not eventuated – and recognise that important progress is being made in some areas – dissatisfaction with the WTO's environmental performance remains. In 2015, for instance, the head of the UN Environmental Programme (UNEP) stated that, “the world's environmental indicators reveal that the pressure exerted by trade on the environment is taking its toll.”⁶ The President of a leading Canada-based international NGO, the International Institute for Sustainable Development (IISD), lamented that there had been “distressingly little progress in the multilateral trade system on issues such as climate change, perverse subsidies, sustainable agriculture, and a litany of other critically important challenges...”⁷ The ‘Our World is Not For Sale Coalition’ – a global network of civil society organisations active on international trade – maintains that WTO agreements reflect and entrench an unsustainable capitalist model which, by failing to properly internalise environmental costs and values, exacerbates environmental degradation.⁸⁹ Indeed, many environmental activists characterise the WTO as the mercantilist centrepiece of a neoliberal economic order dominated by business interests that drive production and consumption patterns which are fundamentally at odds with ecological sustainability.¹⁰

After 20 years, the trade and environment debate is clearly far from over. Recent WTO dispute settlement rulings (such as the Appellate Body's 2016 decision against India's domestic content requirements for solar cells and solar modules, and India's subsequent appeal) underscore the enduring relevance of debate on how WTO rules intersect with efforts to achieve environmental goals. Further, the UN's 2030 Agenda for Sustainable Development and the inclusion of many targets relevant to trade in its Sustainable

⁵ See Azevêdo R. (2015) “2015 a pivotal year for trade and the environment”, Speech by Director General, 28 April, 2015, available at https://www.wto.org/english/news_e/spra_e/spra56_e.htm.

⁶ See foreword by Achim Steiner in IISD & UNEP (2015) *Trade and the Green Economy: A Handbook*. p. viii.

⁷ See foreword in IISD & UNEP (2015) p. ix.

⁸ On this point it is notable that when in office, former WTO Director General Pascal Lamy observed in a speech delivered in his personal capacity to the UK Policy Network that: “The capitalist model is no longer merely socially unsustainable, or even economically unsustainable: it is now also environmentally unsustainable.” See Lamy, P. (2010) “Speech by Pascal Lamy,” Director General of the WTO, *Progressive Governance Conference*, London, 19 February 2010, p. 2.

⁹ They argue, for instance, that WTO rules oblige countries to undertake reforms oriented toward increasing ‘the trade profits of transnational corporations of rich countries, rather than focusing on using trade to strategically support sustainable development’. See Our World is Not for Sale Coalition (2014) “Some Changes that Must be Made to Global Trade Rules to Achieve the Sustainable Development Goals (SDGs) of the post-2015 Development Agenda,” <http://www.ourworldisnotforsale.org/en/node/24387>.

¹⁰ See, for instance, ‘20 Years of WTO is Enough! Junk WTO’, Resistance: People Fighting Transnational Corporate Plunder, 4 December 2015, <http://peopleresist.net/junk-wto/>. Newell, P. (2012) *Globalization and the Environment: Capitalism, Ecology and Power*, Polity Press; Friends of the Earth UK (unknown date) ‘Toward Sustainable Economies: Challenging Neoliberal economic globalisation’, https://www.foe.co.uk/sites/default/files/downloads/towards_sust_economies.pdf. For examples of earlier critiques, see Hartwick, E. and R. Peet (2003) ‘Neoliberalism and Nature: The Case of the WTO’, *Annals of the American Academic of Political and Social Science*, Vol 590, pp. 188-211, and on the environmental impacts of corporate-led globalization, see Karliner, J. (1997) *The Corporate Planet: Ecology and Politics in the Age of Globalization*, Sierra Club Books. For analysis of how social movements cooperated and conflicted in their efforts to respond to perceived threats of neoliberalism – free trade, privatization, structural adjustment and unbridled corporate power, see Bandy, J. and J. Smith (2005) *Coalitions Across Borders: Transnational Protest and the Neoliberal Order*, Rowman and Littlefield.

Development Goals (SDGs),¹¹ has spurred new questions about how the WTO can and should respond.¹²

To date, however, there has been no overall independent assessment of how the WTO has addressed environment challenges thus far. How well has the WTO responded to environmental concerns and where have environmental norms had most impact? Why have some environmental issues achieved more traction and action at the WTO than others and what can this tell us about how best to approach outstanding challenges? Why does the WTO continue to attract such a diversity of concerns from environmental advocates?

As a first step toward answering such questions, this paper offers a review of how the debate and literature on trade, environment and sustainable development at the WTO has evolved, covering the full 20-year period since the WTO's creation.¹³ The review aims to illustrate the broad contours, themes and trends in debate; it does not propose to cover all of the wide ranging literature nor each of the specific technical issues that arose. In so doing, the review aims to provide a backdrop for future efforts – beyond the scope of this paper – to assess and explain the WTO's environmental performance and politics.

During the period from 1995 to 2015, the review shows that while some core 'trade and environment' concerns were consistently on the agenda, the debate evolved considerably. The review identifies a range of perspectives that animated debate – that trade and environmental protection are in conflict; that trade policy and rules are not the best avenue for resolving environmental concerns; that win-win solutions to trade and environment challenges exist and should be grasped; and that attention to the development dimension of trade and environment issues is vital. It also documents a layering of frames used to advance environmental considerations – such as sustainable development; green growth and the green economy; and, most recently, the Sustainable Development Goals (SDGs). The paper explores how the North-South dimension of the trade-environment issue unfolded; the widening tolerance of Member States for engagement with NGOs and civil society; the growing specialisation within the 'environmental agenda' on trade; and the fragmentation of the environmental community, reflecting the different priorities of stakeholders and their ability to influence the trade agenda. The review also highlights how different parts of the WTO system were engaged on environmental matters – the judicial arm interpreted WTO rules where some controversial environmental concerns arose; negotiating bodies took up some issues; and the organisation's regular committee's were venues for a number of ongoing technical discussions. It also documents how the fate of environmental topics was linked to the wider political and economic context. Even though environmental issues were on the Doha agenda, for instance, political attention to them was trumped by concerns about development and recovery from financial crises. Further, when ailing WTO negotiations spurred a shift by governments to bilateral and regional trade and investment negotiations,

¹¹ See Appendix 7 and UN (2015) *Transforming our World: the 2030 Agenda for Sustainable Development*. UN: New York, <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

¹² The SDGs cover an expansive set of issues, including ending poverty in all its forms everywhere, tackling world hunger, achieving gender equality, ensuring access to modern energy, building resilient infrastructure, moving towards sustainable consumption and production patterns, conserving oceans, and taking urgent action to combat climate change.

¹³ For an up-to-date summary of key contemporary debates, see Matsushita, M., T. Schoenbaum, P. Mavroidis, and M. Hahn (2015) 'Environmental Protection and Trade', *The World Trade Organization: Law, Practice, and Policy*, Oxford University Press: Oxford. For an overview at the time of the WTO's 10th anniversary, see Brack, D. (2005) *The World Trade Organization and Sustainable Development: A Guide to the Debate*, Chatham House Briefing Paper, December 2005, Chatham House: London.

environmental NGOs followed and also re-allocated their resources to other environmental priorities, such as climate change.¹⁴

To trace the evolution of debate, the paper reviews the scholarly literature on international trade politics, trade-environment impacts, and environmental issues in WTO disputes. The review also covers a broad range of policy reports, news services, and statements from NGOs, think tanks, civil society and international organizations. This included the compilation of a database of all publications issued over the period by the International Centre for Trade and Sustainable Development (ICTSD).¹⁵

A number of primary sources were also included as part of the literature reviewed, including the minutes and summaries of the work of the WTO's Committee on Trade and Environment (CTE), the reports of WTO dispute settlement proceedings on environment-related issues, summaries of the various WTO Committees and Special Sessions where environmental matters arise,¹⁶ and submissions by Member States to the CTE and other WTO Committees on environmental questions. The research included compilation of a database on the frequency with which Member States used environmental terms¹⁷ over eight WTO Ministerial Conferences in 1996 (Singapore), 1999 (Seattle), 2001 (Doha), 2005 (Hong Kong), 2009 (Geneva), 2011 (Geneva), 2013 (Bali) and 2015 (Geneva) (see Appendix 9) and in Ministerial Declarations (see Appendix 8).¹⁸ To gauge how environment issues were addressed and portrayed by the WTO Secretariat, the research also included a review of WTO Secretariat news stories and press releases as well as formal statements and speeches by the various WTO Directors General (see Appendix 4), WTO events (see Appendix 5) and WTO publications, research and information documents on environmental matters.

The paper proceeds in two parts. Part 1 provides historical context, outlining the origins of trade and environment discussions from the early GATT days until the WTO's creation in 1994. It then presents a factual overview of the main ways in which, 20 years later, the WTO Secretariat and its membership engage with environmental considerations. Part 2 of the paper analyses the evolution of debate, discourse and action on the environment at the WTO chronologically over four phases from 1994 to 2015. Part 3 of the paper concludes with some preliminary findings from the review and proposes a set of questions for future research.

¹⁴ Howse, R. (2016) "The World Trade Organization 20 Years On: Global Governance by Judiciary," *European Journal of International Law*, vol. 27, 9-77.

¹⁵ ICTSD is a Geneva-based NGO/think tank that consistently published research, policy analysis and news on these issues, especially through its BRIDGES series of publication, including BRIDGES Monthly, Weekly and BioRes as well as its sister BRIDGES publications in Spanish, French, Portuguese, Russian, Arabic and Chinese. For an overview of these publications, see <http://www.ictsd.org/bridges-news/bridges/overview>.

¹⁶ This includes the CTE as well as the Negotiating Group for Rules, the Committees on SPS and TBT, the TRIPS Council and the Council for Trade in Services.

¹⁷ The list of terms searched included: environment, sustainable development, fisheries/fish, greening, clean technology/clean technology and services, green chapter, PPMs, MEAs, multilateral environmental agreements/accords, forest, mining, environmental impact assessment, minerals, natural resources, logging, pollution, toxic waste, global warming, trade and environment, Committee on Trade and Environment (CTE), eco-labelling/ecolabelling/environmental labelling/environmental label, environmental standards/environmental measures, environmental private standards, environmental certification, environmental justice, asbestos, sea turtles, endangered species, environmental goods and services, MDGs, UNEP, planet, mutual supportiveness, biodiversity/biological diversity, genetic resources, prior informed consent, green economy, climate change/climate crisis, environmental technology, disputes, and trade and energy. Where questions arose, an expansive approach to the terms was used, while excluding non-related uses (such as the use of environment in relation to the 'business environment' or 'economic environment.' The full database is on file with the author.

¹⁸ The research did not cover the 1998 Geneva Ministerial or its declaration. There was no declaration in 1999, 2009, or 2011 and the 2003 Cancun Ministerial concluded with a Ministerial Statement but no declaration.

Part One

Links between trade and environmental protection — both the impact of environmental policies on trade, and the impact of trade on the environment — have been under discussion at the WTO since the 1970s, albeit with varying intensity and focus. To set the context, this Part of the paper reviews the history of the ‘trade and environment’ issue in the GATT and the movement of trade/environment and trade/sustainable development issues toward the centre of political debates toward the close of the Uruguay Round. It also provides a summary of the environment and sustainable development provisions in the Marrakesh Agreements that completed the Round and established the WTO in 1995. In both instances, the primary purpose is to provide a descriptive account rather than a political assessment.¹⁹ The discussion then ‘fast-forwards’ two decades to offer a synopsis of the WTO’s work on trade and environment in 2015. The review highlights the scope of environmental topics addressed, the diversity of Secretariat activities relevant to environmental matters, and ongoing WTO disputes with an environmental dimension.

1. From GATT to the WTO

1.1 From Stockholm to the First GATT Environmental Disputes (1971-1985)

Environmental issues have featured in the multilateral trade system since the initial GATT negotiations post-World War Two. As the main architect of the GATT, the United States introduced an environmental dimension into the GATT negotiations in its first draft text of an Agreement (the U.S. Draft Charter).²⁰ Its draft GATT text incorporated the idea of environmental exceptions to the general prohibition on import restrictions. These draft provisions then became the 1947 GATT’s long-standing Article XX exceptions “relating to the conservation of exhaustible natural resources” and those “necessary to protect human, animal, plant life or health.”²¹

Over the next two decades, discussion of environmental issues in the GATT context was rare. In 1971, however, they emerged again in the lead-up to the 1972 UN Conference on Human Environment, held in Stockholm. In 1971, amidst mounting international concerns about the impact of economic growth on the environment, the GATT Secretariat was asked to contribute to the Stockholm process. In response, the GATT Secretariat prepared a study under its own responsibility entitled *Industrial Pollution Control and International Trade*,²²

¹⁹ This Part of the paper draws heavily from the WTO’s own descriptive accounts. For a review of how environmental issues arose and were taken up during the GATT years and the Uruguay Round, see the WTO website: WTO, ‘Early years: emerging environment debate in GATT/WTO’, available at: https://www.wto.org/english/tratop_e/envir_e/hist1_e.htm. The Secretariat’s perspective can also be found on its web-page on ‘Sustainable Development’ (https://www.wto.org/english/tratop_e/envir_e/sust_dev_e.htm), on “Trade and environment” (https://www.wto.org/english/tratop_e/envir_e/envir_e.htm), and on “The environment: a specific concern” (https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey2_e.htm), as well as associated links.

²⁰ The US remained in the lead on the GATT’s subsequent tariff-cutting rounds, and with the European Community, jointly agreed the agendas for the Tokyo Round and the Uruguay Round (where environmental issues were negotiated in-depth for second time as discussed below).

²¹ See GATT (1994) *Analytical Index: Guide to GATT Law and Practice*, Geneva: GATT, pp. 541-2 and p. 745.

²² GATT (1971) ‘Industrial Pollution Control and International Trade’, *GATT Studies in International Trade*, no. 1. GATT: Geneva. For such arguments, see for instance, UN (1971) *Development and Environment, Report and Working Papers of a Panel of Experts Convened by the Secretary-General of the United Nations Conference on the Human Environment*, Founex, Switzerland, June 4-12, 1971 (referred to as the Founex Report). The Founex Report stated: ‘The real danger is if the environmental standards enforced by the developed countries are

which set out concerns among trade officials that environmental protection policies could become obstacles to trade and constitute a new form of ‘green’ protectionism. After the Secretariat’s study was presented to GATT members, a number of countries proposed the creation of a mechanism in the GATT to examine the implications of environmental policies for trade. The GATT Council of Representatives subsequently agreed in 1971 to create a Group on Environmental Measures and International Trade (EMIT).²³ (The group was not convened until 1991 as discussed below).

In 1972, the Stockholm Declaration warned that environmental standards should not be “directed towards gaining trade advantages,” and urged that the UN monitor and report “the emergence of tariff and nontariff barriers to trade as a result of environmental policies.”²⁴ The Stockholm Conference spurred intergovernmental discussion in a range of environmental forums and international organisations on the relationship between economic growth, macroeconomic policy, social development and environment.²⁵ The Stockholm Conference also came in the context of developing country efforts to promote a New International Economic Order (NIEO) that would better reflect and advance their economic development priorities, including through greater development-orientation of the multilateral trading system. Developing countries regularly argued that while developed countries could ‘afford’ environmental sensibilities, such as a concern for pollution control, poorer countries could not, citing their need to reduce poverty and stimulate economic growth. Indeed, some policymakers believed they could boost their country’s comparative advantage and spur investment by waiving environmental standards and serving as ‘pollution havens’.²⁶ Further, many developing countries were suspicious of developed country efforts to impose their environmental concerns, fearing that “developed countries would attempt to export their preferences for pollution control or to place ‘environmental’ tariffs on imports from countries with lower standards.”²⁷

Meanwhile, interest among GATT members in the intersection of trade and the environment grew when, as observed by the WTO Secretariat, “environmental policies began to have an increasing impact on trade, and with increasing trade flows, the effects of trade on the environment had also become more widespread.”²⁸ During the Tokyo Round of GATT negotiations (1973–1979), countries explored how environmental measures in the form of technical regulations and standards could form obstacles to trade. When the Tokyo Agreement on Technical Barriers to Trade (TBT) emerged, its provisions called, amongst

unrealistic and unilateral and are arbitrarily invoked by them to keep some of the exports of the developing countries out of their markets’, p. 31. Also see UNCTAD (1976) ‘Implications for the Trade and Investment of Developing Countries of Unites States Environmental Controls’, TD/B/C2/150/Add. i/Rev 1. UNCTAD: Geneva.

²³ The group was open to all GATT signatories. See Watson, J. (2013) *The WTO and the Environment: The Development of Competence Beyond Trade*, Routledge, p. 157.

²⁴ See UN (1972) *United Nations Conference on the Human Environment, Recommendation 71*, UN Doc. A/Conf. 48/18 (1972).

²⁵ See, for instance, Blackhurst, R. (1977) ‘International Trade and Domestic Environmental Policies in a Growing World Economy’, in Blackhurst, R. et al. *International Relations in a Changing World*, Geneva: Sythoff-Leiden. Also see OECD (1978) *Macroeconomic Evaluation of Environmental Programmes*, OECD: Paris, Muzondo, T. et al. (1990) ‘Public Policy and the Environment: A Survey of the Literature,’ *IMF Working Papers No. 90/56*, Washington, D.C. June; Siebert, H. (1977) ‘Environmental Quality and the Gains from Trade,’ *Kyklos*, 30(4).

²⁶
²⁷ Leonard J. (1988) *Pollution and the Struggle for the World Product: Multinational Corporations, Environment and International Comparative Advantage*, Cambridge University Press: Cambridge, p. 69.

²⁸ See WTO website, ‘Early years: emerging environment debate in GATT/WTO’, available at: https://www.wto.org/english/tratop_e/envir_e/hist1_e.htm.

other things, for non-discrimination in the preparation, adoption and application of technical regulations and standards, and for standards to be transparent.

From the early 1980s, there was also growing scholarly attention to economics of natural resources and the environment;²⁹ the intersections of development and the environment;³⁰ the environmental implications of macroeconomic policy, structural adjustment programs and foreign debt;³¹ and the environmental performance of multinational corporations.³² In each area, there was attention to trade policy and dynamics as key parts of international and national economic context that could impact the environment.

Meanwhile, developing country apprehensions about the trade implications of developed country environmental policies continued.³³ In addition, environmental challenges were of growing concern for developing countries. Observing that products prohibited in developed countries on the grounds of environmental hazards, health or safety reasons were nonetheless exported to them, developing countries called for greater information to enable them to make informed decisions regarding such imports.³⁴ This issue was subsequently taken up at the 1982 GATT Ministerial meeting, where governments examined measures to control the export of goods that were prohibited domestically (on the grounds of harm to human, animal, plant life or health, or the environment). This work paved the way for the creation in 1989 of a GATT Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances. (Although the group met 15 times until 1991, it did not produce substantive results).³⁵

Between 1982 and 1994, six GATT panel proceedings involved an examination of environmental measures and human health-related measures under GATT Article XX.³⁶

²⁹ For an introduction to this area and background, see Pearce, D. and R. Turner (1990) *Economics of Natural Resources and the Environment*, London: Harvester Wheatsheaf.

³⁰ Redclift, M. (1984) *Development and the Environmental Crisis*, London: Routledge; Durning, A. (1989) *Poverty and the Environment: Reversing the Downward Spiral*, Worldwatch Paper 92, The WorldWatch Institute, Washington, D.C.; Makrandya, A. and J. Richardson (1990) *The Debt Crisis, Structural Adjustment and the Environment*, London Environmental Economics Centre: London.

³¹ World Bank (1994) *Economywide Policies and the Environment*, World Bank: Washington, D.C. World Bank (1990) *Adjustment Lending: Policies for Sustainable Growth*, World Bank: Washington, D.C.; Reed, D. (ed) (1992) *Structural Adjustment and the Environment*, Earthscan: London; and Reed, D. (ed) (1996) *Structural Adjustment, the Environment and Sustainable Development*, Earthscan: London.

³² Pearson, C. (1987) *Multinational Corporations, Environment and the Third World*, Duke University Press; Durham; Pearson, C. (1985) *Down to Business: Multinational Corporations, the Environment and Development*, World Resources Institute: Washington, D.C. Also see, Leonard J. (1988) *Pollution and the Struggle for the World Product: Multinational Corporations, Environment and International Comparative Advantage*, Cambridge University Press: Cambridge.

³³ Pearson, C. (1982) *Environmental Policies and their Trade Implications for Developing Countries with special reference to fish and shellfish, fruit and vegetables*, UNCTAD: Geneva. For a snapshot of debates at the time, see Rubin, S. (1982) *Environment and Trade*, New Jersey: Allanheld, Somun and Co.

³⁴ Scherr, S. J. (1987) 'Hazardous Exports: US and International Policy Developments' in Pearson, C. *Multinational Corporations, Environment and the Third World*, Duke University Press; Durham. Also see Langlet, D. (2009) *Prior Informed Consent and Hazardous Trade*, Wolters Kluwer: The Hague.

³⁵ Sankey, J. (1989) 'Domestically Prohibited Goods and Hazardous Substances - a new GATT Working Group is established', *Journal of World Trade* 23(6). Also see Winqvist, T. (1999) *Trade in Domestically Prohibited Goods*, International Institute for Sustainable Development: Winnipeg.

³⁶ Of the six reports, three were not adopted. The six cases were: 1) United States — Taxes on Automobiles, ruling not adopted, circulated on 11 October 1994. Case brought by EU; 2) United States — Restrictions on Imports of Tuna, "son of tuna-dolphin", ruling not adopted, circulated on 16 June 1994. Case brought by EU; 4) United States — Restrictions on Imports of Tuna, the "tuna-dolphin" case, ruling not adopted, circulated on 3 September 1991. Case brought by Mexico, etc. 4) Thailand — Restrictions on the Importation of and Internal Taxes on Cigarettes, ruling adopted on 7 November 1990. Case brought by US; 5) Canada — Measures Affecting Exports of Unprocessed Herring and Salmon, ruling adopted on 22 March 1988. Case brought by US;

Among these, the case that put an international media spotlight on linkages between environmental protection and trade was a 1991 dispute between Mexico and United States (discussed below).

1.2 The Uruguay Round, the Rio Earth Summit and Sustainable Development (1986-1994)

By the mid-1980s, the mainstream economic view was that trade liberalization was a key component of a broader package of economic reforms necessary for growth in both developed and developing countries. At the World Bank, IMF, OECD and beyond, economists argued that liberalised trade and investment regimes would be economically and environmentally beneficial to all countries, promoting economic efficiency, competition and growth. A number of studies at that time underscored the environmental costs of developing country dependence on low value-added exports of natural resources and unprocessed commodities and raw materials, with the implication that the reduction of trade barriers could help improve environmental outcomes in developing countries.³⁷

The push for free trade and export-led industrialization in developing countries was viewed by critics as part and parcel of a wider neoliberal economic agenda that espoused the benefits of open world markets, minimal state intervention, and structural economic adjustment loans. While not all developing countries embraced the free trade agenda, some did, and many governments that were unconvinced nonetheless succumbed to pressures for unilateral trade liberalization. In reality, however, global trade relations at that time largely operated on a mercantilist basis and trade flows were dominated by developed countries and concentrated among small groups of large multinational companies in most sectors. While it was true that tariff barriers had come down for many sectors and products, developing countries faced a range of limits on their market access to developed countries (and to other developing countries). Amidst subsidies, tariff escalation, and rising non-tariff barriers to trade in their key markets, they argued that their prospects for value-added exports and development were limited and resisted pressure to open their markets, calling instead for a more nuanced approach to trade policy and liberalization. Alongside, environmentalists warned that more open trade could intensify export pressures in ways that would exacerbate environmental degradation and unsustainable natural resource use, arguing that few developing countries had effective environmental policies and institutions in place.³⁸

From 1986, the Uruguay Round of GATT negotiations were in play, driven largely by the desire of ‘the Quad’ – the US, the European Community, Japan and Canada – to expand market access for their products and seek better regulatory conditions around the world for their business sector (including on intellectual property and investment). Throughout the negotiations, developing country argued that restrictive trade practices and an unequal global trading system hampered their access to developed country markets. The GATT negotiations also unfolded amidst growing concern about environmental issues. In 1987, for example, the World Commission on Environment and Development (WCED) produced a report entitled *Our Common Future* (commonly referred to as the Brundtland Report). Establishing a link

and 6) United States — Prohibition of Imports of Tuna and Tuna Products from Canada, ruling adopted on 22 February 1982. Case brought by Canada.

³⁷ See Chapter Three, for instance, in World Commission on Environment and Development (1987) *Our Common Future*, Oxford University Press: New York.

³⁸ For a review of such debates, see Runnalls, D. and A. Cosbey (1992) *Trade and Sustainable Development: A Survey of the Issues and a New Research Agenda*, IISD: Winnipeg. This publication also provides an extensive bibliography of literature from that time.

between environmental protection and development at large, the report popularized the term 'sustainable development,' which it defined as: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."³⁹ Among the report's conclusions was that poverty was an important cause of environmental degradation, and that greater economic growth, spurred in part through international trade, could generate resources needed to combat poverty.

In 1991, a GATT dispute settlement panel ruled that a US embargo on tuna imports from Mexico caught using 'purse seine' nets constituted an unfair trade barrier. The case opened the way for on-going scrutiny of how the multilateral trade system addresses production process methods (PPMs). At the heart of the tuna-dolphin case were questions such as whether one GATT member can tell another what its environmental regulations should be, and the 'product' versus 'process' issue, that is, on where trade rules permit action to be taken against the method used to produce goods (rather than the quality of the goods themselves).⁴⁰ Although the United States justified its embargo on the grounds that Mexican tuna trawlers caused the incidental killing of more dolphins than permitted by US law, the panel concluded that the United States could not embargo imports of tuna products from Mexico simply because Mexican regulations on *the way tuna was produced* did not satisfy US regulations. The Panel did conclude, however, that the US could apply its regulations on *the quality or content* of the tuna imported. The Panel further found that GATT rules did not allow one country to take trade action for the purpose of attempting to enforce its own domestic laws in another country (i.e., extra-territorial action) — even to protect animal health or exhaustible natural resources.⁴¹ It also ruled against a US embargo on tuna imports from intermediary countries that trade in tuna with embargoed countries.⁴² The panel's ruling in favour of Mexico was not adopted, however, and was heavily criticised and later challenged, by the United States.⁴³ International environmental groups decried the ruling, arguing that it illustrated how GATT rules could present obstacles to environmental protection.⁴⁴ In parallel to the tuna-dolphin dispute, Austria and ASEAN were locked in debate over tropical timber exports. Spurred by environmental concerns in Europe about the demise of tropical rainforests, the Austrian environmental ministry threatened to implement new labelling

³⁹ World Commission on Environment and Development (1987) *Our Common Future*, Oxford University Press: New York.

⁴⁰ On the tuna-dolphin case, see Housman, R. and D. Zaelke (1992) "Trade, Environment and Sustainable Development: A Primer," *Hastings International and Comparative Law Review*, Vol 15, pp. 535; Housman, R and Zaelke, D. (1992) "The Collision of Environment and Trade: The GATT Tuna/Dolphin Decision," *Environmental Law Reporter*, Vol. 22.

⁴¹ According to the WTO Secretariat, "The panel's task was restricted to examining how GATT rules applied to the issue. It was not asked whether the policy was environmentally correct. It suggested that the US policy could be made compatible with GATT rules if members agreed on amendments or reached a decision to waive the rules especially for this issue. That way, the members could negotiate the specific issues, and could set limits that would prevent protectionist abuse. The panel was also asked to judge the US policy of requiring tuna products to be labelled 'dolphin-safe' (leaving to consumers the choice of whether to buy the product). It concluded that this did not violate GATT rules because it was designed to prevent deceptive advertising practices on all tuna products, whether imported or domestically produced." See Chapter 4 of WTO (2015) *Understanding the WTO* (Fifth Edition) WTO: Geneva, p. 70.

⁴² For a summary of the case, see *United States – Restrictions on Imports of Tuna*.
https://www.wto.org/english/tratop_e/envir_e/edis04_e.htm.

⁴³ Although the panel report was circulated in 1991, it was not adopted and thus does have the status of a legal interpretation of GATT law. The report was not adopted due to the pending negotiations involving the US and Mexico, and the case was instead settled out of court by them. Many of the issues were revisited in the Tuna-Dolphin II case in 1992.

⁴⁴ Greenpeace International (1991) "The Greenpeace International Statement on the Current GATT Case Between Mexico and the United States," *Press Release*.

requirements to restrict imports of tropical timber from Indonesia and Malaysia. When Austria implemented the restrictions in 1992, ASEAN countries called for their removal and Malaysia threatened political and trade sanctions in retaliation. The tensions over the tropical timber issue consolidated growing concern among trade officials about the potential for environmental measures to constrain trade.⁴⁵

Meanwhile, the Uruguay Round was advancing “almost simultaneously with the articulation of the broad agenda of sustainable development at the international level.”⁴⁶ In addition, a number of international environmental agreements were concluded or under negotiation. In 1989, responding to concerns about increased hazardous waste exports, especially from developed to developing countries, governments adopted the Basel Convention on the Transboundary Movement of Hazardous Wastes.⁴⁷ In addition, preparations for 1992 United Nations Conference on Environment and Development (UNCED) (commonly referred to as the Rio ‘Earth Summit’) spurred attention to challenges of sustainable development, and broadened attention to the trade and environment issue.

In 1991, the GATT’s Group on Environmental Measures and International Trade (EMIT) was convened for the first time at the request of members of the European Free Trade Association keen to spur a substantive response and contribution by the GATT to the Rio process.⁴⁸ The motivation for convening the EMIT group was not, however, primarily an environmental one, but rather one of defending trade interests. EFTA countries, as well as the EC and US, faced complaints from domestic producers that environmental measures posed growing threats to their trade interests and that it was important for the GATT to have a voice on trade and environment matters, particularly in light of concerns that the growing success of environmental issues in other international for a may pose a threat to key GATT principles.⁴⁹ In 1991, an agreement by OECD members to establish an OECD Joint Session of the Trade and Environment Committees illustrated the growing recognition of trade and environment intersections.⁵⁰ Similarly, the World Bank’s 1992 *World Development Report*, which focused on development and environment in the lead up to the Rio Summit, featured analysis of ‘trade and environment.’⁵¹ The mainstream economists’ view of the trade and environment issue was clearly summarised in a background paper for that report: “At best, trade barriers are a second-best means of reducing environmental damage. Any case for

⁴⁵ UPI (1992) “Malaysia threatens trade ban on Austria over wood products,” *UPI*, October 27, <http://www.upi.com/Archives/1992/10/27/Malaysia-threatens-trade-ban-on-Austria-over-wood-products/7437720162000/>.

⁴⁶ IISD (1996), op cit., p. 8. For a negotiating history of the Uruguay Round, see Stewart, T. (1993) *The GATT Uruguay Round: A Negotiating History (1986-1992)*, Kluwer.

⁴⁷ For a discussion of the agreement’s trade dimensions, see Krueger, J. (1999) *International Trade and the Basel Convention*, London: Earthscan Publications.

⁴⁸ See EMIT, “Report of the Meeting of the Group on Environmental Measures and International Trade,” TRE/1, December 17, 1991. EFTA at that time included Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland. Also see von Moltke, K. (1993) “The Last Round: The General Agreement on Tariffs and Trade in Light of the Earth Summit,” *Environmental Law*, vol. 25 no. 2 (Winter 1993), pp. 323-344.

⁴⁹ Shaffer, G. (2002) “If Only We Were Elephants: The political economy of the WTO’s Treatment of trade and environment matters,” in Kennedy, D. and J. Southwick (eds) *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec*, Cambridge University Press: Cambridge, p. 358.

⁵⁰ For a review of discussion at the OECD see, Youngman, R. and D. Andrew (1997) “Trade and Environment in the OECD,” in *Sustainable Development: OECD Policy Approaches for the 21st Century*, OECD: Paris.

⁵¹ The report’s wide-ranging discussion included analysis of the possible effects of dramatic growth in the world’s population, industrial output, use of energy and demand for food. See World Bank (1992) *World Development Report 1992: Development and the Environment*, World Bank: Washington, D.C.

more gradual liberalization of trade should be based on estimates of the costs of maintaining barriers versus the benefits of delayed environmental damage.”⁵²

As economic scholars produced empirical and theoretical studies of the effects of environmental policies on world trade,⁵³ a number of leading international trade scholars acknowledged the environmental challenges at hand. Nonetheless, trade economists in favour of open markets generally argued that the challenges of environmental protection would be better addressed at the local or national through (market-based) environmental policy instruments rather than through international trade law or policy.⁵⁴ In the legal field, top scholars acknowledged the legal questions and complex politics arising from efforts to address environmental issues at the WTO, including the ‘differences in cultures’ between trade policy experts and environmental policy experts.⁵⁵

Meanwhile, there were numerous efforts to detail the how various proposed GATT rules and provision could have implications for environmental law and policy.⁵⁶ A number of US environmental NGOs testified before US congressional committees, lobbied the USTR, and produced analyses of the draft GATT agreements,⁵⁷ alongside press statements and reports on the environmental challenges presented by trade.⁵⁸ In 1991, they successfully prompted U.S. congressional leaders to seek a greener GATT deal.⁵⁹ International NGOs became increasingly active on trade. At the international level, WWF was a key voice in the debate.⁶⁰

⁵² Dean, J. (1992) “Trade and Environment: A Survey of the Literature,” *Background Paper for the World Development Report 1992, Policy Research Working Papers, WPS 996*, World Bank: Washington, D.C. Also see Low, P. (1992) *International Trade and the Environment*, Washington DC: World Bank.

⁵³ See, for instance, Whalley, J. (1991) “The Interface between Environmental and Trade Policies,” *Economic Journal*, 101 (405): 180-9; Tobey, J. (1990) “The Effect of Domestic Environmental Policies on Patterns of World Trade: An empirical Test,” *Kyklos* 43 (2): 191-209; Grossmann, G. and A. Krueger (1991) “Environmental Impacts of a North American Free Trade Agreement,” *Discussion Papers Economics*, Woodrow Wilson School of Public and International Affairs, Princeton, NJ, November.

⁵⁴ See for instance various chapters in Low, P. (1992) *International Trade and the Environment*, Washington, DC: World Bank.

⁵⁵ See, for instance, Jackson, J. (1992) ‘World Trade Rules and Environmental Policies: Congruence or Conflict?’, *Washington And Lee Law Review*, 49, pp. 1227-1244. On this ‘culture of difference,’ see Jerome, R. (1991) « Traders and Environmentalists, » *Journal of Commerce*, December 27, 1991 at 4A.

⁵⁶ Ibid; US Congress Office of Technology Assessment (1992), *Trade and Environment: Conflicts and Opportunities*, US OTA: Washington, D.C.; Housman, R. and Zaelke, D. (1992), *Trade, Environment and Sustainable Development: A Primer*, Hastings International and Comparative Law Review, Vol. 15, pp. 535.

⁵⁷ See, for instance, National Resources Defense Council (1991) *Environmental Reform of the World Trading System*. Testimony of the NRDC before the Subcommittee on International Trade, Committee on Finance, U .S. Senate, Washington, D .C., October 25, 1991. Also see Ward, Justin R. and Glenn T. Prickett (1992) “Letter to Ambassador Carla A. Hills expressing opposition to the adoption of the “Draft Final Act “proposed by GATT Director General Dunkel,” January 13, 1992.

⁵⁸ Cameron, J. and H. Ward (1992) *The Multilateral Trade Organization: A Legal and Environmental Assessment*. A WWF International Research Report, WWF: Gland; Environmental News Network (1992) *GATT: The Environment and the Third World: A Resource Guide*. Berkeley: Environmental News Network; Audley, J. (1992) “A Critique of Arthur Dunkel’s Report on Trade and the Environment,” The Sierra Club Center for Environmental Innovation, Washington, D.C.; Roht-Arriaza, N. (1992) *UNCED Undermined: Why Free Trade Won’t Save the Planet*. Report prepared for Greenpeace International, Washington, D .C.; Ross, J. (1992) “Free Trade that Costs the Earth,” *Panoscope*, No. 32 (September): 20-2; Schaeffer, R. (1990) “Trading Away the Planet,” *Greenpeace* 15 (5): 13-16; Morris, D. (1990) “Free Trade: The Great Destroyer,” *The Ecologist* 20, No. 5, (1990): 190-95 .

⁵⁹ Inside U.S. Trade (1991) “Baucus Proposes GATT Environmental Code to Offset Effect of Lax Standards,” *Inside US Trade*, October 1991.

⁶⁰ Arden-Clarke, C. (1991) *The General Agreement on Tariffs and Trade, Environmental Protection and Sustainable Development*. Gland: The World Wildlife Foundation Discussion Paper. June; Arden-Clarke, C. (1992) *The GATT Report on Trade and Environment: A Critique by the World Wide Fund for Nature*. Gland: WWF; Arden-Clarke, C. (1992) *South-North Terms of Trade, Environmental Protection and Sustainable Development*, World Wide Fund for Nature Discussion Paper. Gland, Switzerland: World Wide Fund for Nature (formerly World Wildlife Fund), February; Overseas Development Council and World Wildlife Fund (1991) *Environmental Challenges to International Trade Policy: Conference report from a joint conference by the*

A Malaysian-based NGO, Third World Network (TWN), voiced a broad set of development and environmental concerns throughout its reporting on the GATT negotiations, underscoring threats that the proposed rules posed for national sovereignty.⁶¹ The U.S.-based Institute for Agriculture and Trade Policy (IATP) echoed many of TWN's concerns and sought to advance more sustainable and fair terms for agricultural production around the world.⁶² Consumers' organizations also joined the fray with analysis of the environmental implications of trade and calls for greater transparency of the GATT negotiations.⁶³ Business organisations, such as the International Chamber of Commerce, published views on the trade-environment,⁶⁴ and unions and labour organizations were increasingly vocal about the potential negative impact of free trade deals on employment, wages and workers rights.⁶⁵ Together, this advocacy spurred growing interest in the international media, with *The Economist* publishing several prominent editorials warning of the risks of trade protectionism in the guise of environmental protection.⁶⁶

In February 1992, trade and environment issues were taken up in detail in the preparatory phase and outcomes of the 8th session of the UN Conference on Trade and Development (UNCTAD) in Cartagena, Colombia. In their final Declaration, the Conference elaborated several paragraphs on trade and environment issues (see paras 151-154). They "recognized that improved market access for developing-country export [sic], in conjunction with sound environmental policies, would have a positive environmental impact."⁶⁷ The Conference also argued that "environmental policies should deal with the root causes of environmental

Overseas Development Council and World Wildlife Fund, Washington, D.C., February.

⁶¹ Raghavan, C. (1990) *Recolonization: GATT, the Uruguay Round and the Third World*, Penang: Third World Network; M. Khor (1990) "The Uruguay Round and the Third World," *The Ecologist* 30, No. 6, p. 211; Khor, M. (1990), *The Uruguay Round and Third World Sovereignty*. Penang, Malaysia: Third World Network.

⁶² Dawkins, K. (1992) *Balancing: Policies for Just and Sustainable Trade*, Minneapolis, Minnesota: Institute for Agriculture and Trade Policy, February.

⁶³ Wallach, L. (1991) Uruguay Round 'Final Act' Text is Worse than Expected on Environmental, Health and Consumer Interests. A Memorandum from Public Citizen, Washington, D.C., December; IOCU (1991) *Reducing the Burden of Western Agricultural Protectionism: Comments by IOCU and BEUC on Agricultural Trade and the GATT Negotiations*. Statement by International Organization of Consumers Unions and Bureau Européen des Unions de Consommateurs, November; IOCU (1991) *Consumers Demand a Conclusion to the GATT Round: Comments on the Final Stage of the Uruguay Round*, Statement by International Organization of Consumer's Unions and Bureau Européen des Unions de Consommateurs, November; IOCU (1991) *Consumers Interests and GATT: The Need for Greater Transparency*, A Discussion Paper by the International Organization of Consumers Unions. October; Davison, A. (1991) *Buying the Earth: A Consumer Commentary on the Overlap Between World Trade and Environmental Problems*, Discussion paper prepared for the International Organization of Consumer Unions. The Hague: IOCU.

⁶⁴ International Chamber of Commerce (ICC) (1991) *International Trade and the Environment: Principles for Policy and Implementation*. A Statement adopted by the 67th Session of the ICC Executive Board, Paris, October 1, 1991; Business Council for Sustainable Development (1991) *Trade and Sustainable Development*. BCSD, September, Draft.

⁶⁵ Cavanaugh, J., L. Compa, A. Elbert, B. Goold, K. Selvaggio and T. Shorrock (1988) *Trade's Hidden Cost: Worker Rights in a Changing World Economy*. Washington, D.C.: The International Labor Rights Education and Research Fund.

⁶⁶ Dunne, N. (1991) "U.S. Call for a GATT Code on Environment." *Financial Times*, September 18; Dunne, N. (1991) "Environment Rules Set Stage for GATT Conflicts." *Financial Times*, December 5, 1991; Dunne, N. (1992) "Fears over 'Gatzilla the Trade Monster'," *Financial Times*, January 30. There were also several editorials in *The Economist* on the topic, see "Environmental Imperialism: GATT and Greenery." *The Economist*, February 15, 1992; "Should Trade Go Green? How to Stop Protection For the Environment Becoming Protectionism in Trade." *The Economist*, January 26. Also see "Could GATT Go Green?" *New Statesmen and Society* 3, No. 131 (December 14, 1990) and "Can GATT Go Green?" *New Scientist* 128, No. 1742 (November 10, 1990).

⁶⁷ See paras 151-154 in the section on "Trade and Environment" in UNCTAD (1992) *A New Partnership for Development: The Cartagena Commitment, The Spirit of Cartagena: Declaration Adopted by the UN Conference on Trade and Development at its 8th Session, UNCTAD VIII*, Cartagena de Indias, Colombia, 27 February 1998, the pp. 46-48. See http://unctad.org/en/Docs/tdviimisc4_en.pdf.

degradation, thus preventing environmental measures from resulting in unnecessary restrictions to trade” and that “trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.” The governments further called on UNCTAD to undertake work on “the need for environmental protection to coexist with liberal trade policies and free market access and contribute to consensus building with regard to appropriate principles and rules.”

When the Earth Summit process concluded later 1992, its Rio Declaration on Environment and Development and Agenda 21 (the programme of action adopted at the Rio Conference) framed international trade as vital to poverty alleviation and to the fight against environmental degradation.⁶⁸ Agenda 21 addressed, for instance, the importance of promoting sustainable development through, amongst other means, international trade.⁶⁹ Chapter 2 of Agenda 21 emphasized that sustainable development policies at the national level must be supported by a dynamic international economy and an open, equitable, secure, non-discriminatory and predictable multilateral trading system. Among the objectives identified in Chapter 2 of Agenda 21 (on international cooperation to accelerate sustainable development in developing countries and related domestic policies) were improved market access for exports of developing countries; the provision of adequate financial resources; and acceleration of the development and diffusion (especially to developing countries) of “cleaner” technologies. Agenda 21 also observed that sustainable development requires the promotion of patterns of consumption and production that reduce environmental stress and meet the basic needs of the poor. Further, the Agenda identified two major programme areas relating to linkages between trade and environment: (a) promoting sustainable development through trade, and (b) making trade and environment mutually supportive. It also addressed the issue of differing environmental standards, as follows: “The challenge is to ensure that trade and environment policies are consistent and reinforce the process of sustainable development. However, account should also be taken of the fact that environmental standards valid for developed countries may have unwarranted social and economic costs in developing countries.”⁷⁰

Two further UNCED outcomes relevant to trade and environment matters were the opening for signature of two new multilateral environmental agreements (MEAs) – the Framework Convention on Climate Change and the Convention on Biological Diversity – each of which had several trade-related provisions. To ensure monitoring and review of the implementation of the Rio outcomes, the Earth Summit also created the Commission on Sustainable Development (CSD), comprised of 53 members elected by the UN’s Economic and Social Council (ECOSOC). Starting in 1993, the CSD held annual meetings where trade and environment issues were regularly on the agenda. In 1994, for instance, the second session of the CSD included a review of trade, environment and sustainable development as one of Agenda 21’s cross-sectoral components.⁷¹

⁶⁸ See UN document A/CONF.151/5/Rev.1.

⁶⁹ UN (1992) *Agenda 21: Programme of Action for Sustainable Development*. New York: United Nations.

⁷⁰ Ibid, chapter 2, para 2.20.

⁷¹ For a review of the CSD’s work in this area, including on trade and environment, see Chasek, P. (1997) “The United Nations Commission on Sustainable Development: The First Five Years,” Prepared for delivery at *The United Nations and the Global Environment in the 21st Century: From Common Challenges to Shared Responsibilities*, Conference hosted by the United Nations University, 14-15 November 1997.

From the Earth Summit forward, the 'trade and environment' debate unfolded in the context of a wider 'sustainable development' focus in the global policy arena. Although sustainable development and environmental protection were generally considered to be closely linked terms, some advocates favoured 'sustainable development' as a wider, more inclusive frame than 'environment' due to its emphasis on social and economic factors, as well as the needs of developing countries. The precise meaning attributed to sustainable development varied widely depending on the agenda of those using the term. Although developing countries had long been reluctant to embark on structured discussion of environmental issues in the GATT context, the experience of the UNCED negotiations gave them more confidence to engage on environmental topics and to argue for attention to the development dimensions of environmental issues in GATT discussions.⁷² Post-Rio, the approach that developing countries took to environmental issues in the GATT evolved from one of generalised resistance to a more cautious and targeted engagement. At meetings of the EMIT group, developing countries presented development perspectives on the issues on its agenda, including the effects of environmental measures such as eco-labelling schemes on international trade; the relationship between WTO rules and trade provisions in MEAs; and the transparency of national environmental regulations with an impact on trade. Developing countries also sought to advance a development view on trade and environment issues through the UN, securing a 1993 UN General Assembly request for the UN Conference on Trade and Development (UNCTAD) to comprehensively address trade and environmental issues. (UNCTAD was called on to report back to the CSD and ECOSOC in 1994).⁷³

Meanwhile, alongside Southern NGOs, such as TWN, there was a growing swell of concern from Northern development NGOs, such as Oxfam, on the implications of the Uruguay Round negotiations for developing countries.⁷⁴ Along with prominent development analysts at the time, they argued that developing countries faced a skewed, mercantilist trading system, where protectionism in developed country markets impeded their economic prospects, particularly in the agricultural sector. They argued against pressures to liberalize developing country markets without careful consideration, proposing that trade policy should be aligned with broader economic development strategies and institutional support to governments so that local businesses, livelihoods, and communities would be strengthened not threatened.⁷⁵ They argued that the GATT system fell far short of an open, rules-based multilateral trading regime and that the on-going negotiations were poised to produce great risks and few economic gains for developing countries.

Simultaneously, public debate on the pros and cons of free trade among social and labour activists,⁷⁶ and on environment and trade, was intensifying.⁷⁷ In the early 1990s, concerns

⁷² For discussion of some of these concerns about moving beyond trade issues, see GATT (1992-1993) *Report by the Chairman of the Group on Environmental Measures and International Trade, presented to the Contracting Parties at the Forty-Ninth Session*, GATT B.I.S.D. (40th Supp), GATT Secretariat: Geneva, p. 70.

⁷³ For a review of the CSD's work in this area, including on trade and environment, see Chasek, P. (1997) *op cit*; and Bigg, T. and F. Dodds (1997) "The UN Commission on Sustainable Development." in *The Way Forward: Beyond Agenda 21*, edited by Felix Dodds. London: Earthscan.

⁷⁴ Coote, B. (1992) *The Trade Trap*, Oxfam: Oxford; Watkins, K. (1992) *Fixing the Rules: North-South Issues in International Trade and the GATT Uruguay Round*, Catholic Institute for International Relations: London; Clark, J. (1986) *For Richer for Poorer: An Oxfam Report on Western Connections with World Hunger*, Oxfam: Oxford.

⁷⁵ Page, S. (1994) *How Developing Countries Trade: The Institutional Constraints*, Routledge: London.

⁷⁶ See, for instance, Lang, T. and C. Hines (1993) *The new protectionism: Protecting the future against free trade*. Earthscan: London; Manning, S. and M. Rocconi (1992) *Human Rights Implications of the Draft Final Act of the Uruguay Round of GATT*. Briefing paper, prepared for the International Labor Rights Education and Research Fund, February 10, 1992.

about the environment were a flashpoint for public outcry about new trade negotiations. Citizen campaigns emerged on the environmental and consumer impacts of the proposed North American Free Trade Agreement (NAFTA), particularly among NGOs in the United States and Canada,⁷⁸ and many of the same NGOs and critics launched campaigns voicing environmental concerns in the final stages of the Uruguay Round of GATT negotiations.⁷⁹ Citing experts such as the former World Bank economist Herman Daly, environmental NGOs argued that the push for more open and free trade stimulated commercial competition in ways that threaten environment standards.⁸⁰ They warned that trade rules could have a chilling effect on environmental regulations and that boosted trade flows could exacerbate unsustainable use of natural resources and pollution. At the heart of such complaints were fears that international trade rules may trump national sovereignty and democratic processes of environmental rule making, particularly through the dispute settlement proceedings.

In order to protect and defend the environment from 'bad trade rules,' environmental NGOs published studies to show where and how specific trade rules might be problematic for the environment.⁸¹ Such concerns in turn inspired a number of analytical efforts to bring clarity to the question of environmental implications of trade.⁸² The OECD for instance published work on environmental policies and industrial competitiveness,⁸³ and leading environmental and trade scholars identified options for making trade and environmental policies mutually

⁷⁷ Amidst this voluminous literature, following are some of the key scholarly works. On the trade side, Bhagwati, J. (1993) "Trade and Environment: The False Conflict?" in D. Zaelke et al. (eds) *Trade and the Environment: Law, Economics and Policy*, Island Press: Washington, D.C. On the environment side, see Charnovitz, S. (1994) "Free Trade, Fair Trade, Green Trade: Defogging the Debate," *Cornell International Law Journal*, Vol. 27, p. 456; Charnovitz, S. (1993) "A Taxonomy of Environmental Trade Measures," *Georgetown International Environmental Law Review* 6; Esty, D. (1994) *The Greening of the GATT: Trade, Environment and the Future*, Institute for International Economics: Washington, D.C.; Sampson, G. (2005) *The WTO and Sustainable Development*, Tokyo: *United Nations University Press*; and Vranes, E. (2009) "Trade and the Environment: Fundamental Issues in International Law," *WTO Law and Legal Theory, International Economic Law Series*, Oxford: Oxford University Press. A synthesis of opposing views at that time is in Petersmann, U. (1993) "International Trade Law and International Environmental Law: Prevention and Settlement of International Disputes in GATT," *Journal of World Trade* 27. For a developing country perspective, see Rege, V. (1994) "GATT Law and Environment-related Issues Affecting the Trade of Developing Countries," *Journal of World Trade* 28(3) 95-128.

⁷⁸ In the NAFTA context, for instance, the need to placate U.S. environmental groups that posed a credible threat to the agreement's eventual ratification by U.S. Congress resulted in the negotiation of a separate 'environmental chapter' and to create a NAFTA Commission on Environmental Cooperation (CEC), along with some opportunities to engage in the negotiation process. Although resisted by Mexico and resisted by environmental NGOs that sought a more fundamental overhaul of the NAFTA, these initiatives earned the NAFTA critical support from a number of politically influential environmental NGOs. See Esty and Deere, *Greening the Americas*, op. cit; and Audley, J. (1997) *Green Politics and Global Trade: NAFTA and the Future of Environmental Politics*, Georgetown University Press: Washington, D.C., pp. 64-92.

⁷⁹ For a snapshot of debate at that time, see Dunne, N. (1992) "Fears of 'Gattzilla the Trade Monster,'" *Financial Times*, January 30. Also see Nader, R. (1993) "Free Trade and the Decline of Democracy," in *The Case Against Free Trade: GATT, NAFTA, and the Globalization Of World Power*, North Atlantic Books.

⁸⁰ Daly, H. (1993) "The perils of free trade (Debate: Does Free Trade Harm the Environment?)," *Scientific American*, November, pp. 50-55.

⁸¹ See, for instance, Arden-Clarke, C. (1991) *General Agreement on Tariffs and Trade, Environmental Protection and Sustainable Development*, A World Wildlife Fund Discussion Paper, WWF: Gland; and French, H.F. (1993) *Costly Trade-Offs: Reconciling Trade and the Environment*, Worldwatch Institute Paper 113, Worldwatch Institute, Washington, D.C.

⁸² Shaw, N. and A. Cosbey (1994). GATT, the World Trade Organization and Sustainable Development, *International Environmental Affairs* 6 (3): 245-72. For a compilation of perspectives on trade and environment at that time, see Zaelke, D., P. Orbusch and R. Housman (eds) (1993) *Trade and the Environment: Law, Economics and Policy*, Washington, D.C.: Island Press. Further, a range of economist perspectives from that time were compiled in, see Anderson, K. and Blackhurst, R. (eds) (1992) *The Greening of World Trade Issues*, New York: Harvester Wheatsheaf.

⁸³ OECD (1993) *Environmental Policies and Industrial Competitiveness*, OECD: Paris.

reinforcing.⁸⁴ In addition, there was considerable debate among environmental advocates about the appropriate international forum for addressing trade-environment issues. Some environmental advocates argued, for instance, in favour of a new multilateral forum that could address environmental issues in more broadly defined ways than the prevailing trade-environment approach; others argued for turning such questions over to a strengthened World Environment Organization.⁸⁵ Environmentalists also debated whether multilateral or unilateral approaches could best advance environmental outcomes.⁸⁶ While many environmental advocates viewed trade and environment priorities as deeply opposed, those in favour of finding solutions at the GATT/WTO and harnessing trade rules for environmental ends called for environmental NGOs to more carefully examine the potential of some trade rules.⁸⁷

Notably, there were efforts among NGOs from developed and developing countries to identify issues of shared concern in regard to the trade negotiations, particularly among NGOs focused on agricultural issues and development and those in favour of more localized, sustainable production processes and democratic decision-making. According to Susan Ariel Aaronson, for instance, one of the first efforts at cross-border organizing on trade issues occurred at the 1988 Brussels GATT Ministerial session in Brussels.⁸⁸

Towards the end of the Uruguay Round, attention to trade-related environmental issues emerged in several of the negotiating texts. The Nordic countries led a push for action within the WTO to address environmental concerns. When Sweden and Finland joined the European Union, they contributed to the growing EU interest in environmental aspects of the negotiations.⁸⁹ The US and the EU also faced political pressures from national environmental constituencies to take action on the environment at the WTO. Spurred by recent US-EU disputes over SPS measures, the US government (with European support) sought ways to balance environmental protection and trade protection and to narrow the use of SPS measures as barriers to trade. This effort, however, “spurred environmental and consumer groups on both sides of the Atlantic to join the fray in 1990, demanding that the SPS Agreement include provisions affirming the right of each country to establish the risk of health and the environment that it deems appropriate.”⁹⁰

Developing countries, on the other hand, resisted the prospect of incorporating new environment-friendly trade-environment provisions in the GATT/WTO Agreements.⁹¹ Fear of

⁸⁴ Housman, R. & D. Zaelke (1993), “*Making Trade and Environmental Policies Mutually Reinforcing: Forging Competitive Sustainability*,” *Emory Law Review*, Vol. 23; C. Ford Runge (1994) *Freer Trade, Protected Environment*, New York: Council on Foreign Relations.

⁸⁵ For further discussion, see Esty, D. (1994) “The Case for a Global Environmental Organization,” in Kenen, P. (ed) *Managing the World Economy: Fifty Years After Bretton Woods*, Institute for International Economics: Washington, D.C.

⁸⁶ Charnovitz, S. (1993) “Environmental Trade Measures: Multilateral or Unilateral,” *Environmental Law and Policy*, Vol. 23, pp. 154.

⁸⁷ See, for instance, Esty, D. (1993) “GATting the Greens – Not Just Greening the GATT,” *Foreign Affairs*, 72, 5 (November- December), pp. 32-36.

⁸⁸ For discussion of the emergence of such efforts see, Ritchie, M. (1996) “Cross-Border Organizing”, in Mander, J. and E. Goldsmith (eds) *The Case Against the Global Economy and For a Turn Toward the Local*, San Francisco: Sierra Club.

⁸⁹ IISD (1996), p. 10.

⁹⁰ Steinberg, R. (1995) “Trade-Environment Negotiations in the EU, NAFTA and GATT/WTO: State Power, Interests and the Structure of Regime Solutions,” *Berkeley Roundtable on the International Economy Working Paper 75*, University of California, Berkeley.

⁹¹ For a developing country critique at the time, see Raghavan, C. (1990) *Recolonization: GATT, the Uruguay Round and the Third World*. Penang: Third World Network.

increased protectionism sanctioned by the GATT “spurred a general resistance within the South to linking trade and environment.”⁹² Developing countries expressed concerns about national sovereignty as well as procedural questions around who “selects and prioritized environmental problems, based upon which set of environmental data and risk assessment and more crucially, upon which set of environmental values.”⁹³

In the final stages of the GATT negotiations, pressures from the environmental *demandeurs*, most notably the United States and the EU, to incorporate environmental provisions overwhelmed developing countries.⁹⁴ Negotiations on environmental topics arose in the context of the TBT and SPS negotiations, as well on the Preamble to the Marrakesh Agreement and on a separate Ministerial Statement on Trade and Environment issues.⁹⁵ In the SPS and TBT negotiations, developing countries, led by India and Brazil “expressed their intention” not to agree to the proposed environmental provisions “[u]ntil being compensated.”⁹⁶ Ultimately, however, developing countries were pushed by the more economically powerful developed countries to sign onto the SPS, TBT and other WTO agreements, fearing that “failure to do so would have jeopardized” market access on an MFN basis to the United States and the EU.⁹⁷ Developing countries were able to make some gains in the negotiations, securing reference to increased market access, for instance, in the Ministerial Statement on Trade and the Environment (discussed in Section 1.3 below).⁹⁸

Behind the scenes, a handful of like-minded Secretariat staff and lead negotiators worked informally to forge language to send to Marrakesh for the Preamble to the WTO Agreements that would reflect and build on the Rio Principles, Agenda 21, and the outcomes of the 1992 UNCTAD VIII Conference in Cartagena.⁹⁹ As firm believers in the benefit of multilateral not unilateral approaches to environmental protections, and intellectually convinced that it should be able to advance trade and environmental goals, they sought to craft language that affirmed the mutual supportiveness of environmental, social and trade matters.¹⁰⁰ While

⁹² Vaughan, S. (1994) “Trade and Environment: Some North-South Considerations,” *Cornell International Law Journal*, Vol. 27: Iss. 3, pp. 591-606;

⁹³ Ibid. Such questions are clearly articulated in Bhagwati, J. (1993) “Trade and Environment: The False Conflict?” in Zaelke, D., P. Orbusch and R. Housman (eds) (1993) *Trade and the Environment: Law, Economics and Policy*, Washington, D.C.: Island Press, pp.159-90.

⁹⁴ Ibid.

⁹⁵ For an overview of environmental provisions in the Marrakesh Agreements, see Charnovitz, S. (1994) “The World Trade Organization and Environmental Supervision,” *International Environmental Report (BNA)*, 17, January 26, 1994.

⁹⁶ Richard Steinberg argues that: “Most developing countries acceded to the GATT in the 1960s and in obtaining the improved access to developed country markets implicit in accession, they had to accept the environmental exceptions of Article XX. At the conclusion of the Uruguay Round of trade negotiations, the European Union and the United States effectively compensated and coerced the developing countries into accepting two agreements that are central to the GATT/WTO trade-environment regime (the Agreement on Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade), as well as other agreements (on intellectual property, investment measures, and services), by simultaneously threatening to otherwise withdraw most-favoured-nation (MFN) treatment of their goods and offering new MFN treatment with lower tariff levels.” See Steinberg, R. (1995) “Trade-Environment Negotiations in the EU, NAFTA and GATT/WTO: State Power, Interests and the Structure of Regime Solutions,” *Working Paper 75*, Berkeley, p. 22.

⁹⁷ Steinberg, R. (1995) ‘Trade-Environment Negotiations in the EU, NAFTA and GATT/WTO: State Power, Interests and the Structure of Regime Solutions,’ *Working Paper 75*, Berkeley, pp. 21-22.

⁹⁸ Steinberg (1995), p. 22.

⁹⁹ See paras 151-154 in the section on “Trade and Environment” in UNCTAD (1992) *A New Partnership for Development: The Cartagena Commitment, The Spirit of Cartagena: Declaration Adopted by the UN Conference on Trade and Development at its 8th Session, UNCTAD VIII, Cartagena de Indias, Colombia, 27 February 1998*, the pp. 46-48. See http://unctad.org/en/Docs/tdviimisc4_en.pdf.

¹⁰⁰ Ibid.

aware that many countries were not convinced of mutually supportiveness in practice, the intent was to enshrine a political reconciliation of trade and sustainable development objectives – or at least the aspiration for such reconciliation – in the WTO's preamble.

As the Uruguay Round of negotiations drew to a close in late 1993, developing countries widely expressed disappointment in the outcomes of the Round. They argued that the package of Agreements failed adequately to address their development needs and priorities, and postponed attention to numerous issues they considered vital, such as greater market access; reduction of developed country agricultural subsidies; the operationalization of special and differentiated treatment; and other 'implementation issues' embodied in the WTO's 'built-in agenda' (which refers to provisions in the existing WTO Agreements that called for reviews of the operations or implementation of the agreements or further negotiations).¹⁰¹ The "lack of reciprocity involved in the final GATT negotiations led many developing countries to believe that the WTO [would] not seriously consider their concerns before making policy recommendations," including on issues such as the environment.¹⁰² As the NAFTA negotiations concluded in North America, the adoption of a NAFTA environmental side agreement fuelled trepidation on the part of many developing countries.¹⁰³ At an informal Meeting of the GATT in December 1993, the Malaysian Ambassador to the GATT clearly expressed the frustration and mistrust of the Northern-driven trade-environment agenda.¹⁰⁴ He called on developed countries to demonstrate a similar commitment to other areas of Agenda 21, such as poverty alleviation and financing for development.

Recognising the divergence among developed and developing countries, and faced with the challenge of building confidence and encouraging dialogue among the soon-to-be WTO Members, the GATT Secretariat held a high level meeting on trade, environment and sustainable development in Geneva in February 1994.¹⁰⁵ In an effort to bridge competing views, the meeting brought together a diverse group of around 300 participants, including NGOs (the Ford Foundation contributed financing to support participation of NGOs from developing countries). The proceedings featured presentations on three themes: liberalization, environmental protection and sustainable development; the internationalization of environmental costs; and the implications for the trading system and international cooperation. Among the many concerns highlighted by environmental advocates was the 1991 GATT dispute settlement panel's ruling (noted above). The meeting did little to allay the trepidations of environmental organisations.

¹⁰¹ For a review of developing country engagement in the Round, see Tussie, D. and Glover, D. (eds) (1993) *The Developing Countries in World Trade: Policies and Bargaining Strategies*, Lynne Rienner: Boulder.

¹⁰² Vaughan (2004), op cit., p. 602.

¹⁰³ Housman, R. (1994) *Reconciling Trade and the Environment: Lessons from the North American Free Trade Agreement*, UNEP Series on Environment and Trade No. 3, UNEP: Geneva. An example of efforts by the environmental scholars and NGOs to draw on the NAFTA experience to bring the environment more substantively into the WTO is: Silverman, J. (1994) "The 'giant sucking sound' revisited: A blueprint to prevent pollution havens by extending NAFTA's unheralded 'eco-dumping' provisions to the New World Trade Organization," *Georgia Journal of International and Comparative Law*, Vol. 24; 347 – 378.

¹⁰⁴ Cited in Vaughan (2004), op cit., p. 602.

¹⁰⁵ See GATT (1994) "Papers presented at the GATT Symposium on Trade, Environment and Sustainable Development," 10-11 June 1994, *News and Views from the GATT*, TE/009, 28 July 1994. For the GATT Secretariat's report of the meeting, see *GATT Trade and Environmental Bulletin 008*.

In February 1994, UNCTAD and UNEP also held a high-level informal meeting on trade and environment, with a focus on developing country perspectives.¹⁰⁶ In their remarks, developing country officials emphasised the importance of considering the WTO's work within the overall policy context of the UNCED outcomes. Insisting that the economic burden of environmental protection should not fall on them and the importance of national sovereignty, they echoed UNCED's language of common but differentiated responsibilities (i.e., that developed countries bear greater responsibility for global environmental problems and should bear proportionally higher costs, such as through financing and technology transfer to developing countries). The Indian Minister for Environment and Forests highlighted developed countries consumption patterns as a key issue for attention, arguing that:

"[i]t would be a retrograde way of shaping environmental norms to allow dispute resolution panels of GATT to indicate the direction the global environment should take. Not only retrograde, but naive, because the roots of the linkage between trade and environment are not to be found in superficial assumptions. They go much deeper, and are systematic. There is a social and environmental subsidy which industrialized nations receive from developing countries. This insidious subsidy renders all development in the North unsustainable by definition. It makes a mockery of free trade; and if we have to set things right, then the subsidy must be accounted for."¹⁰⁷

Efforts to build understanding did not, however, allay concerns among environmentalists, trade advocates or developing countries on the trade-environment debate or build bridges between them. A group of Environmental Ministers – from both developed and developing countries – who gathered from around the world in India in February used their communiqué to insist on the need for trade negotiations to consider environmental issues.¹⁰⁸ In March 1994, just before the GATT Marrakesh Ministerial Conference that would formally conclude the Uruguay Round, environmental organisations issued a suite of concerns and proposals.¹⁰⁹ In April 1994, when governments met in Marrakesh, developing country concern about how environmental issues remained clearly on view. Malaysia's Minister of Trade stated, for instance, that:

"[Environmental issues] are now clearly being used to promote protectionist motives, particularly to keep out imports from countries which have a better competitive edge and comparative advantage."¹¹⁰

Later in April, at an UNCTAD-UNEP informal meeting on environment and trade, the Malaysian Trade Minister argued that efforts at "confidence building" were complicated by

¹⁰⁶ In response to a request by the UN's Commission on Sustainable Development (CSD), the two secretariats co-hosted a two-day high-level Informal Meeting on Trade and Environment, Environment and Sustainable Development in November 1994. For a report of that meeting, see <http://www.un.org/esa/documents/ecosoc/cn17/1995/ecn171995-23.htm>.

¹⁰⁷ Cited in Vaughan (2004), op cit., p. 598.

¹⁰⁸ The meeting of ministers of the environment was held in Agra (India) on 24-25 February 1994. See UNCTAD (1994) "Trade and Environment and UNCED follow-up activities in UNCTAD," *Note prepared by the UNCTAD Secretariat for the Second Meeting of the Commission on Sustainable Development*, Geneva, 14 April. <http://www.ciesin.org/docs/008-581/008-581.html>. This document, prepared by the UNCTAD secretariat, was accompanied by one prepared by the GATT secretariat, for the forthcoming CSD session with regard to trade aspects of Agenda 21, Chapter 2.

¹⁰⁹ See, for example, "The GATT Trade and Environment Work Programmes: A Joint NGO Statement," signed on 3 March 1994 by WWF International and twenty WWF national affiliates, Greenpeace International and ten Greenpeace national affiliates, and twenty-nine other NGOs.

¹¹⁰ Cited in Third World Network (1994) "After the Uruguay Round," *Third World Resurgence*, Issue 45, May, p. 22.

the “general lack of consistency in fulfilling commitments under Agenda 21,” and by the “trade barriers and unilateral measures imposed by some developed countries.”¹¹¹

Meanwhile, growing recognition of the political salience of ‘trade and environment’ issues spurred research and analysis from several international organizations. The OECD reported on the environmental effects of trade in the transportation sector,¹¹² while the World Bank,¹¹³ UNCTAD¹¹⁴ and UNEP all published studies that addressed trade and environment linkages.¹¹⁵

In addition, prominent NGOs and experts undertook efforts to bridge the divergent views. In the months before the creation of the WTO, for instance, International Institute for Sustainable Development (IISD) (a Canadian-based NGO/think tank) published its ‘Winnipeg Principles on Trade and Sustainable Development’ (see Appendix 6),¹¹⁶ which had been drafted over the course of 1994 by a nine-member Working Group drawn from the trade, environment and development communities worldwide. The Winnipeg principles articulated three key assumptions: a) the need for poverty alleviation, b) the importance of environmental policies, and c) the role of trade liberalization. On the latter assumption, the document stated that: “[b]arriers to trade can create impediments to the achievement of sustainable development, particularly for developing countries, and trade liberalization is an important component of progress toward sustainable development for all countries.” It also argued that the contribution of trade liberalization to sustainable development would be promoted by policies that respect environmental and social policy goals. To this end, it identified seven principles to should guide decision-making on trade and sustainable development: efficiency and internalization of external environmental costs; equity in distribution between and within generations; environmental Integrity involving, amongst other things, maintenance of ecological systems that are the basis for sustainability; subsidiarity in relation to matters of jurisdiction; international cooperation; recommending a precautionary approach to decision-making involving the environment; and openness in regard to decision-making processes.¹¹⁷ To respond to developing country concerns about abuses of power, the Winnipeg Principles also aligned the environmental agenda with the push for more open dispute processes: “Dispute-settlement procedures need to be open, effective and impartial, protecting the interests of weaker countries against the use of coercive political and economic power by more powerful countries. Unilateral action on transboundary

¹¹¹ Cited in Vaughan (2004), op cit., p. 602

¹¹² Gabel, L. (1994) *The Environmental Effects of Trade in the Transportation Sector*, OECD: Paris.

¹¹³ Pearce, D. and Warford, J. (1993) *World Without End: Economics, Environment and Sustainable Development*, World Bank: Washington, D.C.

¹¹⁴ UNCTAD (1994) *Sustainable Development: The Effect of Internalization of External Costs on Sustainable Development: Report by the UNCTAD Secretariat to the Trade and Development Board* (Apr. 18, 1994), UNCTAD: Geneva.

¹¹⁵ Repetto, R. (1994) *Trade and Sustainable Development*, Geneva: UNEP.

¹¹⁶ IISD had been established after the Rio Summit to advocate policies to support sustainable development within Canada and globally. The driving force behind the Winnipeg Principles was Konrad von Moltke. See IISD (1994) *Winnipeg Principles on Trade and Sustainable Development*, IISD: Winnipeg. Also see Tidsall, C. (2001) “The Winnipeg Principles, WTO and Sustainable Development: Proposed Policies for Reconciling Trade and the Environment,” *Sustainable Development* 9 (4), pp 204-212.

¹¹⁷ Source: <http://iisd.ca/trade/princip2.htm>. The nine experts hailed from both developed and developing countries and offered both trade expertise and environmental expertise. The experts were Richard Blackhurst, Janine Ferretti, Arthur, J. Hanson, Nurul Islam, Konrad von Moltke, Rubens Ricupero, David Runnalls, Mohamed Sahnoun and Erna Witoelar. See IISD (1994b) summary in Tidsall (2001).

environmental issues – an option generally available only to a few large countries – should be considered only when all possible avenues of cooperative action have been pursued.”¹¹⁸

1.3 Environment and Sustainable Development in the WTO Agreements

The suite of Marrakesh Agreements that came into effect in 1995 contained a number of environmental dimensions. Reflecting the spirit of the Rio Earth Summit and its declaration (although not mentioning them by name), the Preamble to the Marrakesh Agreement Establishing the World Trade Organization includes references to sustainable development, environmental protection, resource conservation and the needs of developing countries.¹¹⁹ The Preamble states that WTO members recognize:

“that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living..., 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 and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.”

Second, Trade ministers also signed a Ministerial Decision on Trade and Environment (see Appendix 3), which states that:

“There should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other.”¹²⁰

The Ministerial Decision also created the Committee on Trade and Environment (CTE) as a regular committee of the new WTO to: “identify the relationship between trade measures and environmental measures in order to promote sustainable development and make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.”¹²¹ The CTE is open to the entire WTO membership and has accepted some international organizations, including MEA Secretariats as observers.¹²² The Ministerial Decision set out a ten-point work programme for the CTE. Box I presents the items on the original work programme, which were later referred to as ‘agenda items.’ (The Box also noted those items that were specifically taken up in the 2001 Doha Declaration and became either subjects of Doha Round negotiations or were designated as ‘items of focus’ for the WTO’s regular CTE Committee. The current status of those included in the Doha negotiations was unclear in late 2016 as Member States continued to debate the future of the Round and its various components.)

¹¹⁸ IISD (1994b) p.5. The Winnipeg approach to sustainable development emphasised, for instance, that developed country barriers to trade can drive unsustainable practices within their borders because they thwart efforts by countries to expand into more value-added products and exports.

¹¹⁹ WTO (1994) *Marrakech Agreement Establishing the World Trade Organisation*, 14 April 1994, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_01_e.htm#pA.

¹²⁰ For the full text of the Decision on Trade and Environment, see https://www.wto.org/english/tratop_e/envir_e/issu5_e.htm.

¹²¹ https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e.htm.

¹²² The Secretariats were not, however, permitted to observe the Special Sessions of the CTE that occurred in the context of the Doha Round.

Box 1. The 1994 CTE work programme and status as of December 2015

	Description of agenda item in 1994 CTE work programme	Updated status of the agenda item post the 2001 Doha Ministerial
1. Trade rules, environment agreements, and disputes	The relationship between the rules of the multilateral trading system and the trade measures contained in multilateral environmental agreements (MEAs), and between their dispute settlement mechanisms.	In Doha Round negotiations
2. Environmental protection and the trading system	The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system.	
3. Environment taxes and requirements	The relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes; and (b) requirements for environmental purposes relating to products, such as standards and technical regulations, and packaging, labelling and recycling requirements.	CTE item of focus
4. Transparency of environmental trade measures	The provisions of the multilateral trading system dealing with the transparency of trade measures used for environmental purposes.	
5. Trade rules, environment agreements, and disputes	The relationship between the rules of the multilateral trading system and the trade measures contained in multilateral environmental agreements (MEAs), and between their dispute settlement mechanisms.	In Doha Round negotiations
6. Environment and trade liberalization	How environmental measures affect market access, especially in relation to developing countries and least developed countries; and the environmental benefits of removing trade restrictions and distortions.	CTE item of focus
7. Domestically-prohibited goods	The issue of exports of domestically prohibited goods (DPGs), in particular hazardous waste.	
8. Intellectual property	The relevant provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.	CTE item of focus
9. Services	The work programme envisaged in the Decision on Trade in Services and the Environment.	
10. The WTO and other organizations	Input to the relevant WTO bodies on appropriate arrangements for relations with intergovernmental and non-governmental organizations (NGOs).	In Doha Round negotiations

Third, a number of specific Uruguay Round negotiations addressed trade-related environmental issues, resulting in modifications to the TBT Agreement and attention to certain environmental issues in the GATT, the General Agreement on Trade in Services, the agreements on Agriculture, Sanitary and Phytosanitary Standards (SPS), Trade-Related Aspects of Intellectual Property Rights, and Subsidies and Countervailing Measures, and (see Appendix 2). The 1994 GATT Agreement also incorporated the provisions included in Article XX of the 1947 GATT Agreement, which set out a number of specific instances in which WTO Members may be exempted from trade rules. According to the Article XX, WTO Members can undertake measures inconsistent with the GATT if these are: (XX(b)) necessary to protect human, animal or plant life or health; or (XX(g)) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption. The introductory paragraph of Article XX works to prevent the misuse of such trade-related measures in the form of 'green protectionism', stipulating that environmental measures may not be "applied in

a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.”

Ministers also adopted a decision on Trade in Services and the Environment.¹²³ To determine whether any modification of Article XIV (the ‘general exceptions’ provision) of the Services Agreement would be required to take account of environmental measures that may conflict with its provisions, the Decision called on the CTE “to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development” as well as on “the relevance of inter-governmental agreements on the environment and their relationship to the Agreement.”

In sum, when the WTO was launched in January 1995, environmental issues were approached through a frame asserting that trade and sustainable development goals both are and should be mutually supportive. For the trade community, the core concern was to prevent the introduction through the ‘green agenda’ of new forms of protectionism and to assert the importance of trade rules/disciplines and market access priorities. The mainstream trade community was also adamantly against any vision of the WTO as an ‘environmental organization,’ insisting that that environmental protection was the domain of other international organizations and that potential trade-environment conflict could best be addressed through improved environmental measures at the national level. Wherever environmental issues appeared in the text of the Marrakesh Agreements, they were coupled with text that reiterated the importance of pursuing environmental goals in ways that did not threaten key GATT principles, such as national treatment and MFN.

¹²³ See https://www.wto.org/english/docs_e/legal_e/46-dsenv_e.htm.

2. The WTO's Work on Trade and Environment in 2015

Since the WTO opened its doors in 1995, its work on environmental issues has expanded considerably. This work includes Member State negotiations and decisions, activities undertaken by the WTO Secretariat, and dispute settlement deliberations and rulings of the panellists and the WTO's Appellate Body. At the time of the WTO's 20th anniversary in 2015, there were seven main clusters of work on environmental issues at the WTO.

The first cluster of work related to discussions and negotiations in the CTE. In this Committee, WTO Members were continuing work on all of the original agenda items included in the 1994 CTE 1994 mandate, as well as the three areas for which the 2011 Doha Declaration called on the CTE to identify WTO rules that needed clarification (see Figure 1), namely:

- a) market access, where the CTE was asked to examine the effect of environmental measures and requirements on market access, especially for developing countries, and preventing 'green protectionism',¹²⁴ as well as 'win-win-win' situations where eliminating or reducing trade restrictions and distortions would benefit trade, the environment and development;¹²⁵
- b) the TRIPS Agreement, where Ministers asked the CTE to continue to look at the relevant provisions of the TRIPS Agreement;¹²⁶
- c) environmental labelling requirements for environmental purposes, where the CTE was asked to examine the impact of eco-labelling on trade and whether existing WTO rules stand in the way of eco-labelling policies. (Parallel discussions were to take place in the WTO Technical Barriers to Trade (TBT) Committee.)

In addition, the CTE was called on to discuss: a) technical assistance and capacity building under paragraph 33 of the Doha Declaration (where Members recognized the importance of technical assistance and capacity building on trade and environment to developing countries, particularly the least-developed among them); b) environmental reviews, where paragraph 33 encouraged Members wishing to perform environmental reviews at the national level to share expertise and experience in this area;¹²⁷ and c) sustainable development, where paragraph 51 of the Doha Declaration called on two committees — the CTE and the Trade and Development Committee — to act as forums for debating the environmental and developmental aspects of the negotiations with an eye to achieving the objective of sustainable development.¹²⁸

¹²⁴ https://www.wto.org/english/tratop_e/envir_e/envir_req_e.htm

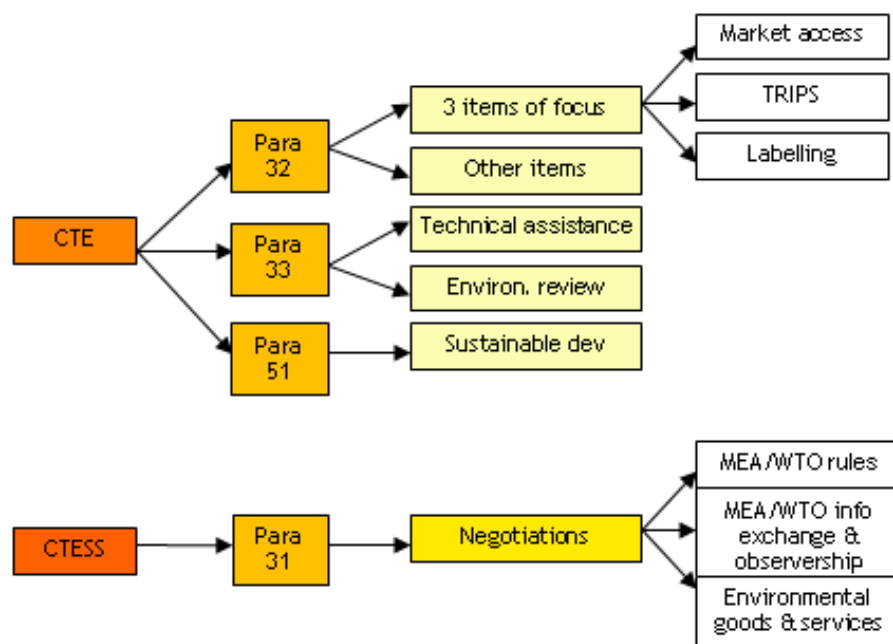
¹²⁵ https://www.wto.org/english/tratop_e/envir_e/win_e.htm

¹²⁶ https://www.wto.org/english/tratop_e/envir_e/trips_e.htm. In addition, paragraph 19 of the Ministerial Declaration mandates the TRIPS Council to continue clarifying the relationship between the TRIPS Agreement and the Biological Diversity Convention.

¹²⁷ https://www.wto.org/english/tratop_e/envir_e/reviews_e.htm.

¹²⁸ https://www.wto.org/english/tratop_e/envir_e/sust_dev_e.htm.

Figure 1. The Doha Declaration's prescriptions on trade and environment



TRIPS = trade-related aspects of intellectual property rights

MEA = multilateral environmental agencies

CTE = Committee on Trade and environment

CTESS = CTE Special Sessions

Source: (WTO website, 2015, https://www.wto.org/english/tratop_e/envir_e/cte_doha_e.htm).

Second, WTO members were pursuing negotiations launched in Doha through Special Sessions of the CTE on three trade and environment themes, namely:¹²⁹ a) the relationship between WTO rules and specific trade obligations set out in multilateral environmental agreements (paragraph 31 (i));¹³⁰ b) the collaboration between the WTO and MEA Secretariats regarding procedures for regular information exchange between the Secretariats and the relevant WTO Committees, as well as criteria for granting of observer status

¹²⁹ https://www.wto.org/english/tratop_e/envir_e/envir_negotiations_e.htm

¹³⁰ Numerous multilateral environmental treaties include provisions on trade, for example, the Montreal Protocol on Substances that Deplete the Ozone Layer, the UNFCCC, the trade-dedicated Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Convention on Biological Diversity (CBD), as well as the Basel, Rotterdam, and Stockholm Conventions on hazardous waste, hazardous chemicals, and persistent organic pollutants respectively. In addition, a number of sectoral agreements in the fisheries sector also have trade-relevant provisions, including the UN Convention on the Law of the Sea (UNCLOS), the UN Fish Stocks Agreement, and the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement). These, in turn, are supplemented by trade-related measures taken by some regional fisheries management organisations. On the intersection of [WTO rules and multilateral environmental agreements \(MEAs\)](https://www.wto.org/english/tratop_e/envir_e/envir_neg_meas_e.htm), see: https://www.wto.org/english/tratop_e/envir_e/envir_neg_meas_e.htm.

(paragraph 31 (ii));¹³¹ and c) the reduction or elimination of tariffs and non-tariff barriers on environmental goods and services (paragraph 31 (iii)) (see Figure 1).¹³²

Third, in accordance with the Doha Declaration, WTO Members were negotiating to clarify and improve WTO rules that apply to fisheries subsidies, as part of negotiations undertaken in Special Sessions of the Rules Committee.¹³³ In addition, negotiations on market access for environmental goods and services (such as catalytic converters, air filters or consultancy services on wastewater management) were taking place in Special Sessions of the Market Access Negotiating Group and of the Services Council. Notably in paragraph 32, the Doha Declaration stated that the “outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.”

Fourth, the WTO’s dispute settlement proceedings in 2015 featured several cases on environmental issues. Such cases played a critical role in interpreting the intersection between environmental protection and the rights and obligations of WTO Member States, particularly as several of the legal questions at stake had not been resolved through WTO negotiations (for a summary of key environment-related cases since the 1995, see Box 2).

Box 2. Two decades of trade and environment disputes (1995 to 2015)

Dispute	Year of latest report	Complainant(s)	Comments
India – Solar Cells	2015	US	In February 2013, the US requested consultations with India over its domestic content requirements under the Jawaharlal Nehru National Solar Mission (“NSM”) for solar cells and solar modules, which the US claimed discriminated against foreign solar equipment manufacturers in favour of domestic counterparts. In May 2014, the DSB established a panel, the report of which was circulated to Members in February 2016. The panel found that the NSM’s domestic content requirements are trade-related investment measures violating the national treatment obligations under the TRIMs Agreement and the GATT 1994. The panel also found that the discrimination relating to solar cells and modules under the domestic content requirements cannot be exempted by the GATT Article III:8(a) derogation for government procurement, as the solar cells and modules discriminated against were not in a “competitive relationship” with the electricity bought by the Indian government from power developers. Among other points, the Panel rejected India’s argument that the DCR measures were justified under Article XX (d) on the grounds that they secure the country’s compliance with ‘law or regulations’ which require the government

¹³¹ https://www.wto.org/english/tratop_e/envir_e/envir_neg_mea_e.htm#collaboration. The negotiations address how WTO rules are to apply to WTO members that are parties to environmental agreements, in particular to clarify the relationship between trade measures taken under the environmental agreements and WTO rules. So far no measure affecting trade taken under an environmental agreement has been challenged in the GATT-WTO system.

¹³² https://www.wto.org/english/tratop_e/envir_e/envir_neg_serv_e.htm.

¹³³ https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm

			to take steps to promote sustainable development, arguing that international agreements would only fall within the meaning if they have 'direct effect' in the country, or otherwise form part of the domestic legal system of the Member concerned. With one exception, it also rejected India's argument that a number of domestic legal instruments fell within the meaning of Article XX (d), arguing that these need to be legally enforceable rules of conduct under a country's domestic legal system, and not the general objectives of the laws.
US – Tuna II (Mexico)	2015	Mexico	In 2012, the Appellate Body found that the U.S. dolphin-safe labelling scheme violated WTO TBT trade rules around labelling and discriminated unfairly against Mexican tuna products. The Appellate Body argued that while the measures, designed to address dolphin mortality when catching tuna, addressed their objective with regards to methods of fishing used in the Eastern Tropical Pacific (ETP) area, the label did not address mortality arising from other fishing methods in other areas of the ocean. The AB concluded that the US measure was not even-handed and had a detrimental impact on Mexican tuna products. In 2013, Mexico requested compliance proceedings on the US amendments to its measure. In 2015, a compliance panel report found that the US had not made enough revisions to bring the measure into line with WTO rules. The compliance panel accepted that a label with eligibility requirements, such as banning the "setting" on dolphins, was justified under Article XX(g) but found that the certification, as well as tracking and monitoring requirements, in the US scheme posed a problem with regards to the Article XX's chapeau.
China – Rare Earths	2014	US, EU, Japan	The Appellate Body confirmed a panel ruling that China's export restrictions on various rare earths, as well as tungsten and molybdenum, were inconsistent with WTO rules. It also upheld a panel conclusion that the design and structure of the export quotas were not justified under the exception in GATT Article XX(g) on the conservation of exhaustible natural resources.
EC – Seal Products	2014	Canada, Norway	The Appellate Body upheld a panel ruling that the EU Seal Regime, which generally prohibits the import and placing on the market of seal products with certain exceptions, was justified under GATT Article XX (a) as 'necessary to protect public morals.' The AB also agreed with the panel that the EU had not demonstrated that its Seal Regime met the requirements of the chapeau of Article XX (which requires that exceptions are not applied in a manner that would constitute arbitrary or unjustified discrimination where the same conditions prevail or a disguised restriction on international trade), particularly with respect to its exception related to the sale of products derived from hunts by indigenous communities.
Canada – Renewable Energy	2013	Japan, EU	The Appellate Body found that a local content requirement in the Canadian province of Ontario's feed-in-tariff (FIT) programme for boosting renewable energy was inconsistent with WTO GATT and the Agreement on Trade-Related Investment Measures (TRIMs). The AB upheld the panel's finding that the measures constituted a subsidy within the definition of the ASCM. However, while the AB reversed the panel's finding that EU and Japan had failed to establish that the measure conferred a benefit, the AB itself was unable to determine this and therefore whether it was a prohibited subsidy. Canada notified the Dispute Settlement Body (DSB) that it had brought the measures into line in June 2014 and no

			compliance proceedings have been initiated.
China – Raw Materials	2012	EU, Mexico, US	The Appellate Body upheld the panel's findings around the relationship between GATT Article XX and China's Accession Protocol. The panel found that China's export restraints on different raw materials, including export duties, export quotas, minimum export price requirements, export licensing requirements, and administration and publication of trade regulations, were not justified pursuant to Articles XX(b) and XX(g). China brought its measures into line in early 2013.
Brazil – Retreaded Tyres	2009	EU	The Appellate Body upheld the panel's finding that Brazil's import ban on retreaded tyres – tyres that are reprocessed for a second and final use – was provisionally justified under GATT Article XX(b) as necessary to protect human life or health. Retreaded tyres have a shorter lifespan and accumulating discards can be difficult to deal with in an environmentally responsible way. Tyre dumping sites are also breeding grounds for disease-carrying mosquitoes. However, the AB then reversed some of the findings under the Article's chapeau, but ultimately agreed with the panel that the ban was not justified because it was applied in a manner that constituted arbitrary or unjustifiable discrimination and a disguised restriction on international trade. EU resorted to binding arbitration after disagreement on the reasonable period time (RPT) for action and Brazil brought its measure into compliance the following year.
EC – Biotech Products	2006	US, Canada, Argentina	A panel found that a general de facto moratorium on approvals of biotech products was in effect in five EU member states and at the EU level with regard to a delay to final substantive approvals for placing biotech products on the single market. The panel found that this moratorium led to undue delay and therefore the EU was acting inconsistently with WTO SPS rules. The panel also found that the EU had not undertaken sufficient risk assessments. Argentina and Canada reached a "mutually agreed solution" with Brussels, while Washington requested authorisation to retaliate. These proceedings have, however, been suspended since 2008.
EC – Asbestos	2001	Canada	The Panel and the Appellate Body both upheld the EU's defence that France's ban on asbestos was justified under GATT Article XX(b) as necessary to protect human life or health.
US – Shrimp	2001	India, Malaysia, Pakistan, Thailand	The Appellate Body found that the US' prohibition of shrimp and shrimp products from non-certified countries – those that had not used a certain net to catch shrimp – was related to GATT Article XX(g) but could not be justified under the Article's chapeau because it was "arbitrary and unjustifiable." The AB reversed, however, the panel's reading of Art. XX with respect to analysis steps. The AB held that WTO panels might accept "amicus briefs" (friends of the court submissions). Malaysia later requested compliance proceedings. WTO arbitrators found that the US' compliance measure was justified.
US – Standards for Reformulated and Convention Gasoline	1996		The case affirmed that the US had every right to adopt the highest possible standard to protect its air quality so long as it did not discriminate against foreign imports. The US lost the case because its requirement on domestic producers was less stringent than that imposed on imported gasoline (in this case from Venezuela and Brazil).

Source: Authors' own based on *WTO Dispute Settlement: One-Page Case Summaries* (1995-2014) and summaries on the WTO's website.¹³⁴ In each instance the date and findings refers to the final point of arbitration by the WTO, in other words, a panel ruling, Appellate Body, or compliance proceedings. The table does not, therefore, provide information on where initial rulings were overturned or modified but focuses on the latest develop in each proceeding.

A fifth area of WTO activity on the environment related to the Secretariat's capacity building, technical assistance, and training portfolio as well as its engagement in the multi-actor Aid for Trade initiative, launched in 2005.¹³⁵ The WTO Secretariat provided assistance to developing countries, for instance, to participate more effectively in the work of the CTE and in environmental negotiations. Other examples of Secretariat capacity-building activities included a bi-annual Advanced Course on Trade and Environment; regional seminars on trade and the environment; and national workshops on trade and environment undertaken in response to requests from Member States, as well as side-events at the Conference of the Parties of relevant MEAs to brief officials about discussions in the trade policy arena and the incorporation of training modules on environment issues in its trade policy courses in Geneva and around the world (see Appendix 5 for examples of training events). The Secretariat also encouraged delegations, donors or recipients to exchange information on trade and environment capacity building in developing countries, such as by reporting their assistance to the CTE (as called for in paragraph 33 of the Doha Declaration). Further, the WTO also established the Standards and Trade Development Facility (STDF), a partnership of five international organizations which it hosts to assist developing countries implement international sanitary and phytosanitary standards, guidelines and recommendations "as means to improve their human, animal and plant health status, and ability to gain or maintain access to markets."¹³⁶ More broadly, a portion of the resources for Aid for Trade, which combines contributions from a range of bilateral and multilateral agencies, was devoted to building the capacity of developing country institutions to respond to environmental requirements in export markets.¹³⁷

A sixth area of the WTO's work on trade and environment related to research and outreach undertaken by the WTO Secretariat's research and external relations. Such work included Secretariat papers and information notes produced at the request of WTO Committee on topics such as 'GATT/WTO Practice on Article XX (exceptions)';¹³⁸ the compilation of a databases (e.g., on environmental measures¹³⁹ and reviews/impact assessments undertaken by Members);¹⁴⁰ speeches by the Director General (for a full list of speeches by WTO

¹³⁴ https://www.wto.org/english/res_e/booksp_e/dispu_settl_1995_2014_e.pdf. See, for instance, WTO (2016) 'India—Certain Measures Relating to Solar Cells and Modules,'

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm.

¹³⁵ See WTO website section on 'Environment: Technical Assistance',

https://www.wto.org/english/tratop_e/envir_e/envir_ta_e.htm.

¹³⁶ <http://www.standardsfacility.org>. On the environment front, for instance, the STDF has organized a seminar, briefing and publication on international trade and invasive alien species, as trade is one of the main pathways of IAS introductions into new habitats. <http://www.standardsfacility.org/invasive-alien-species>.

¹³⁷ For background on the Aid for Trade Initiative, see WTO (2015) *Fifth Global Review of Aid for Trade: Reducing Trade Costs for Inclusive, Sustainable Growth*, WTO: Geneva.

¹³⁸ WTO (2002) *GATT/WTO Dispute Settlement Practice Relating to GATT Article XX, Paragraphs (b), (d), and (g)*, WT/CET/W/203, 8 March 2002, WTO: Geneva.

¹³⁹ An Environmental Database (EDB) documents WT/CTE/EDB/* and documents WT/CTE/W/46, 77, 118, 143 and 195 was established in 1998 for the WTO Secretariat to compile and update annually all measures related to the environment that governments have notified to the WTO or that have been noted in trade policy reviews. This followed intensive discussions on transparency in the CTE and the recommendation in the CTE's 1996 Report to the Singapore Ministerial Conference.

¹⁴⁰ The WTO has compiled a list of all trade related reviews completed or underway as of May 2007 (see WT/CTE/W/25), which it updated with an illustrative list of the various trade related impact assessments in

Director-Generals, see Appendix 4); and other publications and reports undertaken on the Secretariat's own initiative.¹⁴¹ It also included the WTO's outreach to stakeholder communities on environmental issues, most notably NGOs and parliamentarians, as well as its engagement with other international organisations (such as UNEP)¹⁴² and processes (such as Secretariat events and presentations alongside international negotiations on climate).¹⁴³

Finally, outside the context of the Doha Round, fifteen WTO members were pursuing plurilateral negotiations on trade in environmental goods and services (such as wind turbines, air quality monitors and solar panels), which had been launched in July 2014 at the WTO.¹⁴⁴

At the end of the WTO's 20th year, although the status of many of the negotiations that touch on environmental issues with the Doha Round was uncertain, it was clear that the earlier resistance to mention of environmental issues at the WTO had greatly diminished. Environmental and sustainable development issues appeared to varying degrees across WTO discussions, debates and activities. Nonetheless, there were many environmental issues that key Member States continued to be wary of and chose not to address directly at the WTO (such as climate). Moreover, as noted in the introduction, there had been no independent assessment of the extent to which the WTO's environmental discussions and activities over its first two decades were sufficient to address the trade-related aspects of the environmental challenges at hand.

October 2008 (see WT/CTE/W/245/Add.1). The WTO has also shared some experiences on environmental review on its website, see https://www.wto.org/english/tratop_e/envir_e/reviews_exper_e.htm.

¹⁴¹ See, for instance, WTO (2015) *Trade and Environment: Building Pathways to Sustainable Development*. WTO: Geneva, https://www.wto.org/english/thewto_e/20y_e/wto_environment_e.pdf, and WTO. (2011) *Harnessing Trade for Sustainable Development and a Green Economy*. WTO: Geneva. https://www.wto.org/english/res_e/publications_e/brochure_rio_20_e.pdf.

¹⁴² https://www.wto.org/english/thewto_e/coher_e/wto_unep_e.htm.

¹⁴³ WTO (2015) "WTO and UNEP enhance dialogue on trade and environmental issues," *WTO News*, 28 April. Retrieved from https://www.wto.org/english/news_e/pres15_e/pr741_e.htm

¹⁴⁴ WTO (2014) "Azevêdo welcomes launch of plurilateral environmental goods negotiations," *WTO News*, 8 July. Retrieved from https://www.wto.org/english/news_e/news14_e/envir_08jul14_e.htm. According to the participants, the talks were open to any WTO member and that the results will be applied in accordance with the most-favoured nation principle, under which WTO members should treat their trading partners in a non-discriminatory manner. Participants in the negotiations included Australia, Canada, China, Chinese Taipei, Costa Rica, the European Union, Hong Kong China, Japan, New Zealand, Norway, Singapore, the Republic of Korea, Switzerland and the United States, which together accounted for 86 per cent of global environmental goods trade.

Part Two

3. The Evolving Trade and Environment Agenda Debate and Discourse (1995-2015)

From 1995 to 2015, the framing of environment issues at the WTO evolved considerably. The following discussion identifies four phases of discussion, policy debate and action in the first 20 years of the WTO: 1994-2000, 2001-2008 and 2009-2014, and then the year 2015, which marked the WTO's 20th anniversary.¹⁴⁵ For each phase, it identifies shifts in discourse, priorities and focus by NGOs, the Secretariat, and WTO Member States, as well as experts/academics. In so doing, it recognises some overlap between phases as some frames persisted while new ones were layered upon them. To preface the review, it introduces key actors and their perspectives at the time the WTO was launched.

3.1 Key Actors and Perspectives

In the early years of the WTO, environmental discussion focused on identifying and clarifying intersections between 'trade and the environment.' Developed and developing country governments, the WTO Secretariat, industry groups and NGOs from the consumer, environment, development and human rights communities each identified examples of where and how specific trade rules were, or might be, relevant to their respective interests.¹⁴⁶ Although official statements from the WTO Secretariat and Member States continued to assert the potential and need for 'mutual supportiveness' of trade and sustainable development goals, in reality, there were considerable "differences in basic motivations and assumptions," meaning that considerable attention was devoted simply to helping each community understand the other.¹⁴⁷

Trade and environment discussions at this time have been aptly described as "dialogues of the deaf."¹⁴⁸ The 'trade community' and the 'environment community' were quite separate epistemic communities,¹⁴⁹ with little overlap between efforts to clarify the legal issues at hand and to understand the assumptions and priorities of the other side. In both communities, lawyers dominated the definition and approach to trade-environment issues, which were largely couched in terms of legal provisions in WTO rules. The following discussion introduces each of these communities in turn, noting their composition, key perspectives and internal debates.

The 'Trade Community'

¹⁴⁵ For a summary timeline of some of the key 'trade and environment' decisions and actions across the 20 years, see Appendix 1.

¹⁴⁶ For an analysis of the relevant debates, see Esty, D. (1994) *The Greening of the GATT: Trade, Environment and the Future*, Institute for International Economics: Washington, D.C. Also see Andresson, T. Folke, C. and Nyström, S. (1995) *Trading with the Environment: Ecology, Economics, Institutions and Policy*, Earthscan.

¹⁴⁷ Ibid.

¹⁴⁸ IISD (2015), p. ix.

¹⁴⁹ Epistemic communities have been defined by Peter Haas as 'networks of professionals who share common normative and causal beliefs, accept common truth-tests and are engaged in a common policy enterprise.' See Haas, P. (1992) "Introduction: Epistemic Communities and International Policy Coordination," International Organization, 46 (1), pp. 1-35.

In the WTO's early days, trade advocates (including trade diplomats, industry lobbyists and trade economists and lawyers) generally advanced one of three perspectives on the trade and environment issue. First, some asserted the potential for a mutually beneficial relationship. A review of discussions in CTE meetings,¹⁵⁰ for instance, showed that some developed country Member States supported action on certain issues, such as clarifying the relationship between WTO rules and MEAs, and clarifying rules on eco-labelling. Some governments emphasised the contributions that trade liberalization could make to environmental protection.¹⁵¹

Second, others tried to downplay the environmental implications of trade and thus its relevance to the trade arena. Third, some trade advocates acknowledged environmental concerns but maintained that the priority for trade negotiators should be greater openness in the trading system, deferring environmental matters to other international organisations and to environmental ministries. Many asserted that environmental protection remained primarily a domestic policy issue, and as such the focus should be on building national institutions and capacities in developing countries to put in place and enforce environmental policies in the context of open trade.

However, trade negotiators from the majority of WTO Member States remained largely ambivalent about, or fearful of, efforts to integrate stronger consideration of environment and sustainable development matters in trade policymaking. Developing country trade negotiators in particular remained suspicious of the Northern preoccupation with inserting environmental considerations into the trade agenda, arguing that they should focus instead on supporting environmental action at the national level and through international environmental fora. Developing countries perceived the prospect of 'green protectionism' and environment-related trade sanctions by developed countries as new threats to their opportunities for trade growth and development, observing that few weaker countries would be able to enforce environment-related trade sanctions on richer countries.¹⁵² Advocates of open trade joined developing countries in raising questions about the effectiveness of trade sanctions as a tool for enforcing MEAs (arguing that these may impose economic damages on both the target nation and the imposing country).¹⁵³

The 'Environment Community'

Environmental advocates, on the other hand, focused on ensuring that the efforts spent on incorporating environment and sustainable development objectives into the Marrakesh Agreements were not wasted.¹⁵⁴ The push to keep the environment on the WTO agenda (and to keep trade issues on the agenda of environmental NGOs) was largely driven by developed country NGOs, assisted by a small, loose network of prominent environmental lawyers and trade lawyers with environmental sympathies.

¹⁵⁰ See Annual Summaries of the work of the CTE until 2015.

¹⁵¹ WTO (1994) "Trade Liberalization and the Environment: A Positive Agenda for Trade Reform", Submission by Australia to the World Trade Organisation, WT/CTE/W/105, WTO: Geneva.

¹⁵² Das, Bhagirath Lal. 1998. *The WTO Agreements: Deficiencies, Imbalances and Required Changes*. London and Penang: Zed Books and Third World Network.

¹⁵³ Barrett, S. (1997) "The Strategy of Trade Sanctions in International Environmental Agreements," *Resource and Energy Economics*, 19, pp. 345-361.

¹⁵⁴ Von Moltke, K. (1992) "The Last Round: The General Agreement on Tariffs and Trade in Light of the Earth Summit," *Journal of Environment and Development* 3 (1) and Von Moltke, K. & Eckert, G. (1992) "The United Nations Development System and Environmental Management," *World Development* 20 (4).

Specific concerns that environmental NGOs and scholars emphasised during this period were:

- The impact of WTO rules on technical barriers to trade (such as on labelling and the potential to differentiate products based on processes and production methods) and on phytosanitary and sanitary standards, as well as on the making, interpretation and enforcement of national environmental laws. There was particular concern that trade rules could prevent nations from adopting measures to protect the domestic environment (by constraining the scope – and perceived scope – to apply environmental standards for products and services, for instance);
- The need to clarify the relationship between WTO rules and MEAs, and the status of international environmental organisations at the WTO, to ensure that WTO rules did not trump environmental treaties or provisions taken to implement them. Specific issues that arose included the relationship of trade rules to agreements such as CITES, which regulates trade in endangered species;
- The potential for growing international trade to exacerbate unsustainable environmental practices through the ‘scale’ effect. There were concerns that trade opening would expand trade opportunities in ways that could fuel unsustainable processes by exporters keen to profit from these new market opportunities. NGOs highlighted the role of trade in driving exports of unsustainably harvested timber. They also argued that more open trade and investment rules would facilitate a ‘race to the bottom’ by industries seeking to locate production where environmental regulations are weakest;
- The potential for the WTO’s dispute settlement process to override national environmental laws and concern about how narrowly Article XX exceptions would be interpreted;¹⁵⁵
- The absence of environmental assessment of international trade rules; and
- The need for greater transparency in terms of timely, easy and full access to information for all stakeholders, and stronger possibilities for public participation in WTO decision-making processes, including negotiations, Ministerial meetings and regular committee meetings. This included calls for the WTO to allow interested stakeholders to submit ‘amicus briefs’ to dispute settlement proceedings and for greater participation by parliamentarians in WTO deliberations.

Although widely referred to as *the* ‘environmental community’, there were in fact many communities of coalitions, groups and experts involved in this effort. Some NGOs represented large civil society movements and others positioned themselves as policy think tanks, with no claim to a specific membership or constituency. Over time, differences became more pronounced between some developed and developing country NGOs, and also between the more activist social movements and civil society groups, on the one hand, and the increasingly powerful and well-resourced ‘professional’ NGOs, on the other hand.¹⁵⁶ All of these actors had varying access to funding – some relied on philanthropic and governments sources and others on donations and membership subscriptions. There was also variation in regard to strategy and tactics. ‘Outsider’ groups favoured street protests while ‘insider’ organizations hired professional staff to lobby parliaments and governments, and some positioned staff in Geneva to monitor the WTO more closely. While some

¹⁵⁵ Charnovitz, S. (1991) “Exploring the Environmental Exceptions in GATT Article XX,” in *Journal of World Trade* 25(5): 38-55

¹⁵⁶ For an analysis of activism on trade and globalization, including the various debates among NGOs and activists, see Aaronson, S. (2002) *Taking Trade to the Streets: The Lost History of Public Efforts to Shape Globalization*, University of Michigan.

organizations managed to straddle both 'inside' and 'outside' strategies, it was soon possible to distinguish those groups that were more 'confrontational' and activist in approach from those that favoured 'constructive' engagement and dialogue, harnessing legal scholarship and detailed policy reports to appeal to policymakers.

Strategic and tactical variation within the environmental community often stemmed from substantive differences of opinion on the priorities and challenges at hand, and on what actions – practical, policy and/or institutional – could best address them. Many developed country constituency-based NGOs, such as WWF, the Sierra Club, the Natural Resources Defense Council (NRDC) and the National Wildlife Federation (NWF), focused tightly on environment issues that resonated with their respective national membership base. The community also varied in its political and philosophical approaches to environmental issues.

Although there were many nuances and overlaps between perspectives, one way of distinguishing environmentalists was on their 'shade' of green-ness. 'Light green' environmentalists – as they came to be known - focused on environmental responsibility through individual actions and lifestyle changes (such as by purchasing green products and product boycotts), which it was thought could also serve to make the public more responsive to policy changes.

The 'dark green' environmentalists viewed capitalism and consumerism as incompatible with long-term environmental sustainability; they argued that addressing environmental damage required transformation of the economic system.¹⁵⁷ Those concerned about the transformation and destruction of 'the local' – local economies, production, cultures and communities – pushed for more localized economic activity and more self-sufficient communities.¹⁵⁸ The fears of many environmental NGOs that campaigned on trade were underpinned by a set of fundamental underlying concerns about the global economic model, free markets, free trade and 'globalization'.¹⁵⁹ Groups such as Friends of the Earth renewed complaints heard during the Uruguay Round negotiations against the neo-liberal 'Washington Consensus' on economic policy; the rise and consolidation of power in multinational corporations;¹⁶⁰ the erosion of national sovereignty; the growing impotence of the nation state; and threats to democratic decision-making, nationally and in regard to global economy policies. Among other NGOs, Friends of the Earth had previously been active promoting stronger environmental policies at the Bretton Woods Institutions, and calling for an end to structural adjustment policies.¹⁶¹ Opposed to the growth of a homogenising "global consumption culture," many such environmental NGOs also argued for greater focus on unsustainable consumption patterns, particularly in the North, and unsustainable production

¹⁵⁷ More recently a 'bright green' shade of environmentalism has been identified, based on the proposition that environmentally-friendly technologies can enable humanity to thrive without degrading the environment, whether by creating non-polluting versions of existing technologies, clean technologies to prevent pollution or non-polluting versions of existing technologies.

¹⁵⁸ See, for instance, Brecher, J. and T. Costello (1994) *Global Village or Global Pillage: Economic Reconstruction From the Bottom Up*, South End Press: Boston; Mander, J. and E. Goldsmith (1996) *The Case Against the Global Economy and for a Turn Toward the Local*, Sierra Club Books: San Francisco; and Hines, C. (2000) "WTO and the Environment," in *Localization: A Manifesto*, Earthscan: London. pp. 218-236.

¹⁵⁹ Such views were clearly articulated in the UK magazine, *The Ecologist*. See, for instance, Sexton, S. (1996) "Transnational Corporations and Trade," *Ecologist*, 26 (6) pp. 2456-258. Also see Gillespie, A. (1995) "The Contradiction in International Environmental Law between the Free Market, Environmental Protection and Free Trade," *Waikato Law Review* 3, pp. 127-137; Gillespie, A. (2001) *The Illusion of Progress: Unsustainable Development in International Law and Policy*, Earthscan: London.

¹⁶⁰ Korten, D. (1995) *When Corporations Rule the World*, Earthscan: London.

¹⁶¹ Friends of the Earth International had, for instance, been actively involved in campaigns to reform the World Bank.

processes. Civil society organizations and social movements also complained of “upward shifts of power,” and “undemocratic and unsustainable globalization from above.”¹⁶² Sometimes these complaints reflected a preference for nationalistic protectionism, but they also often aimed to advance a broader, progressive and internationalist set of concerns regarding the welfare of people across all countries.¹⁶³

Such differences within the environmental community had practical consequences for the trade-environment debate. In the NAFTA negotiations, there were growing tensions within the North American environmental community between those organizations adamant that the NAFTA deal should be opposed in its entirety and those that sought to try to integrate environmental provisions into the trade deal. Some U.S. environmental groups lobbied Congress to reject NAFTA outright, for instance, while others pursued the potential for an environmental deal. Aware the U.S. administration and Congress needed the support of environmental and labour constituents in order to ratify NAFTA, they used their political leverage to negotiate for the incorporation of some environmental provisions as well as environmental and labour side agreements to NAFTA.¹⁶⁴

There were also sharpening tensions between ‘Northern’ and ‘Southern’ environmental NGOs, particularly on the use of environment-related trade measures. On the one hand, many Northern environmental groups and analysts insisted that unilateral trade measures could be a vital tool for environmental protection and conservation.¹⁶⁵ They feared that international trade rules could frustrate attempts to protect resources and the environment beyond areas of national jurisdiction (e.g., through extra territorial provisions in national laws) and, as such, obstruct efforts to push other countries to adopt high environmental standards. Analysts fearful of environmental protectionism, including Southern environmental NGOs, retorted that such unilateral environmental measures were unfair, particularly as they were viewed as tools that would be used primarily by developed countries.¹⁶⁶ Developing country trade officials and Southern environmental NGOs shared concerns about the US and European coercion of developing countries and the constraints that environment-related import restrictions these could impose on their development. Although critical of the Indian government’s performance on environmental protection, for instance, the Centre for Science and the Environment, a leading Indian environmental NGO, echoed the Indian government’s views on trade measures in MEAs, characterising them as “as an inequitable lever available only to stronger countries.”¹⁶⁷

¹⁶² Cavanagh (1996), p. 1.

¹⁶³ Lang and Hines (1996), p.3.

¹⁶⁴ For a review of green politics in the trade arena at that time, see Audley, J. (1997) *Green Politics and Global Trade: NAFTA and the Future of Environmental Politics*, Washington, DC: Georgetown University Press.

¹⁶⁵ For samples of this perspective, see Berger, Joseph R. (1999) “Unilateral Trade Measures to Conserve the World’s Living Resources: An Environmental Breakthrough for the GATT in the WTO Sea Turtle Case,” *Columbia Journal of Environmental Law* 24: 355-411; Conca, K. (2000) “The WTO and the Undermining of Global Environmental Governance,” *Review of International Political Economy* 7 (3): 484-494.

¹⁶⁶ For examples of views expressed by environmental NGOs at this time, including the Centre for Science and Environment (India), The Consumer Unity and Trust Society (CUTS) (India) and the Instituto del Tercer Mundo (Uruguay), see Shaffer, G. (2002) “The nexus of law and politics: The WTO’s Committee on Trade and Environment,” In R. H. Steinberg (Ed.), *The Greening of Trade Law: International Trade Organizations and Environmental issues*. Lanham, MD: Rowman & Littlefield.

¹⁶⁷ See comments of Sunita Narain at the 1997 NGO Symposium in a session on “Multilateral Environmental Agreements and the WTO.” For examples of this view, see Agarwal, A. (1998) “Turtles, Shrimp and a Ban,” *Down to Earth*, June 5 1998, and Centre for Science and Environment (1992) “Trade Control is Not a Fair Instrument,” Editorial, *Down to Earth* 7 (2), August 15, p. 4.

Further, environmental NGOs from developing countries and some development NGOs in developed countries warned that the 'Northern' environmental agenda on trade underestimated the importance of economic growth, social development and market access for developing countries.¹⁶⁸ They called for a more 'development'-oriented approach to environmental issues that reflected the understanding forged through the UNCED process.¹⁶⁹ However, not all environmentalists shared Rio's emphasis on economic growth and market access as paths toward sustainable development. Some argued that expanding international trade could exacerbate the negative environmental impacts of incorrect pricing of products and services (which failed to incorporate environmental externalities, for instance). Others retorted that the source of such problems was not trade or trade policy, and that solutions could be found by improving environmental policies and institutions. These tensions reflected wider debates in environmental policy circles, and in the rising field of environmental economics, on the degree to which market-based approaches could effectively address environmental challenges, especially in light of poor environmental institutions and capacity in many countries around the world.

There were continuing efforts to broaden the trade-environment discussion by involving the UN's Commission on Sustainable Development (CSD). This effort was advanced by a combination of environmental Ministries (who were the main actors at the CSD), environmental NGOs keen to take the discussion away from the dominant trade logic in the WTO context, and also by development advocates who saw greater prospects at the UN for dialogue from a sustainable development perspective. Trade-environment issues regularly arose on the CSD agenda, and the CSD held a number of more substantive discussions on trade and environment matters than had occurred at the CTE.¹⁷⁰ However, although the CSD was later credited with spurring action on a number of global environmental issues (such as oceans, forests, energy, sustainable consumption),¹⁷¹ the trade community widely viewed the CSD as a sideshow or talk-shop. With time, environmentalists too conceded that the CSD was not an effective forum for spurring concrete action and follow-up by governments, in particular as it largely engaged environmental ministries and not trade authorities, and few governments had effective internal policy coordination on trade-environment matters.

Meanwhile, wider debates on the social, cultural and environmental impacts of globalization were heating up. In 1997, Dani Rodrik's study *Has Globalization Gone Too Far?* captured many developing country concerns about the diminishing scope for managing their national economic development - or what became popularly known as 'policy space' - in the face of global market forces, international regulation and foreign policy prescriptions.¹⁷² There were frequent appeals for stronger global policy coherence around development and sustainable development objectives.¹⁷³

¹⁶⁸ LeQuesne (1996) *Reforming World Trade: The Social and Environmental Priorities* (Oxfam International: Oxford; Wilkinson, M. (1996) "Lobbying for Fair Trade: Northern NGOs, the European Community and the GATT Uruguay Round," *Third World Quarterly* 17 (2), pp. 251-267.

¹⁶⁹ See, for instance, Third World Network (1994) "After the Uruguay Round," *Third World Resurgence*, May, Issue 45 as well as IISD's Winnipeg principles referred to above.

¹⁷⁰ UNGA (1997) *Overall Review of UNCED: Trade and Environment Matters*, A/2-19/4/E/1997/12, 1997, Paragraph 18.

¹⁷¹ UN News Centre (2013) *After 20 years, UN commission on sustainable development holds final session*, 20 September 2013.

¹⁷² Rodrik, Dani. 1997. *Has Globalization Gone Too Far?* Washington, DC: Institute for International Economics.

¹⁷³ Ruggiero, R. (1997) "Global Policy Coherence for our Global Age," *Environmental Policy and the Law*, Vol 28

Several well-resourced NGOs continued to propose a wider focus on trade and sustainable development, where environmental challenges were placed in the wider context of development challenges facing developing countries. Much of the momentum on this front can be traced to creation of ICTSD in 1996 and the work of the IISD, each of which established offices in Geneva.¹⁷⁴ A core purpose of ICTSD was to build a community of stakeholders for sustainable development on global trade, bringing together northern and southern environment and development NGOs, and creating spaces for dialogue with trade officials. In the UK, organisations such as the Foundation for International Environmental Law and Development (FIELD), Chatham House and the International Institute for Environment and Development (IIED) similarly promoted a sustainable development-oriented perspective.¹⁷⁵ The U.S.-based Institute for Agriculture and Trade Policy (IATP), which had been active on trade negotiations since the Uruguay Round, also took a sustainable development approach to the intersection of agricultural trade, food security, local agricultural production systems and environmental protection.¹⁷⁶ The general view of such organisations was that where trade policy is in conflict with environment and development policy, it could delay or even undermine sustainable development by depleting natural resources and increase pollution. Conversely, where trade boosts growth it might serve as force for sustainable development, but the intersections are complex. A sustainable development lens was also viewed as politically necessary in order to get developing countries on board with environmental protection. Demands from the ‘sustainable development community’, included: the use of trade measures to enforce multilateral environmental agreements; rules allowing unilateral use of trade measures against those who use environmentally objectionable production and process methods; more open WTO procedures, and special consideration for developing countries, such as greater aid to enable less developed countries to improve their environmental standards.¹⁷⁷

Some environmental advocates argued, however, that the term sustainable development was incomprehensible to most stakeholders, insisting that the many debates about what ‘sustainable development’ means and requires, diminishes its utility in policy and legal debates.¹⁷⁸ Moreover, they argued that sustainable development’s broader focus watered down the environmental agenda, diluting the potential for action on environmental protection, and proposed that advocates should continued to speak for and advocate on behalf of the environment specifically.¹⁷⁹

¹⁷⁴ See, for instance, Halle, M. (2000) *Seattle and Sustainable Development*, IISD, Winnipeg. http://www.wcit.org/Halle_seattle_and_sd.htm, and von Moltke, K. (1999) *Trade and the Environment: The Linkages and the Politics*, IISD: Winnipeg.

¹⁷⁵ See discussion in Shaffer, G. (2002) “The nexus of law and politics: The WTO’s Committee on Trade and Environment,” in R. H. Steinberg (ed.), *The Greening of Trade Law: International Trade Organizations and Environmental Issues*, Rowman & Littlefield: Lanham, MD.

¹⁷⁶ IATP had organized advocacy and reporting on trade and agriculture negotiations since the launch of the Uruguay Round.

¹⁷⁷ Each of these recommendations appeared in IISD (1994) *Winnipeg Principles on Trade and Sustainable Development*, IISD: Winnipeg. IISD also worked to acknowledge business concerns in its work, noting that business wants greater certainty on trade and environment issues through “clarification of certain trade rules, and of their relationships with multilateral environmental agreements.” See Shaw and Cosbey (1995) op cit., p. 2.

¹⁷⁸ For a review of such debates, see, for instance, Stone, C. (1994) “Deciphering Sustainable Development,” *Chicago-Kent Law Review*, Vol. 69.

¹⁷⁹ Daniel Esty was a vocal proponent of the latter view. Similar debates also arose in the early years of ICTSD in Geneva. A number of U.S.-based foundations and NGOs had supported its creation on the basis that it would give the environmental community a stronger voice in Geneva, and some had envisaged a strong role in steering the organization as a network that would advance this goal. However, its founder and head, who was a former Colombian trade and environment negotiator, favoured a more expansive approach that acknowledged

As the trade and environment debate became hotter, many more environmental conservation and protection NGOs were looking for ways to be involved and relevant. The World Conservation Union (IUCN), for instance, explored how enhanced trade flows and international shipping could contribute to the movement of exotic species, which posed environment threats to the environment and agriculture. U.S.-based NGOs such as Resources for the Future (RFF) were transforming discussion of environmental policy with their work to advance environmental and natural resource economics.¹⁸⁰ By harnessing market dynamics and internalising environmental externalities in economic and business decision-making, they argued that both environmental and economic outcomes could be advanced. Animal rights groups became increasingly vocal and powerful on trade issues too, particularly in the United States and Europe. NGOs such as the UK's Royal Society for the Protection of Birds (RSPC), the Audubon Society, the Royal Society for the Prevention of Cruelty to Animals (RSPCA), the International Fund for Animal Welfare (IFAW), and Defends of Wildlife (DoW), spearheaded or joined environmental campaigns on issues of wildlife trade and also on specific issues such as the welfare of seals and turtles (although the policy positions, strategy and tactics of these groups and environmental organisations sometimes differed).¹⁸¹

Discussion of the trade and environment nexus in the early years of the WTO also took place in the context of a wider 'trade and –' debate. Efforts to spur recognition of the linkages between trade and "non-trade" issues – from labour and human rights to environment, development, culture and animal welfare – sparked debate on appropriate scope of the WTO and trade rules.¹⁸² Labour organizations, for instance, warned of a competitive "race to the bottom" in labour standards.¹⁸³ As in the environmental field, they debated how and whether labour and other social issues should be incorporated into trade arrangements, the potential for trade agreements to promote higher labour standards, and the desirability as well as the effectiveness of side agreements or separate chapters on labour.¹⁸⁴

3.2 The WTO's Early Years (1995-2000)

Demands for Greater Transparency and NGO Participation

developing country concerns, proposed a broader trade and sustainable development agenda, and aimed to 'bridge' the trade and sustainable development communities.

¹⁸⁰ For an introduction to RFF's work, see <http://www.rff.org/about>.

¹⁸¹ For an example of scholarly work at this time, see Nollkaemper, A. (1996) "The Legality of Moral Crusades Disguised in Trade Laws: An Analysis of the EC 'Ban' on Furs from Animals Taken by Leghold Traps," *Journal of Environmental Law*, Vol 8, pp. 237.

¹⁸² In 2002, the American Journal of International Law published a special issue on the topic. See, for instance, Alvarez, J. (2002) "The WTO as Linkage Machine," *The American Journal of International Law* 96 (1): 146-158; Howse, R. (2002) "Symposium: The Boundaries of the WTO," *The American Journal of International Law* 96 (1).

¹⁸³ For an insight into some of these debates, see Wilkinson, R. (2002). "Peripheralising Labour: The ILO, WTO and the Completion of the Bretton Woods Project," in J. Harrod and R. O'Brien (eds) *Globalized Unions? Theory and Strategies of Organized Labour in the Global Political Economy*, London: Routledge. Also see Kaufmann, C. (2007) *Globalization and Labour Rights: The Conflict Between Core Labour Rights and International Economic Law*, Bloomsbury Publishing.

¹⁸⁴ Issues of trade, labour and social rights were prominent in 1995 at the World Summit for Social Development in Copenhagen. In 1996, the OECD published a study entitled OECD (1996) *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade*, OECD: Paris. In 1998, the ILO's Declaration on Fundamental Principles and Rights at Work sparked further debate on the of trade and labour rights. Also see the World Commission on the Social Dimensions of Globalization (2004) *A Fair Globalization: Creating Opportunities for All*, ILO: Geneva; ICFTU (1999) *Building Workers' Human Rights into the Global Trading System*, International Confederation of Free Trade Unions (ICFTU): Brussels.

An early area of debate between developed and developing countries relevant to trade and environment issues concerned the role and engagement of NGOs in WTO processes.¹⁸⁵ When establishing the WTO, Member States established a legal basis for consultation and cooperation with NGOs (see Article V.2. of the Marrakesh Agreement).¹⁸⁶ Whereas international NGOs, and a number of prominent international environmental and legal scholars from developed countries argued that greater engagement of civil society and participation by external experts could improve the quality of decision-making, developing countries resisted. In particular, they feared that greater transparency and expanded opportunities for NGO participation in WTO processes would allow northern NGOs and environmental agendas to dominate, as few developing country NGOs would have the capacity to participate.¹⁸⁷ In July 1996, Member States clarified the WTO's mandate with regard to NGOs in a General Council decision where Members recognized "the role NGOs can play to increase the awareness of the public in respect of WTO activities."¹⁸⁸ To "improve transparency and develop communication with NGOs," Members gave the WTO Secretariat the authority to establish direct contacts with NGOs, including briefings and the organization of a symposium (now known as the Public Forum). NGOs with links to trade issues were also to be invited to WTO Ministerial Conferences.

The WTO's Committee on Trade and Environment as a Prime Focus

In the WTO's first years, the organization's Committee on Trade and Environment (CTE) was a focal point for advocates keen to advance discussion on trade and environment and to influence of the organisation.¹⁸⁹ In the lead up to the WTO's first Ministerial Conference in 1996 in Singapore, IISD published an assessment of the WTO's performance on sustainable development,¹⁹⁰ drawing on its Winnipeg Principles, and included commentary on the CTE's work thus far. The release of an assessment was viewed as premature by some given that the WTO had only been in operation for such a short time, but it set a solid foundation for future work. After 32 days of meetings, and more than 1000 pages of meeting summaries, 30 working papers, and over fifty written proposal and observations from Member States, the CTE's first 47-page report emerged from intense negotiations and was submitted to the Singapore Ministerial Conference. The report called for further study but did not offer recommendations for changes to WTO rules.¹⁹¹ The fact that it only recommended 'further work' but offered no proposals for any substantive changes to GATT rules spurred an outcry among environmental groups and advocates.¹⁹² Despite disappointment with the CTE's work,

¹⁸⁵ See, for instance, Reichert, W. (1996) "Note: Resolving the Trade and Environment Conflict: The WTO and NGO Consultative Relations," *Minnesota Journal of Global Trade* 2.

¹⁸⁶ See, for instance, Esty, D. (1998) "Non-Governmental Organisations at the World Trade Organization: Cooperation, Competition or Exclusion," *Journal of International Economic Law* 1 (1): 123-148.

¹⁸⁷ See, for instance, Subramanian, A. (1992) "Trade Measures for Environment: A Nearly Empty Box?" 15 *World Economy* 135, where the trade system is described as at constant risk of "capture" by special interests, including environmental groups.

¹⁸⁸ See WT/L/162.

¹⁸⁹ Shaw, N. and Cosbey, A. (1995) *GATT, The WTO and Sustainable Development: Positioning the Work Program on Trade and Environment*, International Institute of Sustainable Development: Winnipeg.

¹⁹⁰ IISD (1996) *The World Trade Organization and Sustainable Development: An Independent Assessment*, International Institute for Sustainable Development: Winnipeg. https://www.iisd.org/pdf/wto_assess.pdf.

¹⁹¹ WTO (1996) *CTE Report to the Ministerial Conference*, WT/CTE/1, WTO: Geneva.

¹⁹² Battye, M. (1996) "Environmental Groups Blast World Trade Body," *Reuter European Community Report*, 8 December 1996. Also see WWF's Introduction to the WTO Committee on Trade and Environment: Is it Serious?, which argued that the TE was not serious about "making appropriate recommendations on whether any modifications of WTO rules" are required. Available at www.panda.org/resources/publications/sustainability/wto/intro.htm. The environmental community's

environmental NGOs continued their efforts to contribute to the CTE's work and to move discussions forward through analysis, reporting and initiatives to bring together key officials, experts and stakeholders. In 1997, for instance, ICTSD launched its BRIDGES series of publications with an eye to providing reporting and analysis that would 'bridge' government officials, experts and civil society groups in the trade and sustainable development communities. Also in 1997, WWF jointly hosted a conference on fisheries (primarily funded by WWF) that brought together CTE delegates, CTE officials from the Secretariat and representatives of UNEP, UNDP, the FAO and the OECD. In addition, WWF established its own parallel 'CTE-type' process, in the form of an Expert Panel on Trade and Sustainable Development (EPTSD) comprised of trade and environmentalist specialists from developed and developing countries, which issued periodic reports to the CTE Secretariat and delegates.¹⁹³

In the face of raging public debate on trade and environment, the WTO Secretariat was tentative and passive. Although the Secretariat responded to Member State requests for studies clarifying certain trade and environment issues, when the Secretariat spoke on these issues, it largely limited itself to generic statements aimed to calm public concerns, such as: "The fact that the first paragraph of the preamble recognizes sustainable development as an integral part of the multilateral trading system illustrates the importance placed by WTO members on environmental protection."¹⁹⁴ As it became clear environmental concerns would not vanish, and in light of mounting pressures from developed countries, which in turn faced pressure from domestic environmental constituencies, the Secretariat began to seek ways to respond. In May 1997, the WTO Secretariat convened its first Symposium on Trade, Environment and Sustainable Development. Reporting on that event, IISD reported that many participants considered it a success "because, for the first time, there was an actual interaction between NGOs and Member States."¹⁹⁵ IISD concluded that "[m]ost came away with a greater understanding, though perhaps not sympathy, for the positions of their traditional 'opponents,'" proposing that "the beginnings of trust between the trade community and civil society may have been established."¹⁹⁶

However, the environmental challenges continued. On the one hand, the launch of the shrimp/turtle dispute at the WTO galvanised environmentalists' concerns about trade impacts on the environment. On the other hand, the incorporation of an environmental side agreement in the 1997 Chile-Canada Free Trade Agreement (which represented the first major trade agreement concluded post-NAFTA and post-WTO to incorporate an environmental side agreement between a developing and developed country) served to

disappointment that two years of CTE discussion had yielded little was also captured in Charnovitz, S. (1997) "A Critical Guide to the WTO's Report on Trade and Environment," *Arizona Journal of International and Comparative Law*, Vol 14.

¹⁹³ See WWF (1997) Expert Panel on Trade and Sustainable Development, 2nd meeting, Cairo, February 16-18, 1997, WWF EPTSD Secretariat Report 1, WWF: Gland.

¹⁹⁴ See WTO Secretariat overview on the 'Early Years: emerging environment debate in the GATT/WTO, in the section on 'Trade and environment in the WTO's founding charter', available at https://www.wto.org/english/tratop_e/envir_e/hist1_e.htm.

¹⁹⁵ IISD (1998) "Report of the WTO Symposium of Non-governmental Organizations on Trade, Environment and Sustainable Development," *Sustainable Developments*, Vol 12, No.1, 21 March 1998, available at: <http://www.iisd.ca/download/pdf/sd/sdvol12no1e.pdf>.

¹⁹⁶ Ibid.

reinforce fears among many developing countries that similar provisions may be foisted upon them at the WTO.¹⁹⁷

Developing Country Concerns Intensify Trade and Environment Debate

A number of experts and NGOs raised their voice in favour of an approach to trade-environment challenges that better incorporated developing country concerns. In 1997, for instance, Walden Bello, co-director of Focus on the Global South, exemplified this stance in an article in *BRIDGES* entitled the 'Threat of Green Protectionism.'¹⁹⁸ Bello argued that "[m]ost Southern environmentalists are not opposed to raising environmental product standards in the North" but they oppose using unilateral trade measures and "defacto green protectionism that discriminates against developing country producers."¹⁹⁹ Instead, he underlined the importance of positive measures, such as technology transfer measures to render production processes in the South more environmentally-friendly and for financial assistance for R&D in developing countries on appropriate technology that could meet higher environmental standards.

In 1998, several events spurred renewed political attention to the trade and environment issue: the WTO Appellate Body's report on the Shrimp/Turtle Dispute; the collapse of the negotiations on the OECD's proposed Multilateral Agreement on Investment (MAI) (which had faced large-scale opposition from civil society and NGOs); and the adoption of a new MEA (the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade) that included trade-related provisions (in the form of a prior informed consent procedure requiring approval of listed hazardous chemicals before trade).

Although the WTO panel had ruled in the Shrimp-Turtle dispute that countries have the right to take action to protect the environment, it ruled against a US ban on shrimp imports from countries that do not impose measures to keep the incidental kill of sea turtles lower than the level permissible in the US (the panel argued the US had discriminated in the technical and transition periods provided to shrimp producers from the Caribbean but not to Asian producers).²⁰⁰ Upon appeal, although the WTO Appellate Body concluded in 1998 that the particular shrimp ban in question was not justified because it was applied in an arbitrary and unjustifiable manner, many in the environmental community saw the decision as a positive step forward on several grounds.²⁰¹ First, the Appellate Body affirmed the possible permissibility of an import ban under Article XX (g) exceptions on exhaustible natural resources, provided it was applied in a justifiable and non-arbitrary manner. The ruling was notable for the efforts of James Bacchus, the first chair of the appellate body and author of its first trade and environment decisions, to underscore that the WTO did not exist in isolation and that it could consider and reference international agreements on environment. Second, the Appellate Body held that it could consider *amicus curiae* briefs (as advocated by environmental NGOs) and ruled that a panel has the 'discretion either to accept and consider

¹⁹⁷ Like NAFTA, it also established a Commission for Environmental Cooperation. See <https://www.ec.gc.ca/can-chil/default.asp?lang=En&n=AF64227B-1>.

¹⁹⁸ Bello, W. (1997) 'The Threat of Green Protectionism,' *BRIDGES*, 1 (2), July, p. 8.

¹⁹⁹ Ibid. p. 8.

²⁰⁰ For an overview of the Shrimp-Turtle ruling, see Shaffer, G. (1999) "United States Import Prohibition of Certain Shrimp and Shrimp Products," *American Journal of International Law*, Vol 93, April.

²⁰¹ Howse, R. (2002) "The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate," *Columbia Journal of Environmental Law* 27(2): 489-519.

or to reject information and advice submitted to it, whether requested by a panel or not.’ Although the ruling did not produce formal changes to the rules of WTO dispute settlement proceedings to permit amicus briefs (which would require a decision from Member States), it did spur changes in practice.²⁰²

Environmental Dimensions of Debate on Institutional Reform

As the environmental outcry intensified, so too did calls for greater WTO transparency and stronger engagement with NGOs by the WTO Secretariat and by national governments in their domestic trade policymaking process.²⁰³ In Europe, governments faced increasing pressure on this point after the conclusion of the UN Economic Commission for Europe’s (UNECE) *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, which established the right to access to environmental information and public participation in environmental decision-making and established review procedures that enable NGOs to challenge decisions made without respecting these rights or environmental law in general.²⁰⁴

The push for greater transparency and more opportunities for public participation prompted a decision to host a WTO Symposium on Trade, Environment and Sustainable in March 1998.²⁰⁵ In July 1998, the WTO Director General Ruggiero also announced and enhanced plan for cooperation with NGOs, announcing that the WTO’s External Relations Division would begin a programme of regular briefings for NGOs and would share with WTO members each month a list of documents, position papers and newsletters submitted by NGOs, and would establish a section of its website for NGO issues.²⁰⁶ New arrangements were also made to enable the accreditation of NGOs as observers to the WTO Ministerial Conference, which included access to some parts of the building in which the Conference was held, briefings by the WTO Secretariat, observation of the opening and closing plenaries, and the ability to distribute position papers.²⁰⁷ But at that time, and in the subsequent several years, further calls by NGOs for Member State to expand their scope for engagement in WTO deliberations and boost transparency, including by more rapidly derestricting WTO documents, were unsuccessful. NGOs became increasingly frustrated about secrecy and closed decision-making at the WTO; they complained that participation in Ministerial Conferences remained limited to formal plenaries, side events, and press conferences, with too little access to negotiators and the negotiation process itself. In the

²⁰² The WTO Secretariat notes that *amicus curiae* briefs remain contentious among Member States. According to the Appellate Body’s ruling, WTO Panels may receive and consider *amicus curiae* briefs, but do not have an obligation to do. Although the Appellate Body accepts such submissions private individuals, organizations or third-party Member States, it has not obliged itself to consider them in its deliberations.

²⁰³ Esty, D. (1998) ‘Linkages and Governance: NGOs at the World Trade Organization,’ *University of Pennsylvania Journal of International Economic Law*, 19 (3), pp. 709 – 730. Also see Esty, D. (1998) ‘Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion,’ *Journal of International Economic Law*, 1 (1): 123-146; Esty, D. (1998) ‘Environmentalists and Trade Policy-making’ in Deardorff, A. and R. Stern (eds) *Constituent interests and U.S. trade policy*, University of Michigan Press: Ann Arbor. Also see Bellmann, C. and R. Gerster (1996) ‘Accountability in the World Trade Organization,’ *Journal of World Trade*, 30(6): 31-74.

²⁰⁴ See <http://ec.europa.eu/environment/aarhus/>.

²⁰⁵ For a report on that meeting, see IISD (1998) ‘Report of the WTO Symposium of Non-governmental Organizations on Trade, Environment and Sustainable Development,’ *Sustainable Developments*, Vol 12, No.1, 21 March 1998, available at: <http://www.iisd.ca/download/pdf/sd/sdvol12no1e.pdf>.

²⁰⁶ WTO (1998) ‘Ruggiero Announces Enhanced Plan for Cooperation with NGOs,’ PRESS/107, 17 July 1998.

²⁰⁷ For an independent view of two Secretariat staff at the time, see Marceau, G. and P. Pedersen (1999) ‘Is the WTO Open and Transparent? A Discussion of the Relationship of the WTO with Non-governmental Organisations and Civil Society’s Claims for More Transparency and Public Participation,’ *Journal of World Trade* 33 (1): 5-49.

face of growing criticism, the Secretariat emphasised that decisions to open dispute settlement hearings and other WTO meetings to the public required approval by consensus of Member States. Meanwhile, growing scholarly interest in the institutional performance of the WTO resulted in the publication in 1998 of a first book on the *WTO as an International Organization*.²⁰⁸ The book compiled chapters by leading authorities on the multilateral trading system, several of which addressed questions environmental and labour standards, the role and capacity of the Secretariat, coherence in global economic policymaking, and the needs of developing countries.

Environmental Pressures on the Road to Seattle

In October 1998, as political concerns about secrecy of the WTO intensified and aware that the success at the forthcoming Seattle Ministerial demanded some efforts to placate civil society critics, discussion arose “on the idea of a High Level Ministerial Meeting, either on trade and environment or trade and sustainable development (depending on the proponent).”²⁰⁹ Although there were numerous perspectives on what the role of such a high level meeting should be, it was spurred by political support from President Clinton and Sir Leon Brittan, and by frustration from all sides at the slow pace of discussion at the CTE and lack of progress in resolving the complex trade and environment relationship.²¹⁰

In March 1999, the WTO hosted two separate high-level symposia – one on trade and environment, and one on trade and development. However, there was little high level ministerial participation and the events proceeded as a series of speeches and statements, without any agreed conclusion. NGOs expressed frustration that their call for a meeting to consider “trade and sustainable development” had been sidestepped, noting that only a small group of people attended both meetings.²¹¹ A number of NGO presentations at the meeting emphasised the need for a more open and participatory WTO – both in terms of developing country and civil society engagement.²¹² Environmental critics also pushed for assessments of trade agreements at the national and regional level, and for discussion of environmental assessments at the WTO. Notably, the idea of environmental or sustainability assessments of trade liberalization received support from one of the few High-Level participants at the Symposium – the European Commission’s Sir Leon Brittan – who understood the need to placate increasingly vocal and influential environmental constituencies within Europe.

In 1999, the World Bank weighed in with analysis of the nexus between trade liberalization, and local and global environmental quality,²¹³ and there was growing scholarly interest in the

²⁰⁸ Krueger, A. (1998) “An Agenda for the WTO” in Krueger, A. (ed) *The WTO as an International Organization*, Chicago: Chicago University Press.

²⁰⁹ For a review of debate at this time, see Ward, H. and D. Brack (eds) (2000) ‘Editors’ Overview,’ in *Trade, Investment and the Environment: Proceedings of the Royal Institute of International Affairs Conference*, October 1998, Chatham House: London, xxxvi. The RIIA also published an earlier book: Brack, D. (1998) *Trade and Environment: Conflict or Compatibility*, RIIA/Earthscan: London.

²¹⁰ Ibid. xxxvi.

²¹¹ Ibid. xxxvi.

²¹² Third World Network (1999) “Transparency, Participation and Legitimacy of the WTO,” *Statement of the Third World Network at the WTO Symposium on Trade and Environment and Trade and Development*, 15-18 March, Geneva. For the personal views of two WTO Secretariat staff at the time, see Marceau, G. and P. Pedersen (1999) “Is the WTO Open and Transparent? A Discussion of the Relationship of the WTO with Non-governmental Organisations and Civil Society’s Claims for More Transparency and Public Participation,” *Journal of World Trade* 33 (1): 5-49.

²¹³ Fredriksson, P. (1999) *Trade, Global Policy and the Environment*, August, World Bank Discussion Paper, August, World Bank: Washington, D.C. The book aimed to contribute to debate in three broad areas: the

implications of different environmental standards on trade competitiveness. Toward the end of 1999, the WTO Secretariat released a study on the relationship between trade and environment, which concluded that trade would “unambiguously improve welfare if proper environmental policies were in place.”²¹⁴ The report included an annex with 22 key findings drawn from the study, including: that the root cause of environmental degradation (except for pollution associated with the transportation of goods) is rarely trade but rather market and policy failures; that trade barriers are poor environmental policies; that environmental standards should not necessarily be harmonized; and that the competitiveness effects of environmental regulations are minor. While acknowledging that not all kinds of growth are equally benign for the environment, the report argued that trade could play a positive role and that multilateral environmental cooperation was the way forward.

In the lead up to the 1999 Seattle WTO Ministerial Conference, developed country governments called for the launch of a new ‘Millennium Round’ of trade negotiations. While some policy analysts made efforts to advance a ‘positive agenda’ on trade, environment and sustainable development for the proposed new Round, most activist and critical environmental NGOs remained unconvinced of the potential for a meaningful environmental agenda in the proposed Round and set out a suite of concerns about the environmental impact of trade and fears regarding calls to include ‘new issues’ (such as competition and investment).²¹⁵ In addition to campaign materials critical of the WTO in general,²¹⁶ they produced an array of issue-specific reports and campaign materials to help illustrate the risks to the public, such as on old growth forests,²¹⁷ sea turtles and endangered species,²¹⁸ threats to environmental regulation, environmental dumping (e.g., of toxic waste,²¹⁹ and the WTO dispute settlement process.²²⁰ Meanwhile, a growing range of NGOs raised concerns about the impact of new WTO rules on issues ranging from food security and cultural diversity to human rights and public health. In response to agricultural negotiations, for instance, activists from organizations such as Food First called for recognition of food as a basic human right, an end to export subsidies that result in dumping of agricultural products in ways that undermine the livelihoods and sustainable farming practices of small farmers, peasants, and

environmental effects of trade liberalization and growth, the ‘pollution-haven’ hypothesis, and economic instruments for global environmental problems. Specific issues addressed in the book included the environmental and health effects of trade liberalization and consequent economic growth, the possible inverted U-shaped relationship between growth and emissions, and the effects of trade distortions and environmental policies on environmental damage from sectors such as horticulture and forestry.

²¹⁴ Nordström, H. and S. Vaughan (1999) *Trade and Environment*, WTO Secretariat: Geneva.

²¹⁵ Jha, V. and R. Vossenaar (1999) “Breaking the Deadlock: A Positive Agenda on Trade, Environment and Development,” in *Trade, Environment and the Millennium*, edited by Gary Sampson and Bradnee Chambers, Tokyo: United Nations University Press.

²¹⁶ See, for instance, Friends of the Earth (1999) *The World Trade System: How it Works and What’s Wrong With It*, Friends of the Earth: London; Van Putten, M. (1999) *What’s Trade Got to do With it? A Guide to Trade Policy and Saving the Environment*, National Wildlife Federation: Washington, D.C.

²¹⁷ Friends of the Earth International (1999) *The World Trade System: An Activist’s Guide - Forests*, Amsterdam, and Goldman, P. and J. Scott (1999) *Our Forests at Risk: The World Trade Organizations Threat to Forest Protection*, Earthjustice Environmental Defense Fund: San Francisco.

²¹⁸ Fugazzotto, P. and C. Behera (1999) *Slain by Trade: The Attack of the World Trade Organization on Sea Turtles and the US Endangered Species Act*, Sea Turtle Restoration Project, Earth Island Institute: Forest Knolls, California.

²¹⁹ Goldman, P. and M. Wagner (1999) *Trading Away Public Health : The World Trade Organization Obstacles to Effective Toxics Control*, Earthjustice Environmental Defense Fund, San Francisco.

²²⁰ See WWF (1999) *A Reform Agenda for the WTO Seattle Ministerial Conference*, 30 November – 3 December 1999, WWF Position Paper, Gland: WWF; Stilwell, M., Caldwell, J., Godfrey, C. and C. Arden-Clarke (undated) *Dispute Settlement in the WTO: A Crisis for Sustainable Development*, A World Wildlife Fund, Centre for International Environmental Law, Oxfam-GB and Community Nutrition Institute (CNI) Discussion Paper, WWF: Gland.

indigenous peoples, and support for sustainable agriculture. The services negotiations spurred fears about the protection of basic social services.

A broad range of groups opposed efforts to incorporate stronger investment liberalization into the WTO which they characterized as a corporate agenda pushed by the US and EC, calling instead for a focus on fair trade, which would prioritize social rights and the environment. Negotiations on the TRIPS Agreement (which pitted developed countries keen to further strengthen its provisions against developing country governments seeking to clarify and tailor the agreement to protect their scope to shape intellectual property laws according to local development needs), spurred an outcry against 'biopiracy' of seeds, plants and associated traditional knowledge, as well as a 'No Patents on Life' campaign and calls to resist excessive international IP standards.²²¹ In addition, NGOs expressed a cross-cutting interest in a more democratic WTO negotiating process; a more transparent and open dispute settlement process; and expanding and operationalizing provisions for special and differential treatment of developing countries in WTO rules.²²²

As fears intensified about the proposed new Round, a transnational cross-section of environment, consumer, human rights, and development NGOs – ranging from Friends of the Earth, the Center for International Environmental Law, WWF International, the U.S. National Wildlife Federation, and Third World Network – issued a series of joint campaign announcements. Under the banner 'No New Round – Turn Around,' they rejected the push for a New Round and called instead for a rollback of harmful WTO provisions and policies.²²³ United by common grievances about closed-door decision-making, the labour, consumer and environmental movements also shared fears that WTO rules would lead countries to lower standards that acted as 'barriers to trade' and called for making trade clean, green and fair. Development NGOs argued that the existing WTO rules and proposed negotiations must be rethought to account for development concerns.²²⁴ In the months before the Seattle Ministerial, groups such as Sierra Club, Public Citizen, Friends of the Earth and Earth First, joined with labour unions, farmers organizations, and campaigners from economic justice, development and debt organisations as well as religious groups, among others (who civil disobedience activists) began to mobilise for large scale 'anti-WTO' and 'anti-globalization' street protests in Seattle. Preparations for the Seattle Ministerial Conference also galvanised the coming together of a broad spectrum of globalization activists and scholars under the umbrella of the International Forum on Globalization (IFG), which was sponsored by a number of U.S. philanthropic organizations, and planned to host 'teach-ins' in Seattle and at other major global economic policy events over the subsequent few years.²²⁵

²²¹ In August 1999, Third World Network issued a Joint NGO Statement of Support for the Africa Group Proposals on Reviewing the WTO TRIPS Agreement (Article 27.3b). In November 1999, over 100 international and national NGOs from around the world co-signed a letter to President Clinton calling on the U.S. to agree to amend TRIPS Article 27.3(b) to "expand the list of exceptions to patentability to include living organisms and their parts as well as the list of essential drugs published by the World Health Organization." The signatories also urged "the U.S. delegation in Geneva and those who will be in Seattle to acknowledge the rights of nations to control their biological resources; to guarantee the a priori rights of local communities to use, save and exchange seeds; and to provide essential medicines at affordable prices." See http://www.iatp.org/files/Letter_to_President_Clinton_on_WTOs_TRIPs_Agre.htm.

²²² Such concerns were set forth in Public Citizen (1999) *A Citizen's Guide to the World Trade Organization: Everything You Need to Know to Fight for Fair Trade*, Washington DC: Public Citizen.

²²³ See <http://notforsale.mayfirst.org/en/node/2>.

²²⁴ South Centre (1998) *The WTO Multilateral Trade Agenda and the South*, Geneva: South Centre.

²²⁵ Views of key experts in the IFG's network were drawn together in Barker, D. and J. Mander (1999) *Invisible*

Meanwhile, some of the most highly-resourced environmental NGOs had supplemented their existing work on cross-cutting environmental themes – such as the relationship between the WTO and MEAs, concerns about WTO transparency, and clarifying the WTO's rules on PPMs and labelling²²⁶ – with a new focus on problem-solving on particular environmental issues. A clear illustration of this was the call, launched in 1998, for WTO action to curb 'perverse subsidies' that fuel overcapacity of fishing fleets and drive overfishing.²²⁷ (WWF's work on this issue later spurred the formation in 2002 of a coalition of WTO Member States similarly concerned about overfishing - the "Friends of Fish", see section 3.2) The campaign was made possible due to growing interest of philanthropic funders (such as the Packard Foundation, which supported environmental groups to work on oceans and fisheries and spurred the creation of a new NGO, Oceana, to focus specifically on this area). Notably, the focus on the use of WTO rules on subsidies fitted well with the prevailing logic of free-trade advocates.²²⁸ ICTSD also sought to give voice to developing country perspectives on the environmental challenges facing the WTO, conducting a series of sub-regional dialogues in Latin America and Sub-Saharan Africa on trade, sustainable development and environment issues.²²⁹ In an effort to bring more evidence and understanding to the debate, UNEP also published a series of studies on environment-trade issues in developing countries.²³⁰

Faced with intense environmental lobbying and rising environmental concerns in the U.S. Congress, and in a bid to promote a positive outcome of the Seattle Ministerial, President Clinton issued Executive Order 13141—'Environmental Review of Trade Agreements' two weeks before the Seattle Ministerial Conference.²³¹ The Executive Order committed the United States to a policy of "assessment and consideration of the environmental impacts of trade agreements" and stated "[t]rade agreements should contribute to the broader goal of sustainable development." Environmentalists, however, were not satisfied.

When the Seattle Ministerial took place, reports of the 'Battle of Seattle' protests dominated the world's press, with images of Teamsters (a U.S. labour union) walking alongside protesters dressed as sea turtles. Meanwhile, the intergovernmental negotiations floundered.

Government, San Francisco: International Forum on Globalization (IFG). The IFG was primarily financed by the U.S. Foundation for Deep Ecology.

²²⁶ Keen to harness private labelling and certification schemes to harness consumer power for environmental protection, for instance, a number of environmental groups focused attention on WTO rules relevant to labelling and standards, and their relationship to processes such as those hosted by the International Standards Organization, and the question of where standards should be set and by whom.

²²⁷ Early work on this subject had been conducted by the World Bank, see Milazzo, M. (1998) *Subsidies in World Fisheries: A Reexamination*, World Bank Technical Paper No. 406, World Bank. Washington D.C., USA

²²⁸ Countries such as Australia had long argued against environmental subsidies to agriculture, insisting that they were not effective tools for protecting the environment, but rather contributed to uneconomic agricultural production, spurring the dumping of supply on world markets to the disadvantage of the Cairns Group and developing countries. The call to reduce fishing subsidies was an easier campaign to mount than one related to concerns about the scale effects of trade liberalization on overfishing, whether the evidence and causal relationships were harder to establish. See Deere, C. and E. Havice (2006) *Fisheries, International Trade and Sustainable Development*, Geneva: ICTSD; and Deere, C. (2002) "Fisheries Trade and Sustainable Development: Conflict or Compatibility?" *The Ocean Yearbook*, University of Chicago Press, Volume XII

²²⁹ The presentations from these dialogues were later compiled and published in, Konz, P., Bellmann, C. and R. Meléndez-Ortiz (eds) 2000 *Trade, Environment and Sustainable Development: Views from sub-Saharan Africa and Latin America – A Reader*, Geneva: International Centre for Trade and Sustainable Development, United Nations University Institute for Advanced Study (IAS).

²³⁰ Following six national case studies focused on specific industries, UNEP published a synthesis report of key findings. See UNEP (1999) *Trade Liberalization and the Environment: Lessons Learned from Bangladesh, Chile, India, Philippines, Romania, and Uganda – A Synthesis Report*, UNEP: Geneva.

²³¹ US Government (1999) *Executive Order 13141: Environmental Review of Trade Agreements*. White House, Office of the Press Secretary, November, Retrieved from: <http://www.uhuh.com/laws/donncoll/eo/1999/eo13141.txt>.

'NGO insiders' – those with accreditation to the WTO meetings – complained of limited access to negotiations, poor transparency and few opportunities for civil society input.²³² Developing countries, particularly from Africa, refused to agree on the launch of a new Round. They lambasted undemocratic and unfair WTO negotiation processes, complaining that the majority of WTO members were marginalized from deals brokered by small groups of powerful countries in infamous 'green room' settings.²³³ In the ensuing chaos, the negotiations at the Seattle Ministerial Conference collapsed.²³⁴

Trade and Environment Post-Seattle

The failure of the Seattle Ministerial put the global media spotlight on the challenges of globalization and the 'anti-globalization' movement, spurring active scholarly and policy debate on the prospects of globalization for development and the environment,²³⁵ and the appropriate role of the WTO. Among civil society activists, there was a range of views on where the key problems lay and where to next.²³⁶ A diverse group of NGOs from developing and developed countries that were central to the campaigns at the Seattle Ministerial issued a joint statement, arguing that the process of negotiations at the WTO was "fundamentally flawed."²³⁷ Describing the WTO as undemocratic, unjust, untransparent and unbalanced, they called for reversing the ascendancy of a "narrow set of business interests over all other interests of society."²³⁸ In late 1999, IISD's Mark Halle commented:

"Hearing the WTO repeat like a mantra that trade liberalization is good for the environment, good for the poor, good for development, indeed just plain good was

²³² For a review of debate at that time, see Scholte, J. (1999) "The WTO and Civil Society," *Journal of World Trade*, 33(1): 107–24.

²³³ Luke, D. (2000) "African Countries and the Seattle Ministerial Meeting: A Personal Reflection," *Journal of World Trade*, 34: 39–46. Also see, African Group (2000) *The View of the African Group on Enhancing the Internal Transparency and the Effective Participation of all Members of the World Trade Organization*, March 2000. Geneva: Geneva Office of the Organization of African Unity.

²³⁴ Aaronson, S. (2001) *Taking Trade to the Streets: The Lost History of Public Efforts to Shape Globalization*, University of Michigan Press: Ann Arbor, 142–173.

²³⁵ Friedman, T. (1999) "Senseless in Seattle," *New York Times*, 1 December. See, for instance, Odell, J. (2002) "The Seattle impasse and its implications for the World Trade Organization," in Kennedy, D. and J. Southwick (eds) *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec*, Cambridge University Press: Cambridge; and Howse, R. (2002) "Comment: Trade negotiations and high politics: Drawing the right lessons from Seattle," in Kennedy, D. and J. Southwick (eds) *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec*, Cambridge University Press: Cambridge.

²³⁶ See, for instance, Cosbey, A. (2000) *Institutional Challenges and Opportunities in Environmentally Sound Trade Expansion: A Review of the Global State of Affairs*, North-South Agenda Paper No. 41. University of Miami North-South Center; Sampson, G. (2000) *Trade Environment and the WTO: The Post Seattle Agenda*. Washington D.C.: Overseas Development Council and Johns Hopkins University Press; IISD (2000) *IISD Statement on Trade and Sustainable Development*, Geneva: International Institute for Sustainable Development (IISD); Ward, H. and D. Brack (2000) *Trade, Investment and the Environment*. London: The Royal Institute for International Affairs; Wofford, C. (2000) "A Greener Future at The WTO: The Refinement of WTO Jurisprudence on Environmental Exceptions to GATT," *Harvard Environmental Law Review* 24 (2): 563–92; Tisdell, C. (2000) "Free Trade, Globalisation, the Environment and Sustainability: Major Issues and the Position of WTO", *Economics, Ecology and the Environment Working Paper No. 39*, Department of Economics, The University of Queensland; Tisdell, C. (2000) "Globalisation and the WTO: Attitudes Expressed by Pressure Groups and by Less Developed Countries", *Economics, Ecology and the Environment Working Paper No. 40*, Department of Economics, The University of Queensland.

²³⁷ See *NGO Statement on WTO Crisis in Seattle: A Call for Change*, available at: http://www.iatp.org/files/NGO_Statement_on_WTO_Crisis_in_Seattle_A_Call_.htm. Organisations that signed the statement included Friends of the Earth, GreenPeace, Action Aid, the US Citizens Trade campaign, the Consumer Unity and Trust Society (CUTS), Centre for International Environmental Law, Public Citizen, the International Forum on Globalization, Third World Network and the World Development Movement.

²³⁸ *Ibid.*

grounds enough for the Seattle riots. It has long been clear that trade liberalization can be good for sustainable development but only provided that trade, development and environment policies are harmonious and mutually supportive. By and large, they are not, with the result that trade liberalization has undermined development objectives and damaged the environment.”²³⁹

In April 2000, the ‘Our World is Not for Sale’ coalition launched a new “WTO - Shrink or Sink: The turn around agenda” campaign with a letter signed by over 1000 NGOs from across the world stating that: “The WTO has contributed to the concentration of wealth in the hands of the rich few; increasing poverty for the majority of the world's peoples, especially in third world countries; and unsustainable patterns of production and consumption.”²⁴⁰ The Shrink or Sink campaign also served to consolidate cross-border and cross-issue coalition. Signatories to the letter further proclaimed: “We are committed to a sustainable, socially just and democratically accountable trade system. Thus, as a first step, we demand that our governments implement the changes listed in this document in order to roll back the power and authority of the WTO and turn trade around. We commit ourselves to mobilise people within our countries to fight for these demands and to defy the unjust policies of the WTO. We will also support other people and countries who do so with international solidarity campaigns.” To sustain and support civil society campaigning on the WTO, a number of philanthropists and NGOs worked together to create the Trade Information Project (TIP), housed by IATP in Geneva, to serve as an information clearing-house of trade news, analysis for the benefit of NGOs, civil society groups and activists around the world.

The Seattle experience also inspired a flurry of reports and proposals from NGOs,²⁴¹ scholars and governments – both critical and supportive of the free trade agenda²⁴² – on how to improve the WTO’s institutional performance, fairness and legitimacy. A broad spectrum of critics shared concern about the transparency of the WTO as a whole and its engagement with civil society and parliaments (each of which were considered critical to the incorporation of ‘non-trade’ considerations in international trade negotiations).²⁴³ Exasperated by the slow pace of WTO negotiations, then EC Trade Commissioner Pascal Lamy famously declared the WTO a “medieval” organisation.²⁴⁴ Meanwhile, many NGO campaigners and activists placed concerns about WTO transparency and decision-making within a wider critique of the

²³⁹ Halle, M. (1999) p.7.

²⁴⁰ See “WTO - Shrink or Sink! The Turnaround Agenda International Civil Society Sign-On Letter,” available at http://www.citizen.org/trade/article_redirect.cfm?ID=1569. The launch of this campaign was noted in India’s leading newspaper, The Hindu. See Raghavan, C. (2000) “NGOs launch ‘shrink or sink’ campaign against WTO,” *The Hindu*, 10 April 2000.

²⁴¹ See, for instance, Oxfam (2000) *Institutional Reform of the WTO*, Oxford: Oxfam Great Britain; Consumers International (2000) *The Way Forward for the Multilateral Trading System*. Trade and Economics Briefing Paper 1, London: Consumers International; Action Aid, CAFOD, Christian Aid, Consumers International, FIELD, Oxfam, RSPB, and WDM (2000) *Recommendations for Ways Forward on Institutional Reform of the World Trade Organization*. Available at http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122163.pdf; WTO (2000) ‘Internal Transparency and Effective Participation of Members.’ In General Council Minutes, WT/GC/M/57, July 17, 2000. Geneva: World Trade Organization; Sell, S. (2000) “Big Business and the New Trade Agreements: The Future of the WTO?” In *Political Economy and the Changing Global Order*, edited by R. Stubbs and G. Underhill. New York: Oxford University Press.

²⁴² Among supporters, see Bhagwati, J. N. 2001. After Seattle: Free Trade and the WTO. *International Affairs* 77 (1): 15-30; Schott, J. and Watal, J. (2000) Decision-making in the WTO,” in *The WTO After Seattle*, edited by Jeffrey Schott. Washington DC: Institute for International Economics.

²⁴³ For a scholarly exposition of these arguments, see Charnovitz, S. (2000) “Opening the WTO to Non-governmental Interests,” *Fordham International Law Journal* 24.

²⁴⁴ See AFX European Focus (2003) “Lamy Blames WTO’s ‘Medieval’ Structure For Failure Of Cancun Talks,» *AFX European Focus*, 13 September.

neoliberal globalization process promoted by WTO, the World Bank and IMF, with some rejecting the possibility of meaningful reform.²⁴⁵ News of demonstrations by anti and 'alter' globalization activists at the IMF/World Bank Meetings in Washington in 2000 and the G8 Summit in Genoa in 2001 reverberated widely in the global press, and set the political context for WTO talks. In 2001, the World Social Forum (founded as a counterpoint to the Davos meetings of the World Economic Forum) met for the first time in Brazil's Porto Alegre as a place for dialogue and exchange among a broad diversity of anti-globalization activists and critics from around the world, under the logo 'Another World is Possible.'

From 2000, environmental critics and legal scholars continued to examine the environmental implications of WTO rules and dispute settlement proceedings.²⁴⁶ To boost transparency and the chance of public interest considerations, they also sustained calls for wider and more formal recognition and consideration of *amicus curiae* briefs and for public access to hearings of WTO dispute settlement proceedings.²⁴⁷ Meanwhile, trade issues emerged in numerous international processes. In 2000, governments completed a new Cartagena Protocol on Biosafety to complement the Convention on Biodiversity, which aimed to protect biological diversity from risks arising from living modified organisms created by modern biotechnology. The Protocol's provisions on the transboundary movement of GMOs raised questions about their intersection with WTO rules, and which should prevail when trade disputes related to GM products arise.²⁴⁸ The international community also established eight Millennium Development Goals (MDGs) during the UN Millennium Summit, which included goals to eradicate extreme poverty and hunger (Goal 1), ensure environmental sustainability (Goal 7) and develop a global partnership for development (Goal 8).²⁴⁹ Although there was considerable debate about the choice of objectives and difficulty measuring progress, the MDGs established a new political framework for international cooperation with development firmly at its heart. On trade, the first MDG target under Goal 8 was to "[d]evelop further an open, rule-based, predictable, non-discriminatory trading and financial system." The WTO Secretariat observed that the WTO's activities were relevant to other goals too, such as Goal

²⁴⁵ For a sample of this view, see Bello, W. (2000) *Why Reform of the WTO is the Wrong Agenda. Four Essays on Four Institutions: WTO, UNCTAD, IMF and the World Bank*. Bangkok: Focus on the Global South. Also see Bello, W. (2002) *Deglobalization: Ideas for a New World Economy*, London and New York: Zed Books

²⁴⁶ Tarasofsky, R. (2005) *Trade, Environment and the WTO Dispute Settlement Mechanism*. Chatham House. London, U.K.; Read, R. (2004) "Like Products, Health & Environmental Exceptions: The Interpretation of PPMs in Recent WTO Trade Dispute Cases," *The Estey Centre Journal of International Law and Trade Policy* 5(2): 123-146; Mann, H. and Porter, S. (2003) *The State of Trade and Environment Law 2003: Implications for Doha and Beyond*, IISD and CIEL: Winnipeg, Canada; Bernasconi-Osterwalder, N., Magraw, D., Oliva, M.J., Orellana, M. and Tuerk, E. (2005) *A Guide to WTO Jurisprudence*, Earthscan Publications. London; Howse, R. (2002) "The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate," *Columbia Journal of Environmental Law* 27(2): 489-519; Von Moltke, K (2000) "WTO Reform: Time for an Independent Dispute Settlement Mechanism," *BRIDGES*, June; Charnovitz, S. (2000) "Solving the Production and Processing Methods Puzzle," *WTO Series No. 5, Occasional paper of the Program for the Study of International Organizations*, Graduate Institute of International Studies: Geneva.

²⁴⁷ Marceau, G. and M. Stilwell (2001) "Practical suggestions for Amicus Curiae briefs before WTO adjudicating bodies," *Journal of International Economic Law* 4 (1): 155-187; Umbricht, G. (2001) "An 'amicus curiae' brief on Amicus Curiae Briefs at the WTO," *Journal of International Economic Law* 4 (4): 773-94; Ala'i, P. (2000) "Judicial lobbying at the WTO: The Debate over the Use of Amicus Curiae Briefs and the US Experience," *Fordham International Law Journal* 24 (1/2): 62-94; Howse, R. (2003) "Membership and its Privileges: the WTO, Civil Society, and the Amicus Brief Controversy," *European Law Journal* 9 (4): 496-510; and Robbins, J. (2003) "False Friends: Amicus Curiae and Procedural Discretion in WTO Appeals Under The Hot-Rolled Lead / Asbestos Doctrine," *Harvard International Law Journal* 44 (1): 317-29.

²⁴⁸ See Bail, C., Falkner, R. and Marquard, H. (2002) *Reconciling Trade in Biotechnology with Environment & Development? The Cartagena Protocol on Biosafety*, Earthscan Publications and the Royal Institute of International Affairs, London;

²⁴⁹ See the UN's background page on the MDGs at: <http://www.un.org/millenniumgoals/bkgd.shtml>

1 on poverty and hunger.²⁵⁰ Harnessing the political interest in how to address trade and development, UNCTAD issued a new report setting out a 'positive agenda' for future trade negotiations.²⁵¹ In 2001, the Stockholm Convention on Persistent Organic Pollutants (POPs) included provisions for trade restrictions to achieve its goal of eliminating or restricting the production and use of all intentionally produced POPs.

3.3 Specialisation and Fragmentation in the Environmental Agenda (2001-2008)

From 2001, action on environmental issues at the WTO occurred in the context of the dispute settlement proceedings and was also tied to the fate of the Doha Development Agenda - the new Round of trade negotiations launched at the 2001 Doha Ministerial Conference. In this period, there was a shift in negotiations from a broad concern for 'trade and environment' toward the negotiation of specific topics where environmental concerns arose. This more specialised and fragmented environmental agenda was accompanied by growing focus of some groups and governments on a 'win-win' trade and environment agenda, such as in regard to fisheries subsidies. Environmental advocates remained active in pushing for institutional reform at the WTO, particularly in terms of transparency and participation. While some analysts were encouraged that the WTO had made progress on environmental issues, and could continue to do so, others argued that efforts to green the WTO faced structural constraints.²⁵² By the end of 2007, the Round had failed to advance and prospects of future progress seemed uncertain, the engagement of environmental NGOs at the WTO had waned considerably.

Environment in WTO Dispute Settlement Proceedings

Throughout the Doha Round, environment issues emerged in WTO dispute settlement proceedings (see Box 1 for background on that and other environment cases). In 2001, the Appellate Body's second ruling on the high-profile Shrimp/Turtle case emerged, regarding U.S. measures taken to comply with its early ruling. Although the Appellate Body ruled that the import prohibition on shrimp and shrimp products was considered inconsistent with WTO provisions on quantitative restrictions, the Appellate Body argued that as applied by the U.S. through the implementation of its revised guidelines, the measure was permissible under Article XX(g) exceptions as it was applied in a justifiable and non-arbitrary manner.²⁵³

Meanwhile, amidst public concerns about the science and safety of GM crops, a long-running US-EU WTO dispute on biotechnology²⁵⁴ spurred debate on biosafety and the role of the

²⁵⁰ https://www.wto.org/english/thewto_e/coher_e/mdg_e/mdgs_e.htm.

²⁵¹ UNCTAD (2000) *Positive Agenda and Future Trade Negotiations*. Geneva: United Nations Conference on Trade and Development.

²⁵² For samples of such views, see Williams, M. (2001) "Trade and Environment in the World Trading System: A Decade of Stalemate?" *Global Environmental Politics*, 1, 4: 1-9; Beukel, E. (2001) "Greening the World Trade Organization Trading Regime? Towards a Structural Power Model." *Journal of International Relations and Development* 4 (2): 138. For a review of the politics of environmental issues at the WTO at the time, see Shaffer, G. (2002) "If Only We Were Elephants: The political economy of the WTO's Treatment of trade and environment matters," in Kennedy, D. and J. Southwick (eds) *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec*, Cambridge University Press: Cambridge; and Dillon, S. (2002) "Comment: The dynamics of protest," in Kennedy, D. and J. Southwick (eds) *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec*, Cambridge University Press: Cambridge.

²⁵³ See https://www.wto.org/english/tratop_e/dispu_e/cases_e/1/pagesum_e/ds58sum_e.pdf

²⁵⁴ See Baumüller, H. and Oliva, M.J. (2006) "WTO/EC Biotech Panel Report: Key Issues and Implications," *Environmental Policy and Law Journal* 36(6): 257-26; Musselli, I. & Zarrilli, S. (2002) "Non-trade concerns and the WTO jurisprudence in the Asbestos Case – Possible relevance for international trade in genetically modified

precautionary principle in WTO dispute settlement proceedings;²⁵⁵ trade in biotechnology products;²⁵⁶ biopiracy and TRIPS rules on plant varieties and patents;²⁵⁷ and the task of reconciling trade rules with the Cartagena Protocol on Biosafety.²⁵⁸ In 2006, the WTO panel's final report found in favour of the complainants (US, Canada and Argentina), including that the EU's moratorium on the approval of new biotech products resulted in 'undue delay' in approvals that were incompliant with WTO's SPS Agreements. The panel also ruled against various national import restrictions instituted by EU member states, rejecting the EU's argument that these were necessary for precautionary purposes. The decision prompted dismay and outrage in environmental communities on both sides of the Atlantic.²⁵⁹

The environmental disputes at the WTO inspired numerous debates during this period among environmental and legal scholars. In an effort to broaden public understanding of the technical details at hand and the implications of the decisions that emerged, CIEL produced a compilation of summaries of environmental disputes.²⁶⁰ Scholars of international law and the environment also debated the extent to which the WTO appellate body can and should play an activist role in interpreting WTO law as well as the desirable scope for non-governmental actors.²⁶¹ As the DDA languished and with concern about the stalemate in the WTO's rule-making functions, there was also growing debate about the governance implications and desirability of "rulemaking by judiciary" at the WTO.²⁶²

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organisms," *The Journal of World Intellectual Property* 5(3): 373–393; Baumüller, H. (2003) *Domestic Import Regulations for Genetically Modified Organisms and their Compatibility with WTO Rules*. IISD-ICTSD Trade Knowledge Network: Geneva.

²⁵⁵ ICTSD (2007) *Biotechnology: Addressing Key Trade and Sustainability Issues*, ICTSD: Geneva, and Friends of the Earth (2004) *The WTO, GMOs and Democracy*, Friends of the Earth: London.

²⁵⁶ Anderson, K., Damania, R., Jackson, L. (2004) *Trade, standards and the political economy of genetically modified food*, World Bank Policy Research Working Paper 3395, World Bank: Washington D.C.; Meléndez-Ortiz, R. and Sánchez, V. (2005) *Trading in Genes: Development Perspectives on Biotechnology, Trade and Sustainability*, Earthscan Publications and ICTSD: London; Zarilli, S. (2005) *International trade in GMOs: Legal frameworks and developing country concerns*, Policy Issues in International Trade and Commodities Study Series No. 29, UNCTAD: Geneva.

²⁵⁷ See, for instance, Shiva, V. (2005) "Seed Dictatorship and Food Facism," Research Foundation for Science, Technology and Ecology/Navdanya: New Delhi; and Shiva, V. and R. Singh (2004) "Biopiracy of Indian Wheat," Research Foundation for Science, Technology and Ecology/Navdanya: New Delhi.

²⁵⁸ See Bail, C., Falkner, R. and Marquard, H. (2002) *Reconciling Trade in Biotechnology with Environment & Development? The Cartagena Protocol on Biosafety*, Earthscan Publications and the Royal Institute of International Affairs, London; Pfahl, S. (2005) *Is the WTO the Only Way? Safeguarding multilateral environmental agreements from international trade rules and settling trade and environment disputes outside the WTO*, Adelphi Consult, Greenpeace and Friends of the Earth: London.

²⁵⁹ See Greenpeace International (2006) "Greenpeace dismisses WTO ruling and predicts Europe will stay closed to GMOs," *Press Release* 7 February. In Europe, a coalition of UK-based NGOs argued for the decision to be appealed. See Palmer, A. (2006) "The WTO GMO Dispute: Implications for Developing Countries and the Need for an Appeal," GeneWatch, RSPB, GMFreeze, and the Forum for Biotechnology and Food Security. In the U.S., an alliance of 15 US-based NGOs argued that the dispute was "clearly an effort to chill other nations from pursuing any regulations on GE foods." Also see Public Citizen (2006) "Public Citizen Public Citizen Denounces WTO Tribunal Decision on Genetically Modified Foods," Public Citizen Press Release, 7 February 2006.

²⁶⁰ For an insight into some of these debates, see Bartels, L. (2004) "The Separation of Powers in the WTO: How to Avoid Judicial Activism," *International and Comparative Law Quarterly* 53: 861–895. Also see Howse, R. (2009) "Moving the WTO Forward – One Case at a Time," *Cornell International Law Journal* 42 (2): 223–231.

²⁶¹ For a review of the role of the WTO's judiciary over the organization's first 20 years, see Howse, R. (2016) "The World Trade Organization 20 Years On: Global Governance by Judiciary," *European Journal of International Law*, vol. 27, 9–77.

²⁶² See Steinberg, R. and J. Goldstein (2008) "Regulatory Shift: The Rise of Judicialization at the WTO", in Mattli, W. and N. Woods (eds), *The Politics of Global Regulation*, Oxford University Press: Oxford.

Held shortly after the attacks in the United States on 11 September 2001, the emphasis in Doha was on demonstrating a spirit of multilateral cooperation; avoiding a repeat of Seattle; and responding to developing country demands for greater benefits from the multilateral trade system. Together, these priorities were seen as a way to bolster the WTO's relevance and legitimacy in light of the enduring criticism from the 'anti' and 'alter' globalization movements.²⁶³

On environmental issues, Member States 'strongly reaffirmed' their commitment to the objective of sustainable development in the Doha Ministerial Declaration, declaring: "We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive."²⁶⁴ The Doha agenda also explicitly put environmental issues on the WTO negotiation agenda for the first time, launching talks on the relationship between the WTO and MEAs; the liberalization of trade in environmental goods and services; and improved WTO disciplines on fisheries subsidies, among other issues.

Environmental issues aside, it was debate about development - and how to advance the development ambitions of the DDA - that dominated the first years of the Doha Round negotiations as well as wider global economic policy debates.²⁶⁵ In 2002, reactions to a World Bank report on *Globalization, Growth and Poverty* illustrated the divergent views on how globalisation and trade policy could respond to development priorities.²⁶⁶ After the World Bank's chief economist and Nobel Prize winner, Joseph Stiglitz, resigned partly due to disagreements on the report's policy prescriptions, he became a powerful, outspoken advocate of fairer globalization, fuelling an already lively global policy debate between advocates and sceptics of the development potential of globalization²⁶⁷ and trade.²⁶⁸ The push for progress on the UN's MDGs underscored the need for policy coherence around development priorities in an increasingly complicated regulatory environment.²⁶⁹ As

²⁶³ See, for instance, the Greens/European Free Alliance in the European Parliament (2001) *WTO and Corporate Globalisation: A Greens/EFA Policy Statement*, Brussels: The Greens/EFA; The International Confederation of Free Trade Unions (2001) *ICFTU Statement on the Agenda for the 4th Ministerial Conference of the WTO*, Qatar, 9-13 November 2001; Third World Network (2001) *The Multilateral Trading System: A Development Perspective*, Background Paper for Trade and Sustainable Human Development Project, Bureau for Development Policy, UNDP: New York.

²⁶⁴ See WTO (2001) *Doha Ministerial Declaration*, WT/MIN(01)/DEC/1, WTO: Geneva.

²⁶⁵ In 2000, for instance, UNCTAD published arguments and recommendations in favour of a more development-oriented WTO in UNCTAD (2000) *A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations*, UN: New York and Geneva. Examples of studies published by some of the most influential and mainstream trade analysts around that time include Hoekman, B. (2001) "Strengthening the Global Trade Architecture for Development: The Post Doha Agenda," *World Trade Review* 1: 23-46.

²⁶⁶ World Bank (2002) *Globalization, Growth and Poverty: Building and Inclusive World Economy*, World Bank: Washington, D.C.

²⁶⁷ For the view of a prominent pro-globalisation commentator, see Friedman, J. (2002) *The Lexus and the Olive Tree: Understanding Globalization*, Anchor Books: New York. For a more sceptical view, see Rodrik, D. (2001). "Trading in Illusions," *Foreign Policy*, March-April; and Rodrik, D. (2001) *The Global Governance of Trade – As If Development Really Mattered*, Background Paper for Trade and Sustainable Human Development. Project, Bureau for Development Policy, UNDP: New York.

²⁶⁸ Stiglitz, J. (2002) *Globalization and its Discontents*, W.W. Norton & Co: New York. For Stiglitz on trade, see Stiglitz, J. and A. Charlton (2005) *Fair Trade for All: How Trade Can Promote Development*, Oxford University Press: Oxford; Stiglitz, Joseph, and Andrew Charlton. "Common values for the Development Round." *World Trade Review* 3.3 (2004): 495-506.

²⁶⁹ OECD (2003) *Policy coherence: Vital for global development*. OECD Observer, OECD: Paris; UNCTAD (2004) *Trade and Development Report 2004: Policy coherence, development strategies and integration into the world economy*. UNCTAD/TDR/2004, UNCTAD: Geneva; European Commission (2005) *Policy Coherence for*

development NGOs and international organisations advanced a suite of developing country priorities for the global economic system,²⁷⁰ Oxfam weighed in from 2002 with the launch of its well-resourced campaign to ‘Make Trade Fair’.²⁷¹ The discussion and launch of the WTO’s Aid for Trade Initiative²⁷² also illustrated the growing recognition of the need to respond to development concerns.²⁷³ While the initiative’s subsequent activities included some attention environmental issues, the Aid for Trade Initiative highlighted how the overarching political frame and priority in the trade policy arena was on responding – and being seen to respond – to development concerns.²⁷⁴ Issues of environment and sustainable development in that sense were secondary. From 2001 to 2005, for instance, the WTO Director General Supachai rarely specifically addressed the WTO’s contribution to sustainable development, devoting only one public speech to the issue in the lead up to Rio+10, the 2002 World Summit on Sustainable Development in Johannesburg (see Appendix 4).²⁷⁵

Where environmental issues arose in negotiations, growing pressure to consider development dimensions spurred efforts to garner the support of increasingly active and influential development country coalitions at the WTO. In this respect, the Doha Round marked a shift among environmental NGOs and trade negotiators toward finding ways to bring developing countries on board through closer examination of their interests and to forge coalitions with constituencies and local experts in developing countries.²⁷⁶ Northern environmental NGOs active on agricultural and fisheries negotiations, for instance, published studies that explored the interests and perspectives of rural communities on the issues at stake, as well as links between sustainability, trade and poverty.²⁷⁷ In 2002, the WTO’s first

Development – Accelerating progress towards attaining the Millennium Development Goals, COM(2005) 134, European Commission: Brussels.

²⁷⁰ See reports by UNDP (2003) *Making Trade Work for Sustainable Development*, UNDP: New York and numerous reports by UNCTAD on a positive agenda for the WTO. For a key publication before Seattle, see South Centre (1998) *The WTO Multilateral Trade Agenda and the South*, South Centre. Geneva, Switzerland.

²⁷¹ This campaign coincided with a major Oxfam report on trade and development, see Watkins, K. (2002) *Rigged Rules and Double Standards: Trade, Globalisation, and the Fight Against Poverty*, Oxford: Oxfam International. For a critique of the campaign, see Bello, W. (2002) *What’s Wrong with Oxfam’s Trade Campaign*, followed by Oxfam (2002) *Oxfam’s Response to Walden Bello’s Article on Make Trade Fair*.

²⁷² For background on the initiative launched at the 2005 Hong Kong WTO Ministerial Conference, see https://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm.

²⁷³ Critical development analysts insisted that greater financial and technical support must be a complement, not an alternative to development-friendly reforms of the rules governing global trade. See, for instance, Tandon, Y. (2004) “Technical Assistance as a Political Instrument,” in *The Reality of Trade: The WTO and Developing Countries*, The North-South Institute: Ottawa.

²⁷⁴ Former WTO Director General Mike Moore discusses the impetus for the Aid for Trade Initiative is discussed in his review of his tenure as head of the WTO. See Moore, M. (2003) *A World Without Walls: Freedom, Development, Free Trade and Global Governance*, Cambridge University Press.

²⁷⁵ The Summit’s Plan of Implementation included several references to several trade-related issues. See UN (2005) General Assembly, ‘World Summit Outcome’, A/60/L.1, 15 September 2005, p. 12. Johannesburg WSSD. UN (2002) *World Summit on Sustainable Development: Plan of Implementation*, UN: New York. Also see WTO (2002) *Report of the World Summit on Sustainable Development*, WT/CTE/W/220/Rev.1, 20 December 2002, WTO: Geneva.

²⁷⁶ For an analysis of the relationship between Northern NGOs and South governments in the trade and environment debate, see Tanaka, M. (2003) “Bridging the Gap Between Northern NGOs and Southern Sovereigns in the Trade-Environment Debate: The Pursuit of Democratic Dispute Settlements in the WTO Under the Rio Principles,” *Ecology Law Quarterly* 30 (1): 113-88.

²⁷⁷ See, for instance, Schorr, D. (2005) *Artisanal Fishing: Promoting Poverty Reduction and Community Development Through New WTO Rules on Fisheries Subsidies*, UNEP – Economics and Trade Branch: Geneva; WWF (2005) *Trade Liberalization, Rural Poverty and the Environment: A Wide-Ranging Review of the Debates*, WWF Macroeconomic Policy Office, Washington D.C.; Werth, A. (2003) *Agri-Environment and Rural Development in the Doha Round*, IISD-ICTSD Trade Knowledge Network: Geneva; Lime, T. (2005) *Agricultural Commodities, Trade and Sustainable Development*. International Institute for Economic Development and International Centre for Trade and Sustainable Development, Nottingham, U.K.

informal coalition of Member States on an environmental issue arose with the formation of the 'Friends of Fish,' bringing together both developed and developing country governments. The coalition included Argentina, Australia, Chile, Colombia, Ecuador, Iceland, New Zealand, Norway, Pakistan, Peru, and the United States, and from time to time, according to the issue at hand, other countries also identified themselves as Friends of Fish. The removal of environmental-harmful and trade-distorting fisheries subsidies was increasingly regarded and promoted as a win-win-win for trade, the environment and development. While acknowledging that some fisheries subsidies may bring benefits to the environment and development, the Friends of Fish called on the WTO to "address subsidies that can lead to overcapacity...and trade distortions)."²⁷⁸

The political emphasis on the importance of development considerations linked to environmental challenges did not, however, put an end to North-South tensions in the negotiations, including on environmental matters. In September 2004, then European Commissioner for Trade, Pascal Lamy, put forward a paper that explored the challenges posed by 'collective preferences' (i.e., where governments adopt measures that violate WTO rules and yet the measure is so favoured by public and parliamentary opinion that the regulating country government could not withdraw it),²⁷⁹ proposing a new safeguards provision in the WTO that could permit governments to retain strongly-supported measures provided compensation is paid.²⁸⁰ Many developing countries viewed the proposal as a thin cloak for environment-related protection.

Beyond the North-South tensions, prominent liberal economists regularly expressed dismay at slow of Doha Round negotiations and the watering down of the free trade agenda by politicians from all sides. Echoing debates of the early 1990s, pro-trade economists and trade negotiators maintained that the WTO's core work was to liberalize trade, characterising challenges of development, sustainable development, and environment as diversions that were beyond the organization's mandate. At seminars and conferences on WTO issues, these experts could regularly be heard insisting that the WTO should properly be viewed as a trade organisation, not a development organization nor for that matter an environmental organization. Those trade advocates sympathetic to environmental concerns emphasised the importance of more effective MEAs and more effective national environmental policies and institutions as the best way to address trade and environment tensions.²⁸¹

Unconvinced, a broad network of civil society groups from developed and developing countries sustained their fundamental critique of the way the WTO operates, its negotiating agenda and the outcomes of trade liberalization. In the lead up to the 2003 Cancun WTO Ministerial Conference, for instance, the OWINFS coalition issued a new "Shrink or Sink - A Critique of the WTO" sign-on letter, which set out eleven "transformational" demands on the

²⁷⁸ See ICTSD (2002) "Friends of Fish Call for Reducing Harmful Subsidies," *BioRes*, 16 May, ICTSD: Geneva.

²⁷⁹ Lamy, P. (2004) 'The emergence of collective preferences in international trade: implications for regulating globalization,' *Conference on 'Collective preferences and Global Governance: What Future for the Multilateral Trading System'*, Speech by EU Trade Commissioner Pascal Lamy, Brussels, 15 September 2004.

²⁸⁰ Charnovitz, S. (2004) "An analysis of Pascal Lamy's Proposal on Collective Preferences," *GWU Law School Public Law Research Paper No. 122*, December 2004.

²⁸¹ See, for instance, Sampson, G. (2001) "Effective Multilateral Environment Agreements and Why the WTO Needs Them," *The World Economy*. 24 (9): 1097-1108. Also see Sampson (2005), *The WTO and Sustainable Development*, UNU: Tokyo, pp. 20-21. For a review of this book by Kevin Gallagher, see *Journal of International Economic Law* (June 2006) 9 (2): 511-513.

WTO.²⁸² The statement so clearly encapsulates the perspective of such groups at the time that it warrants citing more fully:

“Trade liberalization encourages richer countries to consume more and poorer countries to export more. The end result is an increasingly polluted environment (through spiralling waste and transport-related pollution levels, for example) and the alarmingly rapid loss of irreplaceable natural resources. Furthermore, the WTO and other free trade agreements, which drive this destructive process, also include rules that undermine hard-won national and international legislation designed to protect peoples' environment. The 'environment' will be a key negotiating topic for governments meeting in Cancun. It has been placed on the agenda by the EU in a very limited way, but there is little prospect of any real change, since the WTO's *raison d'être* is to increase the pace of the overall liberalization process.”

Meanwhile, in line with the Doha negotiating mandate, the environmental agenda at the WTO became increasingly focused on those environmental issues included in the DDA mandate. In addition to the negotiations on fisheries subsidies, environmental issues arose in negotiations to promote the mutual supportiveness of TRIPS and the CBD,²⁸³ which in turn raised questions about the relationship of WTO rules and MEAs.²⁸⁴ Doha Round negotiations on trade in services prompted NGO campaigns on the environmental and social implications of trade in water, and negotiations on geographical indications also raised environmental questions.²⁸⁵ Meanwhile, technical work on the environmental issues continued quietly in the CTE, such as on PPMs and ecolabelling.²⁸⁶ (Some labelling issues were also under discussion in other international organizations. At the FAO, for instance, governments took up the trade-related challenge of developing guidelines for the labelling of sustainable fisheries products.²⁸⁷ UNEP also continued to promote work on environmental assessment of trade policies, building on the publication of a handbook on the topic in 2001.)²⁸⁸

With environment issues as part of the formal Doha negotiating mandate, it is not surprising that Member States made greater reference to environmental issues in WTO Ministerial Declarations between 2001 and 2005 than they did in previous years (See Appendix 8). There were 30, 25 and 22 mentions of environmental terms in the 2001 (Doha), 2003 (Cancun) and 2005 (Hong Kong) Ministerial Declarations respectively. Whereas the word

²⁸² Available at <http://notforsale.mayfirst.org/es/node/3>, retrieved on October 1, 2016.

²⁸³ Trade issues also arose in the context of CBD negotiations on the voluntary “Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization,” which set out international standards on access and benefit-sharing rules. Khor, K.P. and Khor, M. (2004) *Intellectual Property, Biodiversity and Sustainable Development: Resolving the Difficult Issues*. Zed Books. London, U.K.; IUCN, ICTSD, CIEL, IDDI and QUNO (2005) *Disclosure Requirements: Ensuring mutual supportiveness between the WTO TRIPS Agreement and the CBD*. Geneva, Switzerland; ICTSD and UNCTAD (2005) *Resource Book on TRIPS and Development: An authoritative and practical guide to the TRIPS Agreement*, UNCTAD-ICTSD Capacity Building Project. Geneva, Switzerland.

²⁸⁴ Kuijper, J. (2010) *Conflicting Rules and Clashing Courts: The Case of Multilateral Environmental Agreements, Free Trade Agreements and the WTO*. ICTSD: Geneva.
<http://www.ictsd.org/sites/default/files/research/2011/12/conflicting-rules-and-clashing-courts.pdf>

²⁸⁵ Kirkpatrick, C. (2006) *Trade in Environmental Services: Assessing the Implications for Developing Countries in the GATS*. ICTSD Series on Trade and Environment No. 3, ICTSD: Geneva; and ICTSD and IISD (2003–2005) *Trade in Services*, Doha Round Briefing Series No. 3., ICTSD and IISD: Geneva.

²⁸⁶ For a review of the CTE's work around that period, see Shaffer, G. (2002) “The nexus of law and politics: The WTO's Committee on Trade and Environment,” in R. H. Steinberg (Ed.), *The Greening of Trade Law: International Trade Organizations and Environmental issues*. Lanham, MD: Rowman & Littlefield. Also see discussion of the CTE in Sampson, G. (2005) *The WTO and Sustainable Development*, United Nations University Press: Tokyo. The agendas and summaries of CTE meetings are available on the WTO website here: https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e.htm.

²⁸⁷ Deere, C., C Wessells, K. Cochrane, P. Wallis, R. Willmann (2001) “Product certification and ecolabelling for fisheries sustainability,” *FAO Fisheries Technical Paper*, No. 422, FAO: Rome.

²⁸⁸ UNEP (2001) *Reference Manual for the Integrated Assessment of Trade-related Policies*, UNEP: Geneva.

‘environment’ appeared 8, 6, and 5 times in 2001, 2003 and 2005 respectively, and ‘trade and environment’ appeared 5, 5, and 4 times, the term sustainable development appeared four times in 2001 but did not appear subsequently until the 2015 Ministerial Declaration (see section 3.5 below). The other terms most frequently referred to in Ministerial Declarations were the CTE, then fisheries, followed MEAs (see Appendix 8).

The growing specialisation of the environmental agenda at the WTO was also apparent in the rising reference by Member States to specific environmental issues in their statements at Ministerial Conferences (see Appendix 9 for a data-set on the environmental terms used by Member States in such statements). The specialisation was also illustrated in a bibliography to the 2007 edition of IISD and ICTSD’s joint trade and environment resource book;²⁸⁹ the bibliography divided trade and environment resources according to the following specific topic areas: agriculture, biotechnology, capacity building, climate change and energy, dispute resolution, environmental goods and non-agricultural market access, environmental services, environmental technologies, fisheries subsidies, illegal trade in national resources, intellectual property rights, investment, MEAs, policy coherence, regional arrangements, standards and labelling, and trade facilitation. Similarly, a review of reporting in ICTSD’s BRIDGES suite of publications – which had emerged as the informal ‘record’ of evolving trade and sustainable development debates – reveals a steady shift from general ‘trade and environment issues’ to a regular coverage of a suite of sectoral and issue-based environment and trade topics.²⁹⁰

Accompanying the rise of issue-specific trade-related environmental concerns was a fragmentation of the environment-trade community. On specific issues on the WTO negotiation agenda, such as fisheries subsidies and biotechnology, dedicated communities and coalitions of government officials, advocates, experts and scholars arose. A number of NGOs continued to publish and campaign on environmental issues not specifically addressed in the negotiations, such as the impacts of trade liberalization on forests.²⁹¹ By contrast, a diminishing number of international NGOs maintained work on a broad suite of trade-environment issues and on general questions of the environmental performance of the multilateral trading system. In the lead up to major WTO Ministerial Conferences, for instance, ICTSD and IISD collaborated on reports on trade and environment in general,²⁹² and each produced studies on cross-cutting topics, such as dispute settlement.²⁹³ A number

²⁸⁹ Najam, A., M. Halle, and R. Meléndez-Ortiz (2007) *Trade and Environment: A Resource Book*, ICTSD and IISD: Geneva.

²⁹⁰ See www.ictsd.org.

²⁹¹ See Tarasofsky, R. and S. Pfahl (2001) *Trading Away the Last Forests: The threats to forests from trade liberalization under the WTO*, Greenpeace International: Hamburg.

²⁹² See UNEP & IISD (2001) *Trade and Environment: A Handbook*, UNEP and IISD: Geneva, which was followed by a second edition in 2005. See IISD and UNEP (2005) *Environment and Trade – A Handbook (2nd edition)*. International Institute for Sustainable Development and United Nations Environment Programme. Winnipeg, Canada. Also see Najam, A., Halle, M. and R. Meléndez-Ortiz (eds) (2007) *Trade and Environment: A Resource Book*, IISD: Winnipeg. Chatham House and FIELD also supported general publications on trade, environment and sustainable development. See Brack, D. (2005) *The World Trade Organization and sustainable development: A guide to the debate*, Energy, Environment and Development Programme EEDP BP 05/03. Chatham House: London.

²⁹³ Tarasofsky, R. (2005) *Trade, Environment and the WTO Dispute Settlement Mechanism*. Chatham House. London, U.K.; Mann, H. and Porter, S. (2003) *The State of Trade and Environment Law 2003: Implications for Doha and Beyond*. International Institute for Sustainable Development and Center for International Environmental Law. Winnipeg, Canada; and Bernasconi-Osterwalder, N., Magraw, D., Oliva, M.J., Orellana, M. and Tuerk, E. (2005) *A Guide to WTO Jurisprudence*. Earthscan Publications. London, U.K.

of scholars and policy experts also continued to follow and publish general works on trade, the environment and sustainable development.²⁹⁴

The Rise of the 'Win-Win' Trade and Environment Agenda

During the Doha Round, in lieu of seeing trade opening and trade rules as threats to environmental performance, interest in a positive agenda²⁹⁵ and ways to harness trade rules and mechanisms to advance environmental ends intensified. A number of NGOs and analysts argued that greater WTO attention to environmentally harmful subsidies could be a 'win-win' proposition that would both boost economic efficiency by reducing distorting barriers to trade, and support environmental objectives.²⁹⁶ In this spirit, WWF continued its advocacy in favour of using trade rules to curb fisheries subsidies.²⁹⁷ Its efforts were bolstered by technical work conducted by researchers at the World Bank, OECD, UNEP and FAO.²⁹⁸ In addition, IISD pursued research and advocacy on perverse subsidies across a range of environmental topics, including fossil fuel subsidies.²⁹⁹ As a number of governments joined the call for an end to harmful fisheries subsidies, they emphasised that this could in fact produce win-win-win benefits for the environment, for trade and also for development.

In addition, a number of NGOs sought to support practical approaches to international trade designed to be both environmentally-friendly and fair. To raise awareness of the fair trade system, for instance, IATP organized a Fair Trade Fair and Symposium near the 2005 Hong Kong WTO Ministerial Conference.³⁰⁰ Building on the fair trade movement (which had expanded from artisanal products and coffee to a range of food and consumer products) and the experience of 'dolphin safe' tuna labels, there was growing interest in 'green labels' for a range of products.³⁰¹ WWF, for instance, reached out to and partnered with business interests to launch two environmental labelling efforts – the Marine Stewardship Council

²⁹⁴ See, for instance, Gallagher, K. and Werksman, J. (2002) *Earthscan Reader on International Trade and Sustainable Development*, Earthscan Publications: London; Copeland, B. and M. Taylor (2003) *Trade and Environment: Theory and Practice*, Princeton University Press: Princeton.

²⁹⁵ GETS (2003) *Achieving Harmony in Trade and Environment*, Global Environment and Trade Study, Minnesota; Neumayer, E. (2001) *Greening Trade and Investment: Environmental Protection without Protectionism*, Earthscan Publications: London.

²⁹⁶ Further, some scholars argued that attacks on the WTO were counterproductive for the achievement of environmental goals. See Young, A. (2005) "Picking the Wrong Fight: Why Attacks on the World Trade Organization Pose the Real Threat to National Environmental and Public Health Protection," *Global Environmental Politics* 5 (4): 47-72.

²⁹⁷ Schorr, D. (2004) *Healthy Fisheries, Sustainable Trade: Crafting New Rules On Fishing Subsidies in the World Trade Organization*, WWF: Washington D.C.

²⁹⁸ UNEP (2004) *Analyzing the Resource Impact of Fisheries Subsidies: A Matrix Approach*, United Nations Environment Program – Economics and Trade Branch: Geneva; Westlund L. (2004) *Guide for Identifying, Assessing and Reporting on Subsidies in the Fisheries Sector*. Fisheries Technical Paper No. 438, United Nations Food and Agriculture Organization. Rome, Italy; UNEP (2008) *Fisheries Subsidies: A Critical Issue for Trade and Sustainable Development at the WTO: An Introductory Guide*, UNEP: Geneva.

²⁹⁹ See IISD's work on subsidies at: <http://www.iisd.org/topic/subsidies>. This work built on Von Moltke, K. (2003) *Negotiating Subsidy Reduction in the World Trade Organization*, Winnipeg: IISD. IISD's work on trade and subsidies built on earlier analysis of the challenges of subsidies. See, for instance, Myers, D. and J. Kent (2001) *Perverse Subsidies: How Tax Dollars Can Undercut the Environment and the Economy*, IISD: Winnipeg. By 2006, IISD had launched a Global Subsidies Initiative, the aims of which included generating "consensus in the World Trade Organization and in other forums on the need to take resolute, ongoing and systematic action to reduce or eliminate subsidies that are trade-distorting and undermine sustainable development."

³⁰⁰ For the programme of the Fair and Symposium, see <http://www.iatp.org/documents/final-programme-2005-hong-kong-fair-trade-fair-and-symposium>.

³⁰¹ The Fair Trade movement had already been growing for over a decade. In 1997, for instance, IATP incorporated TransFair USA, the first U.S. fair trade certification body. For reviews of fair trade efforts, see Jaffee, D. (2007) *Brewing Justice: Fair Trade Coffee, Sustainability, and Survival*, University of California Press: Berkeley; DeCarlo, J. (2008) *Fair Trade*, Oneworld: Oxford.

(along with Unilever) and the Forest Stewardship Council.³⁰²

The WTO Secretariat seized upon the growing interest in win-win solutions; it became more assertive in its positive framing of the relationship of trade and the environment and conveyed greater receptivity to civil society input.³⁰³ To “assist public understanding of debates in the WTO,” for instance, the Secretariat published a report entitled *Trade and Environment at the WTO* in 2004.³⁰⁴ Between 2005 and 2007, the WTO Director General Pascal Lamy was more assertive than his predecessors on the WTO’s potential contribution to environmental protection. In the lead up to the 2005 Hong Kong Ministerial, for instance, Lamy was determined to avoid a Cancun-like fiasco and sought to appease various constituencies in advance. In speeches in 2005, he described sustainable development as an “end-goal” of the WTO, declaring that “[t]rade can be a friend not foe of conservation”³⁰⁵ and that there is “[n]o conflict between trade and environment” (See Appendix 4 for full citations). He highlighted the “[e]nvironmental dimension” of trade talks at the WTO, urging members to support MEAs and what he referred to as the Round’s “environmental chapter.” The agenda of the 2006 WTO Public Forum illustrated the Secretariat’s focus on portraying the WTO’s positive contribution to the environment. The Secretariat, for instance, sponsored its own sessions on sustainability and environmental impact assessment of trade negotiations as well as “opportunities and challenges for further strengthening the mutual supportiveness of trade and environment in the WTO Round” (see Appendix 4). In his opening remarks at the Public Forum, Lamy asserted that “[s]ustainable development should be the cornerstone of our approach to globalization and to the global governance architecture we create. If I have come to this forum, it is to deliver a message: the WTO stands ready to do its part.”³⁰⁶ The WTO’s website echoed this message stating that: “trade is a powerful ally of sustainable development. The WTO’s founding agreement recognizes sustainable development as a central principle, and it is an objective running through all subjects in current Doha negotiations.”³⁰⁷ Similarly, Lamy argued in 2007 that “civil society is influencing the WTO agenda” and that the “greening of the WTO has started,” declaring that the Doha Round could deliver a “double-win” for environment and trade (See Appendix 4).

Calls for Transparency and Inclusiveness Amidst Pressures for Greater Efficiency

Throughout the Doha Round, the issue of WTO institutional reform—whether it was needed, in what form, and through what kind of process—remained an ever-present issue for the

³⁰² For background on the politics and reception of these to initiatives, see See Gale F., and M. Haward (2011) *Global Commodity Governance: State Responses to Sustainable Forest and Fisheries Certification*, Palgrave MacMillan: Basingstoke. In the early stages of both initiatives, critics expressed dissatisfaction with efforts to take development and fairness considerations into account and to engage local communities in developing countries.

³⁰³ For a wider discussion of the Secretariat’s influence on trade-environment politics, see Jinnah, S. (2010) “Overlap Management in the World Trade Organization: Secretariat Influence on Trade-environment Politics,” *Global Environmental Politics*, 10, 64-79.

³⁰⁴ The document briefly presents its history and focuses on trade and environment related issues within the Doha mandate, the effects of trade liberalization on the environment, the relationship between multilateral environmental agreements and the WTO, and a review of trade disputes involving environmental issues. See WTO (2004) *Trade and Environment at the WTO*, WTO: Geneva.
https://www.wto.org/english/res_e/publications_e/trade_env_e.htm

³⁰⁵ See Lamy, P. (2005) “Trade can be a friend, not a foe, of conservation,” speech at the WTO Symposium on Trade and Sustainable Development, 10-11 October 2005, WTO: Geneva.

³⁰⁶ See Lamy, P. (2006) “Opening Remarks at WTO Public Forum,” Report of the WTO Public Forum 2006, WTO: Geneva.

³⁰⁷ See https://www.wto.org/english/tratop_e/envir_e/sust_dev_e.htm

organisation and its increasingly diverse membership.³⁰⁸ Civil society groups with the support of some developed countries continued to call for greater transparency of trade negotiations and dispute settlement proceedings.³⁰⁹ As noted above, the Secretariat continued to host its annual Public Forum (see Appendix 5 for the themes chosen by the Secretariat), which it viewed as a key mechanism for demonstrating the organization's openness to civil society and its commitment to greater transparency.³¹⁰ NGOs and scholarly critics nonetheless sustained their complaints about WTO transparency³¹¹ and called for more opportunities for public participation, arguing that failure to act on the issues threatened the organization's legitimacy.³¹² Many parliamentarians too remained dissatisfied with WTO processes. The International Parliamentary Union called for a parliamentary dimension to the WTO alongside scholars who argued that greater engagement by parliamentarians could bolster the legitimacy and relevance of WTO decisions by giving voice to public interests not always well represented by national trade negotiators.³¹³

Beyond transparency and participation at the WTO itself, numerous studies from developed and developing countries argued that stronger processes for stakeholder participation in national trade policy-making processes – as well as environmental and social reviews of trade agreements – were essential for more environment and development-friendly trade agreements.³¹⁴ The WTO Secretariat itself weighed in on how countries could better manage their participation in WTO negotiations, publishing a compilation of case studies that included

³⁰⁸ Jackson, J. (2001). The WTO 'Constitution' and Proposed Reforms: Seven 'Mantras' Revisited. *Journal of International Economic Law* 4 (1): 67-78; Petersmann, E. (ed) (2005) *Reforming the World Trading System: Legitimacy, Efficiency, and Democratic Governance*. Oxford: Oxford University Press; Piewitt, M. (2010) "Participatory Governance in the WTO: How Inclusive Is Global Civil Society?," *Journal of World Trade* 44(2): 467-88; Howse, R. and K. Nicolaidis (2003) "Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?," *Governance* 16(1): 73-94; and more recently, Wolfe, R. (2014) An Anatomy of Accountability at the WTO, *Global Policy*, 6(1) February, pp. 13-23.

³⁰⁹ Action Aid, CAFOD, Christian Aid, Consumers International, FIELD, Oxfam, RSPB, and WDM (2000) *Recommendations for Ways Forward on Institutional Reform of the World Trade Organization*, available at http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122163.pdf; Our World is Not for Sale Coalition (2001) *International Civil Society Rejects WTO Doha Outcome – Declaration*; Joint NGO Statement (2003) *Democratise Your Decision-making Process: Joint memorandum to the WTO members on The Need to Improve Internal Transparency and Participation in the WTO*. Third World Network, Oxfam International, Public Services International, WWF International, Center for International Environmental Law, Focus on the Global South, The Institute for Agriculture and Trade Policy, The Africa Trade Network, The International Gender and Trade Network, and The Tebtebba International Centre for Indigenous Peoples' Rights; Oxfam International, WWF, CIEL, IATP, ActionAid, Friends of the Earth (2001) *Joint NGO Open Letter on Institutional Reforms in the WTO*. October. Available at: <http://www.ciel.org/Publications/Reform.pdf> Oxfam.

³¹⁰ Notably, WTO staff published a number of independent views on the topic. See, for instance, Lacarte-Muró, J. (2004) "Transparency, Public Debate and Participation by NGOs in the WTO: A WTO Perspective," *Journal of International Economic Law* 7 (3): 683-686; Pedersen, P. (2006) "The WTO decision-making process and internal transparency," *World Trade Review*, 5(1): 103-31;

³¹¹ Kwa, A. (2002) *Power Politics in the WTO*, Bangkok: Focus on the Global South; and Jawara, F. and A. Kwa (2003). *Behind the Scenes at the WTO: The Real World of International Trade Negotiations*, London: Zed Books.

³¹² See, for instance, Esty, D. (2002) 'The World Trade Organisation's Legitimacy Crisis,' *World Trade Review*, 1(1): 7-22. Howse, R. (2003) "Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?" *Governance: An International Journal of Policy, Administration and Institutions* 16 (1): 73-94; Howse, R. (2001) "The Legitimacy of the World Trade Organisation," in *The Legitimacy of International Organisations*, edited by Coicaud, J. and V. Heiskanen. New York: United Nations University Press.

³¹³ Meinhard, H. (2003) *How Can Parliamentary Participation in WTO Rule-Making and Democratic Control be Made More Effective in the WTO?* Hamburg: University of Hamburg; Mann, E. (2004) "A Parliamentary Dimension to the WTO—More Than Just a Vision?," *Journal of International Economic Law*, 7(3): 659-65; and Shaffer, G. (2004) "Parliamentary Oversight of WTO Rule-Making: The Political, Normative, and Practical Contexts," *Journal of International Economic Law*, 7(3): 629-54.

³¹⁴ Halle, M. and R. Wolfe (2007) *Process Matters: Sustainable Development and Domestic Trade Transparency*, Geneva: International Institute for Sustainable Development.

discussion on how some governments had addressed demands for public participation at the national level.³¹⁵

For the environmental community, the Doha Round marked the realisation of both developed and developing country governments of the potential to advance their negotiating priorities by working alongside and in coalition with NGOs.³¹⁶ Developing countries, for instance, acknowledged that the leadership and support of transnational civil society campaign had been pivotal to the achievement of the 2001 Doha Declaration on TRIPS and Public Health and to getting the issue of cotton subsidies on the WTO agenda. Similarly, on issues such as fisheries subsidies and disclosure of origin of genetic resources, Member States and the WTO Secretariat demonstrated a greater openness to dialogue and engagement with NGOs and independent experts on negotiating positions and tactics, training activities, public events and through the annual Public Forum (see Appendix 5). Developing countries became active in coalitions with explicit environmental objectives, such as the 'Friends of Fish' in the context of the fish subsidies negotiations.

Despite these steps toward greater dialogue with civil society, government officials still expressed diverse views on how much transparency was necessary to boost the WTO's legitimacy, for which stakeholders WTO transparency should be enhanced, and how to go about such improvements. Many commentators noted the trade-offs that can emerge between transparency, inclusiveness and the efficiency of decision-making.³¹⁷ In 2003, the collapse of the Cancun WTO Ministerial Conference reignited concern about fairness, transparency and participation at the WTO among NGOs,³¹⁸ scholars and governments officials.³¹⁹ In addition, the launch of the 'G20' coalition of developing countries on agriculture at the Cancun Ministerial spurred commentary on new power dynamics at the WTO.³²⁰ Questions abounded about how the rise of developing country coalitions, and the growing

³¹⁵ Gallagher, P., P. Low and A. Stoler (2005) *Managing the Challenges of WTO Participation: 45 Case Studies*, Cambridge University Press and WTO Secretariat.

³¹⁶ For a critical discussion of evolving WTO-civil society relations at that time, see Wilkinson, R. (2002) "The Contours of Courtship: The WTO and Civil Society," in *Global Governance: Critical Perspectives*, edited by R. Wilkinson and S. Hughes, Routledge: London.

³¹⁷ See, for instance, EC Directorate-General for Trade, *Reflection paper on WTO organisational improvements*, 29 October 2003, Brussels: European Commission; and Loy, F. (2001) "Public Participation in the WTO," in *The role of the World Trade Organisation in Global Governance*, edited by Gary Sampson. New York: United Nations University Press; and Wolfe, R. (2004) "Informal Political Engagement in the WTO: Are Mini-Ministerials a Good Idea?" in J. Curtis and D. Ciuriak (eds) *Trade Policy Research 2004*, Ottawa: Canadian Department of Foreign Affairs and International Trade, pp. 27-91.

³¹⁸ Third World Network, Oxfam International, Public Services International, WWF International, The Center for International Environmental Law, Focus on the Global South, The Institute for Agriculture and Trade Policy, The Africa Trade Network, The International General and Trade Network, and the Tebtebba International Centre for Indigenous Peoples' Rights, Memorandum on the Need to Improve Internal Transparency and Participation in the WTO, 13 July 2003; UK Parliament (2003) *Trade and Development at the WTO: Learning the lessons of Cancun to Revive a Genuine Development Round, International Development Committee Session 2003-4, First Report*. London: UK Parliament; South Centre (2003) *Institutional Governance and Decision-Making Processes in the WTO*, South Centre: Geneva; South Centre (2003) "Suggestions on Procedural Options based on the 1996 WTO Rules of Procedure for Sessions of the Ministerial Conference with Respect to Some Issues," *South Centre Analytical Note*, South Centre: Geneva; South Centre (2002) "Process Issues in the WTO: State of Play" November 2002, *South Centre Analytical Note*, Geneva: South Centre.

³¹⁹ Esserman, S. and R. Howse (2003) "The WTO on Trial," *Foreign Affairs* 82 (1): 130-140.

Howse, R. (2003) "How to Begin to Think About the Democratic Deficit at the WTO," in *International Governance and Non-Economic Concerns*, in Griller, S. (ed) *New Challenges for the International Legal Order*, Vienna and New York: Springer.

³²⁰ See, for instance, Narlikar, Amrita. 2004. The Ministerial Process and Power Dynamics in the World Trade Organization: Understanding Failure from Seattle to Cancun. *New Political Economy* 9 (3): 413-428; and Hurrell, A. and A. Narlikar (2006) "The New Politics of Confrontation: Brazil and India in Multilateral Trade Negotiations. *Global Society*, 20 (4): 415-433.

economic weight and political voice of India, China and Brazil in trade negotiations, would impact the efficiency of trade negotiations, the ability to conclude new deals and the organisation's governance.³²¹

In 2004, the WTO Director-General at that time, Supachai Panitchpakdi, commissioned a consultative board of experts, led by Peter Sutherland (former Director-General of the GATT and the WTO), to present proposals for institutional reform.³²² The report advocated a stronger role for the WTO Secretariat in negotiations and policy analysis, annual Ministerial conferences and a summit of World Leaders every five years, stronger rights to technical assistance for least developed countries, the creation of a senior official's consultative body, an expanded role for civil society and the opening of dispute settlement headings to the public, as well as further study of the possible reform of the single undertaking.³²³ The Report received mixed reactions from scholars and governments, and Member states followed up on only a few of its recommendations.³²⁴ In 2007, an independent commission on the future of the WTO supported by Warwick University proposed a number of institutional changes, including increasing the size of the WTO Secretariat, expanding the powers of the Director-General, and revising the process for reaching new trade deals to enable a 'critical mass' approach to decision-making.³²⁵ Meanwhile, a range of WTO scholars offered views on questions of WTO reform, with some calling for a boosted role for the Secretariat while others focused on decision-making processes, legitimacy and NGO participation.³²⁶ In addition, there were calls for additional institutional reforms to strengthen the WTO's environmental performance (such as through the inclusion of environmental considerations in the WTO's trade policy review process)³²⁷ and development outcomes.³²⁸

³²¹ Wilkinson, R. (2001) "The WTO in Crisis: Exploring the Dimensions of Institutional Inertia," *Journal of World Trade* 35 (3); WTO (2002) *Internal Transparency of Effective Participation of Members in the Preparatory process in Geneva and the Organisation of Ministerial Conferences*, Statement by the Chairman of the General Council, 6 December, JOB (02)/197/ Rev.1. WTO: Geneva.

³²² See Consultative Board (2004) *The Future of the WTO: Addressing Institutional Changes in the New Millennium*. WTO: Geneva.

³²³ Sutherland followed the report with further personal reflections in Sutherland, P. (2005) "The World Trade Organization at Ten Years," *World Trade Review* 4: 341-354.

³²⁴ Pauwelyn, J. (2005) "The Sutherland Report: A Missed Opportunity for Genuine Debate on Trade, Globalization and Reforming the WTO," *Journal of International Economic Law* 8 (2): 329-346, and Wolfe, R. (2005) "Decision-Making and Transparency in the 'Medieval' WTO: Does the Sutherland Report Have the Right Prescription?," *Journal of International Economic Law* 8(3): 631-45.

³²⁵ Warwick Commission (2007) *The Multilateral Trade Regime: Which Way Forward? The Report of the First Warwick Commission*. University of Warwick.

³²⁶ See, for instance, Van den Bossche, P. (2006) "Radical Overhaul or Pragmatic Change? The Need and Scope for Reform of Decision-Making in the World Trade Organization," *Maastricht Faculty of Law Working Paper* 2006-1, University of Maastricht, Faculty of Law; Van den Bossche, P. (2009) "Non-Governmental Organizations and the WTO: Limits to Involvement?" In *Redesigning the World Trade Organization for the Twenty-first Century*, edited by Debra Steger, International Development Research Centre (IDRC) and the Centre for International Governance Innovation (CIGI): Wilfrid Laurier University Press; Steger, D. (2009) "Why Institutional Reform of the WTO is Necessary," in Steger, D. (ed) *Redesigning the World Trade Organization for the Twenty-first Century*, International Development Research Centre (IDRC) and the Centre for International Governance Innovation (CIGI), Wilfrid Laurier University Press; and Ehlermann C. and L. Ehring (2005) "Are WTO decision-Making Procedures Adequate for Making, Revising, and Implementing Worldwide and Plurilateral Rules?" In E. Petersmann (ed) *Reforming the World Trading System: Legitimacy, Efficiency, and Global Governance*, Oxford: Oxford University Press.

³²⁷ Najam, A., M. Halle, and R. Meléndez-Ortiz (eds) (2007) *Envisioning a Sustainable Development Agenda for Trade and Environment*, New York: Palgrave and Macmillan; Deere Birkbeck, C. (2009) "Reinvigorating debate on WTO reform: the contours of a functional and normative approach to analysing the WTO system," in D. Steger, *Redesigning the World Trade Organization for the Twenty-First Century*. Ed. Wilfrid Laurier University Press/Centre for International Governance Innovation (CIGI).

³²⁸ For example, see UNDP (2003) *Making Global Trade Work For People*. New York: United Nations Conference on Trade and Development; Das, Bhagirath Lal (2007) "The Multilateral Trading System: The Need for Basic

Over the course of the Doha Round, despite on-going substantive and technical debates, there was a 'normalisation' of interaction between a core segment of the trade, environment and sustainable development communities.³²⁹ IISD and ICTSD spearheaded efforts to build knowledge and networks in developing countries on sustainable development intersections, and to facilitate dialogue among international stakeholders at the global and regional levels on key issues at stake.³³⁰ The consolidation of an "inner circle" of relatively 'like minded' actors on trade and environment issues also resulted from the professionalization of the environmental NGO community (which employed lawyers and economists well-versed in trade rules and economic theory); the growing movement of trade, environment and sustainable development professionals between jobs in government, IGO and NGOs; and the efforts of NGOs and the Secretariat to build constructive paths for communication. The growing spirit of constructive collaboration was also aided by increasing efforts by environmental NGOs to speak the language of development in their advocacy efforts.

Although NGOs did not succeed in most of their efforts to secure Member State decisions to alter WTO decision-making procedures, there was some important progress. Member States agreed to allow NGOs to attend public hearings of some WTO dispute settlement proceedings.³³¹ A number of incremental improvements also occurred. One example of this was the WTO Secretariat's decision to provide Geneva-based NGOs representatives with annual WTO accreditation badges, which entitled them to regular briefings on WTO issues and allows access the WTO building for specific events or meetings without the need for registration. More generally, the WTO increasingly included some NGO voices in some of its trainings and seminar events. The fading 'heat' of the trade and environment debate was also, however, due to the growing disillusionment among more activist NGOs that their environmental objectives could be achieved in the WTO context, as discussed below.

Fading Environmental Interest in the Ailing Doha Round

Reform" TWN Briefing Paper 42. Penang: Third World Network.

³²⁹ For an overview of debate among these communities in 2005, see Brack, D. (2005) *The World Trade Organization and sustainable development: A guide to the debate*, Energy, Environment and Development Programme EEDP BP 05/03. Chatham House. London, U.K. For other perspectives, see Sampson, G. (2006) *The WTO and Sustainable Development*. Tokyo: UNU Press; Sampson, G. and J. Whalley (eds) (2005). *The WTO Trade and the Environment*. Northampton: Edward Elgar; Urs, T (2004) "Trade and the Environment: Stuck in a Political Impasse at the WTO after the Doha and Cancún Ministerial Conferences," *Global Environmental Politics* 4 (3): 9-21; Copeland, B. and Taylor, M. (2003) *Trade and the Environment: Theory and Evidence*, Princeton University Press. Princeton, USA.

³³⁰ Since 1997, IISD and ICTSD had collaborated, for instance, in the Trade Knowledge Network, which aimed to foster "foster long-term capacity to incorporate sustainable development in national, bilateral, regional and multilateral trade policy and practice." Also see Cosbey, A. (2004) *Lessons Learned On Trade And Sustainable Development: Distilling Six Years of Research from the Trade Knowledge Network*, IISD-ICTSD Trade Knowledge Network: Geneva, and see http://www.iisd.org/sites/default/files/publications/tkn_brochure_2005.pdf.

³³¹ As noted by the USTR, "the first instance of public observation of a dispute settlement proceeding was in September 2005, during the EC (European Communities) Hormones – Continued Suspension dispute involving the EU, Canada, and the United States. The panel and Appellate Body both agreed to hold their hearings in open sessions, and over 200 members of the public registered to attend.

Since then, the number of open hearings has grown as well as the number of Members willing to make open session, or public, statements." See USTR (2013) "Open Dispute Hearing at WTO Reflects U.S. Transparency Effort," *USTR Blog* March, 2013: <https://ustr.gov/about-us/policy-offices/press-office/blog/2013/march/open-dispute-us-transparency>. For a scholarly review, see Alvarez-Jiménez, A. (2010) "Public Hearings at the WTO Appellate Body: The Next Step," *The International and Comparative Law Quarterly*, Vol. 59, No. 4, pp. 1079-1098

Alongside debates on institutional reform, the body of analytical work on trade and environment continued to grow.³³² Environmental and consumer advocates and scholars continued to raise concern, for instance, about standard-setting in the trade arena³³³ and the WTO's relationship to MEAs and the international environmental regime.³³⁴ The WTO and UNEP each explored ways to address environmental protection through MEAs in ways that were consistent with trade,³³⁵ and the trade and environmental effects of ecolabels.³³⁶ The OECD studied developing country market access concerns in regard to environmental and health requirements,³³⁷ and UNCTAD sought ways to do ensure environmental requirements promoted environment, not trade, protection.³³⁸

Although there were on-going concerns among environmental NGOs and scholars about trade in forest and wildlife products, as well as the evidence of a 'race to the bottom' in environmental protection,³³⁹ these were rarely specifically discussed in the WTO context.³⁴⁰ Similarly, while environmental advocates underlined the need for WTO Members to consider the relationship between trade and climate change, and between trade and energy policy,³⁴¹

³³² Jacob Werksman, formerly of the NGO FIELD, reviews the treatment of environmental issues in the WTO context in a chapter on trade in Werksman, J. (2009) *Greening International Institutions*, Routledge: London.

³³³ Consumers International (2005) *Decision Making in the Global Market: Trade, Standards and the Consumer*. Consumers International. London, U.K.

³³⁴ Brack, D. and Gray, K. (2003) *Multilateral Environmental Agreements and the WTO*. International Institute for Sustainable Development and Royal Institute for International Affairs. Winnipeg, Canada, and London, U.K.; Eckersley, R. (2004) "The Big Chill: The WTO and Multilateral Environmental Agreements." *Global Environmental Politics* 2(2): 24–50; Hoffmann, U. (2004) *Specific trade obligations in multilateral environmental agreements and their relationship with the rules of multilateral trading system – A developing country perspective*. Trade and Environment Review 2003, UNCTAD: Geneva; and Palmer, A. and Tarasofsky, R. (2007) *The Doha Round and Beyond: Towards a lasting relationship between the WTO and the international environmental regime*. Chatham House and Foundation for International Environmental Law. London, U.K.

³³⁵ UNEP (2004) *Economic Instruments in Biodiversity-related Multilateral Environmental Agreements*, United Nations Environment Programme – Economics and Trade Branch, Geneva, Switzerland; WTO Secretariat (2005) *Matrix on Trade Measures Pursuant to Selected Multilateral Environmental Agreements*, TN/TE/S/5/Rev.1. WTO: Geneva; and WTO Secretariat (2003) *Compilation of Submissions Under Paragraph 31(i) of the Doha Declaration*, TN/TE/S/3/Rev.1., WTO: Geneva.

³³⁶ Rotherham, T. (2005) *The Trade and Environmental Effects Of Ecolabels: Assessment and Response*, United Nations Environment Programme – Economics and Trade Branch: Geneva.

³³⁷ OECD (2004) *Addressing Market-Access Concerns of Developing Countries Arising from Environmental and Health Requirements: Lessons from National Experiences*, OECD Trade Policy Working Paper No. 5, Organisation for Economic Co-operation and Development: Paris.

³³⁸ Hoffmann, U. and Rotherham, T. (2006) *Environmental requirements and market access for developing countries: promoting environmental – not trade – protection*, UNCTAD: Geneva.

³³⁹ Gallagher, K. (2008) *Handbook on Trade and the Environment*, Northampton, MA: Edward Elgar Publishing Limited.

³⁴⁰ Roe, D., Mulliken, T., Milledge, S., Mremi, J., Mosha, S. and Grieg-Gran, M. (2002) *Making a Killing or Making a Living: Wildlife trade, trade controls and rural livelihoods*. Biodiversity and Livelihoods Issues No. 6.

International Institute for Economic Development and TRAFFIC. London, U.K.; Brack, D. (2007) *Action against illegal logging: interaction with international trade agreements*. Paper prepared for the Chatham House workshop on "Forest Governance and Trade: Exploring Options," 24 January, London, U.K.; Brack, D. and Hayman, G. (2002) *International Environmental Crime: The Nature and Control of Environmental Black Markets*. Chatham House (formerly Royal Institute for International Affairs). London, U.K.

³⁴¹ Notably, concern in the environmental community about the intersection of climate and trade was not new. In 1999, for instance, the UK's Royal Institute for International Affairs co-published one of the earliest books on the subject, see Brack, D. with C. Windram and M. Grubb (1999) *International Trade and Climate Change Policies*, Royal Institute of International Affairs and Earthscan: London; Sampson, G. (1999) "WTO Rules and Climate Change: The Need for Policy Coherence," In Chambers, B. (ed) *Global Climate Governance*, Tokyo: United Nations University Press; Jinnah, S. (2003) "Emissions trading under the Kyoto Protocol: NAFTA and WTO concerns," *Georgetown International Environmental Law Review*, 15, 709-761; Kommerskollegium/Swedish National Board of Trade (2004) *Climate and Trade Rules – Harmony or Conflict?* Kommerskollegium. Stockholm, Sweden; UNCTAD (2000) *Trade Agreements, Petroleum and Energy Policies*, United Nations Conference on Trade and Development, Geneva, Switzerland; Howse, R. (2006) *WTO Disciplines and Biofuels: Opportunities and Constraints in the Creation of a Global Marketplace*. International Food and Agricultural Trade Policy Council.

they achieved little headway. Member States were not yet ready to consider dialogue on these issues, and few countries wished to update the already complex WTO negotiating agenda.

Further, as the pace of the Doha negotiations ailed, the engagement of NGOs and other stakeholders in WTO affairs diminished. By 2008, faced with a politically ambitious 'development' agenda, growing developing country assertiveness, and unwillingness of developed countries to take on their domestic lobbies, the DDA negotiations had stalled. Given the slow and uncertain outcome of WTO negotiations, many environmental NGOs suffered dwindling resources for advocacy on trade issues as environmental philanthropists and constituencies shifted their support to issues such as climate change, which they viewed as a more urgent priority. NGOs with a sustainable development perspective increasingly turned to Northern development agencies with a shared agenda in favour of boosting developing country engagement on trade and environment issues. ICTSD and IISD, for instance, relied more heavily on funding from the bilateral development agencies of Canada, the UK and a number of Nordic countries.³⁴² They continued efforts to build capacity, understanding and dialogue on trade and sustainable development issues in developing countries, such as through support for policy dialogues, and national case studies by local experts.³⁴³

Environmental and public interest NGOs with sufficient resources to sustain program activities on international trade negotiations shifted their emphasis from the WTO to forums where talks were advancing more swiftly, such as bilateral and regional trade negotiations and climate negotiations, where trade issues also arose.³⁴⁴ As frustration with the Round shifted the attention of key governments and industry stakeholders toward a growing array of bilateral, regional and mega-regional negotiations,³⁴⁵ environmental groups raised alarm about potential environmental implications. Since the NAFTA, environmental advocacy by U.S. NGOs had meant that the United States included environmental chapters in all of its bilateral trade agreements (i.e., with Singapore, Peru, Panama, Oman, Morocco, Korea, Jordan, Colombia, Chile, Central America and the Dominican Republic, Bahrain and Australia).³⁴⁶ Although the inclusion of environmental provisions and chapters in some such

Washington D.C.; ICTSD (2006) *Linking Trade, Climate Change and Energy: Selected Issue Briefs*. International Centre for Trade and Sustainable Development, Geneva, Switzerland; and Green, A. (2005) "Climate Change, Regulatory Policy And The WTO: How Constraining Are Trade Rules?" *Journal of International Economic Law* 8(1):143–189.

³⁴² A review of donors in this period is available from their respective Annual Reports and Audited reports, many of which are available on their respective websites.

³⁴³ See note 336.

³⁴⁴ For an analysis of these negotiations, see Schomer, H. (2007) "Environmental Standards in U.S. Free Trade Agreements: Lessons from Chapter 11," *Sustainable Development Law & Policy*, 36, 84 and Jinnah, S. and E. Morgera (2013) "Environmental Provisions in American and EU Free Trade Agreements: A Preliminary Comparison and Research Agenda," 22 (3), pp. 324-339. For an evaluation of the NAFTA environmental experience, see Wold, C. (2008) "Evaluating NAFTA and the Commission for Environmental Cooperation: Lesson for integrating trade and environment in free trade agreements," *St. Louis University Public Law Review*, 28, 201-252.

³⁴⁵ See, for instance, WTO (2011) *World Trade Report 2011: The WTO and preferential trade agreements: From co-existence to coherence*, WTO: Geneva, and Dür, A. and M. Elsig (2014) *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements*, Cambridge University Press: Cambridge.

³⁴⁶ In 2002, the Bipartisan Trade Promotion Authority granting the U.S. President fast-track negotiating authority if negotiations adhered to guidelines established by Congress, included certain priorities such as strengthening trade partners to develop and implement standards for the protection of environment and human health, and shifted some environment-related provisions from a NAFTA-style side agreement to an environmental chapter

agreements were viewed by some groups and experts as an encouraging sign,³⁴⁷ others were more cautious and called for further reforms to the US approach to trade policy.³⁴⁸ When the political energy of the major actors shifted to advancing two mega-regional negotiations – the TPP and the TTIP – the attention of environmental campaigners again followed.³⁴⁹ Some groups worked on the details of an environmental chapter for the TPP (that subsequently emerged as the most comprehensive draft environmental chapter to date) while others campaigned against these new agreements entirely, and in particular on their proposed investment provisions

Meanwhile, the number of environment/sustainable development NGOs with staff dedicated to following WTO affairs diminished, leaving much of the Geneva-based activity to ICTSD, IISD, and Oxfam, developing country NGOs such as Third World Network (TWN), and the Trade Information Project (TIP). Although NGOs such as CIEL, WWF and Friends of the Earth continued to follow WTO matters, this work became a smaller part of their overall portfolio, in part because of dwindling financial support for such work from donors. WWF's trade work, for instance, had narrowed over time to focus largely on fisheries subsidies, and groups such as Oceana, an NGO created specifically to address ocean conservation issues, limited itself to subsidies issues at the WTO.

3.4 The Decline of the Doha Round and Uncertainty about the WTO's Future (2009-2014)

From 2009, while working to revive the ailing Doha Round, Lamy worked to present the WTO, the Round, and trade opening as central part of the solution to several pressing global challenges, including the MDGs, climate change and the global financial crisis. He also sought to raise the profile of the WTO as a central player in global economic policymaking, actively engaging for instance with the emerging G20 process. In 2010, he proclaimed for instance that “trade opening has much to contribute to the protection of the environment,” that a “rapid Doha conclusion will help us achieve Millennium Development Goals” and that the Round was a “stepping stone” to “better trade rules in natural resources’ (See Appendix 4).

Growing Interest in Trade-Climate Intersections

(although some elements such as environmental cooperation remained in separate parallel agreements). Environmental provisions were strengthened in the Bipartisan Trade Deal of 2007, in which Congress defined requirements for stronger environmental protections, including that the entire Environment Chapter be subject to dispute settlement and that the pending agreement with Peru address the potential trade in illegally harvested timber (which spurred the creating of an Annex on Forest Sector Governance).

³⁴⁷ Lurié, A. and M. Kalinina (2015) *Protecting Animals in International Trade: A Study of the Recent Successes at the WTO and in Free Trade Agreements*, *American University International Review*. pp. 457-465.

³⁴⁸ Environmental Investigation Agency (2015) *Implementation and Enforcement Failures in the U.S.-Peru Free Trade Agreement Allows Illegal Logging Crisis to Continue: June 2015 Briefing Paper*, EIA (June 2015) ; U.S. Gov't Accountability Office, GAO-15-161, *Free Trade Agreements: Office Of The U.S. Trade Representative Should Continue To Improve Its Monitoring Of Environmental Commitments* 30, <http://www.gao.gov/assets/670/666782.pdf>; and Davidian, G. (2015) 'Should Citizens Expect Procedural Justice in Nonadversarial Processes? Spotlighting the Regression of the Citizen Submissions Process from NAAEC to CAFTA-DR,' in Baker, B. et al (eds) *NAFTA and Sustainable Development: History, Experience, and Prospects for Reform* 37, 65, Cambridge Univ. Press: Cambridge.

For a review of environmental in US FTAs and proposals for further improvement, see Gallagher, K. (2010) 'Reforming US FTAs for Environmental Protection: Lessons from Mexico and Beyond,' in *A New Trade Policy for the United States: Lessons from Latin America*, Woodrow Wilson Centre Reports on the Americas #26, pp. 55-64.

³⁴⁹ Bernasconi-Osterwalder, N. (2015) *How the Investment Chapter of the Trans-Pacific Partnership Falls Short: Commentary*, IISD: Geneva.

As attention to climate change grew in global policy circles, it also spurred discussion on whether and how climate could be addressed at the WTO.³⁵⁰ Some environmental advocates were keen to harness trade rules to promote climate action and a 'green transition'³⁵¹ and also to ensure those rules did not hinder efforts to mitigate and adapt to climate change. Environmental advocates and a number of WTO Member States argued that the organisation's membership should embrace focused dialogue on what the WTO could do on climate and energy. Many developing countries cautioned, however, that efforts to link climate and trade could usher in a new era of green protectionism, such as through the use of border measures and trade sanctions.

The WTO Secretariat weighed in on the topic, led by Lamy through a number of high profile speeches on climate in 2008 and 2009.³⁵² Lamy spoke of the importance of putting trade at "the service of the international climate agenda" and of concluding an international climate deal. His emphasis was on a deal concluded outside the WTO, he argued "that the relationship between international trade — and indeed the WTO — and climate change would be best defined by a consensual international accord on climate change that successfully embraces all major polluter."³⁵³ In the lead-up to the Copenhagen Conference of the Parties to the Kyoto Protocol, Lamy stated that "[a] consensual international accord on climate change is needed" and underscored the "[u]rgency of responding to the climate crisis," while cautioning against "unilateral fixes" (such as unilateral climate-related trade measures). The WTO Secretariat also established a web page on the topic with background information on the "impact of trade opening on climate change," "the WTO and the challenge of climate change," as well as "climate change and the potential relevance of WTO rules." On the page, the Secretariat observed that "[t]he issue of climate change, per se, is not part of the WTO's on-going work programme and there are no WTO rules specific to climate change. However, the WTO is relevant because climate change measures and policies intersect with international trade in a number of different ways."³⁵⁴ The Secretariat further noted that the webpage was "prepared by the Secretariat under its own responsibility" to provide a "general explanation of the subject matter."³⁵⁵ In addition, the Secretariat produced a background note on trade and climate in the WTO under its own authority, with no

³⁵⁰ See footnote 338.

³⁵¹ Halle, Mark (2009) "Harnessing Trade for a Global Green Transition," in Deere Birkbeck, C. and R. Meléndez-Ortiz (eds) *Rebuilding Global Trade: Proposals for a Fairer, More Sustainable Future*, Oxford: ICTSD and The Global Economic Governance Programme, Oxford.

³⁵² See Lamy, P. (2007) "[Doha could deliver double-win for environment and trade](#)", *DG Pascal Lamy at the Informal Trade Ministers' Dialogue on Climate Change in Bali on 8-9 December 2007*,

³⁵³ See, for instance, Lamy, P. (2008) 'A Consensual International Accord on Climate Change is Needed.' *Speech to Temporary Committee on Climate Change, European Parliament*, 29 May, Brussels.

https://www.wto.org/english/news_e/sppl_e/sppl91_e.htm Lamy, P. (2009) 'Global Problems do not Respond to unilateral fixes; Copenhagen must be our focus,' *WTO News Item*.

https://www.wto.org/english/news_e/news09_e/dgpl_29jun09_e.htm

³⁵⁴ Ibid. The Secretariat elaborated that: "First, trade openness can help efforts to mitigate and adapt to climate change, for example by promoting an efficient allocation of the world's resources (including natural resources), raising standards of living (and hence the demand for better environmental quality) and improving access to environmental goods and services. Second, the WTO is relevant because national measures to mitigate and adapt to climate change may have an impact on international trade (as they may modify conditions of competition) and may be subject to WTO rules. The WTO "tool box" of rules can be relevant, therefore, to the examination of climate change measures. Moreover, WTO rules, as a whole, offer a framework for ensuring predictability, transparency and the fair implementation of such measures."

³⁵⁵ The text was accompanied by a disclaimer that it was "in no way intended to provide legal guidance with respect to, or an authoritative legal interpretation of, the provisions of any WTO agreement. Moreover, nothing in this note affects, nor is intended to affect, WTO members' rights and obligations in any way." See https://www.wto.org/english/tratop_e/envir_e/climate_intro_e.htm.

attribution or organizational logo, but which nonetheless appears on the WTO's website.³⁵⁶ The subheading of the note reads: "current WTO rules provide significant scope to protect the environment and tackle climate change while maintaining trade open." In 2009, the WTO Secretariat also published a joint report with UNEP entitled *Trade and Climate Change*.³⁵⁷

Rising Interest in the Green Economy and Green Growth

When the 'green economy' and 'green growth' emerged as new themes in global policy debates, the WTO Secretariat seized on it as a new frame for environmental discussion at the WTO. The effort to forge a positive economic agenda for addressing climate change (as opposed to climate action being understood as an 'anti-economy' agenda) spurred interest among many governments, international organisations, and stakeholder groups. A number of international organizations saw the concepts as useful for prompting a more constructive and wide-ranging debate on environment, sustainable development and the global economy.³⁵⁸ In 2011, for instance, UNEP report on the green economy in the lead up to the 2012 Rio+20 Summit.³⁵⁹ The same year, the WTO Secretariat published a brochure entitled 'Harnessing Trade for Sustainable Development and a Green Economy', which offered a set of messages on sustainable development and trade, including that 'international trade is a key component of sustainable development, and that the 'multilateral trading system supports countries' efforts to realise sustainable development.' It examined 'the contribution of trade', referring to green economy measures, and 'how WTO rules and monitoring mechanisms help ensure that such measures are not disguised protectionism' and the contribution that the successful completion of the Doha Round could make to sustainable development.³⁶⁰ In its contributions to the Rio+20 process, the Secretariat continued to respond to the popularity of the 'green economy.' Noting that over 50 Member States and political groups had referred to trade in their Rio+20 submissions, the Secretariat sought to respond to concerns that transition to a green economy could present challenges for international trade, through protectionism in the guise of the green economy. The Secretariat called for the Rio+20 outcome document to reaffirm the "vital contribution of trade to sustainable development" and "the importance of an open and equitable rules-based multilateral trading system in helping the international community turn the vision of sustainable development into reality."³⁶¹

Along with the term 'green growth,' the term Green Economy inspired important critical debate among scholars, environmental advocates, and some governments.³⁶² Although the term 'Green Economy' was widely used in the lead up to the Rio+20 United Nations Summit on Sustainable Development,³⁶³ governments did not universally endorse it³⁶⁴ and

³⁵⁶ The page was published on 21 December 2009. See

https://www.wto.org/english/news_e/news09_e/climate_21dec09_e.pdf

³⁵⁷ WTO/UNEP (2009) *Trade and Climate Change: WTO-UNEP Report*, WTO and UNEP: Geneva.

³⁵⁸ OECD (2011) *Towards Green Growth: A Summary for Policy Makers*, OECD: Paris.

³⁵⁹ UNEP (2011). *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication: A Synthesis for Policy Makers*. UNEP: Geneva.

³⁶⁰ WTO (2015) *Harnessing Trade for Sustainable Development and a Green Economy*, WTO: Geneva.

³⁶¹ See WTO (2011) "Discussion on the compilation document: comments and guidance for the zero draft outcome document: Statement by Karsten Steinfatt, WTO Secretariat," 2nd Interessional Meeting of UNCSD, 15-16 December, WTO: Geneva.

³⁶² See, for instance, Barbier, Edward (2012). "The Green Economy Post Rio+20." *Science*, November 16. 887-888.

³⁶³ ILO (2012) *Working towards sustainable development: Opportunities for decent work and social inclusion in a green economy*, International Labor Organization: Geneva.

³⁶⁴ Bina, Olivia (2013) "Green Economy and Sustainable Development: An Uneasy Balance." *Environment and Planning C: Government and Policy* 31.6:1023-1047.

governments did not use the term in their outcome document from Rio+20 in 2012. Governments did, however, affirm ‘that international trade is an engine for development and sustained economic growth, and also [...] the critical role that a universal, rules-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalization, can play in stimulating economic growth and development worldwide, thereby benefiting all countries at all stages of development as they advance towards sustainable development.’³⁶⁵ Post-Rio+20, the interest in ‘greener trade and investment’ spurred IISD and UNEP to reissue and update their handbook on ‘Environment and Trade’ as a handbook on *Trade and the Green Economy* “to reflect the green economy as an important tool for achieving sustainable development and poverty eradication, and to illustrate the holistic approach that is required when addressing issues at the nexus of trade, environment and sustainable development.”³⁶⁶

The WTO’s Uncertain Future Amidst Financial Crises, the Rise of the Emerging Powers and the G20’s Growing Prominence

Subsequent interest in the green economy was sustained partly by the search for a positive economic agenda in the context of the global financial crisis, the associated collapse of global trade, and associated efforts to restore global economic growth.³⁶⁷ To devise strategies to cope with the financial crisis, the G20 became an increasingly dominant global policy forum, and proposals for the reform of global economic and financial institutions proliferated.³⁶⁸ There were also efforts to make trade issues more central to the G20 agenda. The WTO Director-General actively promoted a focus on sustaining global trade flows and resisting protectionism through the G-20 process, and was joined by a number of trade scholars keen to discourage sceptical national policymakers from using the financial crisis as an opportunity to retreat into protectionism.³⁶⁹ The WTO Secretariat argued that trade could not only help re-boost growth, but could also be inclusive and sustainable. In 2009, ICTSD weighed in with a compilation of views on how, in addition to calls to limit protectionism, the G20 could also advance ‘fairer, more sustainable’ trade.³⁷⁰

Meanwhile, as the Doha Round continued to drag on, there was enduring concern about waning role of the WTO, the decline of multilateralism in global trade governance, and the

³⁶⁵ At the 2012 UN Conference on Sustainable Development (Rio+20), a follow up to the 1992 UN Conference on Environment and Development (UNCED), governments launched a process for devising a set of global SDGs and created a dedicated working group to hammer out a proposal. In the Rio+20 process, governments unpacked sustainable development as a model that fosters poverty eradication, sustained economic growth, enhanced social inclusion, improved human welfare, the healthy functioning of the planet’s ecosystems, and opportunities for employment and decent work for all. See UN (2012) *The Future We Want: Outcome Document of Rio+20*, Rio+20, United Nations Conference on Sustainable Development, UN: New York.

³⁶⁶ IISD & UNEP (2014) *Trade and Green Economy: A Handbook*. International Institute for Sustainable Development & UNEP: Geneva. For a further example, see Meléndez-Ortiz, Ricardo (2011) “Governance of International Trade for the Green Economy.” *Review of Policy Research* 28.5: 479-486.

³⁶⁷ See Baldwin, R. (2009) *The Great Trade Collapse: Causes, Consequences and Prospects*. Vox EU. <http://www.voxeu.org/content/great-trade-collapse-causes-consequences-and-prospects>.

³⁶⁸ See UN (2009) Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development, *General assembly Resolution A/63/L.75*, Geneva: United Nations; UN Commission of Experts. 2009. *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System*, 21 September 2009. New York: United Nations.

³⁶⁹ Baldwin, R., and S. Evenett (2009) *The collapse of global trade, murky protectionism and the crisis: Recommendations for the G20*. CEPR.

³⁷⁰ Deere Birkbeck, C. and R. Meléndez-Ortiz (2009) *Rebuilding Global Trade: Proposals for a Fairer, More Sustainable Future - Short Essays on Trade and Global Economic Governance*, ICTSD and Global Economic Governance Programme: Geneva and Oxford.

challenges of addressing development concerns in the global trade system.³⁷¹ A number of Member States called for the WTO to reinstate biannual Ministerial Conferences (which had lapsed since the 2005 Hong Kong Ministerial) and to place governance issues on the agenda, with a particular finding ways to address the WTO's ailing negotiation function and reinvigorating its other work (such as the work of its Regular Committees).

To support the interest among some Member States of addressing governance concerns, ICTSD published a compilation of proposals for WTO reform in 2009, including long-standing proposals from environmental constituencies.³⁷² At the 2009 Geneva WTO Ministerial, however, no decisions on such matters were taken (fearful of high expectations of a Ministerial and the risk to the WTO's credibility of a failed conference in terms of progress on the round, Members opted for a low-profile Ministerial Conference with no Ministerial Declaration).³⁷³ At the 2011 Geneva WTO Ministerial Conference, a Chairman's statement was issued (in lieu of a Ministerial Declaration), which included 'Elements for Political Guidance' from Member States. Although Members still deferred any decisions on the governance front, Ministers did "underline the importance of the work of regular WTO bodies including their role in the oversight of implementing existing Agreements; dispute avoidance; transparency through monitoring and reporting and as a forum for the consideration of trade-related issues raised by Members" and called for "strengthening and improving their functioning."³⁷⁴

From 2011-2014, political energy at the WTO was focused on how to rescue the ailing Doha Round and how to respond to the growth of regionalism and bilateralism in trade. In trade policy circles, supporters or 'friends' of multilateralism focused on how to strengthen the WTO system. There was also growing debate about how the rising economic and political weight of China, Brazil, Russia, and India would impact WTO negotiations and the implications of this new multipolarity for the organisation's future.³⁷⁵ In his second term as Director General, Lamy became increasingly focused on the 'multilateral trading system of the future' in his public remarks.³⁷⁶ In this spirit, he commissioned a report on the future of world trade and the WTO's role,³⁷⁷ and took personal leadership in seeking to forge a new 'Geneva Consensus' on trade.³⁷⁸

³⁷¹ Examples of sustained and mounting concern can be found in: Zedillo, E. (2007) "Save the WTO From the Doha Round," *YaleGlobal*. Accessed at <http://yaleglobal.yale.edu/content/save-wto-doha-round>; Zedillo, E. 2009. *The Multilateral Trading System: A Response to its Challengers*. Available at:

<http://www.ycsg.yale.edu/focus/papers/globalTrade.pdf>; Jones, K. (2009). *The Doha Blues: Institutional Crises and Reform at the WTO*. Cambridge: Oxford University Press; Deere Birkbeck, C., and R. Meléndez-Ortiz (2009). *Rebuilding Global Trade: Proposals for a Fairer, More Sustainable Future*, Oxford: International Centre for Trade and Sustainable Development and The Global Economic Governance Programme; Deere Birkbeck, C. (2011) *Making Global Trade Governance Work for Development: Perspectives from Developing Countries*, Cambridge University Press: Cambridge.

³⁷² Deere Birkbeck, C. and Monagle, C. (2009) *Strengthening Multilateralism: A Mapping of Proposals on WTO Reform*, ICTSD and Global Economic Governance Programme, Oxford.

³⁷³ For documents related to the 2009 Ministerial Conference, see https://www.wto.org/english/thewto_e/minist_e/min09_e/official_doc_e.htm.

³⁷⁴ See WTO (2011) "Chairman's Concluding Statement," WT/MIN (11)/11, 17 December 2009, WTO: Geneva.

³⁷⁵ Narlikar, A. (2011) "Adapting to new power balances: Institutional reform in the WTO," in Cottier, T. and M. Elsig (eds) *Governing the World Trade Organization: Past, Present and Beyond Doha*, Cambridge University Press: Cambridge.

³⁷⁶ Lamy, P. (2011) "Lamy Looks at the Multilateral Trading System of the Future," *WTO News*, 6 September. Retrieved from https://www.wto.org/english/news_e/sppl_e/sppl205_e.htm.

³⁷⁷ WTO (2013). *Panel on Defining the Future of Trade*. WTO: Geneva.

https://www.wto.org/english/thewto_e/dg_e/dft_panel_e/dft_e.htm

³⁷⁸ Lamy, P. (2013) *The Geneva Consensus: Making Trade Work for All*. Cambridge University Press.

The shift from the traditional, non-inclusive and Quad-dominated (US, EU, Canada and Japan) agenda-setting and deal-making at the WTO to a G-5 (US, EU, Brazil, China and India) and subsequently a G-7 (the G-5 plus Japan and Canada) also raised questions about how the emerging powers and the growing number of developing country coalitions at the WTO would approach environmental questions. ICTSD again published a compilation of expert and stakeholder views on the future of the WTO in 2012, although this volume had a far broader scope than environmental or sustainable development concerns.³⁷⁹ Amidst growing research and policy analysis on the future of the global trading system, there was also pointed criticism of the failure to properly define what purposes the WTO and its reform should serve.³⁸⁰ Environment issues were no longer a high-profile political concern or the central subject of political pressures on the organization or its Member States. While concerns about WTO transparency and public participation continued to inspire scholarly interest and recurred in NGO statements, the intense campaigning of a decade earlier had waned.³⁸¹ Environmental scholars continued to analyse trade and environment issues, including on issues that had largely faded from the attention of NGOs, such as waste trade,³⁸² but many NGOs, especially in the US and Europe, now focused attention on environmental and sustainable development implications of bilateral and regional trade and investment negotiations. Moving beyond a WTO-centric approach, IISD also deepened research on intersection of trade policies, subsidies and a range of environmental challenges, particularly in the energy sector - to put a spotlight on the corrosive effects subsidies can have on environmental quality, economic development and governance.³⁸³

3.5 The WTO's 20th Anniversary (2015)

The WTO's 20th anniversary in 2015 marked the fourth phase in the WTO's evolving treatment of environmental matters. This section reviews the Secretariat's views on the trade and environment issue in 2015, followed by those of external stakeholders. It then introduces the latest chapter of the environment/sustainable development discussion at the WTO – responding to the UN's 2030 Sustainable Development Agenda.

The Secretariat View on the WTO@20

In April 2015, as part of its 20th anniversary events, the WTO Secretariat hosted a meeting of delegates, representatives of international organizations such as UNEP, and external experts entitled *20 Years of Building Pathways to Sustainable Development*.³⁸⁴ The Secretariat characterised the event as an opportunity to 'take stock of the increasing interconnections between trade and environment'...and to 'look ahead to what needs to be done to ensure

³⁷⁹ Meléndez-Ortiz, R., C. Bellmann, and M. Rodríguez Mendoza (eds) (2012) *The Future and the WTO: Confronting the Challenges, a Collection of Short Essays*. International Centre for Trade and Sustainable Development (ICTSD), July, <http://www.ictsd.org/downloads/2012/07/the-future-and-the-wto-confronting-the-challenges.pdf>

³⁸⁰ Wilkinson, R. (2014) *What's Wrong with the WTO and How to Fix it?* Polity Press..

³⁸¹ For a recent review of WTO transparency, see Delimatsis, P. (2014) "Transparency in the WTO's Decision-making," *Leiden Journal of International Law*, Vol. 27, No. 3, pp. 701-726.

³⁸² Grosz, M. (2011) *Sustainable Waste Trade Under WTO Law: Chances and Risks of the Legal Frameworks' Regulation of Transboundary Movements of Wastes*, Martinus Nijhoff. Also see Koellner, T. (2013) *Ecosystem Services and Global Trade of Natural Resources: Ecology, Economics and Policies*, Routledge.

³⁸³ For information on IISD's Global Subsidies Initiative, see <https://www.iisd.org/gsi/>.

³⁸⁴ WTO (2015) *Trade and Environment: 20 Years of Building Pathways to Sustainable Development*, WTO: Geneva. https://www.wto.org/english/thewto_e/20y_e/buildpath20y_e.htm.

these two areas *continue to be mutually supportive* in the years to come [emphasis added].³⁸⁵

In his speech at the event, Lamy argued that the creation of the WTO, had "...put the relationship between trade and sustainable development on a more solid footing," and "helped WTO members navigate successfully the rapidly evolving and expanding interface between trade and environment." He characterised the vision of the WTO's founders as one of "global cooperation in trade as a means to unleash growth, alleviate poverty, raise living standards and ensure full employment, while also protecting the environment," and one where the well-being of habitats, societies and economies are not separate, but inextricably linked.³⁸⁶ He argued that the connections between trade and the environment had grown significantly over the past 20 years, noting that the Secretariat had worked "actively and constructively" with UNEP, underlining the importance of their joint report on trade and climate. In addition, Lamy argued that "practical and realistic" ways are needed to make trade and environment policies work together, citing as examples the negotiations on environmental goods and services and on the WTO's relationships with MEA. On the latter, he argued that the talks could help formalise cooperation among the Secretariats of MEAs, such as the UNFCCC and avoid potential conflicts, such as by 'strengthening national cooperation between government agencies which deal with trade and environment'. Notably, in his remarks of the WTO's performance, Lamy made no specific mention on fisheries or any other specific environmental issue or challenge, or the organization's relationship with NGOs in general.

In a brochure prepared for the 20th anniversary event, the Secretariat included numerous statements and examples that help form a picture of how the WTO's record on trade, environment and sustainable development issues were viewed by the Secretariat at the time of its 20th anniversary. The Secretariat argued that the WTO had helped to 'open up fresh avenues of dialogue on how trade interacts with the environment and how to ensure that trade and environmental policies work hand in hand.'³⁸⁷ The Secretariat also stated that "[s]ustainable development is at the heart of the WTO" and that "trade can act as a catalyst for sustainable development."³⁸⁸ It argued that the 2012 Rio+20 process had confirmed the understanding that "upholding and safeguarding the multilateral trading system and acting to protect the environment and promote sustainable development can be mutually supportive goals; and proposed that the challenge is to find ways to make trade and environmental policies work together for sustainable development."³⁸⁹ The Secretariat further stated that the WTO's dispute settlement system had shown that WTO Members have the right to adopt trade-related measure to protect the environment and that "WTO rules provide ample space for environmental rules to be accommodated."³⁹⁰ On this point, the Secretariat underlined that:

³⁸⁵ See WTO (2014) "WTO and UNEP enhance dialogue on trade and environmental Issues," *Press Release*, 28 April. https://www.wto.org/english/news_e/pres15_e/pr741_e.htm

³⁸⁶ See Azevêdo, R. (2015) "2015 a Pivotal Year for Trade and the Environment," *Speech at joint WTO-UNEP event '20 years of Building Pathways to Sustainable Development'*, WTO News. 28 April 2015, WTO: Geneva, available at: https://www.wto.org/english/news_e/spra_e/spra56_e.htm

³⁸⁷ WTO (2015) *Trade and Environment: 20 Years of Building Pathways to Sustainable Development*, WTO: Geneva. https://www.wto.org/english/thewto_e/20y_e/buildpath20y_e.htm.p. 1.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

“[e]ven if a measure undertaken by a WTO Member is found to be inconsistent with basic WTO rules, it maybe justifiable if it pursues an environmental or health objectives, for example and if certain conditions are fulfilled. So far no measure affecting trade taken under an environmental agreement has been challenged in the GATT-WTO system.”³⁹¹

The Secretariat provided examples of environmental and natural resource policies that can fall within GATT exceptions as shown by disputes brought to the WTO over the previous 20 years, including those that addressed protection of dolphins stocks and sea turtles; the reduction of health risks associated with re-treaded tyres; the conservation of tuna stock, salmon and herring; and air pollution. The Secretariat noted that the phrase ‘exhaustible natural resources’ in GATT Article XX(g) had been interpreted to include not only ‘mineral’ or ‘non-living’ resources but also living species that may be susceptible to depletion, such as sea turtles.³⁹² The Secretariat also highlighted the importance of how environmental measures are applied, noting that they must not constitute a “means of arbitrary or unjustifiable discrimination” or a “disguised restriction on international trade,” and that it must be applied in good faith (that is, it does not constitute an abuse or misuse of the justifications made available under Article XX).³⁹³

In addition, the WTO’s brochure highlighted the role played by the CTE as a forum “where members can discuss trade and environment-related issues and analyse relevant policy challenges,” allowing them to “improve their understanding of the rapidly evolving intersection between trade and the environment” by, for example, sharing national experiences.³⁹⁴ Finally, the Secretariat underlined the importance of negotiations on trade and environment, noting that these aim at “liberalizing trade in environmental goods and services as a way to encourage the flow of environmental technologies across borders” and ensuring a “harmonious co-existence between WTO rules and specific trade obligations in agreements struck at the multilateral level to protect the environment.”³⁹⁵

External Views on the WTO@20

A number of external commentators also offered views on the WTO’s performance on trade, environment and sustainable development over its first 20 years. Together, UNEP and IISD launched a new version of their *Handbook on Trade and the Green Economy* to coincide with

³⁹¹ Ibid.

³⁹² To support this interpretation, the Appellate Body noted in the US — Shrimp case that modern international conventions and declarations made frequent references to natural resources as embracing both living and non-living resources.

³⁹³ The Secretariat also highlighted that the Appellate Body’s view in the *Brazil — Retreaded Tyres* case, that Article XX’s introductory paragraph recognizes the need to maintain a balance between the right of a WTO member to invoke an exception and the rights of other members under the GATT. In the case report, the Appellate Body observes that the Article XX chapeau “serves to ensure that Members’ rights to avail themselves of exceptions are exercised in good faith to protect interests considered legitimate under Article XX, not as a means to circumvent one Member’s obligations towards other WTO Members.” The Secretariat noted in its brochure that WTO dispute settlement rulings have highlighted some of the circumstances that may help to demonstrate that the government measure is applied in accordance with the chapeau, including relevant cooperation activities undertaken by the member concerned at the international level in the trade and environment area, the design of the measure, its flexibility to take into account different situations in different countries and an analysis of the rationale put forward to explain the existence of discrimination.

³⁹⁴ WTO (2015) *Trade and Environment: 20 Years of Building Pathways to Sustainable Development*, WTO: Geneva. https://www.wto.org/english/thewto_e/20y_e/buildpath20y_e.htm.

³⁹⁵ Ibid.

the WTO's anniversary event.³⁹⁶ In the foreword, the President of IISD argued that compared to earlier "incendiary debates" among the trade and environment communities, there was now "much deeper understanding all around, and distinctly less mistrust and suspicion" about their different motivations and assumptions.³⁹⁷ The external speakers invited to the WTO's 20th anniversary event largely presented a positive view on progress to date. In his remarks, for instance, ICTSD's chief executive, Ricardo Meléndez-Ortiz, argued that the WTO had proven quite flexible with regard to environmental issues, particularly with regard to the incorporation of environmental issues into negotiations, citing the talks on fisheries subsidies and the launch of plurilateral negotiations on trade in environmental goods and services.³⁹⁸ He argued that progress in environmental policymaking and institutions at the national level had helped to deter many of the worst potential environmental impacts, and that two decades of dialogue within the WTO's CTE had boosted mutual understanding of the issues at hand. Others speakers at the event observed that the WTO's dispute settlement proceedings had been more sensitive to environmental issues than anticipated and that trade rules had not simply trumped environmental regulations as feared.

However, a number of environmental groups viewed the WTO's 'results sheet' as more mixed. In 2015, for instance, Friends of the Earth (FoE) complained that WTO rulings continued to favour "profits over the planet."³⁹⁹ Specifically, FoE rallied against a WTO Appellate Body ruling that a U.S law requiring country-of-origin labelling for meat violated WTO rules. They argued that the ruling denied consumers the right to know about the origins of meat products, insisting that governments regulations on consumer product labelling were vital to helping consumers make informed decision about which products to buy, such as whether food contains genetically engineered ingredients.⁴⁰⁰ The Sierra Club, a US NGO, also argued that WTO negotiations on environmental goods could perversely result in a trade boost for environmentally damaging products.⁴⁰¹

Further, for many environmental groups and scholars, a number of environmental concerns were long overdue for attention at the WTO, including the impact of agricultural trade on sustainable food systems⁴⁰² and biodiversity loss,⁴⁰³ the links between trade, deforestation

³⁹⁶ IISD and UNEP (2015) *Trade and Green Economy Handbook*, IISD and UNEP: Geneva.

³⁹⁷ Ibid. p. ix.

³⁹⁸ Audio recordings of the full proceedings of the meeting are available at: https://www.wto.org/english/thewto_e/20y_e/buildpath20y_e.htm.

³⁹⁹ See more at: <http://www.foe.org/news/news-releases/2012-11-friends-of-the-earth-condemns-world-trade-organization-ruling#sthash.DsaXpRld.dpuf>

⁴⁰⁰ The WTO tribunal ruled that revisions made in 2013 to U.S. country of origin labelling safeguards did not conform to a 2012 WTO appellate ruling against the original U.S. law on country-of-origin labelling. See FOE (2015) "WTO Denies consumers right to know about meat origins; TTIP promises worse," *FOE News Releases*, May 18, 2015, <http://www.foe.org/news/news-releases/2015-05-wto-denies-consumers-right-to-know-about-meat-origin#sthash.FBIzuFct.dpuf>. In 2012, when the WTO Appellate Body ruled against Canada's feed-in tariff program, which aimed to increase green energy's share of its electricity market and build local, green energy infrastructure), Friends of the Earth had already argued that: "[T]he decision illustrates how the WTO has put itself in a position to make future choices about climate policy based not on sound climate science, but rather based on trade rules." See more at: <http://www.foe.org/news/news-releases/2012-11-friends-of-the-earth-condemns-world-trade-organization-ruling#sthash.DsaXpRld.dpuf>.

⁴⁰¹ Biron, C. (2014) "Scepticism as 'Green Goods' Trade Talks Begin," *IPS News*. 11 July.

⁴⁰² Needelman, A. (2014) *Whose Century Is It? The Trans-Pacific Partnership, Food and the '21st Century Trade Agreement*. Institute for Agriculture and Trade Policy. August 2014. <http://www.iatp.org/documents/whose-century-is-it-the-trans-pacific-partnership-food-and-the-%E2%80%9C21st-century-trade-agreement>

⁴⁰³ On biodiversity loss, for instance, a 2012 study concluded that a 'significant number of species are threatened as a result of international trade,' including due to demand from consumers in developed countries. Evaluating more than five billion supply chains in terms of their biodiversity impacts, the authors suggested that some 30 per cent of global species threats are due to international trade, excluding effects caused by invasive species. The

and illegal logging;⁴⁰⁴ and the environmental implications of trade in water services.⁴⁰⁵ Further, a range of environmental scholars highlighted evidence about a number of the environmental impacts of expanded shipping and air freight;⁴⁰⁶ the relationship between trade flows, the use of natural resources (including commodities) and environmental impacts of extractive industries); links between export-oriented growth and industrial pollution; and the chilling effect of trade rules on environmental law making and implementation. There was also concern about the ways in which poor market access can contribute to poor environmental outcomes by providing incentives to strip natural resources rather than add value to them.

At the 2015 Nairobi WTO Ministerial Conference, as at the Bali WTO Ministerial two years earlier, environmental NGOs and environmental activists in particular were less active. At both ministerial meetings, environmental topics were far from the top political issues at stake. The Bali WTO Ministerial Declaration, for instance, included only two references to one environmental topic - environmental disputes (see Appendix 8). In Nairobi, the Ministerial Declaration mentioned the importance of 'sustainable, robust and inclusive growth,' although the meaning of sustainable in that context was ambiguous (in the sense that the intention of governments may have been to emphasise the importance of continuous growth not prone to crisis) and the SDGs, but no other environmental matter.

The shift of political attention away from the WTO to bilateral, plurilateral, regional and mega-regional negotiations continued to spur debate and analysis on the future role of the WTO and options for reviving its relevance and centrality to the global trading system.⁴⁰⁷ A core question has been how to build space in the WTO system for constructive dialogue on key global policy issues relevant to the WTO, whether or not they are (or should be) on the official negotiating agenda.

From 2014-2015, ICTSD and the World Economic Forum (WEF) advanced their joint 'E15 Initiative,' with the stated goal of strengthening the global trade and investment system for sustainable development.⁴⁰⁸ Signalling ICTSD's shift toward a more explicit engagement with the private sector, the initiative sought to bring together a vast network of experts from the private sector, academia, government and international organizations in their personal capacities to analyse and propose ways forward on a suite of topics facing the global trading system. In 2016, the E15 Initiative published and promoted policy options produced by thematic working groups on fisheries and oceans; climate change; agriculture and food security; extractive industries; and clean energy technologies, as well as on regulatory coherence, services, subsidies, investment policy, innovation, industrial policy, competition

authors also suggested that some of these threats are due to imports of coffee, tea, sugar, textiles, fish, and other manufactured items that cause a large biodiversity footprint at origin. See Lenzen, M, D. Moran, K. Kanemoto, B. Foran, L. Lobefaro, and A. Geschke (2012) "International trade drives biodiversity threats in developing nations," *Nature*, Vol. 486, 7 June.

⁴⁰⁴ See, for instance, Brack, D. (2013) "Combatting Illegal Logging: Interaction with WTO Rules," *Chatham House Briefing Paper*, May 2013; Gulbrandsen, L. and O. Fauchald (2015) "Assessing the New York Declaration on Forests from a trade perspective," *BRIDGES BioRes*, 9 (4), May.

⁴⁰⁵ Gould, E. (2014) *The Really Good Friends of Transnational Corporations Agreement*. Public Services International (PSI), Our World Is Not For Sale (OWINFS). September. http://www.world-psi.org/sites/default/files/documents/research/report_tisa_eng_lr.pdf

⁴⁰⁶ Although aviation had been included since 2012 in the EU's carbon Emissions Trading System (ETS) it had not otherwise been addressed in the trade and environment context.

⁴⁰⁷ WEF (2015) *The High and Low Politics of Trade: Can the World Trade Organization's Centrality Be Restored in a New Multi-Tiered Global Trading System?* World Economic Forum: Geneva

⁴⁰⁸ For further background, see www.e15initiative.org.

policy, global value chains, finance and development, and the functioning of the WTO.⁴⁰⁹ There was, for instance, a strong interest in how the trade and investment system could help address climate change by assisting in the transition to a low-carbon economy. Together, the E15 analyses and policy options highlight how the framing of trade-environmental/SD issues among the now dominant ‘insider’ segment of the trade-environment community had moved solidly toward exploring how to embrace, harness and guide trade and investment for environmental and SD ends as well as toward a wider interest in sustaining and boosting international trade and investment.

Meanwhile, at the WTO, continuing negotiations on fisheries subsidies and on environmental goods and services reflected this trend. The environmental community also took up the trade community’s growing interest in understanding the role of global supply chains in shaping international trade trends, such as through studies on the links between agricultural commodity supply chains and deforestation.⁴¹⁰ Amidst efforts to promote climate action through support for wind and solar industries, ‘environmental industrial policy’ was identified as a ‘next frontier’ for the trade, investment and environmental debate.⁴¹¹ Although Lamy, as well as organisations such as ICTSD and IISD continued to argue that action on issues such as climate and energy was critical to sustaining the relevance of the WTO, they were not able to move the WTO membership to take action on these issues.⁴¹²

The WTO and the UN’s 2030 Sustainable Development Agenda

The final months of the WTO’s 20th anniversary in 2015 coincided with efforts to conclude the UN’s post-2015 development agenda.⁴¹³ From 2010, the international community had devoted considerable energy to stitching together various processes to craft a follow up to the MDGs. The resulting “2030 Agenda for Sustainable Development,” as it is now formally known, commits to achieving sustainable development in its three dimensions—economic, social, and environmental—in a balanced and integrated manner,⁴¹⁴ and includes a list of Sustainable Development Goals (SDGs). The engagement of the trade community in the

⁴⁰⁹ See ICTSD and WEF (2016) *Proposals and Options to Upgrade the Global Trade System*, ICTSD and WEF: Geneva.

⁴¹⁰ See Brack, D. with Wellesley, L. and A. Grover (2016) “Agricultural Commodity Supply Chains: Trade, Consumption and Deforestation,” *Chatham House Research Paper*, January, Chatham House: London.

⁴¹¹ See, for instance, the work of the E15’s working group on industrial policy, including Wu, M. (2015) “Re-examining ‘Green Light’ Subsidies in the Wake of New Green Industrial Policies,” *E15Initiative*, ICTSD and WEF: Geneva. Already in 2013 and 2014, IISD staff had published several reports on the intersections between trade, investment and green industrial policy. See https://www.iisd.org/trade/crosscutting/tri-cc/green_industrial_policy.asp. In particular, see Cosbey, A. (2013) “Green Industrial Policy and the World Trading System,” *Issue Brief 17*, Entwined: Stockholm. Also see Rodrik, D. (2014) “Green Industrial Policy,” *Oxford Review of Economic Policy* 30(3): 469–91, http://drodrik.scholar.harvard.edu/les/dani-rodrik/les/green_industrial_policy.pdf.

⁴¹² Lamy, P. (2013). “Lamy Calls for Dialogue on Trade and Energy in the WTO,” *WTO News*, 29 April. Retrieved from https://www.wto.org/english/news_e/sppl_e/sppl279_e.htm

⁴¹³ BRIDGES, “UN post-2015 talks focus on draft sustainable development goals,” ICTSD *Bridges Trade BioRes*, 31 March 2015. <http://www.ictsd.org/bridges-news/biores/news/un-post-2015-talks-focus-on-draft-sustainable-development-goals>; Tipping, A. (2014) “Harnessing Trade Policy in the Sustainable Development Goals,” ICTSD *Bridges Trade BioRes*, 8(7) 2 September. <http://www.ictsd.org/bridges-news/biores/news/harnessing-trade-policy-in-the-sustainable-development-goals>. Also see

⁴¹⁴ The 29-page-long text consists of five sections, including a preamble; a declaration with shared principles and commitments, and a call for action to change the world; a list of SDGs and targets; the means of implementation (MoI) and a revitalised global partnership for development; and details on following up and reviewing efforts to put the agenda into action. The 2030 Agenda also recognises that the full implementation of the outcome of the UN Financing for Development Process, the Addis Ababa Action Agenda (AAAA) adopted by the UN General Assembly at the end of July 2015, will be critical for the realisation of the SDGs and targets.

formulation of the SDGs was limited but sought to convey a positive view of how trade could contribute to the SDGs. The final Agenda features trade and investment tools and policies in a number of the SDG targets or as means to achieve a specific target (see Appendix 7).⁴¹⁵

Several systemic trade-related targets are included under SDG 17 (focused on the ‘means of implementation’ for the goals as a whole). These targets are grounded in a multilateral vision of trade, referring to a universal, rules-based trading system and urging the conclusion of the Doha Round. Reference is also made to increasing the exports of developing countries, with a view to doubling those from LDCs, alongside implementing DFQF market access for their exports consistent with WTO decisions. The specific trade-related targets or targets integrated into other SDGs cover topics such as correcting distortions in agricultural markets with references to the Doha Round mandate; fisheries subsidies reform with a mention of WTO negotiations; developing sustainable regional and trans-border infrastructure; rationalising inefficient fossil fuel subsidies; and tackling illegal wildlife trade. Increasing aid to developing countries for trade support is included as a target to achieve SDG 8 on promoting sustained, inclusive, and sustainable economic growth.⁴¹⁶

The emergence of the SDGs as a central piece of the global governance context raised questions about where the WTO might need to respond and evolve in response. In late 2015, informal discussions were beginning among some NGOs, government officials and Secretariat staff on how the WTO should respond to the SDGs. The WTO Secretariat’s documentation for the Fifth Global Review of Aid for Trade emphasized the need for concerted action to deliver on the inclusive, sustainable growth envisioned in the post-2015 Agenda, arguing that trade could boost growth that is both inclusive and sustainable.⁴¹⁷ In their Ministerial Statement from the 2015 WTO Ministerial Conference in Nairobi, WTO Member States recognised the ‘role the WTO can play in contributing towards the achievement of the 2030 Sustainable Development Goals’ and acknowledged ‘that international can play a role towards achieving sustainable, robust and balance growth for all’, but made no specific mention of the environment or any specific environmental topic.⁴¹⁸

As 2015 drew to a close, interest was growing among inter-governmental agencies and non-state actors in what concretely could be done within the trade and investment arena to contribute to the SDGs.⁴¹⁹ IISD and ICTSD co-published a paper on the challenge of reviewing progress on the trade and investment targets of the SDGs, which raised questions about the role of the WTO and other actors in monitoring and assessment of trade’s intersection with the SDGs.⁴²⁰ Further, in 2016, ICTSD commissioned a series of papers on

⁴¹⁵ Hoekman, Bernard. *Trade Costs and the Post-2015 Sustainable Development Agenda*, E15Initiative Blog Post, February 2015. <http://e15initiative.org/blogs/trade-costs-and-the-post-2015-sustainable-development-agenda/>.

⁴¹⁶ On the investment side, within the systemic targets under SDG 17, UN members pledge to adopt and implement investment promotion regimes for LDCs. Investment is then singled out as a means to implement the poverty eradication goal, while FDI is positioned as a means to implement SDG 10 on reducing inequality within and among countries. SDG 7 calls for the promotion of investment in energy infrastructure and clean energy technology.

⁴¹⁷ WTO and OECD (2015). *Aid for Trade at a Glance: Reducing trade costs for inclusive, sustainable growth*, WTO and OECD, Geneva and Paris; and WTO (2015) *Fifth Global Review of Aid for Trade*, WTO: Geneva.

⁴¹⁸ See https://www.wto.org/english/thewto_e/minist_e/mc10_e/mindecision_e.htm

⁴¹⁹ Bellmann, C. and A. Tipping (2016) “The Role of Trade and Trade Policy in Advancing the 2030 Development Agenda,” *International Development Policy*, Geneva: The Graduate Institute.

⁴²⁰ Tipping, A., and R. Wolfe (2015) *Trade and sustainable development: Options for follow-up and review of the trade-related elements of the Post-2015 Agenda and Financing for Development*. IISD and ICTSD: Geneva.

trade issues arising from the SDGs.

4. Preliminary Findings and Research Agenda

Amidst uncertainty about the WTO's future agenda, and with the organization's 20th anniversary behind us, the time is ripe to assess what the future agenda on trade, environment and sustainable development at the WTO should be, where there have been successes or failure to date, and what lessons can be learned. To aid in those tasks, this paper concludes with some preliminary findings from the literature review and suggestions for further research.

First, this paper has shown that although some core 'trade and environment' topics remained on the WTO agenda for over 20 years, a layering of additional frames and topics revealed important differences among stakeholders on priorities and their ability to set and control the 'trade and environment' agenda. There was also fragmentation of the 'environmental agenda' among specific topics as advocates worked to focus attention on, and find solutions to, specific environmental concerns.

Second, the trade and environment discussion at the WTO has matured considerably over the past 20 years and engagement by its Member States and Secretariat with environmental issues has widened. From the initial focus on the WTO's CTE and environmental disputes, this literature review has documented efforts by some Member States to undertake environmental impact assessments, the inclusion of some environment issues on the WTO negotiating agenda, and wider opportunities for NGO participation, as well as specific instances of action and leadership on environmental matters from Member States and the Secretariat. Over the past two decades, deliberations on trade and environment at the WTO have become informed by a more robust evidence base, deeper expertise among government officials in trade and other relevant ministries, and greater engagement of stakeholders in policy discussions. Processes of learning and dialogue boosted mutual standing and clarified a range of technical matters, resulting in less suspicion between trade and environmental advocates.

Third, the paper has underscored that the 'environmental community' was not homogenous. Rather, there was a complex web of communities and networks – sometimes overlapping - with distinct agendas and different access to financial resources and policymakers. The paper has noted tensions between those advocates keen to speak primarily 'for the environment' and those who insist on the broader sustainable development frame as vital to finding solutions to environmental challenges. It has also identified both partnerships and disagreements between developed and developing country networks in their analysis and characterisation of the environmental challenges and appropriate campaigning strategies.

Fourth, the paper has documented the emergence and role of a core 'insider' epistemic community of trade/environment and trade/sustainable development experts in NGOs, think tanks, academia, and the secretariats of international organizations. Even as the array of actors, networks, perspectives and priorities on trade and environment-sustainable development issues expanded, this inner circle was critical to the mainstreaming of environmental concerns in trade policy fora. At the same time, it played a powerful role in

defining the scope of what were considered sensible, appropriate, relevant, and ultimately legitimate environmental issues for discussion at the WTO.

Fifth, environmental advocacy and action at the WTO was linked to developments in the wider global trading system and policy landscape. The rise of bilateralism and regionalism in trade diplomacy; the growing power of emerging economies in trade negotiations; and changing market dynamics - such as the rise of private standards and other non-tariff barriers to trade - shifted environmental attention, opportunities and priorities at the WTO. The proposed TPP and TIPP emerged, for instance, as a higher priority for environmentalists than drawn-out WTO negotiations, particularly amidst uncertainty about the Doha Round and the WTO's future. Similarly, as the political focus on development in the early Doha Round years gave way to a concern for trade recovery and growth in the wake of financial crises, the political salience of environmental issues at the WTO diminished. When environmental attention shifted toward climate change and the SDGs, trade issues arose, but were secondary. Although trade issues arose in numerous international environmental fora, the WTO and its CTE remain the international venue with the broadest standing agenda on trade and environment questions.

Sixth, the review suggests that the WTO has responded more to some environmental concerns and issues than others. Although the WTO took up a number of environmental topics, such as fisheries subsidies and environmental goods and services, trade aspects of a number of other high-profile environmental issues - such as deforestation, industrial pollution and environmental concerns related to trade in water services - acquired little serious traction at the WTO.⁴²¹ Although the challenges of climate change sparked debates on whether and how they should be addressed at the WTO, the issue remains at the periphery of WTO discussions. Even on the issues that were negotiated for over ten years, such as fisheries subsidies, governments did not conclude a deal and so practical benefit to the sustainability of the world's threatened fish stocks emerged. Although the track-record of WTO dispute settlement proceedings put to rest some of the fears about the potential impact of WTO jurisprudence on the scope for national environmental regulation, recent dispute settlement cases and rulings have renewed concerns that WTO rulings may have perverse implications for the environment, such as by challenging consumer labelling initiatives and national policies to help combat climate change.

Not surprisingly, the trade and environment debate and action at the WTO to date has evolved in ways that prioritise those environmental concerns that can be most closely fitted within the WTO's principles and rules, and which fit with the perspective of trade advocates. Although in practice action on many environmental priorities demands trade-offs and balancing with economic and social objectives, an inner circle of experts sought to sustain a framing focused on the idea of 'mutually-supportive trade and sustainable development goals.' The discourse of 'mutual supportiveness' was considered vital to keeping sustainable development on the WTO agenda. IISD, for instance, identified "the 'modern agenda' as 'one that looks for mutual support, that asks how the objectives of a healthy economy, social equity and environmental integrity can be met with few compromises, and ideally, with

⁴²¹ Friends of the Earth (2001) *Stealing our Water, Implications of GATS for Global Water Resources*, Friends of the Earth Trust: London.

positive synergy.”⁴²² This framing held that environmental objectives need not (and should not) threaten the pursuit of the WTO’s core purpose or principles (i.e., an open, non-discriminatory and rules-based global trading system) and can be accommodated within its legal framework. In this spirit, a number of environmental experts and organizations have focused attention on practical ‘solvable problems’ and ways to use available trade rules for ‘win-win’ environmental benefits.

The unintended consequence, and risk, of the pursuit of the positive agenda, however, has been that campaigns that presented environmental and trade goals as in opposition have been perceived as out-dated; issues that highlighted the conflicting interests at the heart of many environmental challenges – and the politics of confrontation that ensue – threatened to spoil efforts to foster cooperation and were crowded out. Although dissenting voices were sometimes included at the margins of inner circle policy dialogues, their focus was on ‘reasonable,’ constructive dialogue. Campaigns that drew attention to the challenges associated with the ‘scale effects’ of trade and trade liberalization, for instance, and to the underlying model of economic growth, gained little traction. Similarly environmental concerns about the relationship between trade and deforestation, unsustainable consumption patterns, and growing international transportation were noted but never advanced far on the policy agenda.

In order to devise a forward-looking agenda for trade, environment and sustainable development, an independent 20-year assessment of the WTO’s environmental performance and progress is needed, ideally in consultation with key actors in the debate over the past 20 years. Focusing on lessons learned and future priorities, core issues for consideration should include:

- Where and how did environmental norms impact the multilateral trading system? This question calls for consideration of the diverse expectations and goals of the environmental and sustainable development communities at the time the WTO was created and changing priorities over times. It also requires a clear framework for tracing how policy change occurs in the trade arena and a set of metrics for measuring progress.
- Why have some environmental issues fared better than others? Among the possible explanations are that some environmental issues were perceived as more serious and urgent. The relevance of trade and trade rules as drivers of the some environmental problems - or as part of a solution to them – may have been clearer in some instances than others. Conversely, misunderstandings about the role of trade law and policy may have hampered the up-take of some trade-related environmental concerns. The appetite of Member States for action may have been impacted by commercial and other national economic interest, while the role of ideas and framing may also be key to explaining why some environmental issues and priorities attracted more attention than others. Similarly, the role of epistemic communities – from ‘networked insiders’ to more activist ‘outsiders’ – in promoting these frames is worthy of exploration.

⁴²² IISD & UNEP (2015).

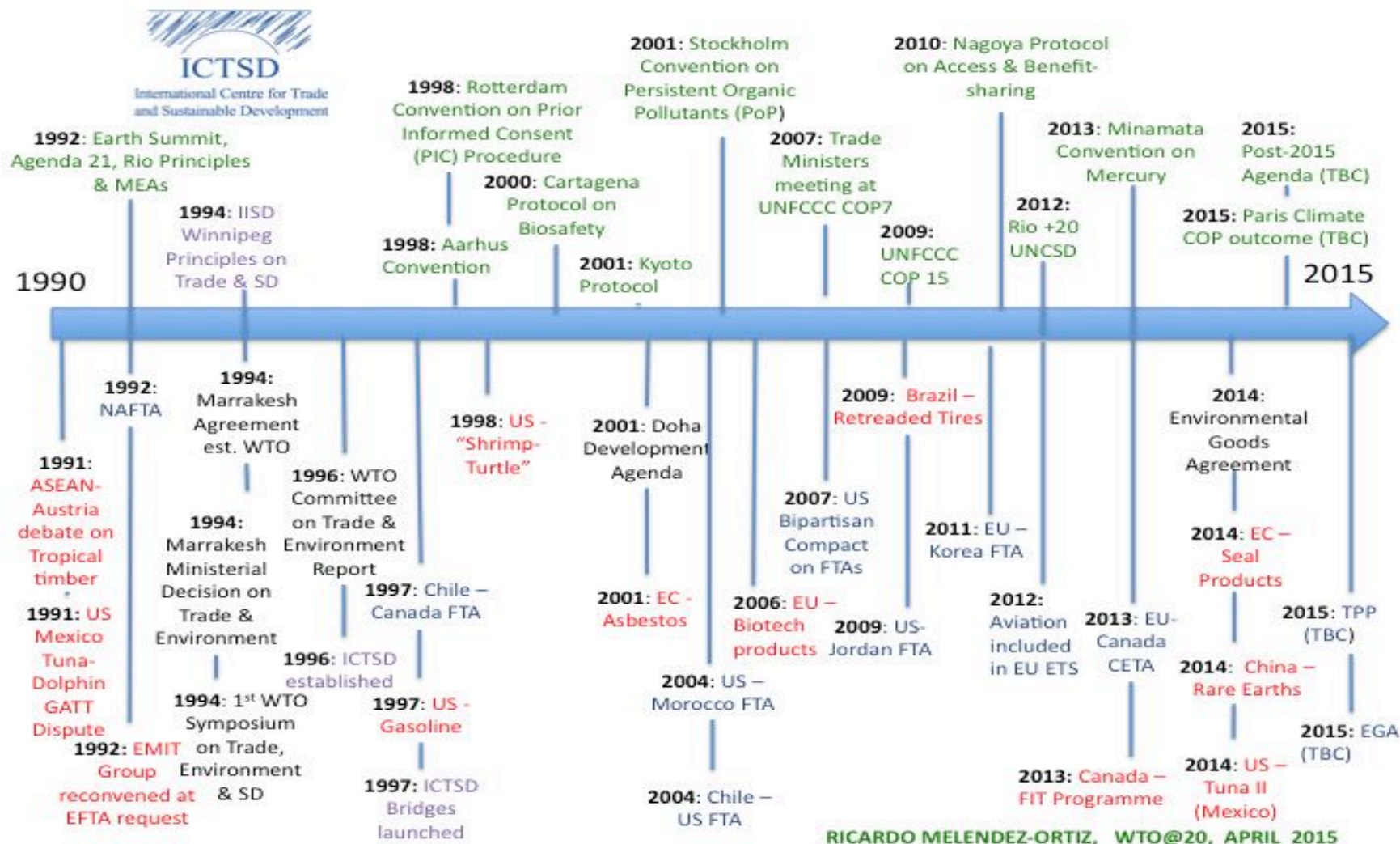
- Which ‘old’ environment issues remain outstanding but are still relevant? How could they be revived, addressed and where? For which new or contemporary issues is the WTO an appropriate forum – or the most appropriate forum – for discussion and action? Or should advocates also look elsewhere in the trading system or to alternative fora, processes and partnerships to advance solutions?
- Which stakeholders most shaped the trade and environment agenda? When and how did they exert influence? When were governments critical in advancing or constraining progress on environmental issues, and to which domestic interests were they responding? What was the role of private commercial interests and other national economic interests? How did access to funding impact the agendas and effectiveness of NGOs and civil society groups? Where and how did the secretariats of international organizations play a role? How significant was the role of networks of experts and what kinds of experts and expertise were most powerful?⁴²³ Within such networks, how significant were particular individuals and how did the evolution of their careers change their positions and impact the debate over time? Which strategies – from activism (such as lobbying, public mobilization and street protests) to ‘inside’ strategies (such as policy proposals, stakeholder dialogues) - were most successful?

Looking ahead, given the long list of environmental challenges at hand, consideration of priorities and best opportunities for future success will be critical. Amidst an evolving global economic policy landscape, Brexit and the Trump era set a new political and policy context for public debate on international trade and investment as well as for efforts to advance environment and sustainable development goals. The challenges of funding and the search for financial support will continue to loom large, particularly as environmental solutions that focus on business partnerships and market incentives are increasingly deemed more fruitful than policy changes that rely on lengthy political and legal advocacy. A careful review of lessons learned could help environment and sustainable advocates better lead the way for potential donors, working together on how and where to invest in the environmental and sustainable development dimensions of trade and investment policy.

⁴²³ Hannah, E., Scott, J, and S. Trommer (2015) *Expert Knowledge in Global Trade*, Routledge: London.

Appendix 1. Timeline of Trade and Environment at the WTO (1990-2015)

Source: Melendez-Ortiz (2015).



RICARDO MELENDEZ-ORTIZ, WTO@20, APRIL 2015

Appendix 2. Environmental Provisions in the Marrakesh Agreement Establishing the World Trade Organization and other WTO Agreements

Preamble

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, 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 and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development, ...

Agree as follows:...

Article XX

General exceptions

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

...

(b) necessary to protect human, animal or plant life or health;

...

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including ...;

...

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;"

Agreement on Technical Barriers to Trade

Preamble

"... *Recognizing* that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. ..."

Article 2

Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

"With respect to their central government bodies:

2.1 Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose,

technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.

[...]

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.”

Agreement on Sanitary and Phytosanitary Measures

Annex A

Definitions

“**1. Sanitary or phytosanitary measure** — Any measure applied:

- (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.”

Agreement on Agriculture

Annex 2

Domestic Support: the Basis for Exemption from the Reduction Commitments

...

“**12. Payments under environmental programmes**

- (a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.
- (b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.”

Agreement on Trade-Related Aspects of Intellectual Property Rights

Article 27

Patentable Subject Matter

...

“**2.** Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (b) plants and animals other than micro-organisms, and essentially biological processes for the

production of plants or animal other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.”

General Agreement on Trade in Services

Article XIV

General Exceptions

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

...

(b) necessary to protect human, animal or plant life or health; ...”

Appendix 3. Full Text of the 1994 Decision on Trade and Environment

Adopted by ministers at the meeting of the Uruguay Round Trade Negotiations Committee in Marrakesh on 14 April 1994.

Ministers,

Meeting on the occasion of signing the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations at Marrakesh on 15 April 1994,

Recalling the preamble of the Agreement establishing the World Trade Organization (WTO), which states that members' "relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, 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 and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,"

Noting:

- the Rio Declaration on Environment and Development, Agenda 21, and its follow-up in GATT, as reflected in the statement of the Chairman of the Council of Representatives to the CONTRACTING PARTIES at their 48th Session in December 1992, as well as the work of the Group on Environmental Measures and International Trade, the Committee on Trade and Development, and the Council of Representatives;
- the work programme envisaged in the Decision on Trade in Services and the Environment; and
- the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights,

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other,

Desiring to coordinate the policies in the field of trade and environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members,

Decide:

- to direct the first meeting of the General Council of the WTO to establish a Committee on Trade and Environment open to all members of the WTO to report to the first biennial meeting of the Ministerial Conference after the entry into force of the WTO when the work and terms of reference of the Committee will be reviewed, in the light of recommendations of the Committee,
- that the TNC Decision of 15 December 1993 which reads, in part, as follows:
 - “(a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;
 - (b) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system, as regards, in particular:
 - the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with

- special consideration to the needs of developing countries, in particular those of the least developed among them; and
- the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12; and
- surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;”

constitutes, along with the preambular language above, the terms of reference of the Committee on Trade and Environment,

- that, within these terms of reference, and with the aim of making international trade and environmental policies mutually supportive, the Committee will initially address the following matters, in relation to which any relevant issue may be raised:
- the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;
- the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;
- the relationship between the provisions of the multilateral trading system and:
 - (a) charges and taxes for environmental purposes;
 - (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;
- the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects;
- the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;
- the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions;
- the issue of exports of domestically prohibited goods;
- that the Committee on Trade and Environment will consider the work programme envisaged in the Decision on Trade in Services and the Environment and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights as an integral part of its work, within the above terms of reference,
- that, pending the first meeting of the General Council of the WTO, the work of the Committee on Trade and Environment should be carried out by a Sub-Committee of the Preparatory Committee of the World Trade Organization (PCWTO), open to all members of the PCWTO,
- to invite the Sub-Committee of the Preparatory Committee, and the Committee on Trade and Environment when it is established, to provide input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO.

Appendix 4. WTO Secretariat News Stories, Speeches by Directors General, and Press Releases on the Environment (1998-2015)

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Appendix 5. Examples of WTO Events and Training on the Environment (2001-2015)

Date	Dialogues and Training	WTO Public Forum	Examples of Session Sub-titles with environmental focus
28 April 2015	WTO and UNEP Enhance Dialogue on Trade and Environmental Issues		
1 – 3 October 2014		Public Forum “Why trade matters to everyone”	<ul style="list-style-type: none"> • Information Technology Agreement (ITA) and environmental goods: emerging opportunities and challenges for sustainable development; • Trade and jobs in a green economy; • Trade in environmental goods as catalyst for implementing sustainable energy for all initiative in Africa; • Implications for jobs, consumers, and the environment and Africa of including investment in the post-Bali Roadmap
24 March - 4 April 2014	2014 Advanced Course on Trade and Environment		
1 – 3 October 2013		Public Forum “Expanding Trade through Innovation and the Digital Economy”	<ul style="list-style-type: none"> • Global value chains: opportunities for trade and the environment; • Climate related standards and the green economy: opportunities and challenges for developing countries in South Asia and East Africa
12 November 2012	Workshop on Environmental Technology Dissemination		<ul style="list-style-type: none"> • Dissemination of Environmental Technologies
24-26 September 2012		Public Forum “Is Multilateralism in Crisis?”	<ul style="list-style-type: none"> • How can we ensure that green economy policies work together rather than at cross-purposes?: A closer look at policies to support renewable energy
12 September 2012	The Outcomes of Rio+20: An Informal Dialogue Among Stakeholders		
19 - 21 September 2011		Public Forum “Seeking answers to global trade challenges”	<ul style="list-style-type: none"> • Advancing Trade and Environment in the Absence of Negotiations; • Encouraging Innovation and the Deployment of Environmental Technologies; • Strategies for Promoting Green Innovation and Disseminating Environmentally Friendly Technologies — What Role for

			<ul style="list-style-type: none"> Intellectual Property? Seeking Answers to Global Trade Challenges International Carbon Flows: Sustainability, Trade and Climate Change The Future of WTO Negotiations: How can the WTO support green growth and climate change policies
15 – 17 September 2010		Public Forum “The Forces Shaping World Trade”	<ul style="list-style-type: none"> Sustainable energy use and trade; Multilateral Environmental Agreements (MEAs) and the WTO; Trade, the environment and 9 billion hungry people: Coordinating the efforts of the WTO and other international organizations to ensure food security and to mitigate the impact of climate change; The future of trade and the environment: Creating the WTO's solution for trade, development and sustainable oceans
28 – 30 September 2009		Public Forum “Global Problems, Global Solutions: Towards Better Global Governance”	<ul style="list-style-type: none"> Climate-change policies and trade rules: Conflict or coherence? Global problems, global solutions: Towards better global governance in the agro-food chain; Labour and environment provisions in bilateral and regional agreements: Challenges for the multilateral trading system; Multilateralism, our global crises and strategies for the future; Private environmental standards: Opportunities and challenges
23 - 25 September 2009	Workshop on Environmental Goods and Services		
9 July 2009	Workshop on Environment-related Private Standards, Certification and Labelling Requirements		
24 – 25 September 2008		Public Forum “Trade Into Future”	<ul style="list-style-type: none"> Addressing Global Environmental Challenges: What to expect from future dispute settlement panels; Leveraging Trade Policy toward Sound Environmental Governance: Legal and Economic Considerations

			<ul style="list-style-type: none"> Related to the Implementation of Market-Based Environmental Policies; Mutual Supportiveness of Trade, Climate Change and Development Objectives and Policies; Climate Change, Competitiveness and Trade Policy: Opportunities and Challenges for the Future of the Multilateral Trading System
4 – 5 October 2007		Public Forum “How the WTO Can Help Harness Globalization?”	<ul style="list-style-type: none"> Trade and Climate Change: Peril or promise? The Role of Trade in Supporting International Efforts to Mitigate Climate Change; Rebalancing Trade with Global Norms
5 February 2007	WTO-UNEP Roundtable		<ul style="list-style-type: none"> UNEP Global Ministerial Environment Forum 2007
25 - 26 September 2006		Public Forum “What WTO for the XXIst Century?”	<ul style="list-style-type: none"> Sustainability and Environmental Impact Assessments
10 - 11 October 2005	WTO Symposium on Trade and Sustainable Development within the Framework of Paragraph 51 of the Doha Ministerial Declaration		<ul style="list-style-type: none"> The Environmental Impact of Agricultural Subsidies; Fisheries subsidies; Environmental Aspects of Fisheries Subsidies; Environmental Goods and Services Liberalization; Trade and Environment Capacity-Building
20 – 22 April 2005		Public Symposium “WTO After 10 Years: Global Problems and Multilateral Solutions”	<ul style="list-style-type: none"> 10 years of Trade and Environment in the WTO: What has been achieved, and what next?
11 October 2004	Workshop on Environmental Goods		<ul style="list-style-type: none"> Trends in the Environmental Goods Industry; Key Concerns and Challenges for Developing Countries; Practical Considerations in Identifying Environmental Goods
25 - 27 May 2004		Public Symposium “Multilateralism at a Crossroads”	<ul style="list-style-type: none"> Environmental Requirements and Market Access: An update on policy and practice — inside and outside the WTO; Environmental Goods and Services: Towards a Meaningful Outcome for Sustainable Development; Environment and Governance — what role for the WTO?
16 - 18 June 2003		Public Symposium “Challenges Ahead on the Road to Cancún”	<ul style="list-style-type: none"> The effects of environmental regulations on developing country exports: What are the concerns and what can be done?; The State of Trade and Environmental Law

29 April - 1 May 2002		Public Symposium “The Doha Development Agenda and Beyond”	<ul style="list-style-type: none"> • Trade and Environment after Doha; • The WTO, Poverty Alleviation, and the Environment; • An Emerging Southern Agenda on Trade and Environment
6-7 July 2001		Public Symposium “issues Confronting the World Trading System”	<ul style="list-style-type: none"> • Trade and environment; • Trade liberalization, development and the environment — towards sustainable development

Appendix 6. IISD's Winnipeg Principles for Trade and Sustainable Development (Summary)

The following text is a summary of the Winnipeg Principles, as presented on the website of the International Institute for Sustainable Development (IISD) website.

Goal

These principles are intended to guide trade and trade-related environment and development policies, practices and agreements, to help ensure that they work to achieve sustainable development.

Points of Departure

Sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". We embrace this Brundtland Commission definition and note the seven strategic imperatives it identified for sustainable development: reviving growth; changing the quality of growth; meeting essential needs for jobs, food, energy, water, and sanitation; ensuring a sustainable level of population; conserving and enhancing the resource base; reorienting technology and managing risk; and merging environment and economics in decision-making. The principles that follow take this definition of sustainable development as their starting point, along with three key assumptions:

- **Need for Poverty Alleviation.** Sustainable development cannot be achieved worldwide while massive poverty persists. Wealth created by trade, along with continued economic reforms and a substantial increase in the transfer of financial resources and technology from rich to poor countries, is an essential means to achieving this end.
- **Importance of Environmental Policies.** Domestic and international environmental policies are of paramount importance for all aspects of sustainable development. As such policies become more effective, the risk that economic activities -- including trade and development -- may contribute to environmental degradation is reduced.
- **Role of Trade Liberalization.** Barriers to trade can create impediments to the achievement of sustainable development, particularly for developing countries, and trade liberalization is an important component of progress toward sustainable development for all countries. The contribution of trade liberalization to sustainable development is promoted by policies that respect environmental and social policy goals.

Principles

Efficiency and Cost Internalization

Environmentalists, development specialists and trade economists share a common interest in promoting efficiency. More efficient production reduces the drain on scarce resources such as raw materials and energy, and limits the demands placed on the regenerative capacity of the environment. Efficient use of land, labour and capital is also the heart of development efforts to combat poverty and satisfy human needs. Allowing the most efficient producers to provide the world's goods and services is the main rationale for an open trading system.

Efficient resource use requires that the prices paid by producers for inputs, and by consumers for final goods and services, accurately reflect their full costs. In fact, most goods are not priced to reflect full costs (the magnitude of the distortion will vary from case to case), due to such factors as unpaid environmental costs and price-distorting trade barriers. Rectifying these problems is not easy; there are technical difficulties in evaluating unpaid environmental costs and designing instruments to deal with them. As well, some groups resist change because they benefit from these distortions, even

though their net effect on the community at large may be seriously damaging both economically and environmentally. Despite the substantial practical difficulties, high should be attached to accurate pricing through cost internalization, in accordance with the "polluter pays principle", and through reduction of price-distorting trade barriers.

Equity

Equity relates to the distribution both within and between generations of physical and natural capital, as well as knowledge and technology. Inequity and poverty contribute significantly to environmental degradation and political instability, particularly in developing countries. When basic needs are not met, the poor have no choice but to live off whatever environmental resources are available. At the same time, past use of natural resources already limits the choices available to present generations, particularly in developing countries. Faced with these limitations, and having limited financial, administrative and technical capacity to deal with problems of environment and development, many developing countries will require additional resources and strengthened capacities if they are to adequately protect their environmental resources, including many which are of global significance.

Trade liberalization can contribute to greater equity through the dismantling of trade barriers that harm developing countries and ultimately their environments. In particular, reduced tariff escalations for processed goods and improving trading opportunities for a wider array of industrial foods could help these countries seeking to diversify their economies and reduce their reliance on environmentally sensitive commodity production. In the context of decreasing levels of traditional foreign aid, the best alternative for increasing incomes in poorer countries by the necessary magnitudes is increased trade and investment flows, the result of more open borders in both developed and developing countries, together with appropriate domestic policies in developing countries. Other measures to achieve equity and poverty alleviation include strengthening developing country capacity to develop indigenous technologies and to manage environmental resources, and creating mechanisms for the accelerated transfer of existing clean technologies. Continued progress in resolving the debt crisis is also important, as is an increase in transfers of financial resources.

Environmental Integrity

Trade and development should respect and help maintain environmental integrity. This involves recognition of the impact of human activities on ecological systems. It requires respect for limits to the regenerative capacity of ecosystems such as fisheries and forests that are vulnerable to irreversible depletion; actions to avoid irreversible harm to plant and animal populations and species; and protection for valued areas such as designated parklands or sites of internationally recognized ecological, cultural or historical significance.

Many of these aspects of the environment have values, which cannot be adequately captured by methods of cost internalization, highlighting the need for other policy instruments. Such special conservation measures may represent an important exception to normal trade rules, whether in the context of trade agreements or environmental agreements. They may take the form of trade bans or quantitative restrictions. While such measures could include unilateral trade restrictions, they should nonetheless be enacted within the context of internationally agreed criteria.

Subsidiarity

Subsidiarity recognizes that action will occur at different levels of jurisdiction, depending on the nature of issues. It assigns priority to the lowest jurisdictional level of action consistent with effectiveness. International policies should be adopted only when this is more effective than policy action by individual countries or jurisdictions within countries.

Environmental policies in different jurisdictions can reflect differences in environmental conditions or development priorities, leading to variations in environmental standards within countries or among groups of countries. Harmonization of emission standards, ambient environmental quality standards, procedural requirements or laws, supplemented where feasible by negotiated minimum process

standards, can play an important role by ensuring that these essential differences respect a common framework. But this approach will not always be possible or appropriate. In the absence of such agreements voluntarily accepted by all affected countries, and where the environmental consequences remain within domestic jurisdictions, other countries should not use economic sanctions or other coercive measures to try to eliminate differences in standards. Where there are significant trans-border environmental impacts, solutions should be sought multilaterally. These might include international environmental agreements, the formulation of international standards, capacity building, incentives for voluntary upgrading of standards and the possible use of trade measures.

Subsidiarity requires an important element of cooperation in international affairs. The responsibility of countries seeking higher environmental standards abroad to seek them multilaterally, shunning coercive measures, is matched by an obligation on the part of other countries to cooperate in such efforts. International Cooperation Sustainable development requires strengthening international systems of cooperation at all levels, encompassing environment, development and trade policies. The most desirable forms of international cooperation will avoid conflicts, through international efforts at development and environmental protection, and by improving the functioning of the global trading exchange rate and financial system. These efforts might include more initiatives aimed at technology sharing, capacity build, transfers of resources and debt relief, and an opening of protected markets. Progress in these areas of cooperation will address the root causes of many apparent trade-environment conflicts, in particular large disparities in technical capacity for environmental management and a lack of resources to invest in environmental protection. Cooperation may also take the form of multilateral agreements on the environment and new forms of cooperative cost internalization.

When international disputes arise, the procedures for handling them must be capable of addressing the interests of the environment, development and the economy together. This may involve changes to existing rules, changes to existing dispute settlement mechanisms, or the creation of new mechanisms. Dispute settlement procedures need to be open, effective and impartial, protecting the interests of weaker countries against the use of coercive political and economic power by more powerful countries. Unilateral action on transboundary environmental issues – an option generally available only to a few large countries -- should be considered only when all possible avenues of cooperative action have been pursued.

Science and Precaution

In the development of policies intended to reconcile trade, environment and development interests science, in particular ecological science and the science of complex systems, can provide the basis for many necessary decisions, including the suitability of health, safety and environmental standards.

Action to address certain problems, however, will still have to be taken in the face of uncertainty and scientific disagreement, particularly where mistakes may have very serious consequences. It is therefore also essential in certain instances to adopt a precautionary and adaptive approach that seeks the prevention and easing of environmental stress well before conclusive evidence concerning damage exists, and which adapts policy as new scientific information becomes available. Such approach should include transparent efforts to identify and clarify the changing risks and to relate the risks to benefits and costs of corrective measures.

Openness

Openness comprises two basic elements: first, timely, easy and full access to information for all those affected; and second, public participation in the decision-making process. It is essential for the formulation and practical implementation of environmental and development policies, and is also important in minimizing the risk that trade policies will be manipulated to favour inefficient producers. While structures for openness are increasingly evident in dealing with problems at the national level, there has not been a comparable development for issues of an international nature. As people worldwide devote increasing attention to such issues, there is a need to find forms of participation appropriate to the different international organizations and negotiations.

National and international rule-making and dispute settlement should be transparent, seeking, when appropriate, scientific and technical advice on environmental and developmental impacts and soliciting the views of the public, including specialists in relevant areas to the dispute settlement process. Transparency and the opportunity for interested members of the public to make submissions are also important when trade issues are involved. At a minimum, adjudicating panels should entertain written submissions from non-governmental organizations, and panel decisions should be published with a minimum of delay

Appendix 8. Frequency of Environmental Terms Used in WTO Ministerial Declarations (1996-2013)

	Environment	Sustainable development	Fisheries	Multilateral environmental agreements / accords	Forest	Trade and environment	Committee on Trade and Environment (CTE)	Environmental labelling	Environmental standards & measures	Environmental goods and services	UNEP	Mutual supportiveness	Environmental Disputes	Total
1996 Singapore Ministerial Declaration	3	1				3	1						1	9
1998 Geneva Ministerial Declaration		1										1		2
1999 - Seattle - No declaration														0
2001 Doha Ministerial Declaration	8	4	3	2		5	2	1	1	1	1	1	1	30
2003 Cancun Ministerial Declaration Revised Draft	6		1	2		5	6			1	1	1	2	25
2005 Hong Kong Declaration	5		6	2	1	4	3			1				22
2009 Geneva - No declaration														0
2011 Geneva - No declaration														0
2013 Bali Ministerial Declaration													2	2
Total	22	6	10	6	1	17	12	1	1	3	2	3	6	90

Appendix 9. Frequency of Environmental Terms Used in Ministerial Statements by Member States (1996 - 2013)

	Environment	Sustainable development	Fisheries	Clean technology and services	Multilateral environmental agreements & accords	Forest	Mining	Minerals	Natural resources	Pollution	Trade and environment	Committee on Trade and Environment	Environmental labelling	Environmental standards & measures
Albania		1												
Angola		1												
Antigua and Barbuda														
Argentina	2													
Armenia														
Australia	4	2	1								2	1		1
Austria	11	7			2						5	1	2	
Bahrain	5										1	1		1
Bangladesh													1	1
Barbados									1					
Belgium		2												1
Belize			1								1			
Benin	1										1			
Bolivia	1													
Botswana	6	3							1		4			1
Brazil	6	2									2	1		
Brunei Darusalam	4	1									1	1	1	
Bulgaria	3	1												
Burkina Faso		1												
Burundi	2										1			
Cambodia		1												
Cameroon	2										1			
Canada	2				1						1		1	
Cape Verde	1													
Central African Republic														
Chad														
Chile	4	2									1	1		
China		2												
Colombia	1	2	1										1	
Congo	1													
Congo, Dem Rep	3	4					1	1	1					
Costa Rica	2										2			
Cote d'Ivoire	4	4							1		3	1		
Croatia		1												
Cuba	1	2							1	1	1			
Cyprus	4	2									1			
Czech Republic	3								1		3			
Denmark	9	7	3	2	3						3		2	1
Djibouti		1												
Dominica														
Dominican Republic														
Ecuador	3	1									2			
Egypt	2										1			
El Salvador	1													

Appendix 9. Frequency of Environmental Terms Used in Ministerial Statements by Member States (1996 - 2013)

	Endangered species	Environmental goods and services	Millennium development goals	UNEP	Planet	Mutual supportiveness	Biological diversity	Genetic resources	Prior informed consent	Green Economy	Climate change	Environmental technology	Environmental Disputes	Total
Albania							1						1	3
Angola											1			2
Antigua and Barbuda														
Argentina														2
Armenia														
Australia		1				1					2			15
Austria	1	1	1			1					3			35
Bahrain														8
Bangladesh			1								2			5
Barbados													1	2
Belgium						2								5
Belize			1											3
Benin														2
Bolivia		1			1	2					2			7
Botswana														15
Brazil						1								12
Brunei Darusalam											1			9
Bulgaria						1					1			6
Burkina Faso			1		1									3
Burundi														3
Cambodia														1
Cameroon														3
Canada		1		1	1						3		1	12
Cape Verde														1
Central African Republic			1								3			4
Chad														
Chile						1								9
China														2
Colombia														5
Congo													1	2
Congo, Dem Rep						1					1			12
Costa Rica		1											1	6
Cote d'Ivoire														13
Croatia														1
Cuba			2		3						2		1	14
Cyprus						1					1			9
Czech Republic		1					1							9
Denmark			1			1					3	3		38
Djibouti														1
Dominica														
Dominican Republic											1			1
Ecuador								1			2	1	1	11
Egypt														3
El Salvador			1											2

Appendix 9. Frequency of Environmental Terms Used in Ministerial Statements by Member States (1996 - 2013)

	Environment	Sustainable development	Fisheries	Clean technology and services	Multilateral environmental agreements & accords	Forest	Mining	Minerals	Natural resources	Pollution	Trade and environment	Committee on Trade and Environment	Environmental labelling	Environmental standards & measures
Estonia														
European Communities	9	3	1		1						1		1	
Fiji	3	1	2						1		1			
Finland	4	5			1						2	1	1	
France	3	8		1	1					1				1
Gabon		1	1			2								
Gambia		1	2						1					
Georgia														
Germany	5	2			1						1			
Ghana	1								1					
Greece	11	8			1						2			
Grenada														
Guatemala	5	2												
Guinea Bissau														
Guinea														
Guyana	2													
Haiti	1													
Honduras	7										3	1		1
Hong Kong	1	2									1			
Hungary	2	2									1			
Iceland	12	3	13		1				1		3	1		
India	3	1	1								1	1		1
Indonesia	1	1	2			1					1			1
Ireland	4	1									2			
Israel					1				3					1
Italy	3	1									2			
Jamaica														
Japan	13	3	7			4			4		3			
Jordan														
Kenya	4	4			2						1		3	1
Korea, Rep of	2	2	10			4					2	1		
Kuwait														
Kyrgyz Rep		2												
Lao People's Dem Rep														
Latvia		1				1								
Lesotho														
Liechtenstein	4	1									1	1		
Lithuania	2	1												
Luxembourg	3	2									2			
Macedonia									1					
Macao	2										1			
Madagascar		2												
Malawi														
Malaysia	3	2									2		2	1

Appendix 9. Frequency of Environmental Terms Used in Ministerial Statements by Member States (1996 - 2013)

	Endangered species	Environmental goods and services	Millennium development goals	UNEP	Planet	Mutual supportiveness	Biological diversity	Genetic resources	Prior informed consent	Green Economy	Climate change	Environmental technology	Environmental Disputes	Total
Estonia														
European Communities		1				1					2		3	23
Fiji			1								1			10
Finland														14
France					1						1	1		18
Gabon														4
Gambia			1											5
Georgia														
Germany		3									3		2	17
Ghana			1										4	7
Greece			1		1						3			27
Grenada														
Guatemala			2										1	10
Guinea Bissau			2											2
Guinea			1								1			2
Guyana			1			2					1			6
Haiti														1
Honduras													1	13
Hong Kong														4
Hungary						2								7
Iceland	1												1	36
India			1		1		1	1						12
Indonesia							1				2		1	11
Ireland		1									2		1	11
Israel		1												6
Italy		1											1	8
Jamaica													1	1
Japan		2	1								8	1	6	52
Jordan														
Kenya														15
Korea, Rep of													1	22
Kuwait														
Kyrgyz Rep														2
Lao People's Dem Rep														
Latvia		1									1			4
Lesotho			1								2		1	4
Liechtenstein		1									2		1	11
Lithuania														3
Luxembourg			1	1		1								10
Macedonia														1
Macao														3
Madagascar			1								1		1	5
Malawi			4											4
Malaysia														10

Appendix 9. Frequency of Environmental Terms Used in Ministerial Statements by Member States (1996 - 2013)

	Environment	Sustainable development	Fisheries	Clean technology and services	Multilateral environmental agreements & accords	Forest	Mining	Minerals	Natural resources	Pollution	Trade and environment	Committee on Trade and Environment	Environmental labelling	Environmental standards & measures
Maldives	2	1	4											
Mali		1												
Malta	5	2							1		3	1		
Mauritania		1	1											
Mauritius	1								4					
Mexico	6	1									3			
Moldova														
Mongolia								1						
Montenegro		1												
Morocco	5	4	13		2						2	1		
Mozambique	1	1									1			
Myanmar		1												
Namibia	3										2	1		
Nepal														
Netherlands	4	1									1	1		
New Zealand	6	1	1								2			
Nicaragua		3												
Niger		1												
Nigeria	3			1							1			
Norway	3	4	4								1			
Oman														
Pakistan	1													
Panama	1	1												
Papua New Guinea	4	2	6			1	1		1		2			2
Paraguay		1				2								
Peru	3	3	4								1	1		
Philippines	6	5	1		3	1					3			
Poland	4	1			2						2	1		
Portugal	2	2												
Qatar	6	3	2	1					1		3			
Romania		2												
Russia														
Rwanda		1												
Saint Kitts and Nevis	1													
Saint Lucia														
St. Vincent & the Grenadines	1		1			1			1					
Samoa		1												
Saudi Arabia											1	1		
Senegal														
Sierra Leone	2	1	2			1								
Singapore	2										1			
Slovak Republic	2	5									2			
Slovenia	2	2			1						1		1	
Solomon Islands	1	1	14						1		1			

Appendix 9. Frequency of Environmental Terms Used in Ministerial Statements by Member States (1996 - 2013)

	Endangered species	Environmental goods and services	Millennium development goals	UNEP	Planet	Mutual supportiveness	Biological diversity	Genetic resources	Prior informed consent	Green Economy	Climate change	Environmental technology	Environmental Disputes	Total
Maldives			1								1			9
Mali					1			1						3
Malta											1		1	14
Mauritania			1		1									4
Mauritius			1											6
Mexico													1	11
Moldova														
Mongolia														1
Montenegro													1	2
Morocco		1												28
Mozambique							2	2						7
Myanmar											1			2
Namibia			1										1	8
Nepal											1			1
Netherlands		1				1					2		1	12
New Zealand		1				1								12
Nicaragua			1											4
Niger			1											2
Nigeria				1								1		7
Norway						3		1			3			19
Oman														
Pakistan			2										2	5
Panama													2	4
Papua New Guinea											4			23
Paraguay					2									5
Peru						1	3	6	1				1	24
Philippines		3			1		1				3			27
Poland						2								12
Portugal						1					1			6
Qatar		5		1							3	1		26
Romania														2
Russia														
Rwanda														1
Saint Kitts and Nevis											2			3
Saint Lucia			1										1	2
St. Vincent & the Grenadines			1										1	6
Samoa														1
Saudi Arabia											1	1		4
Senegal														
Sierra Leone														6
Singapore														3
Slovak Republic						2								11
Slovenia														7
Solomon Islands											2		1	21

Appendix 9. Frequency of Environmental Terms Used in Ministerial Statements by Member States (1996 - 2013)

	Environment	Sustainable development	Fisheries	Clean technology and services	Multilateral environmental agreements & accords	Forest	Mining	Minerals	Natural resources	Pollution	Trade and environment	Committee on Trade and Environment	Environmental labelling	Environmental standards & measures
South Africa	4	3									1			
Spain	6	2	5						1		2	1		
Sri Lanka	2		1								1			
Suriname	1	1		1					2					
Swaziland														
Sweden	5	2	1		2						2			1
Switzerland	4	1			1						3			
Taipei														
Taiwan	1	1									1			
Tajikistan														
Tanzania		1												
Thailand	3	3									1			
Togo	1	2	1								1			1
Tonga														
Trinidad and Tobago			1						1					
Tunisia	2	2								1				
Turkey	8	1			1						6	2		
Uganda	2												1	
Ukraine														
United Arab Emirates	5	3			1						2	1		
United Kingdom	3										1			
United States	3	3	2								2	1		
Uruguay														
Vanuatu		1												
Venezuela	2	2			2				2					
Viet Nam		1												
Yemen														
Zambia		2					1							
Zimbabwe	1										2	1		1
Total	328	197	109	6	30	18	3	2	33	3	128	26	17	18

Appendix 9. Frequency of Environmental Terms Used in Ministerial Statements by Member States (1996 - 2013)

	Endangered species	Environmental goods and services	Millennium development goals	UNEP	Planet	Mutual supportiveness	Biological diversity	Genetic resources	Prior informed consent	Green Economy	Climate change	Environmental technology	Environmental Disputes	Total
South Africa			4											12
Spain		1				1								19
Sri Lanka							1							5
Suriname								1		2	3	1		12
Swaziland			3											3
Sweden		2	2								3	2		22
Switzerland				1							3			13
Taipei														
Taiwan		1				1					4			9
Tajikistan														
Tanzania			1			1					1			4
Thailand														7
Togo					2						1			9
Tonga			1								1			2
Trinidad and Tobago														2
Tunisia			2											7
Turkey							2						1	21
Uganda			1				1	1						6
Ukraine					1									1
United Arab Emirates														12
United Kingdom		1	1		1						2			9
United States		1												12
Uruguay			2				1				1		2	6
Vanuatu											1			2
Venezuela			2		1		2						1	14
Viet Nam														1
Yemen														
Zambia						1								4
Zimbabwe														5
Total	2	34	57	5	19	33	17	14	1	2	103	12	50	1267

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