

The WTO as Major Driver of Sustainable Development and its Reform Process



Progetto UNIBO-MAECI
L'Organizzazione mondiale
del commercio quale
protagonista dello sviluppo
sostenibile nel rilancio del
sistema multilaterale



edited by

Elisa Baroncini

with the collaboration of

Alessandra Quarta, Giulia Bortino and Niccolò Lanzoni

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The WTO as a Major Actor for Sustainable Development

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Despite what is often stated by a mistaken narrative on the multilateral governance of the global economy, the WTO system promotes trade liberalisation not as an end in itself, but as a tool to achieve sustainable development. The Preamble of the Agreement establishing the WTO, in fact, unequivocally states that WTO Members “[r]ecogniz[e] that their relations in the field of trade and economic endeavour should be conducted with a view to *raising standards of living ... 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*”¹.

Coherently, a distinctive feature common to all the WTO Multilateral and Plurilateral Agreements is that of enshrining exception clauses², considering legitimate interests³ and the precautionary principle⁴, in the light of which obstacles to trade for goods and services are WTO-compatible when they fulfil certain requirements to pursue non-trade values.

¹ Preamble of the Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994, emphasis added.

² See e.g. GATT Article XX, pursuant to which “[s]ubject 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: (a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health; ... (e) relating to the products of prison labour; ... (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;”; or GATS Article XIV declaring that “[s]ubject 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: (a) necessary to protect public morals or to maintain public order; (b) necessary to protect human, animal or plant life or health; (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to: (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts; (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; (iii) safety ...”; and also TRIPs Article 8, according to which “Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement ...”

³. “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” (Article 2.2 of the TBT Agreement).

⁴ See Article 5.7 of the SPS Agreement: “[i]n cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information.”

In its 30-year practice, each institutional activity of the multilateral trading system – the dispute settlement mechanism, the daily management of the WTO Multilateral and Plurilateral Agreements by the WTO bodies, the WTO political pillar initiatives – has been highlighting the sustainability perspective of its wide and articulated legal framework.

Indeed, since its inception, the WTO case law clarified, e.g., that clean air is an exhaustible natural resource⁵, as well as sea turtles⁶, observing that “the objective of protecting human life and health ... ‘is both vital and important in the highest degree’”⁷ and “protecting the environment is no less important”⁸. WTO adjudicators also concluded that “market transparency, consumer protection, and fair competition”⁹, together with consumer information and animal welfare¹⁰ fall into the legitimate objectives recalled by Article 2.2 of the TBT Agreement. Very recently a WTO Panel found that “areas with high-carbon stock, such as forests, wetlands and peatland” are exhaustible natural resources within the meaning of GATT Article XX (g)¹¹, confirming that “the reduction of CO2 emissions is one of the policies covered by subparagraph (b) of Article XX, given that it can fall within the range

⁵ “The Panel Report took the view that clean air was a ‘natural resource’ that could be ‘depleted.’ Accordingly ... the Panel concluded that a policy to reduce the depletion of clean air was a policy to conserve an exhaustible natural resource within the meaning of Article XX(g)” (WT/DS2/AB/R, *United States – Standards for Reformulated and Conventional Gasoline (US – Gasoline)*; Appellate Body Report, adopted on 20 May 1996, at p. 14).

⁶ “Textually, Article XX(g) is *not* limited to the conservation of ‘mineral’ or ‘non-living’ natural resources. The complainants’ principal argument is rooted in the notion that ‘living’ natural resources are ‘renewable’ and therefore cannot be ‘exhaustible’ natural resources. We do not believe that ‘exhaustible’ natural resources and ‘renewable’ natural resources are mutually exclusive. One lesson that modern biological sciences teach us is that living species, though in principle, capable of reproduction and, in that sense, ‘renewable’, are in certain circumstances indeed susceptible of depletion, exhaustion and extinction, frequently because of human activities. Living resources are just as ‘finite’ as petroleum, iron ore and other non-living resources ... From the perspective embodied in the preamble of the WTO Agreement, we note that the generic term ‘natural resources’ in Article XX(g) is not ‘static’ in its content or reference but is rather ‘by definition, evolutionary’ ... It is, therefore, pertinent to note that modern international conventions and declarations make frequent references to natural resources as embracing both living and non-living resources ... Given the recent acknowledgement by the international community of the importance of concerted bilateral or multilateral action to protect living natural resources, and recalling *the explicit recognition by WTO Members of the objective of sustainable development in the preamble of the WTO Agreement*, we believe it is too late in the day to suppose that Article XX(g) of the GATT 1994 may be read as referring only to the conservation of exhaustible mineral or other non-living natural resources. Moreover, two adopted GATT 1947 panel reports previously found fish to be an ‘exhaustible natural resource’ within the meaning of Article XX(g). We hold that, in line with the principle of effectiveness in treaty interpretation, measures to conserve exhaustible natural resources, whether living or non-living, may fall within Article XX(g). We turn next to the issue of whether the living natural resources sought to be conserved by the measure are ‘exhaustible’ under Article XX(g). That this element is present in respect of the five species of sea turtles here involved appears to be conceded by all the participants and third participants in this case. The exhaustibility of sea turtles would in fact have been very difficult to controvert since all of the seven recognized species of sea turtles are today listed in Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (‘CITES’). The list in Appendix 1 includes ‘all species threatened with extinction which are or may be affected by trade.’ ... For all the foregoing reasons, we find that the sea turtles here involved constitute ‘exhaustible natural resources’ for purposes of Article XX(g) of the GATT 1994” (WT/DS58/AB/R, *United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp)*, Appellate Body Report, adopted on 6 November 1998, paras. 128, 130, 131, 134).

⁷ WT/DS332/AB/R, *Brazil – Measures Affecting Imports of Retreaded Tyres (Brazil – Retreaded Tyres)*, Appellate Body Report, adopted on 17 December 2007, para. 179.

⁸ *Ibid.*, para. 144.

⁹ WT/DS231/AB/R, *European Communities – Trade Description of Sardines (EC – Sardines)*, Appellate Body Report, adopted on 23 October 2002, para. 263.

¹⁰ See WT/DS381/AB/R, *United States – Measures concerning the importation, marketing and sale of tuna and tuna products (US – Tuna II (Mexico))*, Appellate Body Report, adopted on 13 June 2012, paras. 302-303.

¹¹ WT/DS600/R, *European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels (EU – Palm Oil (Malaysia))*, Panel Report, adopted 26 April 2024, para. 7.276.

of policies that protect human life or health”¹², as “global warming and climate change pose one of the greatest threats to life and health on the planet”¹³.

In parallel, the WTO political pillar confirmed and strengthened the sustainability nature of the multilateral trading system. Already in the 1996 Singapore Ministerial Conference, WTO Members declared that “[f]ull implementation of the WTO Agreements will make an important contribution to achieving the objectives of sustainable development”¹⁴, further stressing, in the 1998 Geneva Ministerial Declaration, that they would have continued “to improve [their] efforts towards the objectives of sustained economic growth and sustainable development”¹⁵.

It should therefore come as no surprise to note that the first international agreement implementing one of the Sustainable Development Goals (SDGs) of the UN 2030 Agenda¹⁶ has been reached within the Geneva system. The WTO Agreement on Fisheries Subsidies, adopted at the 2022 Geneva Ministerial Conference, is “the first broad, binding, multilateral agreement on ocean sustainability”¹⁷. It prohibits subsidies for fishing irregularly (illegal, unreported and unregulated (IUU) fishing) and catching overexploited stocks, thus putting into practice, even if with five years of delay¹⁸, SDG 14.6¹⁹.

More generally, with reference to the UN 2030 Agenda, it has to be underscored that the latter considers international trade as “an engine for inclusive economic growth and poverty reduction”, thus requiring States to maintain and go on strengthening “a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the World Trade Organization, as well as meaningful trade liberalization”²⁰. Consequently, the WTO Secretariat reports regularly to the UN High-Level Political Forum, indicating in its reports the contribution of the multilateral trading system to several SDGs²¹.

Last but not least, it has to be remarked that the WTO practice has recently been characterised by the setting up of initiatives concerning environmental and climate change issues, i.e. the Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade²², the Trade and Environmental Sustainability Structured Discussions (TESSD)²³, and the Fossil Fuel Subsidy Reform (FFSR)

¹² WT/DS472/R, Add.1 and Corr.1 / WT/DS497/R, Add.1 and Corr.1, *Brazil – Certain Measures Concerning Taxation and Charges (Brazil – Taxation)*, Panel Report, adopted 11 January 2019, as modified by Appellate Body Reports WT/DS472/AB/R / WT/DS497/AB/R, para. 7.880.

¹³ *EU – Palm Oil (Malaysia)*, Panel Report, para. 7.281.

¹⁴ WT/MIN(96)/DEC, *Singapore Ministerial Declaration*, 13 December 1996, para. 16.

¹⁵ *WTO Geneva Ministerial Declaration*, adopted on 20 May 1998, para. 4.

¹⁶ A/RES/70/1, *Transforming Our World: the 2030 Agenda for Sustainable Development*, Resolution adopted by the General Assembly on 25 September 2015.

¹⁷ WTO, *Agreement on Fisheries Subsidies*, https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm (accessed in August 2025).

¹⁸ The WTO Agreement on Fisheries will enter into force on 15 September 2025, having being ratified by two-thirds of the WTO membership. See IISD, *Milestone Reached as on WTO Global Agreement on Fisheries Subsidies Enters Into Force*, 9 September 2025.

¹⁹ “By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation.”

²⁰ UN 2030 Agenda, para. 68.

²¹ See World Trade Organization, *WTO’s Contribution to Attaining UN Sustainable Development Goals: 2024 Update to the High-Level Political Forum*, Geneva, 2024.

²² See World Trade Organization, *Plastics Pollution and Environmentally Sustainable Plastics Trade*, at the link https://www.wto.org/english/tratop_e/ppesp_e/ppesp_e.htm (accessed in August 2025).

²³ See World Trade Organization, *Trade and Environmental Sustainability*, at the link https://www.wto.org/english/tratop_e/essd_e/tessd_e.htm (accessed in August 2025).

initiative²⁴. The WTO system is also demonstrating a strong commitment to contribute to the achievement of the SDGs involving stakeholders and civil society: under the input of the WTO Director General Okonjo-Iweala²⁵, two advisory groups have been created, i.e. the Civil Society Advisory Group²⁶ and the Business Advisory Group²⁷, engaging non-state actors and stakeholders.

The purpose of the research project “L’Organizzazione mondiale del commercio quale protagonista dello sviluppo sostenibile nel rilancio del Sistema multilaterale”, co-funded by the Italian Ministry of Foreign Affairs and International Cooperation (Ministero degli Affari Esteri e della Cooperazione Internazionale (MAECI))²⁸, is to present and analyse the WTO as a major sustainability actor, also considering its reform efforts to promote fairness and inclusivity in the global economy, and better, more effective, management and functioning of the WTO Agreements and the WTO institutional structure. The research has been conducted constantly considering the approach and contribution of the European Union to the sustainability issues and reform process of the multilateral trading system: being the present study also addressed to Italian diplomats, the EU supranational dimension is regularly present in the works of the research team, as the Italian Ministry of Foreign Affairs develops its relevant activities also within the EU policies and in collaboration with the EU institutions. Special attention has been devoted to the WTO compatibility of major instruments of the European Green Deal, and to the development dimension, focusing on the African Countries through the analysis of the Piano Mattei.

To realize the present research, experts belonging to academia, together with officials from international (the WTO and the Advisory Centre on WTO Law (ACWL)), EU, and national institutions have been involved.

Beyond expressing my gratitude to all the authors of the present book, let me acknowledge once again the relevant and generous support of MAECI in funding this research, with the precious assistance of Dr. Giorgio Cammareri. Furthermore, I am very grateful to the Director of the Department of Legal Studies of the University of Bologna, Prof. Federico Casolari, for having welcomed and constantly encouraged this UNIBO-MAECI project. I am also obliged to my collaborators Drs. Alessandra Quarta, Giulia Bortino and Niccolò Lanzoni: their patient and industrious help has been essential for editing this book, recording the podcast series, and organizing the Bologna Workshop on 15 April 2025, where the members of the research group were able to present their preliminary work, exchange ideas and discuss, with the most authoritative views and comments by Dr. Enrico Valvo, Head of Common Trade Policy, MAECI Directorate-General for Europe and International Trade Policy, and Prof. Giorgio Sacerdoti, Emeritus at Bocconi University and former Member and President of the WTO Appellate Body.

The present research is being published at a moment of heavy difficulty for the WTO system. There is, in fact, the quasi-paralysis of the political pillar in adopting new rules and reforming the multilateral trading framework (see e.g. the South-African and Indian vetoes against the insertion in Annex IV of the WTO Agreement of the Investment Facilitation for Development Agreement (IFDA),

²⁴ See World Trade Organization, *Fossil Fuel Subsidy Reform*, at the link https://www.wto.org/english/tratop_e/envir_e/fossil_fuel_e.htm (accessed in August 2025).

²⁵ Cf. World Trade Organization Press Release, *DG Okonjo-Iweala Sets up Civil Society and Business Advisory Groups*, 21 June 2023.

²⁶ World Trade Organization, *Civil Society Advisory Group*, https://www.wto.org/english/forums_e/ngo_e/csag_e.htm (accessed in August 2025).

²⁷ World Trade Organization, *Business Advisory Group*, https://www.wto.org/english/forums_e/business_e/bag_e.htm (accessed in August 2025).

²⁸ For the story and further details and documents on the UNIBO-MAECI project, see the dedicated website at the link <https://site.unibo.it/wtosust/en>.

so much looked after by several low-income countries)²⁹ and the prolonged US blockage of the Appellate Body³⁰ combined with the recent tough contestations by Washington D.C. against the Marrakesh system alleging its inability to express the new global economy equilibrium, or obtain from China the observance of all the WTO rules³¹. While due attention is necessary for the reasons at the basis of several criticisms of the negative developments of globalization, a multilateral, transparent, informed, inclusive and rules-based system is still needed by the international Community to work towards the sustainability of the global economy, avoiding imbalances and constantly looking for a fair sharing of the wellness generated by exchanges and technological developments. We therefore humbly hope, with this book, to provide a constructive contribution to the debate on the reform of the WTO system, showing how sustainable development can be pursued and needs, to be achieved, also a renewed multilateral platform discussing innovative common trade rules and fostering constant dialogue.

Bologna, August 2025

²⁹ TWN Info Service on WTO and Trade Issues, *WTO: South Africa, India oppose IFD Agreement at MC13*, 1 March 2024.

³⁰ See, recently, the US veto against the proposal on Appellate Body appointments at the meeting of the WTO Dispute Settlement Body (DSB) in June 2025: WT/DSB/M/503, *Minutes of Meeting Held in the Centre William Rappard on 23 June 2025*, 15 July 2025.

³¹ US Presidential Documents, *Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits*, Executive Order 14257 of April 2, 2025, Federal Register Volume 90, Issue 65, April 7, 2025.