# SECTION 11

# TRADE AND THE ENVIRONMENT

# COMMERCE ET ENVIRONNEMENT

# CHAPTER 36:
# INTERNATIONAL TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT[1]

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## 1 Introducing the international trade, environment and development debate

Issues related to international trade and the environment undoubtedly are of significance to developing countries like Cameroon because they argue that developed countries have depleted resources and indulged in environmentally harmful practices during the past century, in order to achieve unprecedented high standards of living.[2] The developing countries therefore demand a general but differentiated responsibility, seeking open trade and compensation for adopting environmentally restraining policies.[3] Upon further reflection on the link between economic growth activities, environmental protection and social development, the triangular debate on these topics will be highlighted briefly, by introducing the various perspectives.[4]

### 1.1 The trade perspective

Trade creates the wealth, which increases human well-being. Trade can be good for the environment because it creates wealth that can be used for environmental improvement, and the efficiency gains from trade can mean fewer resources used and less waste produced. Increased economic growth leads to more environmental protection and a higher standard of living. The exchange of goods introduces new technologies, which reduce emissions and save raw materials and natural resources.

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1 This chapter is partially based on Ruppel (2016a).
2 Ruppel (2009b; 2010c, e).
3 Goyal (2006:11).
4 For further reading see: Goyal (2006) and UNEP (2005d).

### 1.2 The environmental perspective

The environment actually represents a higher order than trade and the *status quo* seriously threatens the earth's eco-systems. Developing countries try to protect themselves against costly environmental demands. In contrast, the wealth created by trade will not necessarily result in environmental improvements. Trade liberalisation is deemed to cause greater harm, leading to exports of natural resource allocation to other countries and thereby causing increased environmental degradation.[5]

### 1.3 The development perspective

Developing countries' top priority should be to reduce poverty. Openness to trade (market liberalisation) and investment may be a key to doing so by increasing exports, even though the link between market liberalisation and economic growth does not happen automatically. Developed countries protect their industries with subsidies, special trade rules and tariff systems which place exporters at a disadvantage in developing countries. Demands that developing countries comply with the environmental standards of developed countries are unfair, particularly if they are not accompanied by technical or financial assistance. Priorities differ; in Africa, for example, clean water is paramount and, historically, developed countries caused most of the environmental damage in the first place.

### 1.4 Sustainable development: the answer to the dilemma?

Principle 11 of the 1972 Stockholm Declaration states that

> [t]he environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organisations with view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

In its 1987 report *Our Common Future*, the Brundtland Commission defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[6] Since the 1992 UN Conference on Environment and Development in Rio de Janeiro, the principle of sustainable development has influenced a broad number of international instruments,

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5 For a detailed discussion see UNEP (2005d:3ff).

6 The World Commission on Environment and Development.

both of legal and non-legal in nature. It aims at embracing and balancing ecology, economy, conservation and utilisation and has become a worldwide governing political *Leitmotiv* for environment and development. It can be broadly understood as a concept that is characterised by (i) the link between the policy goals of economic and social development and environmental protection; (ii) the qualification of environmental protection as an integral part of any developmental measure, and vice versa; and (iii) the long term perspective of both policy goals, that is the States' intergenerational responsibility.[7]

Apart from the question, whether the principle of sustainable development actually enfolds normative quality,[8] the concept reflects the idea of distributive justice and can play an important role in the process of bridging the North-South divide in international and developmental relations.[9] Sands formulated an "integration approach", where economic and social development must be an integral part of environmental protection, and vice versa.[10]

Although many African countries are classified as least-developed countries, the southern African region is endowed with numerous natural resources, fisheries, and minerals. In turn, environmental challenges include among other things, land degradation, poor land use and land management, exploitation of natural resources, water scarcity, bio-diversity loss and climate change. In this regard poverty and challenges of governance often collide with different interests in society and political pressures.[11]

The former executive Director of the United Nations Environmental Programme (UNEP), Klaus Töpfer, stated that "sustainable development cannot be achieved unless laws governing society, the economy, and our relationship with the Earth connect with our deepest values and are put into practice internationally and domestically." The problem continues to lie, however, in that such laws "must be enforced and complied with by all of society, and all of society must share this obligation".[12] But how can the law work for everyone equitably (developing and developed countries), reduce poverty, retain wealth and at the same time protect the environment? The Commission on Legal Empowerment of the Poor came up with an analysis and a few reasonable suggestions in its 2008 report:[13]

> Transforming a society to include the poor requires comprehensive legal, political, social, and economic reforms.…Legal empowerment is not a substitute for other important development

7 Beyerlin (1996).
8 Cf. Sands (2003:254).
9 Beyerlin (1996) with further references.
10 Sands (2003:263).
11 Kameri-Mbote & Odote (2009:37).
12 Klaus Töpfer in the Preface to Zaelke *et al.* (2005).
13 Commission on Legal Empowerment of the Poor (2008:1ff.).

> initiatives, such as investing more in education, public services, and infrastructure, enhancing participation in trade, and mitigating and adapting to climate change: instead, it complements such initiatives, multiplying their impact by creating the conditions for success….While the government is the key responsible actor, the 'duty bearer' in human rights terms … the United Nations and the broader multilateral system can help by lending their full support. The international non-governmental community can do the same.…regional political organisations, regional banks, and regional UN institutions; civil society and community-based organisations; the business community; religious communities and indigenous spiritual traditions; and various professional associations …. The world as a whole will benefit as more and more states undertake the reforms needed to empower the poor.…Who can deny that we all share a responsibility to protect: one which we are far from meeting? Whether for climate change, trade, migration, or security, the world will expect fair rules for the 21 century, rules offering protection and opportunity for all in accordance with shared human rights obligations.

It is also important to acknowledge that not only rests the responsibility on national governments and international organisations but also on corporate businesses to enter into a new era of sustainable development. The importance of a harmonised interplay between trade and sustainable development is well reflected in the universally applicable (to all countries, not just developing nations and emerging economies) sustainable development goals (SDGs), which are universally applicable (to all countries, not just developing nations and emerging economies).

At the United Nations Sustainable Development Summit on 25 September 2015, world leaders adopted the 2030 Agenda for Sustainable Development, which includes a set of 17 Sustainable Development Goals (SDGs) to end poverty, fight inequality and injustice, and tackle climate change by 2030. The Sustainable Development Goals, otherwise known as the Global Goals, build on the Millennium Development Goals (MDGs), eight anti-poverty targets that the world committed to achieving by 2015. The MDGs, adopted in 2000, aimed at an array of issues that included slashing poverty, hunger, disease, gender inequality, and access to water and sanitation. Enormous progress has been made on the MDGs, showing the value of a unifying agenda underpinned by goals and targets. Despite this success, the indignity of poverty has not been ended for all.[14]

The SDGs, and the broader sustainability agenda, go much further than the MDGs, addressing the root causes of poverty and the universal need for development that works for all people. All 17 SDGs are relevant to Cameroon. The SDGs put significant emphasis on the role that trade can play in promoting sustainable development and in this context, the World Trade Organization (WTO) with its 164 mem-

14 See http://www.undp.org/content/undp/en/home/mdgoverview/post-2015-development-agenda.html, accessed 9 November 2017.

bers[15] has an important role to play. The SDGs directly refer to WTO activities in some of the formulated goals, such as:

- SDG 2 on hunger, food security, nutrition and sustainable agriculture;
- SDG 3 on healthy lives and wellbeing;
- SDG 8 on economic growth, employment and work;
- SDG 10 on inequalities within and among countries;
- SDG 14 on oceans, seas, and marine resources; and
- SDG 17 on strengthening the global partnership for sustainable development, which contains a section on trade, including a commitment to promoting a "universal, rules-based, open, non-discriminatory and equitable multilateral trading system" under the WTO.[16]

## 1.5 The role of trade for sustainable development and the reduction of poverty in Africa[17]

Human rights and good governance have an impact on the domestic investment climate, which contributes to growth, productivity and the creation of jobs, all factors essential for economic growth and sustainable reductions in poverty. The furtherance of economic development, reduction of poverty and the promotion of human rights in fact go hand in hand. The aforementioned relationship has grown closer over the past few years due to increasing discussions in the world community on related matters and issues. The connection can be seen as a two-way relationship insofar as economic development is obliged to respect human rights in a democratic society. Conversely, human rights can be given more effect through economic growth, as a possible outcome of economic growth is the increasing availability of resources, resulting in the reduction of poverty and a higher standard of living.[18] Both human rights and good governance have an impact on the investment climate, which again contributes to productivity and the creation of jobs, all essential for economic growth, sustainable development and the reduction of poverty.[19]

The evidence of African poverty and growth rates leaves little room for doubt about the need for financial assistance and an improved trade climate. China, for example, is providing substantial funds for investment and development in many African countries. China follows a 'purely capitalist' approach, not attempting to assist in

15 As at 31 January 2018.
16 See https://www.wto.org/english/thewto_e/coher_e/sdgs_e/sdgs_e.htm, accessed 17 January 2018.
17 The following passages are largely based on Ruppel (2010b, 2012).
18 Cf. Ruppel (2009a; 2010a); Ruppel & Bangamwabo (2008).
19 Ruppel (2009b).

the facilitation of social or political change through the pursuit of wealth and although this approach seems appealing to many African leaders,[20] it is questionable because it does not attempt to improve social welfare in the targeted countries.[21]

Far more than any unconditional investment and development aid, trade can prove to be the catalyst, given favourable conditions, to uplift millions of people from poverty. African countries could gain disproportionately from further global trade reform but it is widely acknowledged that a level playing field does not yet exist in the current world trade system, at least not to the required extent. Developing countries still face

numerous hurdles, including high tariffs against their exports and subsidised competition. Nevertheless, the participation of developing countries in the global trading system is the most effective way of encouraging development and helping to alleviate poverty. A key objective of the on-going round of WTO negotiations, the Doha Development Round, is to assist developing countries more fully to reap the benefits of international trade. The liberalisation of agriculture in particular is hoped to provide significant benefits to developing countries in Africa.[22] In this light, free trade agreements (FTAs) can bring about economic benefits by reducing barriers to trade and investment between participating parties. They can open markets faster than would otherwise be possible through the WTO and build on the commitments already agreed in the WTO. Over two-thirds of WTO members are developing and least-developed countries. Members could gain access to a range of special provisions and assistance contained in the rules of the WTO. The WTO's Committee on Trade and Development and its Sub-Committee on Least-Developed Countries monitor the implementation of provisions designed to assist developing and least-developed countries. The committees also monitor the substantial amount of training and technical assistance provided to developing countries by the WTO.[23] Yet, the design of the multilateral trade regime needs to shift from one which overemphasises a market access perspective to one which prioritises enabling (or at least not disabling) the domestic policy space available to developing countries to make a range of diverse, including unorthodox, policy choices and pursue the concomitant strategies. It should also not be evaluated on the basis of whether it maximises the flow of goods and services, but on whether trade arrangements, current and future, maximise possibilities for human development, especially in developing countries. An implication is that multilateral trade rules will need to adjust 'one-size-fits-all' solutions that really

20 Politicians often receive so-called 'signature bonuses' for approving resource or other investment deals.
21 Keenan (2009:125).
22 Khor & Hormeku (2006); Ruppel (2010c).
23 (ibid.).

only suit a few powerful members. The global trade governance framework requires additional asymmetric rules in favour of the weakest members. In the long run, such rules will be beneficial for both developed and developing countries. Trade rules therefore have to allow for diversity in national institutions and standards. Countries should have the right to protect their own institutions and development priorities where necessary, and no country has the right to impose its institutional preferences on others. In order to create a trade regime friendly to poverty reduction and human development, governments must have the space to design appropriate policies.[24]

Article 11 of the International Covenant on Economic, Social and Cultural Rights, is concerned with the right to food and advocates "taking into account the problems of both food importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need. Between the weak and the strong, poor and the rich, liberty is the oppressor and the law is freedom."[25] Negotiating and implementing such rules is the WTO's basic mission, and its primary vocation in so doing is to regulate, and not to deregulate, as is often thought. It also presupposes the existence of social policies, whether to secure redistribution or provide safeguards for the men and women whose living conditions are disrupted by changes in the international division of labour. It does not suffice unless it is accompanied by policies designed to correct the imbalances between winners and losers; and the greater the vulnerability of economies, societies or individuals, the more dangerous the imbalances. It does not suffice unless it goes hand in hand with a sustained international effort to assist developing countries to build the capacity required to take advantage of open markets.[26]

Trade can be a powerful source of economic growth. Trade liberalisation is not automatically or always associated with economic growth, let alone poverty reduction or sustainable development. Signing up to unbalanced agreements has the potential to lead to violations of economic and social rights of people.[27] Economic Partnership Agreements (EPA) negotiations between various states in Africa and the EU have proven that trade and investment liberalisation is not always linked with development strategies,[28] let alone with mechanisms which guarantee labour and other human rights. Moreover, regional integration[29]

> ... can only be meaningful if it facilitates the integration of existing economic blocs in Africa by promoting intra-regional trade and encouraging diversification and the establishment of linkages between production units across the continent, thus effectively creating a larger regional

24 Cf. Ruppel (2012).
25 Lamy (2009).
26 (ibid.).
27 Cf. Dessande (2010); Ruppel (2010b).
28 Ruppel (2012:156).
29 Ukpe (2010:231).

market. The resulting increased productivity and product competitiveness will place Africa on a better footing to participate gainfully in reciprocal inter-regional trade. To the extent that the current EPA process undermines Africa's regional integration initiatives, it will not further the integration of African countries into world trade.

## 2 The WTO and the North-South Divide

Helping developing and least-developed countries secure a share in the growth of international trade commensurate with the needs of their economic development has steadily gained importance in recent years. Developing and least-developed country members can gain access to a range of special provisions and assistance contained in the rules of the WTO – in general, referred to as special and differential treatment. The WTO provides no explicit definition as to which country is considered to be a developing country. The status of a member as a developing country is to a large extent based on self-selection and members announce whether they consider themselves developing countries. In some cases, the developing country status is part of the accession negotiations.[30] Least-developed countries, being those that have been designated as such by the United Nations,[31] benefit from additional special and differential treatment.

Altogether, over two-thirds of WTO members are developing and least-developed countries. In recent years, they have participated more actively and efficiently in WTO negotiations and decision-making. In the course of recent negotiations, developing countries, including least-developed countries, have been able to make their voice heard and their concerns considered.[32] Developing countries are represented in several (sometimes overlapping) negotiating groups, such as the African group or the group of least-developed countries. These groups aim to speak with one voice using a single co-ordinator or negotiating team and have gained in influence in WTO negotiations and decision-making. The standard procedure for decision-making in the WTO is based on consensus. Under WTO rules, this means that "the body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no member, present at the meeting when the decision is taken, formally objects to the proposed decision."[33]

Where consensus is not possible, the WTO agreement allows for taking decisions by voting on the basis of one country, one vote, and with a vote being won with a majority of the votes cast. This, however, is implemented only very exceptionally.

30 Van den Bossche & Zdouc (2013:105).
31 Which is currently the case for 48 countries. See UNCTAD (2014b).
32 Van den Bossche & Zdouc (2013:148).
33 See footnote 1 to Article IX of the WTO Agreement.

There is a broad variety of provisions granting special and differential treatment to developing countries.[34] GATT for example contains a special section on trade and development. In very general terms, the WTO framework includes provisions allowing developed countries to treat developing countries more favourably than other WTO members, and provisions granting extra time for developing countries to fulfil their commitments under certain WTO agreements. Other provisions are designed to increase developing countries' trading opportunities through greater market access, or require WTO members to safeguard the interests of developing countries when adopting domestic or international legislation. Moreover, provisions on technical assistance for developing countries are part of WTO efforts in favour of developing countries. Legal assistance and training of government and other officials are special fields of support to developing countries In sum, it can be stated that the WTO's legal framework contains numerous provisions for special and differential treatment for developing countries. Technical support forms an important pillar for dealing with the special needs of developing countries.

Concerns have been raised with regard to the effectiveness of the numerous provisions on special and differential treatment for developing countries, which have been considered as best-endeavour provisions that are not enforceable.[35] Nevertheless, some of the developing countries do play an increasingly important and active role in the WTO as they become more important in the global economy. Integrating developing economies into the global trading system is an important and controversially discussed issue at multilateral trade negotiations, and remains one of the challenges facing the WTO. As to the challenges between sustainable development and trade, these are notably driven by advanced economies as well as civil society. For the time being, developing countries are wary of potential agreements on trade and the environment. The on-going negotiations on climate change are exemplary in this regard.

A very important factor in the current discussions on development, and on special and differential treatment in the WTO, is the Doha Development Round of negotiations. It was officially launched at the WTO's Fourth Ministerial Conference in Doha, Qatar, in November 2001 and is currently at a crossroads. One fundamental objective of the Doha Development Agenda is to improve the trading prospects of developing countries. Although its future remains uncertain owing to controversies among members on many items on the agenda, one major step forward was the Bali Package concluded at the Ninth Ministerial Conference of the WTO in December 2013. The main issues of this conference included measures to support least-developed WTO member countries and a review mechanism for the special and dif-

34 For a comprehensive compilation of the special and differential treatment provisions, and their use, see WTO (2015).

35 Keck & Low (2004).

ferential treatment provisions applicable to least-developed countries and developing countries in all WTO agreements. Part II of the Bali Package relates to the work under the Doha Development Agenda. With regard to development and least-developed country issues, Part II of the Bali Package includes among others preferential rules of origin for least-developed countries; duty-free and quota-free market access for least-developed countries; and a monitoring mechanism on special and differential treatment. These are important achievements with regard to the Doha Development Round. However, an enormous amount remains to be accomplished (especially an encompassing agreement on agriculture) and the implementation of decisions remains a major challenge. As it is not unlikely that some issues, and in particular the issue of agriculture, is not going to be resolved in the current round, the focus of attention is shifting to mega-regional trading arrangements.

It is hoped that the outcomes of the on-going Doha negotiations will reflect the beneficial role that world trade could play in sustainable development and the reduction of poverty. A key objective of the on-going round of WTO negotiations is to assist developing countries more fully in reaping the benefits of international trade. The liberalisation of agriculture, in particular, is hoped to provide significant benefits to developing countries. Trade can be a powerful source of economic growth. But trade liberalisation is not automatically or always associated with economic growth – let alone poverty reduction or sustainable development.

In December 2013, WTO members concluded negotiations on a Trade Facilitation Agreement at the Bali Ministerial Conference, as part of a wider 'Bali Package'. Since then, WTO members have undertaken a legal review of the text. In line with the decision adopted in Bali, WTO members adopted on 27 November 2014 a Protocol of Amendment to insert the new Agreement into Annex 1A of the WTO Agreement.

The TFA entered into force on 22 February 2017, following its ratification by two-thirds of the WTO membership. A full implementation of the TFA could reduce trade costs significantly with the biggest gains in the poorest countries – especially in Africa.[36] To date, 19 African countries have ratified the TFA.[37]

The TFA will help the movement, release and clearance of goods, including goods in transit. It will also improve cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. These are all areas in which most African countries have significant challenges.[38] The Trade Facilitation

36 See https://www.wto.org/english/news_e/news17_e/ddgra_08may17_e.htm, accessed 18 February 2018.
37 See https://www.tfadatabase.org/ratifications, accessed 18 February 2018.
38 See https://www.wto.org/english/news_e/news17_e/ddgra_08may17_e.htm, accessed 18 February 2018.

Agreement is expected to provide significant advantages for developing countries to couple intra-regional trade with infrastructure development efforts and to boost considerable growth potential that has so far largely remained untapped in Africa.[39]

## 3 The WTO and the environment

Today, the WTO sees itself primarily as a forum for governments where international trade agreements are negotiated. The WTO provides a system of trade rules covering goods, services and intellectual property, as well as a legal and institutional framework for the implementation and monitoring of these agreements, and a venue for settling disputes arising from the interpretation and application of WTO agreements. Administering WTO trade agreements, monitoring national trade policies, providing technical assistance and training for developing countries and co-operating with other international organisations are further functions of the WTO.[40] More specifically, the WTO's main activities are:

- negotiating the reduction or elimination of obstacles to trade (import tariffs, other barriers to trade) and agreeing on rules governing the conduct of international trade (e.g. anti-dumping, subsidies, product standards, etc.);
- administering and monitoring the application of the WTO's agreed rules for trade in goods, trade in services, and trade-related intellectual property rights;
- monitoring and reviewing the trade policies of members, as well as ensuring transparency of regional and bilateral trade agreements;
- settling disputes among members regarding the interpretation and application of the agreements;
- building capacity of developing country government officials in international trade matters;
- assisting the process of accession of some 30 countries who are not yet members of the organisation;
- conducting economic research and collecting and disseminating trade data in support of the WTO's other main activities; and
- educating the public about the WTO, its mission and its activities.[41]

The WTO's founding and guiding principles remain the pursuit of open borders, the guarantee of the most-favoured-nation principle and non-discriminatory treatment by

39 Cf. WTO website for the latest version of the Agreement (WT/L/931, previously issued under WT/PCTF/W/27).

40 See Article III of the Agreement Establishing the WTO.

41 See http://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm, accessed 30 January 2014.

and among members, and a commitment to transparency in the conduct of its activities. The opening of national markets to international trade, with justifiable exceptions or with adequate flexibilities, will encourage and contribute to sustainable development, raise people's welfare, reduce poverty, and foster peace and stability. At the same time, the liberalisation of markets must be accompanied by sound domestic and international policies which contribute to economic growth and development according to each member's needs and aspirations.[42]

Although the the WTO is primarily concerned with reducing trade barriers and eliminating discriminatory treatment in international trade, nowadays world trade law is also framed by the concept of sustainable development. Although environmental issues have not been negotiated as a separate topic during the Uruguay Round, the agreement establishing the WTO (unlike the General Agreement on Tariffs and Trade (GATT)) has anchored the objective of sustainable development and the need to protect and preserve the environment within its Preamble:

> 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.

Although this statement in the Preamble is more of a policy goal than a binding principle, it has significant weight in decision-making and dispute resolution and can make an important difference to the agreement's operation in practice. The importance of the citation of sustainable development in the Preamble has, for example, been highlighted by the WTO's Appellate Body in the so-called Shrimp – Turtle Case.[43] However, trade regulations are not, and cannot be, a substitute for environmental regulations. Nowadays, the world trade order is *de facto* closely related to international environmental policy and its institutions. Environmental degradation and pollution are largely induced by economic activities and international trade flows.

But what is the WTO's relationship to the environment? At first glance, the WTO provides a forum for negotiating agreements aimed at reducing obstacles to international trade and ensuring a level playing field for all, thus contributing to economic growth and development.[44] The WTO is not an environmental protection agency. So far, its competence in the field of trade and environment is limited to trade policies

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42 (ibid.).

43 WT/DS58 Appellate Body Report, adopted on 21 November 2001, available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm, accessed 28 April 2018. This case will be sketched below in the subsection on relevant WTO disputes.

44 WTO (2015:9); VanGrasstek (2013:3); Van den Bossche & Zdouc (2013:84).

and to the trade-related aspects of environmental policies that have a significant effect on trade. However, in addressing the link between trade and environment, the two fields can complement each other. Overall, the GATT/WTO rules already provide significant scope for members to adopt national environmental protection policies. The right of governments to protect the environment is confirmed by WTO agreements under certain conditions. This is regulated by way of exceptions that allow governments under certain conditions to implement policies to protect the environment but which affect trade. Trade liberalisation for developing country exports, along with financial incentives and technology transfers, are necessary to help developing countries generate the necessary resources to protect the environment and work towards sustainable development. Improved co-ordination on trade- and environment-related issues at the national level between trade and environmental officials, as well as increased co-ordination at the international level, could enhance mutual support between the trade and environmental regimes.

## 4 The Committee on Trade and Environment

The WTO's Committee on Trade and Environment (CTE) was established in 1994 by the Marrakesh Ministerial Decision on Trade and Environment.[45] As subsidiary body of the General Council of the WTO, the CTE is responsible for implementing the mandate the council was given by the Decision on Trade and Environment. The CTE meets several times a year and membership is open to all WTO Members. Observer governments and observers from inter-governmental organizations are invited to participate in CTE meetings. Originally, the CTE was endowed with broad mandates to identify the relationship between trade measures and environmental measures in order to promote sustainable development and[46]

> 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….

The CTE was *inter alia* mandated to discuss:[47]

- the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;

45 See http://www.wto.org/english/docs_e/legal_e/56-dtenv_e.htm, accessed 10 November 2017.
46 See 1994 Marrakesh Ministerial Decision on Trade and Environment at http://www.wto.org/english/docs_e/legal_e/56-dtenv_e.htm, accessed 10 November 2017.
47 See WTO 2017 Report of the Committee on Trade and Enviroment, WT/CTE/24.

- 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 charges and taxes for environmental purposes;
- the relationship between the provisions of the multilateral trading system and 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;
- the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights;
- the work programme envisaged in the Decision on Trade in Services and the Environment; and
- 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.

Some of the items contained in the original ten items programme are being negotiated in the course of the Doha negotiations.[48] Considering its mandates and the items of its work programme, the CTE is an important institution to find a balance between trade and environment in general, and more particularly between legal implications of the trading system and multilateral environmental agreements.

Such is for instance the use of eco-labels (i.e. labelling products according to environmental criteria) by governments, industry and non-governmental organizations (NGOs) increasing. However, concerns have been raised about the growing complexity and diversity of environmental labelling schemes:[49]

48 For further information see http://www.wto.org/english/tratop_e/envir_e/cte00_e.htm, accessed 10 November 2017.

49 See https://www.wto.org/english/tratop_e/envir_e/labelling_e.htm, accessed 20 February 2018.

This is especially the case with labelling based on life-cycle analysis, which looks at a product's environmental effects from the first stages of its production to its final disposal. These requirements could create difficulties for developing countries, and particularly small and medium-sized enterprises in export markets. WTO members generally agree that labelling schemes can be economically efficient and useful for informing consumers, and tend to restrict trade less than other methods. This is the case if the schemes are voluntary, allow all sides to participate in their design, based on the market, and transparent. However, these same schemes could be misused to protect domestic producers. For this reason, the schemes should not discriminate between countries and should not create unnecessary barriers or disguised restrictions on international trade. A particularly thorny issue in the eco-labelling debate has been the use of criteria linked to processes and production methods (PPMs).

## 5 The 2001 Doha Declaration and the environment

The 2001 Doha Declaration envisages trade, the environment and sustainable development to as mutually supportive. The declaration was adopted at the Doha Ministerial Conference in 2001 emphasising the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any member that is not a party to the MEA in question; procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status; the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services. The Committee on Trade and Environment was instructed, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development; the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and labelling requirements for environmental purposes. The importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them was stressed.[50]

Agenda 21 promulgated that international trade and environmental laws should be mutually supportive. In this context, the relationship of the WTO rules and MEAs is

50 The Doha Ministerial Declaration is available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm, accessed 10 November 2017.

not always clear.[51] Of the many MEAs currently in existence, over 20 incorporate trade measures to achieve their goals. Such trade-restricting measures may conflict with WTO rules (this problem is reflected in the Chile – Swordfish case).[52]

The relationship between MEAs and WTO regulation is monitored by the CTE and is mostly not so problematic in cases, where all WTO members concerned are at the same time parties to the specific MEA in question. Then the case can be dealt with under the general obligations of public international law. WTO regulations will in general terms not hinder members, which are parties to an MEA to apply it accordingly. More problematic are cases in which one of the parties concerned is not a WTO member, respectively not a party to the MEA in question.[53]

## 6 WTO Agreements and their environmentally relevant provisions

### 6.1 The General Agreement on Tariffs and Trade (GATT)

The General Agreement on Tariffs and Trade (GATT) covers international trade in goods. The workings of the GATT agreement are the responsibility of the Council for Trade in Goods (Goods Council) which is made up of representatives from all WTO member countries. GATT 1994, Articles I and III deal with non-discrimination. One component of the principles of non-discrimination is the most-favoured-nation (MFN) clause (Article I). It regulates that WTO members are bound to treat the products of other members not less favourable than accorded to the products of any other country. No country may give special trading advantages to another or to discriminate against it. This means that all members are on an equal footing, and all share the benefits of any move towards lower trade barriers. The MFN principle ensures that developing countries and others with little economic leverage are able to benefit freely from the best trading conditions, whenever and wherever they are negotiated. Another principle of non-discrimination is the national-treatment (NT) principle (Article III); it regulates that once goods have entered a market they must be treated no less favourably than equivalent domestically-produced goods.

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51 E.g. the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; the 2001 Stockholm Convention on Persistent Organic Pollutants (POPs); the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the 1985 Vienna Convention for the Protection of the Ozone Layer; the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer; the 1992 Bonn United Nations Framework Convention on Climate Change and its 1997 Kyoto Protocol; and the 1992 Rio Convention on Biological Diversity, to name but a few of the most prominent MEAs.

52 Discussed in below in Section 8 of this chapter.

53 Stoll & Schorkopf (2006:258).

Non-discrimination in terms of environmental concerns ensures to prevent the abuse of environmental policies and of their usage as disguised restrictions on international trade.

Moreover, GATT Article XI provides for an elimination of quantitative restrictions. Article XI has been violated in the context of a number of environmental disputes in which countries have imposed bans on the importation of certain products; it therefore has relevance for trade and environment discussions. Most importantly, Article XX grants general exceptions from the aforementioned GATT rules. Article XX(b) lists measures necessary to protect human, animal or plant life and health; Article XX(g) lists measures relating to the conservation of exhaustible natural resources. WTO members may be exempted from GATT rules in specific instances. However, measures must be necessary (necessity-test). If the conditions set by Article XX are fulfilled, they must still pass the test of the introductory clause (Chapeau) of Article XX. According to the Chapeau measures may not be pronounced as arbitrary and unjustifiable discrimination between countries where the same conditions prevail and they may not constitute a disguised restriction on international trade. GATT rules provide significant scope for members to adopt national environmental protection policies. GATT rules impose only one requirement in this respect, that of non-discrimination. WTO members are free to adopt national environmental protection policies provided that they do not discriminate between imported and domestically produced like products (NT principle), or between like products imported from different trading partners (MFN clause). Non-discrimination is one of the main principles on which the multilateral trading system is founded. It shall secure predictable access to markets, protect the economically weak from the more powerful, and guarantee consumer choice.[54]

## 6.2 The General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services (GATS) is among the World Trade Organisation's most important agreements. The agreement, which came into force in January 1995, is the first and only set of multilateral rules covering international trade in services. It has been negotiated by the member governments, and sets the framework within which firms and individuals can operate. The GATS has two parts: the framework agreement containing the general rules and disciplines; and the national schedules which list individual countries' specific commitments on access to

54 On the trade and environment negotiations see https://www.wto.org/english/tratop_e/envir_e/envir_negotiations_e.htm, accessed 10 November 2017.

their domestic markets by foreign suppliers.[55] GATS contains a general exceptions clause in Article XIV, similar to that of GATT Article XX. In addressing environmental concerns, GATS Article XIV(b) allows WTO members to maintain policy measures inconsistent with GATS if this is necessary to protect human, animal or plant life or health. This must not result in arbitrary or unjustifiable discrimination and may not constitute disguised restriction on international trade. GATS Article XIV Chapeau is identical to that of GATT Article XX.

### 6.3 The Agreement on Technical Barriers to Trade (TBT)

The Agreement on Technical Barriers to Trade (TBT) attempts to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. Technical regulations and product standards may vary from country to country. Many differing regulations and standards make life difficult for producers and exporters. If regulations are set arbitrarily, they could be used as an excuse for protectionism.[56] The TBT aims to avoid unnecessary obstacles to trade. Product specifications, whether mandatory or voluntary (known as technical regulations and standards), as well as procedures to assess compliance with those specifications (known as conformity assessment procedures), should not create unnecessary obstacles to trade. Article 2.2 provides for legitimate objectives for countries to pursue protection of human health or safety; protection of animal or plant life; and protection of the environment.

### 6.4 The Agreement on Sanitary and Phyto-sanitary Measures (SPS)

The Agreement on Sanitary and Phyto-sanitary Measures (SPS) deals with the following problem: How do we ensure that our country's consumers are supplied with food that is safe to eat and safe by the standards considered appropriate? And at the same time, how can we ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers?[57] The SPS Agreement is very similar to the TBT Agreement, but covers a narrower range of measures. It covers measures taken by countries to ensure the safety of foods, beverages and feedstuffs from additives, toxins or contaminants, or for the protection of countries from the

55 See http://www.wto.org/english/tratop_e/serv_e/gats_factfiction1_e.htm, accessed 10 November 2017.
56 See http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm, accessed 10 November 2017.
57 See http://www.wto.org/english/tratop_e/sps_e/sps_e.htm, accessed 10 November 2017.

spread of pests or diseases. It recognises the right of members to adopt SPS measures but stipulates that they must be based on a risk assessment, should be applied only to the extent necessary to protect human, animal or plant life or health, and should not arbitrarily or unjustifiably discriminate between countries where similar conditions prevail. The SPS objectives aim to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages and foodstuffs.

## 6.5 The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) introduced intellectual property rules into the multilateral trading system for the first time. Ideas and knowledge are an increasingly important part of trade. Most of the value of new medicines and other high-technology products are contained in the amount of invention, innovation, research, design and testing involved. Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not because of the plastic, metal or paper used to make them. In the past, products were traded as low-technology commodities now contain a higher proportion of invention and design in their value; for example, branded clothing or new varieties of plants. Creators can be given the right to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them. These are intellectual property rights. They take a number of forms. For example books, paintings and films are protected under copyright; inventions can be patented; brand names and product logos can be registered as trademarks; and so on. Governments and parliaments have given creators these rights as incentive to produce ideas that will benefit society as a whole. The extent of protection and enforcement of these rights varies around the world; as intellectual property became more important in trade, these differences became a source of tension in international economic relations. New internationally agreed upon trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and for disputes to be settled more systematically.[58] TRIPS stipulates patents are available for inventions in all fields of technology. It however also regulates the permissible exceptions thereto in Section 5, Article 27.

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58 From http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm, accessed 10 November 2017.

## 6.6 The Agreement on Subsidies and Countervailing Measures (SCM)

The Agreement on Subsidies and Countervailing Measures (SCM) disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies. Under the agreement, a country can use the WTO's dispute-settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. Alternatively, a country can launch its own investigation and ultimately charge extra duty (countervailing duty) on subsidised imports found to be detrimental to domestic producers.[59] The Agreement on Subsidies and Countervailing Measures applies to non-agricultural products and is designed to regulate the use of subsidies. Certain subsidies referred to as 'non-actionable' are generally allowed. Under Article 8 of the Agreement on non-actionable subsidies, direct reference had been made to the environment. Amongst the non-actionable subsidies that had been provided for under that Article were subsidies used to promote the adaptation of existing facilities to new environmental requirements (Article 8.2 (c)). However, this provision expired in its entirety at the end of 1999. It was intended to allow members to capture positive environmental external factors when they arise.

## 6.7 The Agreement on Agriculture

The Agreement on Agriculture was negotiated in the Uruguay Round (1986-1994) and is a significant first step towards fairer competition and a less distorted sector. WTO Member governments agreed to improve market access and reduce trade-distorting subsidies in agriculture. It seeks to reform trade in agricultural products and provides the basis for market-oriented policies. In its Preamble, the Agreement reiterates the commitment of Members to reform agriculture in a manner which protects the environment. Under the Agreement, domestic support measures with minimal impact on trade (known as green box policies) are excluded from reduction commitments (contained in Annex 2 of the Agreement). These include expenditures under environmental programmes, provided they meet certain conditions. The exemption also enables members to capture positive environmental external factors.

## 6.8 The Environmental Goods Agreement (EGA)

In 2014, various WTO members launched plurilateral negotiations for an Environmental Goods Agreement (EGA). The negotiations relate to promoting trade and in-

59 See http://www.wto.org/english/tratop_e/scm_e/scm_e.htm, accessed 10 November 2017.

vestment that is needed to protect the environment, and to developing and disseminating relevant technologies. The first phase of the negotiations aims to eliminate tariffs or customs duties on a range of environmental goods. The next phase could address the bureaucratic or legal issues that could cause hindrances to trade and environmental services.[60] The talks aim at securing a tariff-cutting deal on selected environmental goods, and they build on a list[61] of specific environmental goods put together by countries of the Asia-Pacific Economic Cooperation forum. Included are goods such as wind turbines, air quality monitors and solar panels. Meanwhile, several participating countries have presented indicative lists of product nominations related to cleaner and renewable energy, as well as energy efficiency, among others. The talks on an Agreement on Environmental Goods are ongoing and the outcomes remain to be seen. In any event, the talks will contribute to the movement of sustainable development and environmental concerns towards the centre of discourse among WTO members who are engaged in seeking to eliminate tariffs on a number of important environment-related products. These include products that can help achieve environmental and climate protection goals, such as generating clean and renewable energy, improving energy and resource efficiency, controlling air pollution, managing waste, treating waste water, monitoring the quality of the environment, and combatting noise pollution.[62]

## 7 The WTO's Dispute Settlement Body (DSB)

The Dispute Settlement Body (DSB) is the WTO's judicial body. The dispute settlement mechanism of the WTO, one of the pillars of the multilateral trading system, is governed by Articles XXII and XXIII of GATT, and the Dispute Settlement Understanding (DSU). In simplified terms, the full dispute settlement process can be subdivided in four phases:[63] The process begins with consultations between the countries in dispute. If consultations fail, the process enters the second stage, the panel. Panels consist of three or five experts from different countries who examine the evidence and issue a report. The report becomes the Dispute Settlement Body's (DSB) ruling or recommendation unless a consensus rejects it. The third stage of the dispute settlement process is an appeal to the Appellate Body, if so requested by one or both parties to the dispute. The respective appeals report has to be accepted or rejected by

60 See https://www.wto.org/english/news_e/news14_e/envir_08jul14_e.htm, accessed 14 April 2017.
61 List available at http://www.apec.org/Meeting-Papers/Leaders-Declarations/2012/2012_aelm/2012_aelm_annexC.aspx, accessed 14 April 2017.
62 See https://www.wto.org/english/tratop_e/envir_e/ega_e.htm, accessed 14 April 2017.
63 For more details see Delich (2002:71ff.).

the DSB. The final stage is that of adoption and implementation of the DSB's rulings and recommendations.

Historically, Africa's involvement in the dispute settlement process of the WTO is rather small. Although the involvement of developing countries in WTO related cases has increased significantly and account for over 40% of the cases, it is mostly the large Asian and Latin American countries which are making use of the dispute settlement process. While African countries have been respondents in nine cases (Egypt in four cases and South Africa in five cases), no African country has so far initiated proceedings under the DSU.[64] The participation as third party is slightly higher, as 18 African countries have participated in proceedings as third parties.[65]

The reasons for Africa's minor role in the proceedings under the DSU are manifold.[66] Although Africa's share in world trade is growing,[67] its share (2.8% of world exports and 2.5% of world imports in the decade from 2000 to 2010)[68] is still small compared to that of other regions. With a narrow range of primary export products (mainly fuels and mining products),[69] it is understandable that the participation of African countries in the dispute settlement system is currently limited.[70]

Further reasons for Africa's limited participation through litigation under the DSU are the agreements granting preferential access to key trade markets, such as the Lomé Conventions and the Cotonou Agreement, European Partnership Agreements (EPAs) or the United States' African Growth and Opportunity Act (AGOA). Moreover, African priorities at this stage are focused on market access negotiations rather than on taking disputes to the WTO's judicial body. However, it is predictable that the African share of world trade will increase, and as such, there may be need to resolve disputes that arise. With increasing economic development and regional integration strengthening the position of African economies, combined with a growing base of legal expertise in trade related issues, the participation of African countries in the dispute settlement system will undoubtedly improve.

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64 See https://www.wto.org/english/tratop_e/dispu_e/dispu_maps_e.htm; accessed 11 November 2017.

65 African countries which have participated as third parties are Benin, Cameroon, Chad, the Ivory Coast, Egypt, Ghana, Kenya, Madagascar, Malawi, Mauritius, Namibia, Nigeria, Senegal, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. See http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm#respondent, accessed 1 November 2017.

66 Horlick & Fennell (2013:164); Zunckel & Botha (2012:3); Alavi (2007:25-42).

67 UNCTAD (2014a:9).

68 See UNCTAD (2013:11).

69 See WTO Database on International Trade and Market Access Data; Profile for Africa at http://webservices.wto.org/resources/profiles/MT/TO/2012/AFR_e.pdf; accessed 30 January 2018.

70 See World Bank (2011:xiii); Rugwabiza (2012).

## 8 Selected environmental case references

A few of the environment-related cases that have been brought before the GATT/WTO dispute settlement mechanism are outlined in brief below.

### 8.1 United States – Canadian Tuna (1982)[71]

An import prohibition was introduced by the United States after Canada seized nineteen fishing vessels and arrested US-fishermen for harvesting Albacore tuna, without authorisation from the Canadian government, in waters considered by Canada to be under its jurisdiction. The United States did not recognise this jurisdiction and introduced an import prohibition to retaliate against Canada under the Fishery Conservation and Management Act.

The Panel found that the import prohibition was contrary to GATT Article XI:1, and was not justifiable under Articles XI:2 and Article XX(g).[72]

### 8.2 Canada – Salmon and Herring (1988)[73]

Under the 1970 Canadian Fisheries Act, Canada maintained regulations prohibiting the exportation or sale for export of certain unprocessed herring and salmon. The United States complained that these measures were inconsistent with GATT Article XI. Canada argued that these export restrictions were part of a system of fishery resource management aimed at preserving fish stocks, and therefore were justified under Article XX(g).

The panel found that the measures maintained by Canada were contrary to GATT Article XI:1 and were justified neither by Article XI:2(b), nor by Article XX(g).[74]

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71 See http://www.wto.org/english/tratop_e/envir_e/edis01_e.htm, accessed 10 November 2017.

72 United States – Prohibition of Imports of Tuna and Tuna Products from Canada, adopted on 22 February 1982.

73 See http://www.wto.org/english/tratop_e/envir_e/edis02_e.htm, accessed 10 November 2017.

74 Canada – Measures Affecting Exports of Unprocessed Herring and Salmon, adopted on 22 March 1988.

### 8.3 United States – Tuna (Mexico) (1991, not adopted)[75]

The US Marine Mammal Protection Act (MMPA) required a general prohibition of the 'taking' and importation into the United States of marine mammals, except when explicitly authorised. The Act governed, in particular, the taking of marine mammals incidental to harvesting, yellow fin tuna in the Eastern Tropical Pacific Ocean (ETP), an area where dolphins are known to swim above schools of tuna. Under the MMPA, the importation of commercial fish or products from fish which were caught using commercial fishing technology which results in the incidental killing or injury of ocean mammals in excess of US standards, were prohibited. In particular, the importation of yellow fin tuna harvested with purse-seine nets in the ETP was prohibited (primary nation embargo), unless the competent US-authorities established that the government of the harvesting country had a programme regulating the taking of marine mammals, comparable to that of the United States, and the average rate of incidental taking of marine mammals by vessels of the harvesting nation was comparable to the average rate of such taking by US vessels. The average incidental taking rate (in terms of dolphins killed each time in the purse-seine nets) for that country's tuna fleet were not to exceed 1.25 times the average taking rate of US vessels in the same period.

Imports of tuna from countries purchasing tuna from a country subject to the primary nation embargo were also prohibited (intermediary nation embargo). Mexico claimed that the import prohibition on yellow fin tuna and tuna products was inconsistent with Articles XI, XIII and III. The United States requested the panel to find direct embargo was consistent with Article III and, the alternative, was covered by Article XX(b) and (g). The United States also argued that the intermediary nation embargo was consistent with Article III and, the alternative, was justified by Article XX(b), (d) and (g) because the tuna was caught in a manner harmful to dolphins.

The panel found that the import prohibition under the direct and the intermediary embargoes did not constitute internal regulations within the meaning of Article III, were inconsistent with Article XI:1 and were not justified by Article XX(b) and (g). Moreover, the intermediary embargo was not justified under Article XX(d). Allowing the American import measures, the import prohibition, would undermine the multilateral trading system.[76]

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75 See http://www.wto.org/english/tratop_e/envir_e/edis04_e.htm, accessed 10 November 2017.
76 United States – Restrictions on Imports of Tuna, circulated on 3 September 1991, not adopted.

## 8.4 United States – Gasoline (1996)[77]

Following the 1990 amendment to the Clean Air Act, the US Environmental Protection Agency (EPA) promulgated the Gasoline Rule on the composition and emissions effects of gasoline, in order to reduce air pollution in the United States. The Gasoline Rule permitted only gasoline of a specified cleanliness ("reformulated gasoline") to be sold to consumers in the most polluted areas of the country. In the rest of the country, only gasoline no dirtier than that sold in the base year of 1990 ("conventional gasoline") could be sold. The Gasoline Rule applied to all US refiners, blenders and importers of gasoline. It required any domestic refiner which was in operation for at least six months in 1990 to establish an individual refinery baseline, which represented the quality of gasoline produced by that refiner in 1990. EPA also established a statutory baseline, intended to reflect average US 1990 gasoline quality. The statutory baseline was assigned to those refiners who were not in operation for at least six months in 1990, and to importers and blenders of gasoline. Compliance with the baselines was measured on an average annual basis.

Venezuela and Brazil claimed that the Gasoline Rule was inconsistent, *inter alia*, with GATT Article III, and was not covered by Article XX. The United States argued that the Gasoline Rule was consistent with Article III, and, in any event, was justified under the exceptions contained in Article XX(b), (g) and (d).

The panel found that the Gasoline Rule was inconsistent with Article III, and could not be justified under paragraphs (b), (d) or (g). The appeal on the panel's findings on Article XX(g), the Appellate Body found that the baseline establishment rules contained in the Gasoline Rule fell within the terms of Article XX(g), but failed to meet the requirements of the Chapeau of Article XX.[78]

## 8.5 Chile – Swordfish (WTO/ITLOS, 2000)[79]

Swordfish migrate through the waters of the Pacific Ocean. During their extensive journeys, swordfish cross jurisdictional boundaries. For ten years, the European Community and Chile were engaged in controversy over swordfish fisheries in the South Pacific Ocean, resorting to different international law regimes to support their positions. However, the European Community decided in April 2000 to bring the

77 See http://www.wto.org/english/tratop_e/envir_e/edis07_e.htm, accessed 10 November 2017.
78 United States – Standards for Reformulated and Conventional Gasoline, Appellate Body Report and Panel Report, adopted on 20 May 1996.
79 See http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds193_e.htm; http://www.wto.org/english/tratop_e/envir_e/envir_wto2004_e.pdf, accessed 10 November 2017.

case before the WTO, and Chile before the International Tribunal for the Law of the Sea (ITLOS) in December 2000.

With regard to the proceedings at the WTO on 19 April 2000, the European Community requested consultations with Chile regarding the prohibition on the unloading of swordfish in Chilean ports established on the basis of the Chilean Fishery Law. The European Community asserted that its fishing vessels operating in the South East Pacific were not allowed, under Chilean legislation, to unload their swordfish in Chilean ports. The European Community considered that, as a result, Chile made transit through its ports impossible for swordfish. The European Community claimed that the above-mentioned measures were inconsistent with GATT 1994, and in particular Articles V and XI. On 12 December 2000, the Dispute Settlement Body (DSB) established a panel further to the request of the European Community. In March 2001, the European Community and Chile agreed to suspend the process for the constitution of the panel (this agreement was confirmed in November 2003).

Proceedings started on 19 December 2000 at the ITLOS by Chile and the European Community. Chile requested, *inter alia*, the ITLOS to declare whether the European Community had fulfilled its obligations under UNCLOS:

- Article 64 calling for cooperation in ensuring conservation of highly migratory species;
- Articles 116-119 relating to conservation of the living resources of the high seas;
- Article 297 concerning dispute settlement; and
- Article 300 calling for good faith and no abuse of right.

The European Community requested, *inter alia*, the Tribunal to declare whether Chile had violated:

- Articles 64, 116-119 and 300 of UNCLOS;
- Article 87 on freedom of the high seas including freedom of fishing, subject to conservation obligations; and
- Article 89 prohibiting any State from subjecting any part of the high seas to its sovereignty.

On 9 March 2001, the parties informed the ITLOS that they had reached a provisional arrangement concerning the dispute and requested that the proceedings before the ITLOS be suspended. This suspension was recently confirmed. The case therefore remains on the docket of the Tribunal.

## 8.6 United States – Shrimp: Initial Phase (1998)

To date, seven species of sea turtles have been identified worldwide. They spend their lives at sea, where they migrate between their foraging and their nesting grounds. Sea turtles have been adversely affected by human activity, either directly (exploitation of their meat, shells and eggs), or indirectly (incidental capture in fisheries, destruction of their habitats, pollution of the oceans). In early 1997, India, Malaysia, Pakistan and Thailand brought a joint complaint against a ban imposed by the United States on the importation of certain shrimp and shrimp products. The US Endangered Species Act of 1973 (ESA) listed as endangered or threatened the five species of sea turtles that occur in US waters and prohibited their take within the United States, in its territorial sea and the high seas. Pursuant to ESA, the United States required that US shrimp trawlers use 'turtle excluder devices' (TEDs) in their nets when fishing in areas where there is a significant likelihood of encountering sea turtles. Section 609 of Public law 101-102, enacted in 1989 by the United States, provided, *inter alia*, that shrimp harvested with technology that may adversely affect certain sea turtles may not be imported into the United States, unless the harvesting nation was certified to have a regulatory programme and an incidental take-rate comparable to that of the United States, or that the particular fishing environment of the harvesting nation did not pose a threat to sea turtles. In practice, countries having any of the five species of sea turtles within their jurisdiction and harvesting shrimp with mechanical means had to impose on their fishermen requirements comparable to those borne by US shrimpers, essentially the use of TEDs at all times, if they wanted to be certified and to export shrimp products to the United States.

The Panel considered that the ban imposed by the United States was inconsistent with Article XI and could not be justified under Article XX. The Appellate Body found that the measure at stake qualified for provisional justification under Article XX(g), but failed to meet the requirements of the Chapeau of Article XX, and, therefore, was not justified under Article XX of GATT 1994.[80]

## 8.7 United States – Shrimp: Implementation Phase (2001)

Malaysia introduced an action pursuant to Article 21.5 of the Dispute Settlement Understanding (DSU), arguing that the United States had not properly implemented the findings of the Appellate Body in the Shrimp – Turtle dispute. The implementation dispute revolved around a difference of interpretation between Malaysia and the

80 United States – Import Prohibition of Certain Shrimp and Shrimp Products, Appellate Body Report and Panel Report, adopted on 6 November 1998.

United States on the findings of the Appellate Body. In Malaysia's view, a proper implementation of the findings would be a complete lifting of the US ban on shrimps. The United States disagreed, arguing that it had not been requested to do so, but simply had to revisit its application of the ban. In order to implement the recommendations and rulings of the Appellate Body, the United States had issued Revised Guidelines for the Implementation of Section 609 of Public Law 101-162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations (the Revised Guidelines). These Guidelines replaced the ones issued in April 1996 that were part of the original measure in dispute. The Revised Guidelines set forth new criteria for certification of shrimp exporters. Malaysia claimed that Section 609, as applied, continued to violate Article XI:1 and that the United States was not entitled to impose any prohibition in the absence of an international agreement allowing it to do so. The United States did not contest that the implementing measure was incompatible with Article XI:1, but argued that it was justified under Article XX(g). It argued that the Revised Guidelines remedied all the inconsistencies that had been identified by the Appellate Body under the Chapeau of Article XX.

The implementation panel concluded that the protection of migratory species was best achieved through international cooperation. However, it found that the Appellate Body had instructed the United States to negotiate (not necessarily to conclude) an international agreement for the protection of sea turtles with the parties to the dispute. The panel found that the United States had indeed made serious *bona fide* efforts to negotiate such an agreement and ruled in favour of the United States. Malaysia subsequently appealed against the findings of the implementation Panel. It argued that the panel erred in concluding that the measure no longer constituted a means of "arbitrary or unjustifiable discrimination" under Article XX. Malaysia asserted that the United States should have "negotiated and concluded" an international agreement on the protection and conservation of sea turtles before imposing the import prohibition. The Appellate Body upheld the implementation panel's finding and rejected Malaysia's contention that avoiding "arbitrary and unjustifiable discrimination" under the Chapeau of Article XX.[81]

81 United States – Import Prohibition of Certain Shrimp and Shrimp Products, Recourse to Article 21.5 by Malaysia, Appellate Body Report and Panel Report, adopted on 21 November 2001.

## 8.8 Brazil – Measures Affecting Imports of Re-treaded Tyres (2007)[82]

On 20 June 2005, the European Community (EC) requested consultations with Brazil on the imposition of measures that adversely affect exports of re-treaded tyres from the EC to the Brazilian market. The EC addressed the following measures:

- Brazil's imposition of an import ban on re-treaded tyres;
- Brazil's adoption of a set of measures banning the importation of used tyres, which are sometimes applied against imports of re-treaded tyres, despite the fact that these are not used tyres;
- Brazil's imposition of a fine of 400 BRL per unit on the importation, as well as the marketing, transportation, storage, keeping or keeping in deposit or warehouses of imported, but not for domestically re-treaded tyres; and
- Brazil's exemption of re-treaded tyres imported from other MERCOSUR[83] countries from the import ban and from the above-mentioned financial penalties, in response to the ruling of a MERCOSUR panel established at the request of Uruguay.

The EC considered that the foregoing measures are inconsistent with Brazil's obligations under Articles I:1, III:4, XI:1 and XIII:1 GATT 1994.

- Brazil justified its foregoing by Articles XX(b) and (d), XXIV GATT 1994;
- upon Brazil's acceptance Argentina joined the consultations on 20 July 2005; and
- on 6 March 2006, the European Communities requested the Director-General to compile the panel.

The Panel decided that the measre was considerd to be necessary. The prohibition on the importation of re-treaded tyres contributes to the objective pursued by Brazil, as it can lead to a reduction in the overall number of waste tyres generated in Brazil because re-treaded tyres have a shorter lifespan than new tyres. This can in turn reduce the potential for exposure to the specific risks to human, animal, plant life and health. The Panel is of the view that alternative measures to the import ban (measures to reduce the number of waste tyres; measures to improve the management of waste tyres; other disposal methods e.g. land filling; stockpiling) were not reasonably available to Brazil in light of the level of protection Brazil pursues in relation to the health risks concerned. Stockpiled waste tyres pose similar types of risks such as mosquito-borne

82 See http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm, accessed 10 November 2017.

83 MERCOSUR (Spanish: Mercado Común del Sur; Portuguese: Mercado Comum do Sul; English: Southern Common Market) is an economic and political agreement between Argentina, Brazil, Paraguay and Uruguay.

diseases and tyre fires to those posed by the accumulation of waste tyres in general and thus cannot constitute an alternative to the import ban.

The Panel ruled that the import ban was applied in a manner that resulted in discrimination because it gave rise to discrimination between MERCOSUR and non-MERCOSUR countries. Furthermore, the Panel saw a discrimination in favour of tyres re-treaded in Brazil using imported casings, to the detriment of imported re-treaded tyres.

In conclusion, the Panel, by applying the two-tier test of Article XX[84], found that the importation of used tyres through court injunctions resulted in the import ban being applied in a manner that constitutes a means of unjustifiable discrimination and a disguised restriction to trade within the meaning of the Chapeau of Article XX. In light of this conclusion, the Panel found that the measure at issue was not justified under Article XX GATT 1994.

### 8.9 China – Measures related to the exportation of various raw materials

The case was initiated by a request for consultations by the United States on 23 June 2009[85], deals with China's restraints on the export from China of various forms of raw materials. The consultations were joined by Canada[86], the European Communities[87], Mexico[88] and Turkey[89]. The dispute deals with certain measures imposed by China affecting the exportation of certain forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorous, and zinc. China is a leading producer of each of the raw materials which are used to produce everyday items as well as technology products. Four types of export restraints imposed on the different raw materials at issue have been challenged, namely export duties, export quotas, minimum export price requirements, and export licensing requirements.

The DSB established a Panel and Argentina, Brazil, Canada, Chile, Colombia, Ecuador, the European Union, India, Japan, Korea, Mexico, Norway, Chinese Taipei,

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84 In order to be justified under Article XX, a GATT 1994-inconsistent measure must go through a two-tier test: The measure at issue must fall under one of the exceptions – sub-paragraphs (a) to (j) – listed under Article XX; each sub-paragraph concerns different objectives and contains different requirements; and, the measure must be applied in a manner that satisfies the requirements of the Chapeau of Article XX, which means that measures must 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".

85 WT/DS394/1.

86 WT/DS394/4.

87 WT/DS394/2.

88 WT/DS394/5.

89 WT/DS394/3.

Turkey and Saudi Arabia reserved their third-party rights. The United States considered that China was in violation of Articles VIII, X, and XI of the GATT 1994; and several provisions of the Protocol on the Accession of the People's Republic of China (the Accession Protocol) by imposing temporary duties on exports of bauxite, coke, fluorspar, magnesium, manganese, silicon metal, and zinc; and by furthermore subjecting exports of yellow phosphorus to a duty in excess of the *ad valorem* rate listed for item No. 11 in Annex 6 to the Accession Protocol. The European Union claimed that China has violated the obligation assumed under the note to Annex 6 to consult "with other affected WTO Members prior to the imposition" of the export duties on bauxite, coke, fluorspar, magnesium, manganese, silicon metal, and certain forms of zinc.

Article XX of the GATT 1994 and in particular its provisions relating to environmental matters play a major role in this case. China[90] *inter alia* argued that the export duty applied to fluorspar was justified pursuant to Article XX(g) because it is a measure relating to the conservation of an exhaustible non-renewable mineral resource, and is applied together with restrictions on domestic production and consumption. The export duties applied to coke, magnesium metal, and manganese metal are justified pursuant to Article XX(b) because they are necessary for the protection of human, animal, and plant life or health by virtue of their contribution to the reduction of the polluting and energy-intensive production of coke, magnesium metal, and manganese metal.

On 5 July 2011, the Panel[91] ruled in favour of the claimants and found that the wording of the Accession Protocol did not allow China to use the general exceptions in Article XX of the GATT 1994 to justify its WTO-inconsistent export duties and that even if China were able to rely on certain exceptions available in the WTO rules to justify its export duties, it had not complied with the requirements of those exceptions. The Panel recommended that China bring its export duty and export quota measures into conformity with its WTO obligations such that the series of measures do not operate to bring about a WTO-inconsistent result.

Upon appeal the Appellate Body[92] upheld the Panel's finding that there is no basis in China's Accession Protocol to allow the application of Article XX of the GATT 1994 to China's obligations under Paragraph 11.3 of the Accession Protocol. The Appellate Body report and the panel report, as modified by the Appellate Body report

90 See WT/DS394/R/Add.1, WT/DS395/R/Add.1 and WT/DS398/R/Add.1.
91 WT/DS394/R; WT/DS395/R; WT/DS398/R.
92 WT/DS394/AB/R, WT/DS395/AB/R, WT/DS398/AB/R.

have been adopted by the DSB[93] and China informed the DSB of its intention to implement the rulings and recommendations and rulings.

## 8.10 China – Measures related to the exportation of rare earths, Tungsten and Molybdenum[94]

On 13 March 2012, the US,[95] Japan[96] and the EU[97] requested consultations with China under the WTO's dispute settlement system. Canada has also requested to join the consultations.[98] The case deals with China's restrictions on the export of various forms of rare earths,[99] as well as tungsten and molybdenum. Rare earths feature unique magnetic, heat-resistant and phosphorescence properties and are used, inter alia, to produce highly efficient magnets, phosphors, optical and battery materials. These materials are key components of products such as helicopter blades; windpower turbines; energy-efficient light bulbs; motors for electric and hybrid vehicles; flat screens and displays; hard drives; medical equipment; and many others. Although reserves of rare earth elements are dispersed throughout the world with China holding only 50% of the world's reserves, China has a near-monopoly position with more than 97% of the world's rare earth production.[100] The country has curbed output and exports since 2009 to conserve mining resources and protect the environment. The complaint relates to China's restrictions in the form of export duties; export quotas; minimum export price requirements; export licensing requirements; and additional requirements and procedures in connection with the administration of the quantitative restrictions. The complainants claim that China's measures are inconsistent with Articles VII, VIII, X and XI of GATT 1994 and several provisions of

93 At its meeting on 22 February 2012, see WT/DS394/16, WT/DS395/15, WT/DS398/14 (24 February 2012).

94 Panel Report at http://www.wto.org/english/tratop_e/dispu_e/431_432_433r_e.pdf, accessed 18 February 2018. On this case, see also Baroncini (2012).

95 WT/DS431/1; G/L/982, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds431_e.htm, accessed 30 January 2018.

96 WT/DS433/1; G/L/984, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds433_e.htm, accessed 30 January 2018.

97 WT/DS432/1; G/L/983, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds432_e.htm, accessed 30 January 2018.

98 WT/DS431/4; WT/DS432/4; WT/DS433/4.

99 A set of 17 chemical elements, usually referred to as rare earths. These include 15 lanthanides (lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium and lutetium) as well as scandium and yttrium. The request specifically refers to certain materials falling under but not limited to a vast number of Chinese Customs Commodity Codes.

100 Humphries (2013).

China's Protocol of Accession. It is argued that China administers export restrictions on various forms of rare earths, tungsten, and molybdenum, and that the requirements and procedures in connection with these export restrictions are administered in a manner that is not uniform, impartial, reasonable, or transparent.

On 29 August 2014, the DSB adopted the Panel and Appellate Body reports, which found that China's export restrictions on rare earths, tungsten and molybdenum were in breach of China's WTO obligations and were not justified under the GATT exceptions.

## 9 Multilateral environmental agreements (MEAs)

International environmental treaties or Multilateral Environmental Agreements (MEAs) as they are commonly referred to, regulate the relationships between states pertaining to the environment. Generally, the first objective of any MEA is the protection and conservation of the environment. International trade agreements focus on the exchange of goods, services and capital across international borders. That there is *de facto* a close interrelationship between trade and the environment can be taken from the respective legal documents: Environmental agreements contain trade measures and trade agreements provide for measures for environmental protection, as has been sketched in the previous section. This close relationship and a call for mutual supportiveness of trade and environment agreements with a view to achieving sustainable development has been emphasised by Chapter 2 of Agenda 21 and various environmental and trade agreements.

Different trade measures are provided for in MEAs, which are taken to protect the environment and have an impact on international trade flows. The most direct such measure is to prohibit or restrict trade in certain goods or products. Trade measures may be imposed in different forms, such as import or export licences, product standards, labelling, certification systems, notification procedures, taxes or subsidies. By applying trade measures, environmental agreements typically either aim to control and monitor trade activities with regard to the over-exploitation of natural resources, or to combat trade activities considered being sources of pollution.

The 1973 Convention on International Trade in Endangered Species (CITES) for example contains several trade measures to control the trade of species in danger of extinction or which might become endangered. The species to which the trade measures are applicable are specified in the annexes to CITES. Trade measures here include export and import licenses, quotas and certificates on the country of origin.

The 2000 Cartagena Protocol on Bio-Safety, agreed upon by the Parties to the 1992 Convention on Biological Diversity, is another important example of MEAs that have an impact on international trade flows. The Protocol provides for specific steps states may take to regulate trade in genetically modified organisms (GMOs) in

order to ensure safety of international transfers and of the use of any living GMOs resulting from biotechnology as trans-boundary movements of GMOs may have adverse effects on the conservation of biological diversity. The import of living GMOs may thus be restricted as part of a detailed risk management procedure. The Protocol establishes trade control measures based on a compulsory procedure of notification by the exporting country.

The 1985 Vienna Convention for Protection of the Stratosphere was developed as a framework convention establishing general objectives and a basis for cooperation on ozone layer protection. In order to achieve the elimination of the production of ozone depleting substances, the 1987 Montreal Protocol on Substances that Deplete the Stratospheric Ozone Layer, established trade restriction measures. Certain substances are listed as ozone depleting and all trade in those substances is generally banned between parties and non-parties. Bans may also be implemented against parties as part of the Protocol's non-compliance procedure.

Whereas the 1992 United Nations Framework Convention on Climate Change (UNFCCC) does not provide for specific trade measures, the 1997 Kyoto Protocol contains more detailed obligation related to the reduction of greenhouse gases and provides for trade affecting techniques such as tax impositions on carbon dioxide emissions, the adoption of certain treatment or emission rules for greenhouse gas emissions not covered by the Montreal Protocol or the elimination of subsidies adversely affecting the objective of the UNFCCC.

Aiming to protect human health and the environment against the adverse effects which may result from the production and management the 1989 Basel Convention on the Control of Trans-Boundary Movement of Hazardous Wastes and their Disposal contains trade measures establishing a notification and consent procedure for any envisaged trans-boundary movement of hazardous and other wastes. The Convention acknowledges the sovereign right of states to ban the entry of hazardous wastes in their territories and contains obligations concerning transport, disposal, packaging and labelling. Parties may only export a hazardous waste to another party that has not banned its import and that gives written consent to the import. In general, parties may not import from or export to a non-party. Parties are also obliged to prevent the import or export of hazardous wastes if there is an indication that the wastes will not be treated in an environmentally-sound manner at their destination.

The above examples of trade measures in MEAs show that measures generally designed to protect the environment may have a direct impact on the freedom of international trade. Although the provisions in the fields of trade and environment should mutually complement each other according to Agenda 21 and many other international rules, it may occur that MEAs and trade agreements address the same issues differently whereby conflicts between the two fields of international law may arise. In such instances, disputes may be resolved according to the procedures as described in the respective MEA. However, disputes on trade measures in MEAs could also be

taken to the WTO's DSB, especially, if the Party affected by the trade measure is not a party to the MEA, but a member of the WTO. So far, MEAs have not been challenged directly under the WTO's DSU. However, conflicts may arise between WTO rules and trade related measures where trade restrictions provided for in MEAs are used by a party to the MEA against a non-party to the MEA if both parties are members of the WTO. In such cases, the MFN and national-treatment principles, as well as provisions on eliminating quantitative restrictions are potentially infringed.[101] Neither the WTO's legal framework nor the wordings of MEAs claim to be hierarchically superior to the other. On the contrary, the concept of mutual supportiveness of trade and environment agreements is emphasised by both regimes without offering express solutions to solve possible conflicts resulting from the coexistence of trade and environment agreements. Generally, it can be stated that in case of a conflict between MEAs and WTO rules, the rules of treaty interpretation under the Vienna Convention on the Law of the Treaties and general rules of interpretation would have to be applied in order to determine which rules would take precedence over others.[102] So far, trade measures within MEAs have not been in the centre of attention of international trade proceedings. However, WTO members may choose to take a case relating to trade measures in MEAs to the DSB of the WTO. Included in the Doha development agenda, and thus subject to ongoing negotiations, is the task of clarifying the relationship between trade measures in MEAs and WTO rules, the responsibility for which has been given to the WTO's Committee on Trade and Environment.

## 10 Cameroon's global and regional trade ties

The public authorities have fixed as a goal making Cameroon an emerging economy by 2035. Cameroon's "Vision 2035" gives trade an important role and considers it to be a powerful catalyst for creating wealth and promoting development. At the internal level, the Government's objectives for boosting trade consist of ensuring regular supplies in the domestic market under healthy conditions of competition and, at the international level, seeking new markets for Cameroon's goods and services, particularly those with high value added.[103]

Cameroon is a member of the Organization for the Harmonization of Business Law in Africa (OHADA), which was established by the Treaty on the Harmonization of Business Law in Africa (OHADA) signed on 17 October 1993 in Port-Louis

101 For more details see UNEP (2005d:65ff.).
102 For a detailed discussion see Goyal (2006:356ff.).
103 For more information see http://cm.one.un.org/content/dam/cameroon/docs-one-un-cameroun/2017/vision_cameroun_2035%20(1).pdf, accessed 20 February 2018.

(Mauritius Ireland) and revised in Quebec (Canada) on 17 October 2008. The Treaty's main objective is to address the legal and judicial insecurity in Member States and to harmonise business law in Africa in order to guarantee legal and judicial security for investors and companies.[104] 17 States are currently members of the Organization for the Harmonization of Business Law in Africa: Benin, Burkina Faso, Cameroon, Central African Republic, Côte d'Ivoire, Congo, Comoros, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, the Democratic Republic of Congo (DRC), Senegal, Chad and Togo. Through its membership of OHADA, Cameroon also has an arbitration mechanism, the Common Court of Justice and Arbitration. In addition, the Groupement Inter-Patronal du Cameroun (GICAM) has its own arbitration centre.[105]

Cameroon joined the Commonwealth in 1995.[106] According to the Commonwealth Secretariat Strategic Plan 2017/18-2020/21[107] the Commonwealth aims for more inclusive economic growth and sustainable development. In this light, the Commonwealth Strategic Plan explicitly promotes increased trade, increased access to trade, employment and business growth, as well as sustainable development of marine, other natural resources, including blue economies.[108]

Cameroon is an original Member of the WTO.[109] In addition to the WTO, it belongs to several regional trade groupings, including the African Union, the associated African Economic Community (AEC), the the Central African Economic and Monetary Community (CEMAC) and the Economic Community of Central African States (ECCAS).

CEMAC is composed of six Central African States, namely: Cameroon, Republic of the Congo, Gabon, Equatorial Guinea, Central African Republic, and Chad. Its main mission is to promote peace and the harmonious development of its member States by establishing an economic union and a monetary union. The CEMAC countries are founder members of the African Union (AU), successor to the Organization of African Unity (OAU). The creation of CEMAC in 1994 was intended to reinvigorate this integration process. To achieve its goals, CEMAC has set up five institutions and several bodies. The institutions include: the Central African Economic Union (UEAC), the Central African Monetary Union (UMAC), the Community Parlia-

104 See http://www.ohada.org/index.php/en/ohada-in-a-nutshell/general-overview, accessed 22 January 2018.
105 See http://www.legicam.cm/cag/, accessed 22 November 2017.
106 See http://thecommonwealth.org/our-member-countries/cameroon, accessed 18 March 2018.
107 See http://thecommonwealth.org/sites/default/files/inline/CommonwealthSecretariatStrategic_Plan_17_21.pdf, accessed 18 February 2018.
108 Regarding trade and maritime developments in the African blue economy, see Ruppel & Biam (2016).
109 See WT/TPR/S/285.

ment, the Court of Justice, and the Court of Auditors. Each of these institutions is governed by a convention. CEMAC's main decision-making bodies are the Conference of CEMAC Heads of State, the UEAC Council of Ministers (Council of Ministers), the UMAC Ministerial Committee (Ministerial Committee), the CEMAC Commission, the Bank of Central African States (BEAC), the Development Bank of Central African States (BDEAC), and the Central African Banking Commission (COBAC). The Central African Monetary Union aims to consolidate the achievements of monetary cooperation based on a common currency, the CFA franc, and a common central bank, the BEAC.[110]

CEMAC represents a market of 42.4 million people spread over an area of more than 3 million km2. Nearly half of this market (47.2%) is located in Cameroon, which is also responsible for a substantial proportion of regional GDP (28.6%).[111] More than half of the population live in rural areas. CEMAC's diversity of its climate (Sahelian in the north, hot and wet tropical in the south and along the coast) makes it a region suitable for agriculture and livestock raising. It has huge resources in arable and grazing land. Moreover, CEMAC is partly covered by the forests of the Congo Basin, the world's second largest tropical forest zone, which provides exceptional ecological diversity. The CEMAC countries form a heterogeneous whole, in terms of both level of development and economic structure. The Central African Republic and Chad, landlocked countries of the sub-region, belong to the "least developed country" (LDC) group and are also classified as "low-income countries" on the basis of the gross national income per capita. Cameroon, the Republic of the Congo and Gabon are middle-income countries, with Gabon in the upper tier.

All the CEMAC countries also belong to the ECCAS. In addition to the CEMAC countries, ECCAS includes Burundi and the Democratic Republic of the Congo (members of the Economic Community of the Great Lakes Countries), as well as Angola and Sao Tomé and Principe. ECCAS is one of the eight Regional Economic Communities (RECs) designated by the African Union as pillars for the implementation of the African Economic Community. At ECCAS level, the organization of a Conference of Ministers responsible for the forests of Central Africa in 2000 provided a framework for harmonization initiatives. This followed the "Declaration of Yaoundé", in which the ECCAS Heads of State proclaimed, among other things, their support for the preservation of biodiversity and the sustainable management of tropical forests. These commitments were institutionalized in 2005 in the form of a treaty on the conservation and sustainable management of forest ecosystems and the estab-

110 WT/TPR/S/285.
111 (ibid.).

lishment of the Central African Forests Commission (COMIFAC).[112] COMIFAC is the body responsible for formulating, harmonising and monitoring forestry and environmental policies in Central Africa.[113]

The CEMAC countries are all parties to the main international investment guarantee arrangements. With the exception of Equatorial Guinea, the CEMAC countries are for instance all signatories to the Convention of the International Centre for Settlement of Investment Disputes (ICSID), a centre which provides facilities for the conciliation and arbitration of investment disputes between member States and nationals of other member States. [114] Cameroon is not only a member of ICSID, but also the Multilateral Investment Guarantee Agency (MIGA) and has signed the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).[115] According to UNCTAD, Cameroon has signed bilateral investment treaties with 15 countries.[116]

With the exception of Equatorial Guinea, all the CEMAC countries are former contracting parties to the GATT 1947. However, they joined the WTO at different times: Cameroon, Gabon and the Central African Republic acceded in 1995, Chad in 1996, and the Congo in 1997. Equatorial Guinea has observer status and applied for accession on 19 February 2007. The WTO grants "least developed country (LDC)" status to the Central African Republic and Chad. This makes them eligible for the Enhanced Integrated Framework (EIF). The CEMAC countries are not parties to any of the plurilateral agreements concluded under the aegis of the WTO. They grant at least MFN treatment to all their trading partners and have not been party to any dispute under the WTO as either complainant or respondent. Cameroon and Chad were third parties in the disputes European Communities – Regime for the Importation, Sale and Distribution of Bananas and United States – Subsidies on Upland Cotton, respectively. [117]

Owing to its geographic location, the structure and size of its economy, Cameroon is the driver of trade in the CEMAC zone. Cameroon's economy accounts for close to 40% of CEMAC's GDP, 16.8% of its exports and 38.8% of its imports. Its population represents close to 60% of CEMAC's. Despite the volume of Cameroon's trade with CEMAC / ECCAS countries and Nigeria, there are many lingering obstacles to

112 Treaty on the conservation and sustainable management of Central African forest ecosystems and establishing the Central African Forests Commission.
113 Article 5 of the Treaty on the conservation and sustainable management of Central African forest ecosystems and establishing the Central African Forests Commission. Viewed at http://www.comifac.org/lacomifac-1/traite-constitutif, accessed 16 February 2018.
114 WT/TPR/S/285.
115 UNCTAD (2012).
116 (ibid.).
117 WT/TPR/S/285.

the efficient use of this trade potential. The Douala Port, which is the hub of the country's external trade and the access point for operators from landlocked neighboring countries (Chad and Central African Republic) is suffering from several malfunctions, including notably the long delays in customs clearance operations and silting. In addition, the inter-state transit corridors with landlocked countries are not functional owing to the proliferation of tariff and non-tariff barriers.[118]

## 11 Concluding remarks

Economic activities in Cameroon heavily depend on natural resource exploitation. Natural resources represent a significant and growing share of world trade, and properly managed, provide a variety of products that (continue to) contribute greatly to the quality of human life. They, however, also represent challenges for policy makers. Natural resources are scarce, economically useful, distributed unevenly and exhaustible. Their production, trade and consumption can have negative externalities[119] on people and the environment. Natural resources are dominated by national economies, they are highly volatile.[120]

The 'curse' of natural resources, climate change, water stress, food security and the prevalence of poverty *inter alia* remain challenges for Africa. All of these are also linked to international trade and certainly go hand in hand with poverty reduction, self-reliant sustainable development and the rational use of Africa's natural resources.

With regards to trade, over-exploitation of natural resources, widespread dumping of sub-standard products and services, second-hand and re-conditioned machinery, including of transport goods to increase the share in exports in organically-grown agricultural products to create technical data bases on a wide range of exportable products, implementing and monitoring plans for detection of heavy metals, pesticides, microbiological and contaminants in food items are issues that need to be addressed. Another remaining challenge in terms of the WTO and the environment (e.g. biodiversity) is to control the transfer of genetically modified goods, including when delivered as food aid.[121]

The balancing act of bringing the interests of trade, environmental protection and sustainable development in line with each other can only succeed with a joint effort

118 See WT/TPR/S/285.

119 An example of such negative externality would be when a production or mining process results in pollution affecting the health of people who live nearby, or that damages the natural environment, animal or plant life or reduces the livelihood of people.

120 WTO (2010).

121 See http://www.uneca.org/, accessed 22 November 2017.

from all relevant stakeholders. On the occasion of the twentieth anniversary of the WTO, Director-General Roberto Azevêdo said:[122]

> twenty years ago the founders of the WTO saw clearly that the well-being of habitats, societies, and economies are not separate. Rather, they are inextricably linked. Their vision was 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… In the 20 years since then, the connections between trade and the environment have grown significantly. We must therefore do more to ensure that trade and environmental policies work better together, both at national and international levels.

Although various legal provisions in the framework of the WTO provide a solid foundation for modern-day trade to fully embrace the concept of sustainable development and preservation of the environment, there is still ample scope for state and organisational practice to exploit its full potential in this regard. In the implementation of pro-poor policies and sustainable development, natural resources management, integrated reporting, environmental planning, environmental impact assessment and the overall policy review remain part of the on-going African working agenda. Moreover, new technologies, environmentally friendly goods and services need to be promoted and the protection and preservation of traditional knowledge, agriculture and species is important, especially in the African context. All of that requires national commitment, international cooperation, adequate technical assistance, capacity building and investment.[123]

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122 See https://www.wto.org/english/news_e/spra_e/spra56_e.htm, accessed 22 November 2017.

123 For more information on the relevance of investment, see Ruppel (2016a); Ruppel & Borgmeyer (2017).

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