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WTO's Further Actions for SDGs¹

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Abstract

This paper discusses actions that WTO may take to achieve the SDGs: WTO Members should further improve preferential treatment to increase exports from and production in least developed countries (“LDCs”) by including major LDC export goods, such as agricultural goods and dairy products, in their DFQF lists, relaxing the rules of origins applicable to LDC goods, and not imposing countervailing duties against subsidies, including third-country subsidies, granted directly or indirectly by LDCs; WTO Members should continue working on food security and access to essential medicines and vaccines for LDCs; WTO Members should relaunch the EGA negotiation; to effectuate the prohibition of forced labor and child labor, WTO Members should discuss guidelines of measures that would be permissive under the Article XX; WTO Members should explore the permissive import carbon import fees, establishing a dedicated forum in the WTO; and WTO Members should not impose countervailing duties against temporary exemptions from environmental obligations while other Members are taking efforts to achieve their final goals.

Keywords: CBAM, EGA, forced labor, LDC, SDG, subsidy, WTO

JEL classification: F13, F16, F18, F19, H20, H23, J47, K33, Q17, Q27, Q56

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Introduction

The World Trade Organization (“WTO”) was established in 1995 to develop a multi-lateral trading system for fair and free trade. The Preamble of the *Marrakesh Agreement Establishing the World Trade Organization* states that the WTO will conduct trade and economic endeavour, ensuring full employment, a large and steadily growing volume of real income, and effective demand, and seeking to protect and preserve the environment. It also recognizes the need to secure certain share for the developing countries, especially the least developed countries (“LDCs”) in the international trade. As such, the WTO is an organization to expand the free trade in goods and services, balancing the same with environmental protection and the development of LDCs.

On September 25, 2015, the General Assembly of the United Nation resolved “*Transforming our world: the 2030 Agenda for Sustainable Development*” (“SDGs”).¹ This agenda sets forth 17 sustainable development goals and 169 targets that are “integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental.”

As seen above, the WTO and SDGs share the objectives of sustainable development, *i.e.*, balanced development among economies, society, and the environment. The WTO is significant for the SDGs because it is able to set international trade rules binding substantially all the countries of the world. Thus, the WTO would be the most preferable forum for establishing international trade rules, balancing economics with social and environmental matters.

The significance of the WTO is clearer when compared other trade agreements, such as free trade agreements (“FTAs”). FTAs are agreements between like-minded countries. Accordingly, FTAs would be swifter and more flexible in setting rules and measures to respond to newly developed international trade situations. It would also be easier and quicker to establish rules that respond to the demands of the SDGs and demonstrate the directions of preferred rules to the world. These rules, however, apply only to parties in a particular FTA and cannot be applied directly to other countries.

This paper reviews the SDGs to identify issues where the WTO may be able to help achieve the SDGs, including targets that explicitly or implicitly request that the WTO take certain actions. This study does not include analyses of the possible contributions of FTAs to the SDGs. Such analyses defer to the paper by Mr. Seiji Takagi.

¹ Resolution adopted by the General Assembly on September 25, 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>

1. Review of SDGs to Identify Issues where the WTO may be Able to Help

1.1 Analysis of the Individual Goals and Targets of the SDGs

This section reviews 17 goals and 169 targets to identify issues where the WTO may help achieve the goals of the SDGs. It should be noted that this study will not repeat specific language of all individual goals and targets. Please refer to publications of the 17 SDGs and targets, such as “*Transforming our world: the 2030 Agenda for Sustainable Development*,” to confirm their descriptions.

Goal 1. End poverty in all its forms everywhere

Goal 1 consists of seven targets. Target 1.1 defines the “extreme poverty” as “people living on less than \$1.25 a day,” and set that the extreme poverty will be eradicated by 2030. The other six targets discuss how to end poverty, including equal treatment of men and women and accelerated investment.

The WTO is not a forum for dealing directly with poverty. As a supporter for development of LDCs, the WTO has worked on promoting exports from LDCs by providing instruments, such as LDC preferential tariffs, duty-free quota free (the “DFQF”) treatment, and service waivers, as discussed in the next Section. The WTO also will be able to support the achievement of this Goal by providing further support for exports from LDCs, reducing impediments to exports, and facilitating investments in LDCs.² From these perspectives, the WTO may consider the following measures:

- provision of more preferential treatments to imports from LDCs to increase their income;
- exemption of LDC goods from trade remedies, including countervailing duties (“CVDs”) against all subsidies granted to exporters and producers in LDCs, including third country subsidies; and
- facilitation of foreign investments in LDCs to increase their production and sales ability.

Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture

Goal 2 seeks to end hunger and ensure access by all people to safe and sufficient food (Target 2.1), address nutritional needs (Target 2.2) double agricultural income (Target 2.3), and promote access to fair and equitable sharing of the benefits arising from the utilization of genetic resources (Target 2.5). Target 2.b then targets actions to “[c]orrect and prevent trade restrictions and distortions in world agricultural markets, including through the parallel

² Equal rights to economic resources under Target 1.4 would be domestic matters within the individual LDC’s sovereignty, which the WTO would not and should not step in.

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.”

While agricultural developments themselves would not be within the jurisdiction of the WTO, the WTO would be able help these goals and targets:

- by implementing export promotion measures, as discussed in the Goal 1 above;
- by ensuring that agricultural export subsidies are abolished, as required by Target 2.b; and
- by ensuring the food security of all people in international trade.

Goal 3. Ensure healthy lives and promote well-being for all at all ages

Goal 3 addresses public health. In particular, Target 3.8 specifies measures to “[a]chieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.” Target 3.b states that the WTO should “provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPs Agreement and Public Health.”

WTO Members have been working on exactly the issue that Target 3.b addresses since COVID-19 was recognized as a pandemic in 2020. As COVID-19 has subsided, the WTO will be able to contribute to this Goal and Target:

- by establishing a system that affords all people access to essential medicines and vaccines at affordable prices.

Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

Goal 4 deals with issues of education, where the WTO would not be relevant.

Goal 5. Achieve gender equality and empower all women and girls

Goal 5 aims to abolish “all forms of discrimination against all women and girls” (Target 5.1). Target 5.c then urges, “[a]dopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all.”

An informal Working Group of the WTO has reviewed “gender and trade” for the last five years. Accordingly:

- The WTO should continue its work on trade policies to enhance equality between men and women.

Goal 6. Ensure availability and sustainable management of water and sanitation for all

Goal 6 sets that “by 2030, achieve universal and equitable access to safe and affordable drinking water for all” (Target 6.1). Target 6.3 then requires “reducing pollution, eliminating dumping, and minimizing release of hazardous chemicals and materials.”

Trade and environment are major issues faced by the WTO and its Members. Certain industrial policies of Members that allow domestic producers to produce goods without sufficient environmental protection to export them at lower prices could be viewed as unfair international trade practices. Some Members impose CVDs on such goods, claiming that the government’s permission to produce goods without sufficient environmental protection is a subsidy. The EU has been implementing the Carbon Border Adjustment Mechanism (“CBAM”). Some developing Members view these measures as impediments to international trade.

From these points of view, the WTO may consider:

- WTO rules if they sufficiently balance environmental measures and free trade; and
- A mechanism to prevent the export of goods and services produced without sufficient environmental protection, including:
 - appropriateness of the CBAM and the extent to which international trade may be restricted owing to insufficient environmental protection; and
 - CVDs against exports of goods produced with insufficient environmental protection.

Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all

Goal 7 encourages increases of renewable energy (Target 7.2) and measures to “expand infrastructure and upgrade technology for supplying modern and sustainable energy services.” (Target 7.b) While the WTO would not be the forum to consider the promotion of infrastructure or technologies of renewable energy, it may be able to contribute to easier access to renewable energy by reducing and eliminating customs duties on goods related to renewable energy. The WTO may also consider the actionability and countervailability of subsidies and other measures to promote the supply of renewable energy.

It should be noted that the WTO dispute settlement body previously found that a measure on the power supply from renewable energy³ was inconsistent with the WTO Agreements because of the unfair nature of the measure. The panel found that the measure in question favored domestic products and discriminated against foreign products. Such unfair practices are not related to this Goal.

³ See Appellate Body Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS412/AB/R, WT/DS426/AB/R, adopted 24 May 2013.

In sum, WTO Members should consider:

- Relaunch of negotiation of the environmental goods agreement (the “EGA”); and
- permissible subsidies to encourage an increase in renewable energy for environmental protection.

Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Goal 8 aims to “sustain per capita economic growth ... at least 7 per cent gross domestic product growth per annum in the least developed countries” (Target 8.1). To achieve this goal, Target 8.b urges increased aid for trade support for LDCs “through the Enhanced Integrated Framework for Trade-related Technical Assistance to Least Developed Countries.” The WTO has been engaged in the programme of the Framework since October 1997. Thus, this study does not make any further recommendations.

Goal 8 also deals with labor issues, for which the International Labour Organization (“ILO”) is the central forum. The role of the WTO would be to balance labor issues and free trade. Among the various labor issues raised in other targets, Target 8.7 would be relevant to the WTO. This target states, “[t]ake immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking and ... by 2025 end child labor in all its forms.” The elimination of goods and services produced by forced labor or child labor from international trade is a major concern of the United States and the European Union.

The WTO will be able to address the following issue in connection with this Goal:

- Elimination of goods and services produced by forced labor or child labor from international trade.

Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

Goal 9 discusses the construction of infrastructure and industrialization in developing countries. However, this Goal is not relevant to the WTO.

Goal 10. Reduce inequality within and among countries

Goal 10 targets the growth of the income of the bottom 40 per cent of the population (Target 10.1); elimination of discriminatory laws, policies, and practices (Target 10.3); and an enhanced representation and voice of developing countries in global decision-making (Target 10.6). Target 10.a then states, “[i]mplement the principle of special and differential

treatment for developing countries, in particular least developed countries, in accordance with World Trade Organization agreements.”

As stated in Goal 1, the WTO has contributed and will be able to contribute more to increasing the income of developing countries, particularly LDCs. Preferential tariffs would be the most effective tool of the “separate and differential treatment” that the WTO would be able to provide LDCs. The WTO also provides LDCs with various other S&Ds.⁴ Target 10.a, however, does not specify any existing S&Ds to be improved or new S&Ds to be implemented.

More enhanced representation of developing countries, as demanded by this Goal, would not be relevant to the WTO because its consensus-based resolutions give each Member veto power at WTO meetings.

In sum, WTO Members may consider:

- further special and differential treatments as addressed regarding Goal 1.

Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable

Goal 11 sets forth the basic requirements of adequate, safe, and affordable housing and basic services, and the upgrading of slums (Target 11.1). To accomplish this Goal, targets state, among other issues irrelevant to the WTO, “reduc[tion of] the adverse per capita environmental impact” (Target 11.6), and “mitigation and adaptation to climate change” (Target 11. b).

These targets are related to the environment, particularly climate change. *The United Nations Framework Convention on Climate Change* and the *Paris Agreement* are appropriate forums for discussing and taking action on climate change and global warming. The WTO may be able to contribute to this issue:

- by balancing environment measures and free trade, as discussed regarding Goal 6.

⁴ The WTO provides, for example, the following S&Ds:

- LDCs are exempted from commitments on reduction in agricultural support (Article 15.2 of the Agreement on Agriculture);
- Prohibition of export subsidies under Article 3.1 of SCM Agreement does not apply to LDC (Article 27.2 of the SCM Agreement);
- Less than 2% of countervailing duty (“CVD”) may not apply to developing countries (Article 27.10(a) of the SCM Agreement);
- CVDs may not apply to imports of less than 4% of the total import volume from a developing country, unless imports from developing country Members whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the importing Member. (Article 27.10(b) of the SCM Agreement);
- No safeguard measures shall apply to imports from a developing country representing less than 3%, unless imports from developing country Members whose individual shares of total imports represent less than 3% collectively account for more than 9% of the total imports of the like product in the importing Member (Article 9 of the Agreement on Safeguards).

Goal 12. Ensure sustainable consumption and production patterns

Goal 12 requires actions to implement 10-Year Framework of Programmes on Sustainable Consumption and Production Patterns (“10YFP”). The United Nations Environmental Programme (“UNEP”) has been handling the programs of 10YFP.

The WTO would have little to contribute to this Goal.

Goal 13. Take urgent action to combat climate change and its impacts

Goal 13 targets “[s]trengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries” (Target 13.1), and requires improvements of “education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning” (Target 13.3).

The WTO is not a forum to consider and take specific actions against climate change but is able to provide support from the viewpoint of balancing measures for the environment and free trade, as discussed in Goal 11. Thus, the WTO will be able to contribute to this Goal:

- by balancing environmental measures and free trade, as stated in Goal 6.

Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development

Goal 14 claims the prevention and reduction of all types of marine pollution. The forum to discuss maritime pollution is the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, and 1996 and other Protocols of the Convention. The WTO would have little to contribute to these problems.

This Goal extends to fisheries, demanding that the WTO prohibit certain forms of fisheries subsidies (Target 14.6). The WTO satisfied this requirement by concluding the *Agreement on Fisheries Subsidies*. This Agreement is now in the process of ratification by Members. WTO Members are also working on further agreements on fisheries.

Thus, the WTO is on track to meet the requirements of this Goal.

Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss

Goal 15 is related to the conservation of the natural environment, such as terrestrial and inland freshwater ecosystems, forests (Target 15.2), mountain ecosystems (Target 15.4), and threatened species (Target 15.5). These issues have been addressed in other forums including the *Convention on Biological Diversity*, the *UN Convention to Combat Desertification*, the *Convention on International Trade in Endangered Species of Wild Fauna*

and Flora, and *Ramsar Convention on Wetlands*. The WTO is not the forum to handle these issues.

It also targets the fair and equitable sharing of benefits arising from the utilization of genetic resources (Target 15.6). Although this issue is related to international trade, the *Convention on Biological Diversity* is the forum for setting these rules.

Accordingly, Goal 15 would not be within the jurisdiction of the WTO.

Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Goal 16 targets reducing all forms of violence (Target 16.1), including “all forms of violence against and torture of children” (Target 16.2) and “corruption and bribery in all their forms” (Target 16.5). From the perspective of international trade, the WTO may be able to contribute to the following:

- Take action against goods and services, the production of which involves certain violence, such as forced labor and child labor, as identified in Goal 8.

Bribery and corruption are major impediments to international trade. The OECD⁵ and the General Assembly of the United Nations⁶ have addressed this matter, obliging signatories to make bribery and corruption criminal offenses.⁷ All OECD and seven non-OECD countries are the signatories of the OECD Anti-Bribery Conventions, and 147 states are signatories to the resolution of the General Assembly.⁸

As the OECD and UN took the lead on this issue, the WTO would not need to take a step in this matter.

Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development

Goal 17 sets the means of implementing the SDGs. Its section on “Trade,” states as follows:

- 17.10 Promote a universal, rules-based, open, nondiscriminatory, and equitable multilateral trading system under the World Trade

⁵ *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, (“OECD Anti-Bribery Convention”), available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0293> as of November 14, 2023.

⁶ “*United Nations Convention against Transnational Organized Crime*” (“TOC”), available as of November 14, 2023, at https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-11%20AM/Ch_XVIII_12p.pdf

⁷ See Article 1.1 of the OECD Anti-Bribery Convention. See also Article 8 of the TOC. Article 9.1 of the TOC further requires signatory states to adopt “effective measures ... to prevent, detect and punish the corruption of public officials.”

⁸ See *United Nations Treaty Collection*, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en as of November 14, 2023.

Organization, including through the conclusion of negotiations under its Doha Development Agenda;

- 17.11 Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020;
- 17.12 Realize 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.

The WTO has been and will be “a universal, rules-based, open, non-discriminatory and equitable multilateral trading system,” as discussed in Target 17.10. The Doha Development Agenda identified in Target 17.10 could not be completed, as the Secretary of the WTO declared its impasse in December 2011, well before the SDGs was resolved in 2015. It is not clear why the SDGs include this Target to demand that the WTO take actions that it was known to be unable to do. This paper will not discuss this issue further.

Targets 17.11 and 12 require the WTO to provide preferential treatment for LDCs. The WTO will be able to contribute to these targets:

- By providing preferential treatments to LDCs as discussed in Goal 1.

1.2 Summary of Issues that the WTO would be able to contribute further to SDGs

As analyzed above, the WTO may be able to contribute to SDGs further in the following respects:

- Expansion of exports from LDCs to increase their incomes (Goals 1, 2, 10, and 17)
 - provision of more preferential treatments to imports from LDCs;
 - exemption of LDC goods from trade remedies, including countervailing duties (“CVDs”) against all subsidies, such as yellow subsidies and third-country subsidies;
 - facilitation of foreign investments in, and other financial support for, LDCs to increase their production and sales abilities;
 - abolishment of agricultural export subsidies (Goal 2);
- Food security for all people (Goal 2);
- Medicines and vaccines (Goal 3);

- establishing a system under the TRIPs Agreement that affords all people access to essential medicines and vaccines at affordable prices;
- Gender and trade (Goal 5):
 - work on trade policies to enhance equality of men and women;
- Environment and trade (Goal 6, 7, 11, 13):
 - relaunch of the EGA negotiation;
 - permissible subsidies to encourage increase of renewable energy for environmental protection;
 - review of WTO rules balancing environmental measures and free trade;
 - appropriateness of CBAM and the extent to which international trade may be restricted due to insufficient environmental protection;
 - CVDs against exports of goods produced with insufficient environmental protection;
- Labor and trade (Goal 8, 16):
 - elimination of goods and services produced by forced labor or child labor from international trade.

The next Section considers the possible actions that the WTO may take to respond to these issues.

2. How the WTO will be Able to Contribute to SDGs

2.1 Expansion of Exports from LDCs to Increase their Incomes

The most important goal of the SDGs would be to eradicate extreme poverty, as listed in Goal 1. The international trade community can contribute to achieving this Goal by taking measures to increase exports from LDCs. The WTO would also be able to do so by facilitating foreign investment into LDCs to provide more jobs and increase production.

In addition to these claims, the SDGs made specific requests to the WTO to grant duty-free quota free (“DFQF”) treatment to imports from LDCs in Target 17.12.

Below reviews the status of these issues at the WTO and consider the specific actions that the WTO should take.

(a) Measures to Increase of Exports from LDCs: LDC Preferential Tariffs

(i) History of Preferential Treatment of LDC Goods

The GATT Contracting parties decided on November 28, 1979 to establish general preferential tariffs for imports from developing countries and LDC preferential tariffs for

imports from LDCs. This decision was based on the resolution by the United Nations Conference on Trade and Development (“UNCTAD”).⁹

At the WTO Hong Kong Ministerial Conference in 2005, all WTO Members agreed to eliminate custom duties and import quota (“DFQF”) on 97% of products from LDCs.¹⁰ Members reviewed their implementation of DFQF at the WTO Paris Ministerial Conference in December 2013 and found that “nearly all developed Members provide either full or nearly full DFQF market access to LDC products.” The Paris Ministerial Conference then required developed Members, which had not yet reached the 97% DFQF, to improve their existing DFQF coverage. Developing countries are required to seek to provide or improve DFQF market access for products originating from LDCs by the next Ministerial Conference.¹¹

The Paris Ministerial Conference also set guidelines of preferential rules of origin for importing Members. Its decision stated “it is desirable to keep the level of value addition threshold as low as possible,” preferably 25% in case of the value-added method (“RVC”), or the change of heading or subheading of nomenclature in case of the change-of-tariff classification method (“CTH/SH”).¹²

The Nairobi Ministerial Conference in December 2015 decided that Members shall consider adopting preferential RVC 25%, or allow the preferential CTH or CTSH. In addition, the preferential rules of origin for textile products classified in Chapters 61 and 62 shall be the production process method of assembling fabrics into finished products.¹³

(ii) History of Preferential Treatment of LDC Services

The eighth WTO Ministerial Conference at Geneva in December 2011 decided that Members may exempt service imports from LDCs from application of most favored nation treatment irrespective of Article XVI of the *General Agreement of Trade in Services* (“GATS”).¹⁴ The Nairobi Ministerial Conference in December 2015 extended this service waiver until the end of 2030 and recommended capacity building for LDCs.¹⁵

⁹ *Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries*, Decision of 28 November 1979 (L/4903)

¹⁰ *Ministerial Declaration*, Adopted on December 18, 2005, WT/MIN(05)/DEC, para. 47.

¹¹ *Duty-Free and Quota-Free Market Access for Least-Developed Countries*, Ministerial Decision of 7 December 2013, 11 December 2013, WT/MIN(13)/44, WT/L/919.

¹² *Preferential Rules of Country of Origin for Least-Developed Countries*, Ministerial Decision of 7 December 2013, 11 December 2013, WT/MIN(13)/42, WT/L/917, paras 1.3, 1.5.

¹³ *Preferential Rules of Origin for Least-Developed countries*, Ministerial Decision of 7 December 2013, 19 December 2015, WT/MIN(15)/47, WT/L/917/Add.1, para. 1.1(b), 1.2(a), 1.3(a).

¹⁴ *Preferential Treatment to Services and Service Suppliers of Least-Developed Countries*, Decision of 17 December 2011. WT/L/847.

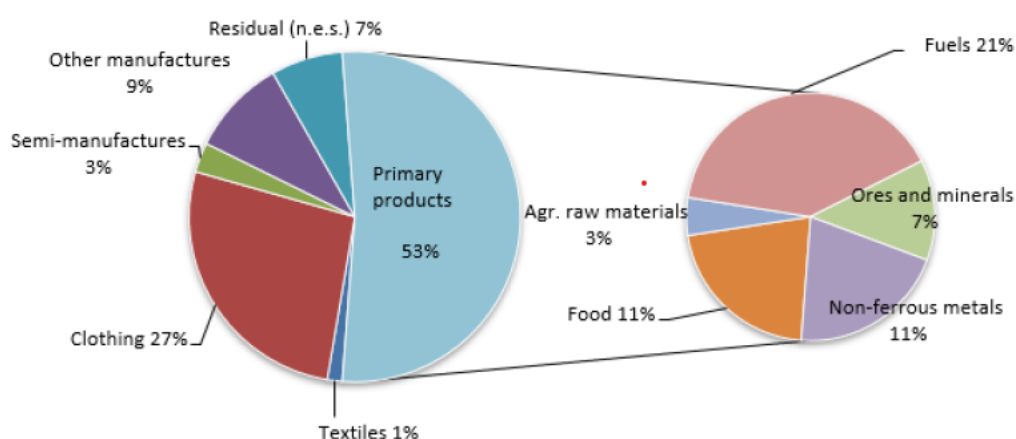
¹⁵ *Implementation of Preferential Treatment in Favour of Services and Service Suppliers of Least Developed Countries and Increasing LDC Participation in Services Trade*, WT/MIN(15)/48, WT/L/982, paras. 1.1 and 1.4.

No further action for the LDCs was taken after 2015, even at the Ministerial Conference in Geneva in July 2022.¹⁶

(iii) Current LDC Trade

Exports from LDCs are overwhelmingly goods (US\$229 billion in 2021), whose amount is seven times greater than that of service exports (US\$29.4 billion in 2021).¹⁷ As shown in Chart 1, more than half of exported goods are primary products. Among these primary products, fuels share 21%, other natural resources share 19%, and food and other agricultural products 14%. The second largest exports from LDCs in 2021 were textiles and clothing, which share 28% of all LDC exports.

Chart 1 Exports from LDCs in 2021¹⁸



These data demonstrate that the reduction or elimination of import barriers against LDCs' primary goods, such as foods and other agricultural products, and textiles and clothing, would be effective for the expansion of LDC exports.

(iv) Exempted Goods from the DFQD

While substantially all developed countries implemented the DFQF, its implementation has not yet reached 100%.

Japan eliminated customs duties on 3,219 items as general preferential tariffs applicable to qualified developing countries. In addition, Japan set the import duties of 430 tariff items to zero for LDC products. The total tariff elimination for imports of LDC products in tariff items reached 97.8%. However, Japan has excluded certain agricultural

¹⁶ *MCI2 Outcome Document*, adopted on June 17, 2022, WT/MIN(22)/24, WT/L/1135.

¹⁷ Sub-Committee on Least Developed Countries. *Market Access for Products and Services of Export Interest to Least Developed Countries*, Note by the Secretariat, October 18, 2022, WT/COMTD/LDC/W/70. See also *Preferential market access for goods*, United Nations, available at <https://www.un.org/ldcportal/content/preferential-market-access-goods-2>, as of June 16, 2023.

¹⁸ *Ibid.*, p.12.

products, such as, rice, rice products, and sugar from LDC preferential tariffs. In addition, Japan has not granted LDCs preferential tariffs on fishery products or shoes.

Canada sets DFQF 98.5% of tariff liens for LDC goods, as it excludes dairy products from the DFQF. In contrast, the EU exempts only military items from the DFQF. The DFQF rate in tariff items has reached 99.8%. The United Kingdom takes the same approach; its DFQF rate is also 99.8%.

The United States has excluded textiles and clothing, shoes, dairy products, and other animal-origin goods from its LDC preferential tariff system. Its exemption rate was 82.3%, substantially lower than other developed countries. However, the United States sets the DFQF system in *African Growth and Opportunity Act* (“AGOA”) applicable to “eligible sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products, in addition to the more than 5,000 products that are eligible for duty-free access under the Generalized System of Preferences program.”¹⁹ According to the United States, the total DFQF rate of the United States is 96.9%.

Accordingly, developed countries have met the target of 97% of the DFQF exemption. The United States would meet this target were the exemption under the AGOA added.

The DFQF of newly industrialized countries remains lower than that of developed countries. India offers the DFQF to 94.1% of LDC goods. Russia’s exemption rate is 61.2%. These DFQF levels in developing countries raise the question of their seriousness in helping the development of LDCs, except for China, which exempts 96.1% of LDC goods imports from tariff lines.

(v) Applicable Rules of Origin to be Qualified for DFQF

Preferential rules of origin are another area where WTO Members should take further action. EU set the preferential rules of RVC 30% for the DFQF. The United Kingdom adopted the co-equal rules of RVC 30% and the CTH. The United States applies RVC 35%.²⁰ Canada set RVC 40% for LDC goods. Only Japan satisfies the requirements of the Nairobi Ministerial Conference, as it applies the CTH to both LDC goods and goods from other regions.

Newly developed countries, except China, have set more stringent rules of origin for LDC goods. India’s preferential rules of origin are RVC 30% plus the CTSH, as often found in its FTAs. Russia set RVC 50%. China’s LDC preferential rules of origin satisfy the

¹⁹ Office of the United States Trade representative “*African Growth and Opportunity Act (AGOA)*,” available at <https://ustr.gov/issue-areas/trade-development/preference-programs/african-growth-and-opportunity-act-agoa> as of October 29, 2023.

²⁰ United Nations Conference on Trade and Development, *Handbook on Duty-Free and Quota-Free Market Access and Rules of Origin for LDCs - PART I: QUAD Countries*, United Nations (2018) p. 33, available at https://unctad.org/system/files/official-document/aldc2018d5part1_en.pdf as of November 23, 2023.

requirement by the Nairobi Ministerial Conference of the CTH. China also set RVC 40% as coequal with the CTH.

(vi) Further Steps that WTO Members Should Take

(A) DFQF Exemption

While developed countries grant the DFQF to 97% of LDC goods in tariff items, such exemption does not mean that 97% in value of LDC goods are exempted. Japan has excluded major export products of LDCs, such as rice, its preparations, and sugar, from the DFQF. Canada excludes dairy products. Thus, the effects of DFQF in these countries would not have a face value of more than 97%.

The current export value of LDC foods and agricultural products is approximately US\$17 billion in toto.²¹ This amount is only 0.25% of the total imports by Japan of agricultural products in 2021.²² LDCs' ability to export agricultural products, even assuming that all agricultural products were destined for Japan, which would be unlikely, makes up a negligible portion of the total imports by Japan of agricultural products.

This paper thus recommends that Japan and other developed countries, such as Canada, include the LDC's major export goods of agricultural products in their DFQF lists. Developing countries should also increase their DFQF levels.

(B) LDC Preferential Rules of Origin

As seen above, developed countries generally set the preferential RVC more stringently than the recommendation by the WTO Nairobi Ministerial Conference.

Thus, this Paper recommends that WTO Members adopt RVC 25% or the CTH for as the preferential rules of origin for the DFQF.

It should be noted that Japan is an exception in this regard. Japan's preferential rules of origin satisfy the decision of the Ministerial Conference. Japan set the CTH for the qualification of the DFQF. The CTH also satisfies the process-based rules required for textile products because the CTH qualifies textiles and clothing assembled from fabrics (HS Chapters 52 to 55, 60) into finished products (HS Chapters 61 and 62) for the DFQF. The CTH would also sufficiently qualify LDC's agricultural powders (HS Chapter 11) and preparations (HS Chapters 17 and 19) using rice or other grains as raw materials (HS Chapter 10).

²¹ = US\$229 billion * 53%*14%(11%+3%) See Chart 1 above.

²² The total import of agricultural products in 2021 was JPY704.02 billion. See the Ministry of Agriculture, Forestry, and Fishery "import and export of agriculture, forestry, and fishery products," December 5, 2022, available at https://www.maff.go.jp/j/tokei/kouhyou/kokusai/pdf/gaikyo_2021_k.pdf as of October 29, 2023. The annual average of TTB in 2021 was US\$108.80. See MUFJ "Exchange Quotations -Yearly Averages-" available at <http://www.murc-kawasesouba.jp/fx/yearend/index.php?id=2021> as of October 29, 2023. Thus, the import amount by Japan of agricultural products in 2021 was US\$674 billion.

(b) Measures to Increase Agricultural Income in LDCs: Abolishment of Agricultural Subsidies

Target 2.b of Goal 2 requests that the WTO strive for the “elimination of all forms of agricultural export subsidies and all export measures with equivalent effect.” The WTO Members agreed that developed Members shall eliminate agricultural export subsidies by 2020 and developing Members shall do so by 2023.²³ Accordingly, the WTO has already responded to this request.

This paper thus will not discuss this issue further.

(c) Measures to Increase Foreign Investments: The Agreement on Investment Facilitation for Development

Target 1.b aims to “[c]reate sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies, to support accelerated investment in poverty eradication actions.”

On July 6, 2023, the WTO took an important step toward achieving this Target. The co-Coordiators of the WTO Structured Discussions announced the conclusion on the negotiation of the text of the *Agreement on Investment Facilitation for Development* (“IFD Agreement”).²⁴ According to the announcement, the *IFD Agreement* “will contribute to creating a more transparent, efficient, and predictable environment to facilitate not only more investment, but also more sustainable investment.”²⁵ Its objective includes the provision of “technical assistance and capacity building (TACB) support to developing and least-developed country (LDC) Members.”²⁶

More than 110 WTO Members joined the *IFD Agreement*, and have been working for its adoption as a plurilateral agreement at the 13th Ministerial Conference in February 2024.

The WTO should adopt the *IFD Agreement* as a WTO Agreement to contribute to Target 1.b.

(d) Countervailing Duties Against Subsidies

(i) Countervailing Duties Against Third Country Subsidies

The European Commission has extended, and the United States Department of Commerce (the “USDOC”) has been examining, application of CVDs to “third country subsidies,” *i.e.*, financial supports by a third country to invest in a developing country. They

²³ World Trade Organization, *Export Competition: Ministerial Decision of 19 December 2015*, WT/MIN(15)/45, WT/L/980.

²⁴ WTO Structured Discussion on Investment Facilitation for Development “*Statement by the Co-Coordiators*,” INF/IFD/W/51, dated July 6, 2023. See also World Trade Organization (2023) “Fact Sheet on Investment Facilitation for Development, INT/SUB/SERV/379, available at https://www.wto.org/english/tratop_e/invfac_public_e/factsheet_ifd.pdf as of December 25, 2023.

²⁵ *Ibid.*, para 1.1.

²⁶ *Ibid.*, para. 1.4.

would regard such financial supports as grants by the developing country, and thus find countervailable.

On June 12, 2020, the European Union imposed 10.9% of CVDs, consisting of 6.5% of third country subsidies and 4.4% of other subsidies, against imports of woven and stitched glass fibre fabrics (“GFF”) originating in Egypt.²⁷ The EU also imposed CVDs against stainless steel products from Indonesia, applying the same logic to inbound investments by the Chinese government in Indonesia.²⁸

In the GFF case, the European Commission found that the Chinese government (“GOC”) and Egyptian government (“GOE”) had jointly established the Suez Economic and Trade Cooperation Zone (“SETC-Zone”). In accordance with the agreements with the GOE, the GOC provided funds to Chinese subsidiaries established and operating in the SETC-Zone to produce the GFF and export the same to the EU.²⁹

The Commission applied the *International Law Commission’s Articles on the Responsibility of States for Internationally Wrongful Acts* to interpret the terms “by the government” in the chapeau of Article 1.1(a)(1) of the *SCM Agreement*. The Commission found that financial support by the GOC was attributable to the GOE, even though the funding had not been made through the GOE.³⁰ It stated, “[t]he Chinese preferential measures in favour of the Chinese entities established in Egypt were thus ‘identified’ and ‘made its own’ by Egypt.”³¹ “It follows from the evidence that the financial contributions in the form of preferential financing from Chinese public bodies to [these Chinese subsidiaries] be attributed to the GOE.”³²

(ii) Recommendation

These CVDs would adversely affect the developments of exports from developing countries. Recalling agreements at the WTO Ministerial Conference that WTO Members shall allow export subsidies granted by LDCs,³³ this paper recommends that the WTO work to limit or prohibit the application of CVDs against other subsidies to LDCs for the benefit of

²⁷ COMMISSION IMPLEMENTING REGULATION (EU) 2020/776 of 12 June 2020, imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People’s Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive-antidumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People’s Republic of China and Egypt, June 15, 2020, L 189/1.

²⁸ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia, March 16, 2022, 16L 88/24, recitals 543-801. Indonesia brought this measure to the WTO Dispute Settlement Body. See *European Union - Anti-Dumping and Countervailing Duties on Stainless Steel Products from Indonesia - Request for consultations by Indonesia*, WT/DS616/1. G/L/1479, January 23, 2023. The panel for this dispute was established on May 30, 2023.

²⁹ *Ibid.*, recitals 658–659.

³⁰ *Ibid.*, recital 686.

³¹ *Ibid.*, recital 694.

³² *Ibid.*, recital 697.

³³ *Ibid.*, fn. 24.

their economic development. In particular, WTO Members should consider an allowance for, or *de minimis* level of, CVDs against

- Subsidies granted by LDC governments; and
- Investments or grants by foreign governments into LDCs.

2.2 Food Security

(a) Analyses

On June 17, 2022, the WTO 12th Ministerial Conference made a declaration for “ending hunger, achieving food security and improved nutrition” “in fulfilment of Sustainable Development Goal 2 of the United Nations.”³⁴ Facing “trade disruptions, record prices and excessive volatility for food and agricultural products,” particularly in LDCs and net food-importing developing countries (“NFIDC”) due to Russia’s invasion of Ukraine, the Ministers committed to take concrete steps “to the specific needs and circumstances of developing country Members, especially those of least-developed and net food-importing developing countries.” The Minister then encouraged “Members with available surplus stocks to release them on international markets consistently with WTO rules.”³⁵

In a separate resolution at the Conference, the Ministers decided that “Members shall not impose export prohibitions or restrictions on foodstuffs purchased for noncommercial humanitarian purposes by the World Food Programme.”³⁶

Pursuant to these Ministerial declarations and resolutions, the WTO Committee of Agriculture established a working group to consider “the needs of LDCs and NFIDCs to increase their resilience in responding to acute food instability.” This group was to submit its report and recommendations to the Committee by November 30, 2023.³⁷ However, the working group was not able to reach a consensus by that date because “one member maintained its concerns regarding a few elements of the coordinator’s revised report.”³⁸ To date, no further actions have been taken.

³⁴ *Ministerial Decision on the Emergency Response to Food Insecurity*, adopted on June 17, 2022, WT/MIN(22)/28, WT/L/1139.

³⁵ *Ibid.*, paras. 3 and 10.

³⁶ *Ministerial Decision on World Food Programme Food Purchases Exemption from Export Prohibitions or Restriction*, adopted on June 17, 2022, WT/MIN(22)/29, WT/L/1140.

³⁷ *Work Programme Pursuant to Paragraph 8 of the Ministerial Declaration on Emergency Response to Food Insecurity*, approved by the Committee on November 22, 2022, G/AG/35.

³⁸ WTO “WTO members review farm policies, discuss food security, technology transfer,” available at https://www.wto.org/english/news_e/news23_e/agri_29nov23_e.htm as of December 16, 2023.

(b) Conclusion

The WTO has been working on food security for LDCs and the NFIDC. While we should closely monitor the work of the working group, **this paper does not make further recommendations.**

2.3 Access to Essential Medicines and Vaccines at Reasonable Prices

(a) Analyses

In 2020, the world faced export restrictions on vaccines from producer countries in the early stages of the COVID-19 pandemic. Developing countries complained that only wealthier countries could afford the benefit of vaccines, and demanded that their vaccine production should be allowed without “adequate remuneration” under Article 31(d) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPs Agreement”)*.

WTO Members finally agreed at the 12th Ministerial Conference in June 2022, authorizing “the use of the subject matter of a patent required for the production and supply of COVID-19 vaccines without the consent of the right holder to the extent necessary to address the COVID-19 pandemic, in accordance with the provisions of Article 31 of the *TRIPs Agreement*.”³⁹ They also agreed that “[d]etermination of adequate remuneration under Article 31(h) may take account of the humanitarian and not-for-profit purpose of specific vaccine distribution programs aimed at providing equitable access to COVID-19 vaccines,” and “[i]n setting the adequate remuneration in these cases, eligible Members may take into consideration existing good practices in instances of national emergencies, pandemics, or similar circumstances.” These decisions are effective for five years.⁴⁰

The Conference further made a “*Ministerial Decision on the WTO response to the COVID-19 pandemic*,”⁴¹ identifying the following issues, among others, that Members should address:

- “timely and accurate information to enable quick identification by Members of potential disruptions in supply chains during COVID-19 and future pandemics”;⁴²
- “the level of global preparedness to COVID-19 and future pandemics, which requires strengthened productive, scientific, and technological capacity across the world, ...

³⁹ Ministerial Decision on the TRIPs Agreement, adopted on June 17, 2022, WT/MIN(22)/30, WT/L/1141.

⁴⁰ *Ibid.*, para. 6.

⁴¹ *Ministerial Decision on the WTO response to the COVID-19 pandemic*, adopted on June 17, 2022, WT/MIN(22)/31, WT/L/1142.

⁴² *Ibid.*, para. 6.

including those related to HIV/AIDS, tuberculosis, malaria, and other epidemics, as well as neglected tropical diseases”;⁴³ and

- building “effective solutions in case of future pandemics including balance-of-payments, development, export restrictions, food security, intellectual property, regulatory cooperation, services, tariff classification, technology transfer, trade facilitation, and transparency, in an expeditious manner.”⁴⁴

WTO Members, however, have not yet agreed to license-free access to diagnostics and therapeutics. In June 2022, they agreed only to consider whether to cover diagnostics and therapeutics within 6 months.⁴⁵ It was reported in November 2023, however, that “the members made no progress on whether to expand IP flexibilities for vaccines to include diagnostics and therapeutics.”⁴⁶

(b) Conclusion

The WTO took significant steps for access to affordable essential medicines and vaccines, as required by Target 3.b during the period of COVID-19 pandemic. As the WTO has produced positive results and has continued to work on this issue.

2.4 Forced and Child Labor and Trade

(a) Analyses

Goal 8 aims to eradicate forced labor and child labor, and end modern slavery and human trafficking. As discussed in Section 1.1, Goal 8, the ILO is the main forum for setting these rules. The WTO may be able to contribute to the eradication of forced and child labors from the trade aspects.

This section first reviews the WTO members’ trade-related labor measures and then considers how the WTO may be able to contribute to this Goal.

(i) Trade-Related Measures by the United States against Forced Labor and Child Labor

The United States has prohibited the importation of any goods that were produced wholly or in part by convict, forced, or indentured labor, including forced or indentured child labor, under Section 307 of the *Tariff Act of 1930*.⁴⁷ In accordance with this Section, the U.S.

⁴³ *Ibid.*, para. 15.

⁴⁴ *Ibid.*, para. 23.

⁴⁵ *Ibid.*, para. 8.

⁴⁶ Inside US Trade “No progress reported in WTO talks on COVID-19 tests, treatments,” the issue on November 1, 2023.

⁴⁷ Section 307 of the *Tariff Act of 1930*, codified 19 U.S.C. 1307.

Customs and Border Protection (“CBP”) issues withholding release orders (“WRO”) from the importation when its investigation reasonably shows that goods produced by such forced labor or indentured child labor are, or likely to be, imported into the United States. As of November 17, 2023, 51 WROs were active.⁴⁸

On top of this prohibition, the United States enacted *Uyghur Forced Labor Prevention Act* (“UFLPA”),⁴⁹ effective as of June 21, 2022. The UFLPA sets the presumption that any and all goods produced wholly or in part in the Xinjiang Uyghur Autonomous Region (Xinjiang) of China, or by entities identified by the U.S. government on the UFLPA Entity List, are made with forced labor. These goods are prohibited from entry into the United States unless the importer provides clear and convincing evidence that they are not made, in whole or in part, by forced labor in the Xinjiang Region.

According to the CBP, goods from the Xinjiang Region worth more than US\$500 million were denied the entry into to the United States for the last 16 months from the effective date of the UFLPA, while goods from the same Region of US\$1 billion were released during the same period.⁵⁰

(ii) EU Measures against Forced Labor and Child Labor

On October 16, 2023, the Internal Market and International Trade Committees of the European Parliament adopted their draft regulations,⁵¹ which show these committees’ position that products made using forced labor, including forced child labor, should be kept out of the EU market.⁵²

According to the press release, the draft regulations set forth that “if it is proven that a company has used forced labour, all import and export of the related goods would be halted at the EU’s borders and companies would also have to withdraw goods that have already reached the EU market.” The draft also requires the Commission to create “a list of geographical areas and economic sectors at high risk of using forced labour. For goods produced in these high-risk areas, the authorities would no longer need to prove that people have been forced to work, as the burden of proof would fall on companies.”⁵³

⁴⁸ See U.S. Customs and Border Protection “*Withhold Release Orders and Findings List*,” available at <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings> as of January 17, 2024.

⁴⁹ *Uyghur Forced labor Prevision Act*, Public Law No. 117-78.

⁵⁰ See U.S. Customs and Border Protection (CBP) “*Uyghur Forced labor Prevision Act Enforcement Statistics*,” available at <https://www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics> as of November 10, 2023.

⁵¹ Compromised text of the *Regulations Prohibiting products made with forced labour on the Union market*, available at https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf, as of December 24, 2023.

⁵² *Ibid.*, Article 2(a) of the Regulation.

⁵³ European Parliament “Towards an EU ban on products made with forced labour,” press release 16-10-2023 - 19:17, available at <https://www.europarl.europa.eu/news/en/press-room/20231016IPR07307/towards-an-eu-ban-on-products-made-with-forced-labour>, as of November 10, 2023.

This action was response to the Commission’s proposal issued on September 14, 2022.⁵⁴ After confirmation of the draft regulations by the plenary session of the European Parliament and the Council, the discussion will start with the Commission for the final text of the regulations.

(b) Roles of the WTO against Forced Labor and Child Labor

(i) Roles of the WTO

The ILO is the main forum for issues of forced labor and child labor. It concluded the “*Forced Labour Convention, 1930 (29)*”⁵⁵ on June 10, 1930. Article 1 thereof provides that “Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.”

In 1932, the ILO concluded the *Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)*.⁵⁶ Article 2 thereof provides that “Children under fourteen years of age, or children over fourteen years who are still required by national laws or regulations to attend primary school, shall not be employed in any employment to which this Convention applies except as hereinafter otherwise provided.”

It is clear from the above that the prohibitions of forced labor and child labor have been internationally recognized principles. The ILO has clarified this principle since its early stages. Certain states moved to exclude goods produced using forced labor and child labor from international trade, as discussed above.

Accordingly, the WTO’s role would be to clarify international trade rules, according to which Members may prohibit the import, export, and introduction into their markets of goods and services produced using forced labor or child labor.

(ii) Current WTO Rules Allowing Measures against Forced or Child Labor

The WTO’s current rule allowing measures to halt imports of goods produced using forced or child labor can be found in Article XX(a) of the GATT. This Paragraph exempts measures “necessary to protect public morals” from application of GATT’s obligations, including most-favored nation treatment, and general elimination of quantitative restrictions. Questions when applying Article XX(a) would be whether the prohibition thereof would be

⁵⁴ “Proposal for a ban on goods made using forced labour,” BRIEFING EU Legislation in Progress, European Parliamentary Research Service (2023), available as of October 22, 2023, at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739356/EPRS_BRI\(2023\)739356_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739356/EPRS_BRI(2023)739356_EN.pdf)

⁵⁵ Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 as of November 10, 2023.

⁵⁶ Available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C033 as of November 10, 2023.

recognized as measures for “public morals,” and whether measures to prohibit forced or child labor is “necessary” within the meaning of Article XX(a). In addition, the measure may not be “a means of arbitrary or unjustifiable discrimination” or “a disguised restriction on international trade” as set forth in the Chapeau of Article XX.

The definition of “public morals” was clarified by the WTO dispute settlement. The panel in *US – Gambling* stated “the term ‘public morals’ denotes standards of right and wrong conduct maintained by or on behalf of a community or nation.”⁵⁷ The panel in *EC – Seal Product* affirmed that the EC’s alleged public moral of “the public concerns about seal welfare constitute a moral issue for EU citizens.”⁵⁸ The panel in *US – Tariff Measures (China)* also stated “‘standards of right and wrong’ invoked by the United States (including norms against theft, misappropriation and unfair competition) could, at least at a conceptual level, be covered by the term ‘public morals’ within the meaning of Article XX(a) of the GATT 1994.”⁵⁹

The ILO set an international standard that forced labor and child labor may not be used, *i.e.*, use thereof would be internationally wrong conduct. The prohibition of forced labor and child labor thus would be a measure to protect “public morals” within the meaning of Article XX(a).

The next question under GATT XX(a) would be whether a particular measure would be “necessary” to prohibit forced labor or child labor. The necessity would be affirmed when “in the absence of reasonably available alternatives.”⁶⁰ The necessity would not be satisfied when an available alternative is “less trade restrictive than the measure at issue,” and “preserve for the responding Member its right to achieve its desired level of protection with respect to the objective pursued.”⁶¹

Furthermore, the measure may not be “a means of arbitrary or unjustifiable discrimination” or “a disguised restriction on international trade” as provided in the chapeau of Article XX.

It has not been tested under Article XX whether the US or EU measures would satisfy these requirements. In particular, questions may arise regarding the presumption of the use of forced labor adopted in the UFLPA or the position adopted by the committees of the European Parliament. Section 307 of the U.S. Tariff Act requires importing authorities to investigate the underlying facts to determine the existence of forced or child labor before the imposition of the import ban. This method appears to be working as a less trade-restrictive alternative. The UFLPA may also be questioned as to whether it would be an unjustifiable

⁵⁷ Panel Report, *US – Gambling*, para. 6.461.

⁵⁸ Panel Report, *EC - Seal Products*, paras. 7.396.

⁵⁹ Panel Report, *United States – Tariff Measures on Certain Goods from China (“US - Tariff Measures (China)”)*, paras. 7.140.

⁶⁰ Appellate Body Report, *Brazil – Measures affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, para. 210.

⁶¹ *Ibid.*, para. 156, referring to Appellate Body Report, *US – Gambling*, para. 308.

discrimination between Uyghur and other products. Thus, it would be premature to state that Article XX would allow for these measures, despite their adverse effects on international trade.

(c) Conclusion

Because it is not clear whether the current provision of GATT would justify the abovementioned measures, this paper recommends that WTO Members set rules for measures that would be permissive under Article XX to prohibit forced labor and child labor.

WTO Members should abstain from bringing this issue to the WTO dispute settlement body. This issue would not be one that the panelists take the lead to decide, but one that Members should conclude.

2.5 Gender Discrimination

(a) Overview of Forums Dealing With Gender Discrimination

Goal 5 claims abolishment of all forms of discrimination against women and girls.

This issue has been handled by United Nations and the UN Office of the High Commissioner for Human Rights (“OHCHR”) since the resolution of “*Universal Declaration of Human Rights*” on December 10, 1948.⁶² Article 7(a)(i) of the “*International Covenant on Economic, Social and Cultural Rights*” resolved by the general assembly of the United Nation in 1966 then set forth “[f]air wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”⁶³

The ILO would also be relevant to women’s wages and working conditions. Its *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* sets forth in Paragraph 29 that “Governments should promote equal remuneration for men and women workers for work of equal value.”⁶⁴

(b) Roles of the WTO

The WTO also has taken several actions for gender equality and trade. In December 2017, the 11th Ministerial Conference at Buenos Aires issued the “*Joint Declaration on Trade and Women’s Economic Empowerment on the Occasion of the WTO Ministerial Conference*”

⁶² Emphasis added.

⁶³ Emphasis added.

⁶⁴ The International Labour Organization “*Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, sixth edition*” (2022) available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf as of January 24, 2024. This declaration provides guidelines to multinational enterprises, governments, and employers’ and workers’ organizations.

*in Buenos Aires in December 2017.*⁶⁵ In September 2020, a group of WTO Members established the “Informal Working Group on Trade and Gender”⁶⁶ to advance the implementation of objectives of the *Joint Declaration*. At the 12th Ministerial Conference in Geneva on June 12, 2022, the Co-Chairs of the Informal Working Group adopted a “*Statement on Inclusive Trade and Gender Equality*.”⁶⁷ In December 2022, the WTO organized the “World Trade Congress on Gender.”

These actions led to the collection and analysis of data. It would be noteworthy among their interim works that “a study on India shows that products produced largely by women face on average 6-percentage-point higher tariffs than products produced largely by men in export markets.”⁶⁸

The collection of data, however, has not yet been sufficient. Further research is required to produce substantive results.

(c) Conclusion

Although the WTO’s informal working groups addressing gender equality have made progress, no substantive results have been reported. The WTO should continue its work.

2.6 Trade and Environment

SDGs focus environmental issues, such as “minimizing release of hazardous chemicals and materials” in Goal 6, encouragement of “increase of renewable energy” in Goal 7, reduction of “the adverse per capita environmental impact” and “mitigation and adaptation to climate change” in Goals 11 and 13, and “prevention and reduction of marine pollution” in Goal 14.

As discussed previously, the WTO is not a forum for directly regulating environmental issues. The WTO would be a good supporter of measures to improve the environment by balancing the same with principles of free trade.

This section considers the WTO’s potential role in addressing environmental issues.

⁶⁵ Available at https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf as of November 10, 2023.

⁶⁶ *Interim Report following the Buenos Aires Joint Declaration on Trade and Women’s Economic Empowerment: Revision*, WT/L/1095/Rev1, September 25, 2020.

⁶⁷ *Statement on Inclusive Trade and Gender Equality*, WT/MIN(22)/7, June 12, 2022.

⁶⁸ World Bank Group and World Trade Organization, “*Women and Trade: the Role of Trade in Promoting Gender Equality*” p. 11, referring to Mendoza, Nayyar and Piermartini 2018.

(a) Negotiation on Environmental Goods Agreement

(i) Analyses

In July 2014, 14 WTO Members (counting the EU and its States as one) initiated negotiations of the EGA to reduce and eliminate tariffs on environment-related products. These Members were unable to reach an agreement by the end of 2016. These negotiations stalled in 2017 when Mr. Donald Trump assumed the Presidency in the United States.⁶⁹

Bacchus analyzed deficiencies in the EGA negotiations. First, Members focused individual goods to be included in the product list of the EGA without agreement on the scope of “environmental goods.” Some Members, such as China, tried to include goods for export because their domestic markets did not have sufficient demand. Members also expected the EGA to be a “living agreement” that could expand the product list along with continuing changes in environmental technologies.⁷⁰ These ideas made the EGA difficult to conclude.

(ii) Recommendation

What WTO can do for encouragement of growth of renewable energy internationally, however, would be to reduce or eliminate Members’ customs duties on renewable energy products. For this purpose, it would thus be imperative to relaunch the negotiation on the EGA.

In reopening negotiations, WTO Members should narrow the scope to products that directly contribute to the reduction of carbon dioxide, such as renewable energy products. It should also be narrowed to negotiate tariff reductions or elimination of goods only. Other environment-related issues such as trade remedy measures, non-tariff measures, and environmental services should be negotiated after the first EGA negotiations on goods are concluded. Otherwise, the negotiations will not converge and will go nowhere.

(b) WTO Rules Regulating Trade-Restrictive Environment Measures

This section considers how WTO rules regulate trade-restrictive environmental measures taken by individual Members.

(i) Analyses

The WTO reduced its objective of balancing environmental issues and free trade into Article XX (b) of the GATT and Article XIV (b) of the GATS. These provisions set forth that measures “necessary to protect human, animal or plant life or health” would be justified

⁶⁹ World Trade Organization “*Environmental Goods Agreement (EGA)*,” available at https://www.wto.org/english/tratop_e/envir_e/ega_e.htm as of January 14, 2024.

⁷⁰ Bacchus (2022), pp. 216–217; Monkelbaan (2017), p. 591.

nonetheless of the measure's trade adverse effects. Furthermore, Article XX (g) of the GATT exempts measures "relating to the conservation of exhaustible natural resources" from disciplines for the free trade.

The WTO Appellate Body applied these provisions to disputed cases and found that, for example, Members' measures to protect and preserve clean air would be justified under Article XX(g) of the GATT, although a measure taken by the United States in question was not justified because it favored domestic industry without good cause.⁷¹ The prohibition of the import of asbestos into France was justified under Article XX(b) because it is necessary to protect human health.⁷² A Measure to protect turtles was justified under Article XX(g), although the manner in which the United States applied the measure in question was found discriminatory to Asian countries, favoring Caribbean countries.⁷³

It should be noted that, while the chapeau of Article XX provides that these measures may not be a means of arbitrary or unjustifiable discrimination between countries, such requirement applies to countries "where the same conditions prevail." The Appellate Body stated on this respect "in our view, a measure should be designed in such a manner that there is sufficient flexibility to take into account the specific conditions prevailing in any exporting Member."⁷⁴ Accordingly, trade-restrictive measures to protect the environment may be designed to be differentiated, considering the conditions of individual countries such as LDCs.

(ii) Conclusion

These precedents demonstrate that the current WTO rules would be sufficient to allow trade-restrictive environment measures, balancing environmental protection and free trade, taking differences in the conditions of exporting countries into account. Accordingly, **this paper does not make any recommendations** on actions that the WTO should take to balance environmental issues with free trade.

⁷¹ Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted May 20, 1996, DSR 1996:I, p. 3.

⁷² Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, adopted April 5, 2001, DSR 2001:VII, p. 3243

⁷³ Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted November 6, 1998, DSR 1998:VII, p. 2755.

⁷⁴ The Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/AB/RW, adopted November 21, 2001, para. 149.

(c) **CBAM: Potential Conflicts between WTO Agreements and the *Paris Agreement***

(i) **Analyses**

The European Union has been implementing the Carbon Border Adjustment Mechanism (“CBAM”). CBAM will impose carbon import fees on imports of steel, aluminum, cement, fertilizer, electricity, and hydrogen when these imports were produced with the exhaust of more carbon than the exhaustion quantity allowed under the EU emission standards.

Some consider that this measure would be allowed under Article XX(g) of the GATT because the EU would implement the CBAM to clean air in conjunction with measures applicable to the EU region.⁷⁵ Questions rise, however, as to whether or not the CBAM would be “unjustifiable discrimination” between imports and EU products.

As seen in prior WTO disputes, an environmental measure was found unjustifiable when it discriminated against certain WTO Members in favor of domestic products or imports from other WTO Members. The current exemption given to certain EU industries from the carbon emission cap under the EU emission standards would be discriminatory if the CBAM is imposed without the abolishment of the exemption because the exemption favors the domestic industry.⁷⁶ The measure could also be discriminatory if an emissions import fee program exempted some exporting countries but not others without an appropriate assessment of the differences in their climate policies or development status.⁷⁷

This paper would like to raise another question: Is the imposition of carbon import fees based on EU standards justified in light of the *Paris Agreement*? The *Paris Agreement* is a legally binding international treaty on climate change. The Parties therein agreed that they would reduce their greenhouse gas emissions in accordance with their submitted “nationally determined contributions” (“NDCs”). The NDC is the commitment of a party to other Parties, and is the agreement among the Parties. Parties also agreed that they would revisit their NDCs to align with the *Paris Agreement* temperature goal.

May a Party to the *Paris Agreement* then demand that another Party unilaterally reduce carbon emissions more than the NDC of the other Party? May a Party impose a burden on the other Party if the other party does not comply with emission standards higher than the NDC of the other Party? Didn’t the EU States agree that they would revisit the NDCs to conduct the alignment process of NDCs under the *Paris Agreement* if the current NDCs were unsatisfactory?

⁷⁵ James Bacchus (2021).

⁷⁶ See Bacchus, pp. 3–4.

⁷⁷ Porterfield, p. 7.

More generally, the following declaration was made in the third sentence of Principle 12 of the *Rio Declaration*.⁷⁸

Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

From the above-mentioned points, would the CBAM be justifiable discrimination when taking differences in conditions of exporting Members into account?

(i) Conclusion

WTO Members should discuss this potentially WTO-inconsistent measure to find proper border mechanisms, taking the *Paris-Agreement* into account. This issue would be what WTO Members decide, not let the Dispute Settlement Body find the inconsistency with the WTO Agreements. This paper thus recommends that WTO Members explore permissive carbon import fees. For this purpose, WTO Members interested in this issue should establish working groups to discuss this issue.

(d) Environmental Subsidy and Countervailing Duty

(i) Analyses

The United States decided to impose CVDs on the imports of certain steels produced in Germany, finding that exemption from the maximum carbon emission requirements under the EU Carbon Trading System is a subsidy.⁷⁹

The USDOC determined in its preliminary determination of the countervailing duty investigation of *Forged Steel Fluid End Blocks from the Germany* that German producers of forged steel fluid end blocks were exempt from the carbon emission limit. The USDOC found that such an exemption was revenue foregone, a type of subsidies under the *SCM Agreement*, because German producers were not required to purchase carbon credits from the German government. Based on this finding, the United States determined a 0.03% to 0.05% subsidy rate. The USDOC maintained this determination in its final determination and imposed definitive CVDs.

⁷⁸ United Nations General Assembly “*Rio Declaration on Environment and Development*,” A/CONF.151/26 (Vol. I), August 12, 1992.

⁷⁹ See *Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the Federal Republic of Germany*, dated May 18, 2020, pp. 25–27. See also *Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the Federal Republic of Germany*, dated December 7, 2020, pp. 46.

The United States defended these CVDs, arguing that “imposing countervailing measures on subsidies that take the form of weak or unenforced environmental standards would promote stronger environmental standards.” According to the United States, “[i]f an industry disproportionately benefits from pollution controls or other environmental measures set below a threshold of fundamental standards, a Member may impose a countervailing duty equal to the benefit received by the industry when the goods from such an industry enter the Member's customs territory.”⁸⁰

However, such CVDs are questionable from the perspective of promoting climate change prevention. The exemptions, against which the USDOC imposed CVDs, are interim measures to achieve final measures of carbon emission caps. Interim measures would give certain producers a grace period until they adopt facilities to meet the final carbon emission cap. Without such a policy space, the measure-implementing country would face difficulties in enforcing emissions control measures from the outset. The CVDs in question would work adversely to the efforts of the country implementing the measure to adopt and enforce the final carbon emission cap.

(ii) Conclusion

While the USDOC's determinations are pending at the Court of International Trade,⁸¹ this Paper recommends that WTO Members consider whether CVDs against interim measures in the process of WTO Members' efforts to achieve carbon emissions reduction goals would be permissive.

(e) New Regulations of Subsidies

(i) Fossil Fuel Subsidy

Some argue that WTO should prohibit fossil fuel subsidies, pointing to the statement of Target 12.c, “[r]ationalize inefficient fossil-fuel subsidies that encourage wasteful consumption, and phasing out those harmful subsidies.”⁸² They allege that fossil fuel subsidies generally disincentivize the transition from carbon-producing fossil fuels to clean energy, and encourage an increase in carbon emissions.

This Paper, however, does not make any recommendations on the WTO's actions against fossil fuel subsidies because it would be premature to discuss discipline of fossil fuel subsidies. The current arguments do not identify, or even suggest criteria to distinguish, fossil fuel subsidies that would “encourage wasteful consumption” and those that help people

⁸⁰ General Council of the WTO, “*Advancing Sustainability Goals through Trade Rules to Level the Playing Field, Draft Ministerial Decision*,” proposed by the United States,” WT/GC/W/814, December 17, 2020.

⁸¹ See *Hyundai Steel Co. v. United States*, Court of Int'l Trade, Slip Op. 23-144, September 29, 2023, in which the court remanded the determination to the Department of Commerce for further deliberation.

⁸² Bacchus (2022), pp. 224–232.

to reach energy resources. Indeed, no subsidy programs would intend to encourage wasteful use, but to improve people's life. A subsidy which would have effects to encourage wasteful consumption, if any, must be determined on a case-by-case basis. Without sufficient experience with such subsidies, any discussion on the regulation of such subsidies would produce no meaningful results.

(ii) Clean Energy Subsidy

Some argue that Members may agree with the allowance of clean energy subsidies.⁸³ However, the *SCM Agreement* does not restrict WTO Members from providing subsidies for renewable energy. Members may grant subsidies to their industries to the extent that such subsidies do not injure industries of other Members. I do not see any justifications to break this balance.

3. Conclusion

Upon reviewing the individual Goals and Targets of SDGs, relevance thereof to the WTO, and efforts made by the WTO and other international organizations, this paper recommends that the WTO contribute to SDGs in the following ways:

- Japan and other developed countries like Canada should include LDC's major export goods, such as agricultural goods and dairy products, in their DFQF lists. Developing countries should also increase the tariffs included in the DFQF;
- WTO Members should adopt the 25% value-added rate or the change of tariff heading for qualification of DFQF, while Japan has already satisfied this issue;
- The WTO should adopt the *IFD Agreement* as a WTO Agreement;
- The WTO should work to limit or prohibit the application of CVDs against subsidies for the benefit of the economic development of LDCs. In particular, WTO Members should consider allowance for, or *de minimis* level of, CVDs against:
 - Subsidies granted by LDC governments; and
 - Investments or grants by third country governments into LDCs;
- WTO Members should closely monitor the work of the working group on food security for LDCs and NFIDCs;
- WTO Members should continue efforts for improvement of access to essential medicines and vaccines;
- WTO Members should set rules for measures that would be permissive under Article XX to prohibit forced labor and child labor;
- The WTO should continue current work addressing gender equality;

⁸³ Monkelbaan (2012), p. 579.

- WTO Members should relaunch the EGA negotiation;
- WTO Members should explore permissive carbon import fees, establishing a forum within the WTO to discuss this issue; and
- WTO Members should consider whether to allow countervailing duties to be imposed against temporary exemptions from environmental obligations during a period of other Members' efforts to achieve their final goal of carbon emission reduction.

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