



WORLD TRADE
ORGANIZATION



WTO | 20 YEARS

Building pathways to
sustainable development

TRADE
and
ENVIRONMENT

Did you know?

The creation of the WTO in 1995 marked a crucial step in the history of multilateral trade, helping 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.



Sustainable development is at the heart of the WTO

Sustainable development and protection and preservation of the environment are enshrined in the WTO's founding document, the Marrakesh Agreement Establishing the WTO.

The Agreement recognizes that trade “should be conducted with a view to raising standards of living [and] ensuring full employment ... 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.”

“...the preamble attached to the WTO Agreement shows that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and international policy.”

**“US – Shrimp”,
Appellate Body**



Signing of the Marrakesh Agreement in 1994.

Trade can act as a catalyst for sustainable development

Upholding and safeguarding the multilateral trading system and acting to protect the environment and promote sustainable development can be mutually supportive goals. The challenge is to find ways to make trade and environmental policies work together for sustainable development. The founders of the multilateral trading system have equipped the WTO with a set of useful tools to assist members in meeting this challenge.

The international community confirmed this understanding at Rio+20, the 2012 United Nations Summit on Sustainable Development.

“We reaffirm that international trade is an engine for development and sustained economic growth, and also reaffirm 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.”

“The Future We Want”, 2012

Outcome document of Rio+20



WTO members have the right to adopt trade-related measures to protect the environment

The WTO's dispute settlement system has shown that WTO rules provide ample space for environmental concerns to be accommodated. Even if a measure undertaken by a WTO member is found to be inconsistent with basic WTO rules, it may be justifiable if it pursues an environmental or health objective, for example, and if certain conditions are fulfilled.

“WTO Members have a large measure of autonomy to determine their own policies on the environment (including its relationship with trade), their environmental objectives and the environmental legislation they enact and implement.”

**“US – Gasoline”,
Appellate Body**

Exception from GATT/WTO rules

Article XX of the General Agreement on Tariffs and Trade (GATT) lays out a number of specific instances in which WTO members may be exempted from trade rules. Article XX(b) and (g) allow WTO members to undertake measures inconsistent with the GATT if these are:

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

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

In addition, the introductory paragraph of Article XX has been designed to prevent the misuse of trade-related measures. An environmental measure 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.” These additional safeguards seek mainly to ensure that protectionism is not introduced through the back door.

What are the environmental policies covered by the exception from trade rules?

In disputes brought to the WTO over the past 20 years, the WTO's Dispute Settlement Body has found that a number of environmental and natural resource protection policies fall within GATT exceptions.

Examples include:

Paragraph b exemptions

Policies regarding:

- protection of dolphins
- air pollution
- the reduction of health risks linked to retreaded tyres

Paragraph g exemptions

Policies regarding conservation of:

- tuna stock
- salmon and herring
- dolphin stocks
- sea turtles
- clean air

The phrase “exhaustible natural resources” under Article XX(g) has been interpreted to include not only “mineral” or “non-living” resources but also living species which may be susceptible to depletion, such as sea turtles. 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.

Also in the same case, the Appellate Body accepted that a policy covered by Article XX(g) applied not only to turtles within US waters but also to those living beyond its national boundaries as there was a sufficient nexus between the migratory endangered marine populations involved and the United States for the purposes of this exemption.



“The words of Article XX(g), “exhaustible natural resources”, were actually crafted more than 50 years ago. They must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the environment.”

**”US – Shrimp”,
Appellate Body**

How environmental measures are applied

The introductory paragraph of Article XX emphasizes how the measure in question is applied. Specifically, the application of the measure must not constitute a “means of arbitrary or unjustifiable discrimination” or a “disguised restriction on international trade”.

“Through these requirements, the 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.”

**“Brazil – Retreaded Tyres”,
Appellate Body**

It requires that the measure does not constitute an abuse or misuse of the justifications made available under Article XX - that is to say, it must be applied in good faith. In the Brazil — Retreaded Tyres case, the Appellate Body recalled that the 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.

WTO dispute settlement rulings have highlighted some of the circumstances which may help to demonstrate that the government measure is applied in accordance with the introductory paragraph to Article XX. These circumstances include 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.

“Accordingly, we have difficulty understanding how discrimination might be viewed as complying with the chapeau of Article XX when the alleged rationale for discriminating does not relate to the pursuit of or would go against the objective that was provisionally found to justify a measure under a paragraph of Article XX.”

**“Brazil – Retreaded Tyres”,
Appellate Body**

The WTO is a forum for policy debate

The WTO Committee on Trade and Environment provides a forum where members can discuss trade and environment-related issues and analyse relevant policy challenges. Meetings of the committee allow governments to improve their understanding of the rapidly evolving intersection between trade and the environment. This is achieved, for example by WTO members sharing their own national experiences.

Trade and environment negotiations

WTO members are engaged in negotiations on trade and environment as part of the broader Doha Development Agenda. These negotiations are aimed at liberalizing trade in environmental goods and services as a way to encourage the flow of environmental technologies across borders. In addition, the aim of the negotiations is also to ensure a harmonious co-existence

between WTO rules and specific trade obligations in agreements struck at the multilateral level to protect the environment. The Doha Round negotiations also encompass other issues related to the environment, including areas such as fisheries subsidies.

“We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement.

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.”

Doha Ministerial Declaration, 2001

Further information on trade and environment

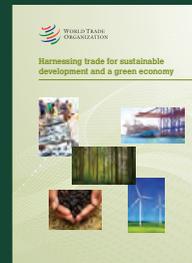
WTO publications can be purchased from the WTO Online Bookshop and from a worldwide network of distributors. They can also be downloaded from the WTO website.

WTO trade and environment webpage

www.wto.org/environment



WTO-UNEP Report:
Trade and Climate
Change



Harnessing trade for
sustainable development
and a green economy