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Sustainable Development Goals and International Trade Law: A critical analysis¹

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Abstract

The post-WWII international trade law system, which was established and developed to liberalise international trade, is facing multiple legitimacy crises. First, the system has contributed to the globalisation of the economy but has not addressed the income disparity within and among states. Second, multinational enterprises that have proliferated under the system have violated human rights, caused environmental degradation and engaged in anti-monopoly practices. Third, the system has not provided effective means for addressing global issues such as global warming and the COVID-19 pandemic. In light of these legitimacy crises of the post-WWII international trade law system, two fundamental questions should be raised: first, whether the system's goal of trade liberalisation is adequate and, second, whether the structure and functions of the system's regulation of international trade are adequate as well. To answer these fundamental questions, this study suggests (1) replacing the goal of the international trade law system from trade liberalisation to sustainability or sustainable development and (2) reconstructing the structure and functions of the regulation of international trade based on the broad definition of 'international trade law system', which comprises not only hard law on international trade but also soft law instruments regarding international trade addressed to states and private firms.

Keywords: international trade law, sustainable development, SDGs, WTO, FTAs/EPAs

JEL classification: F13, F18, F23, F53, J83

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I. Introduction: The Legitimacy Crisis of the Post-WWII International Trade Law System

The post-WWII international trade law system, which was established and developed to liberalise international trade, is facing multiple legitimacy crises. First, the system has contributed to the globalisation of the economy but has not addressed the income disparity within and among states. Second, multinational enterprises that have proliferated under the system have violated human rights, caused environmental degradation and engaged in anti-monopoly practices. Third, the system has not provided effective means of addressing global issues such as global warming and the COVID-19 pandemic. In addition to these criticisms, recent changes in the global economy have exacerbated the international trade law system. First is the stalemate of the Doha Development Agenda, which has brought the World Trade Organisation (WTO) to an ontological crisis. Second is the confrontation between the U.S. and China, which has resulted in the fragmentation of global supply chains. In light of these legitimacy crises of the post-WWII international trade law system, two fundamental questions should be raised: first, whether the system's goal of trade liberalisation is adequate and, second, whether the structure and functions of the system's regulation of international trade are adequate as well.

To answer these fundamental questions, this study suggests (1) replacing the goal of the international trade law system with 'raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods'² from trade liberalisation to sustainability or sustainable development (SD) and (2) reconstructing the structure and functions of the regulation of international trade based on the broad definition of 'international trade law system', which comprises not only hard law but also soft law instruments regarding international trade addressed to states and private firms.

² Preamble of the General Agreement on Tariffs and Trade, paragraph 2.

II. Sustainable Development as Embodied in the Sustainable Development Goals

II.1 Sustainable Development Goals and Sustainable Development

According to the 1987 Report of the World Commission on Environment and Development, ‘Our Common Future’, SD is defined as the development that ‘meets the needs of the present without compromising the ability of future generations to meet their own needs’.³ Since then, this concept has been expanded to include not only environmental sustainability but also social and economic sustainability.⁴ Based on this broad definition of SD, the UN General Assembly adopted the Sustainable Development Goals (SDGs) as common goals of human society in 2015, comprising 17 goals and 169 targets.⁵ Table 1 shows the 17 goals of the SDGs.

Table 1. 17 Goals of the SDGs

Goal 1	No poverty	Goal 10	Reduced inequalities
Goal 2	Zero hunger	Goal 11	Sustainable cities and communities
Goal 3	Good health and well-being	Goal 12	Responsible consumption and production
Goal 4	Quality education	Goal 13	Climate action
Goal 5	Gender equality	Goal 14	Life below water
Goal 6	Clean water and sanitation	Goal 15	Life on land
Goal 7	Affordable and clean energy	Goal 16	Peace, justice and strong institutions
Goal 8	Decent work and economic growth	Goal 17	Partnerships for the goals

³ Report of the World Commission on Environment and Development: Our Common Future, para.27. Available at <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>

⁴ See, for instance, UN Economic and Social Council, Sustainable Development, which says that “ECOSOC operates at the centre of the UN system’s work on all three pillars of sustainable development – economic, social and environmental.” Available at <https://www.un.org/ecosoc/en/sustainable-development#:~:text=ECOSOC%20operates%20at%20the%20centre,%E2%80%94economic%2C%20social%20and%20environmental.>>

⁵ Transforming our world: the 2030 Agenda for Sustainable Development, UN General Assembly Resolution adopted on 25 September 2015. A/RES/70/1.

Goal 9	Industry, innovation and infrastructure		
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The 17 goals of the SDGs are classified according to the three pillars of sustainable development (economy, society and environment) as those relating to economic sustainability (Goals 8, 9, 10 and 12), social sustainability (Goals 1–5, 7, 11 and 16) and environmental sustainability (Goals 6 and 13–15). Goal 17 relates to the method and means of achieving Goals 1–16. In addition, these 17 goals are related to each other and are interdependent. According to David Griggs *et al.*, ‘sustainable development’ is a ‘development that meets the needs of the present while protecting the Earth’s life-support system, on which the welfare of current and future generations depends’.⁶ In other words, the sustainability of the Earth’s life-support system, that is, environmental sustainability, is a necessary condition of SD and is the prerequisite for social sustainability and economic sustainability.

II.2 Legal Nature of the Sustainable Development Goals

In 2000, the UN General Assembly adopted the Millennium Development Goals (MDGs), and the SDGs were drafted as their replacement.⁷ While the MDGs were the combined goals and means for promoting the economic development of developing countries, the SDGs were the combined goals and means for promoting the sustainable development of international society as a whole, which includes both developing and developed countries.⁸

The SDGs were adopted by the UN General Assembly as a resolution and are not legally binding. Each UN member state's collective efforts are aimed at achieving the international society's overall goals and targets for SD. The collective efforts of each UN member states are aimed at achieving the goals and targets of SD of the international society

⁶ David Griggs *et al.*, “Sustainable development goals for people and planet”. *Nature*, Vo.495, 2013, pp.305-307, at 306.

⁷ United Nations General Assembly, United Nations Millennium Declaration, adopted on 8 September 2000. A/55/L.2. <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/559/51/PDF/N0055951.pdf?OpenElement>>

⁸ See UN General Assembly, *supra* n.4, para.5. (“These are universal goals and targets which involve the entire world, developed and developing countries alike.”)

as a whole. Even if the goals and targets are not fully achieved, there will be no penalties. This characteristic of the SDGs is known as governance through goals⁹ or goal-based governance.¹⁰ In addition, a mechanism for continuous evaluation and follow-up of the achievement of the SDGs was introduced. Under this mechanism, each UN member state is required to regularly submit voluntary national reviews (VNRs) to the UN.¹¹ The High-Level Political Forum (HLPF), which is held annually in July, under the supervision of the UN General Assembly and the Economic and Social Council is in charge of overseeing follow-up and review at the global level.¹² For this purpose, the UN Secretary General submits an annual SDG progress report to the HLPF. Every four years in September, in addition to the regular HLPF, a HLPF of the heads of the UN member states (SDGs Summit) is convened under the UN General Assembly.¹³ The UN Secretary General submits a Global Sustainable Development Goals Report to the SDGs Summit, evaluating and measuring the progress of the SDGs during the past four years.^{14,15}

⁹ Norichika Kanie *et al.*, “Rules to goals: emergence of new governance strategies for sustainable development”, *Sustainable Science*, Vol.14, 2019, pp.1745-1749, at 1746.

¹⁰ Norichika Kanie, *SDGs (Sustainable Development Goals)*, Chuokoronsha, 2020, p.12. (in Japanese)

¹¹ 22 UN members submitted VNRs in 2016. 43 VNRs were submitted in 2017, 46 VNRs were submitted in 2018, 27 VNRs were submitted in 2019 and 2020, and 42 VNRs were submitted in 2021. In 2022, 44 VNRs were submitted as at the end of November. See UN, High-Level Political Forum on Sustainable Development, Countries who have presented their Voluntary National Reviews. <<https://hlpf.un.org/countries>>

¹² See UN General Assembly, *supra* n.4, paras.47. Also see *ibid.*, para.82. (“The HLPF will have a central role in overseeing a network of follow-up and review processes at the global level, working coherently with the General Assembly, ECOSOC and other relevant organs and forums, in accordance with existing mandates.”)

¹³ See *ibid.*, para.87.

¹⁴ See *ibid.*, para.75. The UN General Assembly adopted 232 global indicators to assess the progress of the SDGs in July 2017. See UN, Revised list of global Sustainable Development Goal indicators, in the *Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators* (E/CN.3/2017/2), Annex III.

¹⁵ See UN, *Global Sustainable Development Goal Report 2019: The Future is Now – Science for Achieving Sustainable Development*, United Nations, 2019.

In addition to the global review and follow-up, national and regional review and follow-up procedures are introduced.¹⁶ National review reports (NRRs) provide evidence for regional and global review and follow-up procedures. Along with regional dialogues and global reviews, NRRs provide recommendations for follow-up at various levels.¹⁷ Regional follow-up and review can provide useful opportunities for peer learning, sharing of best practices and discussions on shared targets. Regional processes draw on national reviews and contribute to global follow-up and review at the HLFP.¹⁸ Follow-up and review at all levels are voluntary, taking into account various national realities, capacities and levels of development and respecting policy space and priorities.¹⁹

The direct addressees of the SDGs are UN member states. In Paragraph 41, the UN General Assembly Resolution A/RES/70/1, which adopted the SDGs, clearly stated, ‘We recognise that each country has primary responsibility for its own economic and social development’. In addition, Paragraph 41 recognised the contribution of the private sector to the implementation of the SDGs by stating, ‘We acknowledge the role of the diverse private sector, ranging from micro-enterprises to cooperatives to multinationals, and that of civil society organisations and philanthropic organisations in the implementation of the new Agenda’. Furthermore, the SDGs recognise the contribution of international financial institutions, such as the World Bank and regional development banks²⁰ and the UN agencies,²¹ to the accomplishments of the SDGs. The achievements of the SDGs depend on the global partnership among the UN member states, which are primarily responsible for achieving them, and other actors, including the private sector and international organisations.²²

¹⁶ UN General Assembly, *supra* n.4, para.73.

¹⁷ *Ibid.*, para.77.

¹⁸ *Ibid.*, para.80.

¹⁹ *Ibid.*, para.74a.

²⁰ *Ibid.*, para.44.

²¹ *Ibid.*, para.46.

²² See *ibid.*, para.60. (“We recognize that we will not be able to achieve our ambitious Goals and targets without a revitalized and enhanced Global Partnership and comparably

The SDGs are important as they emphasise the role of the private sector and multi-level partnerships in achieving the SDGs. We, therefore, take the SDGs as a first step in setting SD as the goal of the international trade law system and reconstructing the structure and functions of the regulation of international trade.

The SDGs, however, have several biases as a framework for the reconstruction of the international trade law system. First, it mainly addresses states, and it does not address private firms or public–private partnerships in achieving SD (states bias). Second, it refers to the multinational trading system of the WTO as a major means of achieving the SDGs but not to the elements of international trade law other than the WTO, such as FTAs/EPAs and international investment agreements (IIAs) (WTO bias). Third, it refers to the trade concerns of developing country members of the WTO but not to the other rules and activities of the WTO relating to SD (developing country bias). Fourth, it refers to increasing goods exports by developing country members of the WTO but not to other factors of trade policy that lead to SD in developing country members of the WTO, such as trade facilitation and liberalisation of trade in services (export bias).

Given the SDGs’ biases, we should reconstruct them by adding goals and targets that lead to a broadly defined SD, as well as elements of a broadly defined international trade law system. This study explains the basic elements of the broadly defined international trade law system as they contribute to achieving the broadly defined SD in the next section and reconstructs the SDGs in sections IV and V.

III. Elements of the Broadly Defined International Trade Law System.

From the viewpoint of private firms that engage in international business transactions, the distinction between international trade law and international investment law is theoretical, and they comprise broadly defined international trade law that regulates international business transactions. Also, from the viewpoint of private firms, the distinction between hard

ambitious means of implementation. The revitalized Global Partnership will facilitate an intensive global engagement in support of implementation of all the goals and targets, bringing together Governments, civil society, the private sector, the United Nations system and other actors and mobilizing all available resources.”)

law and soft law should also be mitigated, as the latter also influences the behaviours of private firms. If this broad definition of international trade law is adopted, it comprises (1) hard law relating to international trade and investment (narrowly defined international trade law), (2) elements of hard law other than narrowly defined international trade law that relate to international trade and investment, (3) elements of soft law relating to international trade and investment that address states and (4) elements of soft law relating to international trade and investment that address private firms (Table 2).

Table 2. Elements of broadly defined international trade law

Hard law	Narrowly defined international trade law	WTO agreements, FTAs/EPAs, IIAs
Hard law	Other rules of international law relating to the regulation of international trade and investment	Part of international environmental law, international human rights, international labour standards
Soft law	Soft law relating to international trade and investment that addresses states	Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy ²³
Soft law	Soft law relating to international trade and investment that addresses private firms	Tripartite Declaration, OECD Guidelines for

²³ ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), adopted by the Governing Body of the International Labour Office at its 204th Session (November 1977), and amended at its 279th (November 2000), 295th (March 2006) and 329th (March 2017) Sessions. See ILO, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 5th Edition*, 2017.

<https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf>

		Multinational Enterprises ²⁴ Guiding Principles on Business and Human Rights ²⁵
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(Source: Prepared by the author)

According to this broad definition of international trade law, the domestic laws of each country that regulate international transactions of private firms, or so-called international transactions law, are excluded. This is not to say that international transactions law is unimportant in regulating private firms' international transactions. Based on its regulatory jurisdiction, each country applies its international transactions law to international transactions involving domestic and foreign firms. In addition, each country adopts and implements its own international transactions law, and each country's implementation and application of the law vary in coverage. However, the elements of the broadly defined international trade law are based on the regulatory applications of the contracting parties in the case of hard law and soft law elements addressed to states or on the will of their articulators or recipients in the case of soft law elements addressed to private firms, which is independent of the regulatory jurisdiction of each state. As a result, the elements of the broadly defined international trade law are applied to contracting parties (in the case of hard law), all the UN member states (in the case of soft law elements addressed to states) and to private firms (in the case of soft law elements addressed to private firms).²⁶ Therefore, it is possible to

²⁴ OECD Guidelines for Multinational Enterprises, adopted in 1976 and amended in 1979, 1984, 1991, 2000 and 2011. See OECD, *OECD Guidelines for Multinational Enterprises, 2011 Edition*, 2011. <<https://www.oecd.org/daf/inv/mne/48004323.pdf> >

²⁵ Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in June 2011. See UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, 2011. <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf >

²⁶ See Guiding Principles on Business and Human Rights. *Supra* n.24.

theoretically differentiate between the broadly defined international trade law and the so-called international transactions law.²⁷

There is no opposition to the integration of elements of the narrowly defined international trade law (WTO agreements, FTAs/EPAs and IIAs) into the broadly defined international trade law. In contrast, an explanation is needed to include the other elements of the broadly defined international trade law. First, other rules of international law relating to the regulation of international trade and investment, are classified as branches of international law, such as international environmental law and international human rights, which are different from international economic law and international trade law. However, in several instances, these international law rules regulate international trade and investment. For example, the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal are two treaties in international environmental law that primarily focus on limiting international trade to achieve environmental sustainability. In addition, there are treaties that limit trade to implement the objectives of the treaties (e.g. Montreal Protocol on Substances that Deplete the Ozone Layer). Furthermore, in terms of international human rights, Article 7 of the International Covenant on Economic, Social and Cultural Rights provides everyone the right to just and favourable working conditions, the right to form trade unions and strike in Article 8 and the right to an adequate standard of living for himself and his family in Article 11. In terms of the international law of the sea, there are several regional treaties that regulate the sustainable use of maritime living resources, and control illegal, unreported and unregulated (IUU) fisheries.²⁸ These treaties regulate international trade and investment to achieve environmental sustainability, which should be included in the broadly defined international trade law.

²⁷ On the distinction between broadly defined international economic law and international transactions law, see Junji Nakagawa et al. *International Economic Law, 3rd ed.*, Yuhikaku, 2019, pp.3-8. (written by Junji Nakagawa.)

²⁸ See, for instance, Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, adopted on 22 November 2009, entered into force in June 2016.

Soft law elements that address states are the third category of elements comprising broadly defined international trade law. The Tripartite Declaration provides principles that should be complied with by national governments, bodies of employers and labour unions and multinational enterprises with respect to employment, training and labour conditions relating to the attainment of social sustainability.²⁹ In addition, this document considers states, multinational enterprises, employers' organisations and labour unions as its addressees and, therefore, differs from the OECD Guidelines for Multinational Enterprises, which addresses multinational enterprises, in terms of its legal nature.³⁰

The fourth category of elements comprising the broadly defined international trade law is soft law elements that address private firms. This includes the Tripartite Declaration, OECD Guidelines for Multinational Enterprises and the Guiding Principles for Business and Human Rights. The OECD Guidelines provide codes of conduct that OECD member states recommend to their multinational enterprises. The fifth edition of the OECD Guidelines provides detailed codes of conduct related to human rights protection (Recommendation IV), employment and industrial relations (Recommendation V) and environment (Recommendation VI), all of which are related to SD. In addition, the OECD Guidelines provide implementation procedures of the Guidelines, including each OECD member state's national contact points and the use of mediation to ensure compliance by multinational enterprises. In that sense, the OECD Guidelines are partly addressed to states.³¹

The Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in June 2011, provide three pillars: (1) the state duty to protect human rights,

²⁹ See ILO, *supra* n.21, p.v. ('The principles laid down in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) offer guidelines to multinational enterprises, governments, and employers' and workers' organisations in such areas as employment, training, conditions of work and life, and industrial relations'.)

³⁰ See OECD, *supra* n.22, p.3. ("The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries.")

³¹ See *ibid.*, Part II: Implementation Procedures of the OECD Guidelines for Multinational Enterprises.

(2) the corporate responsibility to respect human rights and (3) access to remedy. In addition, the Guiding Principles provides a detailed explanation of the three pillars. In terms of corporate responsibility to respect human rights, it provides detailed principles and guidelines for the conduct of so-called human rights due diligence, which private firms use to address human rights infringements that are caused by them.³² This section of the Guiding Principles is particularly important as a code of conduct for private firms engaging in international transactions, including international trade and investment. The Guiding Principles are a soft law with which private firms are recommended to comply; thus, they do not impose any legal duties on private firms. However, domestic laws in Europe and the U.S. eventually came to comply with the Guiding Principles as a legal obligation.³³ In such cases, the Guiding Principles become legally binding.

According to the general overview of the broadly defined international trade law provided above, the broadly defined international trade law covers a broad range of norms that urge private firms engaging in international transactions, such as international trade and investment, to contribute to the achievement of SD. As a result, the comprehensive role of broadly defined international trade law in achieving the SDGs in global society must be thoroughly understood.

IV. Sustainable Development Goals and International Trade Law System

IV-1. Reference to the International Trade Law System in the Sustainable Development Goals

According to UN General Assembly Resolution A/RES/70/1, which adopted the SDGs, international trade is ‘an engine for inclusive economic growth and poverty reduction, and contributes to the promotion of sustainable development’.³⁴ It then emphasises the role of the WTO as follows: ‘We will continue to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the

³² See Guiding Principles, *supra* n.23, Principles 17~21.

³³ See Japan External Trade Organization, Relevant laws concerning supply chains and human rights (Japanese translation).

<https://www.jetro.go.jp/world/scm_hrm/supplychain.html>

³⁴ *Ibid.*, para.68.

WTO, as well as meaningful trade liberalisation. We call upon all members of the WTO to redouble their efforts to promptly conclude the negotiations on the Doha Development Agenda’.

Several SDGs targets mention the WTO and its initiatives (see Table 3).

Table 3. SDGs targets that mention the WTO and its initiatives

2.b	Correct and prevent trade restrictions and distortions in global agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round
3.b	Provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of developing countries to use to the full the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all
8.a	Increase Aid for Trade support for developing countries, in particular least developed countries, including through the Enhanced Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries
10.a	Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with World Trade Organization agreements
14.6	By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognising that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation
17.10	Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including

	through the conclusion of negotiations under its Doha Development Agenda
17.12	Realise timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access

(Source: Prepared by the author.)

IV-2. Four Biases of the Reference to the International Trade Law System in the Sustainable Development Goals

The reference in the SDGs to the international trade law system is limited to the WTO and its initiatives, which have four biases. First, SDGs address states but do not address elements of the broadly defined international trade law system that are related to private firms, such as the OECD Guidelines for Multinational Enterprises and the Guiding Principles on Business and Human Rights. This is referred to as a state bias. However, Target 17.16 of the SDGs refers to the multi-stakeholder partnership among the states, the private sector and international organisations, and Target 17.17 encourages and promotes effective public, civil and public-private and partnerships (PPP). Therefore, the SDGs recognises the role of private firms and PPP in the achievement of the SDGs. However, the goals and targets of the SDGs do not include the components of international trade law relating to private firms and PPP.

Second, the SDGs do not refer to the hard law components of international trade law other than the WTO, such as FTAs/EPAs and IIAs. This is referred to as the WTO bias. The provisions of FTAs/EPAs are applicable to several targets. For example, the Trans-

Pacific Partnership (TPP),³⁵ Japan–EU EPA³⁶ and Agreement on Climate Change, Trade and Sustainability (ACCTS),³⁷ are related to FTAs/EPAs (Table 3).

Table 4. Targets of the SDGs that are related to FTAs/EPAs

7.3	By 2030, double the global rate of improvement in energy efficiency	Japan – EU EPA Art.16.5(c)
8.7	Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms	TPP Art.19.3.1
8.8	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment	TPP Art.19.3.2
12.7	Promote public procurement practices that are sustainable, in accordance with national policies and	TPP Art.15.3.1(b), 15.3.2, 15.12.6

³⁵ The TPP, incorporated in the CPTPP (Comprehensive and Progressive Agreement of the Trans-Pacific Partnership), entered into force on 30 December 2018. The text of the TPP is available at <https://www.cas.go.jp/jp/tpp/tppinfo/kyotei/tpp_text_en/index.html>

³⁶ The Japan-EU EPA entered into force on 1 February 2019. The text of the Japan-EU EPA is available at <<https://www.mofa.go.jp/files/000382106.pdf>>

³⁷ The negotiation of the ACCTS was started on 25 September 2019 among New Zealand, Fiji, Iceland, Costa Rica, Norway and Switzerland. See New Zealand Ministry of Foreign Affairs & Trade, Agreement on Climate Change, Trade and Sustainability (ACCTS) negotiations. <<https://www.mfat.govt.nz/en/trade/free-trade-agreements/trade-and-climate/agreement-on-climate-change-trade-and-sustainability-accts-negotiations/>>³⁸ See, for instance, Marie-Claire Cordonier Segger, *Crafting Trade and Investment Accords for Sustainable Development: Athena's Treaties*, Oxford University Press, 2021, pp.129-140.

	priorities	
12.c	Rationalise inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts, taking fully into account the specific needs and conditions of developing countries and minimising the possible adverse impacts on their development in a manner that protects the poor and the affected communities	ACCTS
14.4	By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics	TPP Art.20.16.3, Japan – EU EPA Art.16.8
15.6	Promote fair and equitable sharing of the benefits arising from the utilisation of genetic resources and promote appropriate access to such resources, as internationally agreed	TPP Art.20.13.4, Japan – EU EPA Art.16.6.1
15.7	Take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products	TPP Art.20.17.2, Japan – EU EPA Art.16.6.2(b)
15.8	By 2020, introduce measures to prevent the introduction and significantly reduce the impact of invasive alien species on land and water ecosystems and control or eradicate the priority species	TPP Art.20.14

15.c	Enhance global support for efforts to combat poaching and trafficking of protected species, including by increasing the capacity of local communities to pursue sustainable livelihood opportunities	TPP Art.20.17.4, 20.17.5
16.5	Substantially reduce corruption and bribery in all their forms	TPP Art.26.6, 26.7, 26.8, 26.9

(Source: Prepared by the author.)

Table 4 does not contain a complete list. If the contents of the existing FTAs/EPAs and IIAs are systematically analysed, more provisions of the FTAs/EPAs and IIAs will be added to the list. In addition, more targets of the SDGs will be covered by the provisions of the FTAs/EPAs and IIAs, and new targets may be added to the SDGs as the provisions of these agreements become relevant.

Third, the SDGs do not make reference to any WTO rules or practices that do not address the issues of its majority members, who are from developing countries. This is referred to as the developing country bias. In fact, there are several rules and practices of the WTO that are relevant to the achievement of the SD but are not referred to in the SDGs. They include general exceptions that justify trade restrictions for environmental protection (Art. 20(b), (g) of the GATT 1994³⁸) and trade restrictions for human rights protection (Art. 20(a) of the GATT 1994³⁹). Since its founding in 1995, the Committee on Trade and Environment (CTE) has dealt with issues concerning trade and environmental sustainability.⁴⁰ In November 2020, WTO members launched a Trade and Environmental

³⁸ See, for instance, Marie-Claire Cordonier Segger, *Crafting Trade and Investment Accords for Sustainable Development: Athena's Treaties*, Oxford University Press, 2021, pp.129-140.

³⁹ See, for instance, Rachel Harris & Gillian Moon, "GATT Article XX and Human Rights: What Do We Know from the First 20 Years?", *Melbourne Journal of International Law*, Vol.16, 2015, pp.1-52.

⁴⁰ See WTO, WTO, The Committee on Trade and Environment ('regular' CTE). <https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e.htm>

Sustainability Structured Discussion.⁴¹ Although these rules and practices of the WTO are relevant to the SD, they are not referred to in the SDGs.

Lastly, the SDGs' reference to the concerns of developing country members of the WTO is limited to those that are related to increasing goods exports from these countries, and the SDGs do not refer include other issues and concerns of developing country members that are relevant to SD, such as trade facilitation⁴² and trade in services.⁴³ This is referred to as the export bias.

Given how the SDGs were negotiated, these four biases of the SDGs in their reference to international trade law may be partly intentional. The Open Working Group (OWG), which was established by the UN Conference on Sustainable Development (Rio+20 Summit) in June 2012, was in charge of drafting the SDGs. The OWG consisted of 30 regional representatives who were appointed by UN members based on the five regional groups of the UN (Africa, Asia Pacific, East Europe, Latin America, Western Europe and others).⁴⁴ Therefore, the SDGs were the result of UN intergovernmental negotiations, and it was only natural that they were addressed to the governments of UN member states (state bias). As a result, private firms that engage in international trade and investment practices, which are crucial to achieving the goals and targets of the SDGs, are not referred to as responsible actors

⁴¹ See WTO, Trade and Environmental Sustainability Structured Discussions.
<https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfenvir_e.htm>

⁴² On the relevance of trade facilitation to SD, see, for instance, International Institute for Sustainable Development, "The WTO, Trade Facilitation and Sustainable Development", *IISD Trade and Development Brief*, No.3, 2003. Available at
<https://www.iisd.org/system/files/publications/investment_sdc_may_2003_3.pdf>

⁴³ On the negative impact of restrictive and inefficient services trade policy of developing countries on SD, see Matteo Fiorini & Bernard Hoekman, "Restrictiveness of Services Trade Policy and the Sustainable Development Goals", ADBI Working Paper Series, No.903, 2018. Available at <<https://www.adb.org/sites/default/files/publication/472386/adbi-wp903.pdf>>

⁴⁴ See Macharia Kamau, Pamela Chasek & David O'Conner, *Transforming Multilateral Diplomacy: The Inside Story of the Sustainable Development Goals*, Routledge, 2018, pp.52-58.

in this regard.

The WTO's bias toward the SDGs also resulted from its negotiation process for the SDGs. The WTO Secretariat participated in the negotiation process by (1) offering guidance and information to the UN Secretariat when it made preparatory documents for the negotiation, (2) attending inter-sessional meetings of the OWG and (3) participating in the stocktaking process before the drafting of the SDGs.⁴⁵ As a result, the targets that the WTO Secretariat determined to be important for achieving the SD are referred to as SDGs. In addition, the WTO Secretariat believed that it was inadequate to refer to the provisions of FTAs/EPAs and IIAs in the SDG as they are individual international agreements that do not represent a common understanding of the international society as a whole. As a matter of fact, a tremendous amount of work would have been required to survey hundreds of FTAs/EPAs and thousands of IIAs in order to identify elements that are relevant to the goals and targets of the SDGs.⁴⁶

In terms of the WTO's bias toward the SDGs, the SDGs only contain rules and practices that are relevant to its developing country members and least developed countries (LDC) members (developing country bias). In addition, the SDGs only contain rules and practices that are relevant to the increase in goods exports of developing country members and LDC members (export bias).

On the one hand, the SDGs' bias toward developing countries is acceptable because these countries make up the majority of WTO members. On the other hand, this resulted in the exclusion of the other WTO rules and practices that are relevant to SD, such as general exceptions and the activities of the CTE.

Furthermore, the export bias of the SDGs has a detrimental effect. Ten recommendations were made by the WTO in 2018 to improve the role of trade in achieving the SDGs,⁴⁷ including the reduction of trade costs by fully implementing the Trade

⁴⁵ *Ibid.*, pp.122-123.

⁴⁶ It is, however, not impossible to do such survey. As an example of such survey, see Cordonier Segger, *supra* n.37, Chapters 17 and 18.

⁴⁷ WTO, *Mainstreaming Trade to Attain the Sustainable Development Goals*, WTO, 2018, pp.58-64.

Facilitation Agreement (Recommendation 3) and improvement of the services sector (Recommendation 6). This demonstrates that the WTO Secretariat recognised the importance of trade facilitation and service trade liberalisation in achieving the SDGs. However, the SDGs do not refer to these two recommendations. It does not refer to trade facilitation, perhaps because the Trade Facilitation Agreement had not entered into force when the SDGs were adopted.⁴⁸ However, trade facilitation should have been included in the SDGs, which set goals and targets to be completed by 2030, as it will help substantively lower the trade costs of developing countries, which will then contribute to the achievement of the SDGs.

The omission of services trade liberalisation in the SDGs may be attributed to a general passive attitude of developing country members of the WTO towards liberalisation of trade in services. According to the services trade liberalisation negotiation under the Doha Development Agenda, developing country members have been reluctant to submit liberalisation offers except for Mode 4 (movement of natural persons).⁴⁹ In terms of the contribution of services trade liberalisation to the economic growth of developing countries and the fact that the SDGs refer to services in a number of goals and targets,⁵⁰ the omission of services trade liberalisation in the SDGs is regrettable.

V. Beyond the Sustainable Development Goals: International Trade Law System Based on Sustainable Development

The SDGs represent the common understanding of the international society regarding the goals and targets needed to achieve the SD of the international society as a whole.

⁴⁸ The Trade Facilitation Agreement entered into force on 22 February 2017, and 129 WTO members ratified it at the end of September 2022.

⁴⁹ On the negotiation of services trade liberalization under the Doha Development Agenda, see Trade Policy Bureau, Ministry of Economy, Trade and Industry (METI), *2022 Report on Compliance by Major Trading Partners with Trade Agreements – WTO, EPA/FTA and IIA -*, 2022, pp.411-414. (in Japanese)

⁵⁰ See, Fiorini & Hoekman, *supra* n.42, p.5, Table 1: Services Referenced in the SDGs.

International trade and investment are important means of achieving the SD; therefore, it is ideal that elements of the broadly defined international trade law are fully included in the SDGs. However, based on the four biases, the SDGs are not comprehensive in this respect. The elements of international trade and investment law that are relevant to the achievement of goals and targets for achieving the SD of the international society as a whole must be clarified, and the SDGs must be clarified by fully incorporating these elements. The revised SDGs is referred to as SDGs 2.0. A complete picture of SDG 2.0 is presented by adding elements of the broadly defined international trade law that are not incorporated in the SDGs.

The following steps are needed to revise the SDGs in order to include the comprehensive elements of the broadly defined international trade law.

- (1) Add elements of soft law relating to international trade and investment addressed to private firms to overcome state biases in the SDGs

This step should cover the soft law instruments, such as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,⁵¹ OECD Guidelines for Multinational Enterprises⁵² and Guiding Principles on Business and Human Rights.⁵³ In addition to the existing targets of the SDGs that are relevant to these instruments (Table 5), new targets should be added to the SDGs to cover them (Table 6).

Table 5. Existing targets of the SDGs that are relevant to soft law instruments are addressed to private firms.

5.1	End all forms of discrimination against all women and girls everywhere	Tripartite Declaration Section 28, Guidelines V.1(e)
8.7	Take immediate and effective measures to eradicate forced labour, end modern slavery and human	Tripartite Declaration Section 25, 27, Guidelines

⁵¹ See *supra* n.21.

⁵² See *supra* n.22.

⁵³ See *supra* n.23.

	trafficking and secure the prohibition and elimination of the worst forms of child labour, and by 2025, end child labour in all its forms	V.1(c), (d)
8.8	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular, women migrants, and those in precarious employment	Tripartite Declaration Section 33, 44, Guidelines V.4(c)
12.6	Encourage companies, in particular, large and transnational companies, to adopt sustainable practices and integrate sustainability information into their reporting cycle	Guidelines VI.2(a), VI.6
16.10	Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements	Guiding Principles 11–14, 16, 17–24, 29–31

(Source: Prepared by the author.)

Table 6. New targets added to the SDGs to cover soft law instruments addressed to private firms

7.4	By 2030, substantively increase the ratio of renewable energy in corporate activities	Guidelines VI.6(b)
8.11	Private firms should promote job creation and decent work	Tripartite Declaration Section 16–19, Guidelines V.4, V.5
8.12	Private firms should protect freedom of association and the right to collective bargaining	Tripartite Declaration Section 48–51, Guidelines V.1.(a), V.1.(b), V.2, V.6~V.8
10.8	Private firms should abolish all forms of discrimination in employment	Tripartite Declaration Section 28, 30, Guidelines

		V.1(e)
12.9	Private firms should establish and maintain environmental audit	Guidelines VI.1
12.10	Private firms should establish and maintain business contingency plans to prevent serious damage of environment and health arising from business	Guidelines VI.4, private standards
13.4	Substantively decrease the emission of greenhouse gas arising from corporate activities	Guidelines VI.6(b), VI.6(c)
16.12	Private firms should bear responsibility to respect human rights	Guidelines VI, Guiding Principles 11–24, 29–31
17.20	Private firms should adopt principles of corporate social responsibility	Guidelines II.A.1, II.A.2, II.A.6

(Source: Prepared by the author.)

(2) Add elements of broadly defined international trade and investment law other than the WTO to overcome the WTO bias of the SDGs.

These include elements of narrowly defined international trade and investment law other than WTO law (FTAs, EPAs and IIAs), other international trade and investment law and soft law relating to international trade and investment that addresses states.⁵⁴ Table 4 shows the existing list of the provisions of a few FTAs/EPAs that are covered by the SDGs. More provisions of FTAs/EPAs and IIAs will be expected to be added to the list by systematically analysing the provisions of FTAs/EPAs and IIAs. In addition, new targets may be added to the SDGs, as provisions of these agreements become relevant. As this requires a comprehensive and systematic analysis of FTAs/EPAs and IIAs, an analysis will be conducted in the next stage of this study, and an additional Discussion Paper will be produced.

⁵⁴ Elements of soft law relating to international trade and investment that address states are also included in this category, but they are excluded here, as they are covered in (1) above.

(3) Add elements of WTO law and its practices other than the concerns of developing country members that are related to the achievement of SD.

These include general exceptions of the GATT 1994 relating to the environment and human rights protection, activities of the CTE and the Trade and Environmental Sustainability Structured Discussion. The SDGs should include 17.10*bis*, 17.10*ter* and 17.10*quater* as a target that include each of them (Table 7).

Table 7. New targets added to the SDGs relating to the elements of WTO law and its practices other than the concerns of the developing country members

17.10 <i>bis</i>	Respect the general exceptions of the GATT 1994 concerning the protection of the environment and respect for human rights
17.10 <i>ter</i>	Promote the activities of the Committee on Trade and Environment
17.10 <i>quater</i>	Promote Trade and Environmental Sustainability Structured Discussion

(Source: Prepared by the author.)

(4) Add elements of WTO law and its practices other than goods export promotion that is related to the achievement of SD.

These include trade facilitation and liberalisation of services trade. SDGs should include 17.12*bis* and 17.12*ter* (Table 8).

Table 8. New targets added to the SDGs relating to the elements of WTO law and its practices other than goods export promotion of developing countries

17.12 <i>bis</i>	Promote trade facilitation by fully implementing the WTO Agreement on Trade Facilitation
17.12 <i>ter</i>	Promote liberalisation of trade in services

(Source: Prepared by the author.)

The SDGs 2.0, which reflects these steps, demonstrate a comprehensive relationship between the SD and broadly defined international trade law. However, there are several

elements of broadly defined international trade law, in particular, FTAs/EPAs and IIAs, that are not listed in the present version of SDGs 2.0. The next step of this study is to draw a comprehensive picture of the SDGs 2.0 based on the analysis of these elements.