

Sustainable Trade and the WTO: The Compliance Dilemma

Ethan Biji

Christ University

ORCID: 0009-0009-9215-4421

Abstract

International trade, often prioritizing competitiveness, clashes with the need for climate action, particularly impacting developing countries reliant on trade. This paper examines the "compliance dilemma" - the struggle to implement climate-mitigating policies without harming these economies. While the WTO aims to incorporate sustainable development, the paper argues that current provisions within the WTO and GATT Agreements are insufficient and often lead to negative economic consequences for developing nations. For example, the EU's Carbon Border Adjustment Mechanism (CBAM), designed to reduce emissions, could harm exports from developing countries. The paper proposes establishing a WTO International Law Compliance Commission (WILCC) to align WTO rules with international law, address exploitable loopholes in trade agreements, and harmonize trade and environmental policies in collaboration with the UNFCCC. This framework seeks to ensure trade supports both climate action and sustainable economic growth for all stakeholders.

Keywords: World Trade Organization, Sustainable Trade, International Cooperation, Climate Change, International Trade

APA Citation:

Biji, E. (2024). Sustainable Trade and the WTO: The Compliance Dilemma. *International Journal of Law and Policy*, 2(11), 1-15. <https://doi.org/10.59022/ijlp.226>

I. Introduction

The nexus between international trade and climate change is extremely contentious and is attributable to the liberal nature of the global economy. Liberalism and competitiveness are intricately linked concepts, and the ramifications of a competitive international market lie in the fact that it directly incentivizes a pollutive approach to trade. For instance, a producer may opt to move their manufacturing overseas to a country with relaxed environmental regulations (also known as the Pollution Haven Effect (Taylor, July 2004)) to minimize the environmental costs. This gives producers a direct and, more importantly, cheap method to circumvent domestic environmental regulations and restrictions.

Amidst efforts to avert a full-blown climate crisis, solutions that mitigate the challenges posed by an interdependent economic system are being advanced and deliberated. From countervailing duties (Brack, Jul. 1995) to universal environmental policing, no shortage of cognition is being thrown at the issue. Albeit it is notable that most of the advanced solutions suffer from an identical complication, namely, the ‘shotgun approach’ taken to solutions. While it is understandable that a significant portion of the academic circles opt to take a broad approach to subject matters as expansive as the one in question, nuance suffers. Thus, it seems counterproductive to continue this ‘shotgun approach’, and electing to focus on a much narrower branch under the topic is perhaps the best chance for furthering the academic discussion.

The ‘compliance dilemma’ essentially refers to the struggles of international policy to effectively mitigate climate risks and ensure that developing countries, those who lack the capital and cost-tolerance, do not face adverse economic outcomes as a result of these policies. While the WTO and GATT Agreements have provisions that attempt to resolve this dilemma, it does so to extraordinarily little effect.

This paper aims to focus on solutions that allow for economic growth in developing countries while attempting suggesting a resolve concerning enforceability of policy and institutional authority. To achieve the aforementioned aim, this paper is divided into three sections: first, exploring what sustainable trade would and would not entail; second, advancing solutions on protecting developing countries; and finally, institutional enforcement frameworks.

When reading this paper, it is essential to note that pre-existing mechanisms may aim to tackle a few of the issues being discussed. However, these mechanisms may be ineffective for a plethora of reasons. This paper seeks to recognize those failures and advance solutions that seek to address those issues that have gone unnoticed.

If we take a step back and analyze the legal implications of attempting to enforce

environmental regulations on both states and private corporations, knowing what we do about international law and its notoriously ineffective nature, it becomes clear that the path to global environmental policy is littered with the corpses of failed attempts at enforcing international policy. However, popular sympathy is affectionate towards the environment, especially in light of the recent uptick in climate change-related disasters. This leaves room for hope and optimism for cooperation in this regard.

II. Methodology

A. Research Type

The research will adopt a qualitative approach, utilizing a doctrinal legal research methodology. Doctrinal legal research is characterized by its analytical focus on legal principles, rules, and doctrines, aiming to enhance understanding and provide interpretations of the law. This methodology is particularly well-suited for the current paper, which examines complex legal frameworks, notably the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT) Agreements, and their influence on sustainable trade and climate change policies. This focus on foundational legal structures provides a strong basis for addressing the study's core questions.

B. Research Procedure

The research procedure will involve several stages. Initially, the study will articulate the primary research question, focusing on the "compliance dilemma" that emerges from the conflict between international trade obligations and climate action initiatives. This dilemma is especially significant for developing countries, where the balancing of trade benefits with environmental responsibilities is often fraught with challenges. Following the establishment of the research question, the next stage involves a comprehensive review of relevant literature on international trade law, environmental law, climate change policy, and WTO regulations. This literature review will incorporate key legal instruments, academic articles, policy documents, and reports from international organizations such as the WTO, the United Nations Framework Convention on Climate Change (UNFCCC), and the United Nations itself.

Once the literature is reviewed, the study will proceed with an analysis of specific legal provisions within the WTO and GATT Agreements, focusing on articles that relate directly to environmental protection, trade measures, and dispute resolution mechanisms. In addition, the research will examine pertinent case studies, including the European Union's Carbon Border Adjustment Mechanism (CBAM) and other trade-environment disputes, to better understand the practical implications of WTO rules in these areas. From these analyses, the study aims to develop potential solutions to address the compliance dilemma, with particular consideration given to the establishment of a WTO

International Law Compliance Commission (WILCC). This commission could provide an institutional avenue for addressing conflicts between trade and environmental obligations, thus promoting sustainable trade practices on a global scale.

C. Data Analysis Procedure

The data collected, including legal texts, policy documents, and scholarly literature, will be analyzed through various methods to ensure a comprehensive examination. A content analysis will allow for the close examination of legal documents, policy texts, and scholarly work to identify prominent themes, arguments, and interpretations related to sustainable trade, WTO regulations, and climate change initiatives. In conjunction with content analysis, a comparative analysis will be conducted to evaluate different legal provisions, case studies, and policy approaches. This comparative approach will help illuminate the similarities, differences, and best practices in advancing sustainable trade and addressing the compliance dilemma. Additionally, principles of legal interpretation, especially those in the Vienna Convention on the Law of Treaties, will be applied to determine the meaning and scope of relevant WTO provisions. This interpretative framework will aid in clarifying ambiguities and provide a basis for assessing the applicability of WTO rules to contemporary environmental challenges.

D. Rationale behind the Procedure

The chosen research methodology and procedures are carefully selected to support the study's objectives for several reasons. First, the doctrinal legal research methodology is highly relevant to the study's focus on legal frameworks and their impact on sustainable trade and climate change efforts. This approach enables a direct engagement with the legal structures that underlie international trade. Furthermore, the research procedure is designed to ensure a comprehensive analysis by incorporating a wide range of sources, including legal instruments, academic works, policy documents, and case studies. This breadth of materials fosters a well-rounded understanding of the issue. By adhering to established principles of legal interpretation, the research also seeks to maintain objectivity and minimize bias in its findings. Lastly, the study aims to produce actionable solutions, such as the proposed WILCC, which could provide a viable institutional mechanism for addressing the compliance dilemma and supporting sustainable trade practices on an international level.

III. Results

Recognizing the need for the World Trade Organization (WTO) to align its rules with the accepted principles of international law and to address potential misuse of its provisions, we propose the establishment of a Commission under the WTO. This

Commission will serve to review, amend, and recommend changes to the WTO Rules to ensure compliance with international law and to prevent misuse. Additionally, it will act as a liaison with the United Nations Framework Convention on Climate Change (UNFCCC) to harmonize environmental and trade policies.

Article 1: Establishment of the Commission

1. A Commission is hereby established under the auspices of the WTO, referred to as the "WTO International Law Compliance Commission" (WILCC).
2. The WILCC shall operate independently but in coordination with existing WTO bodies, including the General Council and the Dispute Settlement Body.

Article 2: Objectives of the Commission

The objectives of the WILCC shall include:

1. **Alignment with International Law:** To ensure that the WTO Rules are consistent with universally accepted principles of international law, including human rights, environmental standards, and trade law.
2. **Review of Provisions:** To conduct a comprehensive review of existing WTO Legal Instruments and the provisions contained within to identify any that may be subject to misuse, abuse or misinterpretation.
3. **Recommendations for Amendments:** To propose amendments to the WTO Rules where necessary to eliminate ambiguities or loopholes that could be exploited.
4. **Facilitation of Dialogue:** To foster dialogue among member states, civil society, and international legal experts regarding the interpretation and application of WTO Rules in light of international law.
5. **Liaison with UNFCCC:** To act as a liaison with the UNFCCC to ensure that trade policies are harmonized with environmental policies, promoting sustainable development and addressing climate change effectively.

Article 3: Composition of the Commission

1. The WILCC shall consist of a diverse group of members, including:
 - a. Legal experts in international trade law.
 - b. Representatives from member states, ensuring geographical and developmental diversity.
 - c. Civil society representatives with expertise in human rights and environmental law.
 - d. Experts in environmental policy and climate change.
2. Members shall be appointed for a term of three years, with the possibility of renewal.

Article 4: Functions and Powers of the Commission

1. **Research and Analysis:** The WILCC shall conduct research and analysis on the interaction between WTO Rules, international law, and environmental policies.
2. **Public Consultations:** The Commission shall hold public consultations to gather input from stakeholders, including member states, non-governmental organizations, and academic institutions.
3. **Drafting Amendments:** The WILCC shall draft proposed amendments to the WTO Rules and submit these proposals to the General Council for consideration.
4. **Reporting:** The Commission shall prepare an annual report detailing its activities, findings, and recommendations, which shall be submitted to the WTO General Council.
5. **Advisory Role:** The WILCC may provide advisory opinions on specific issues related to the interpretation of WTO Rules in light of international law and environmental considerations upon request from member states or WTO bodies.
6. **Collaboration with UNFCCC:** The WILCC shall engage with the UNFCCC to coordinate efforts in developing trade policies that support climate goals, ensuring that trade agreements do not undermine environmental protections.

Article 5: Procedures

1. The WILCC shall establish its own rules of procedure, subject to approval by the General Council.
2. Decisions of the WILCC shall be made by a majority vote of its members.
3. The Commission shall meet at least twice a year, with additional meetings convened as necessary.

Article 6: Funding

1. The activities of the WILCC shall be funded through the WTO budget, with the possibility of additional funding from voluntary contributions from member states and international organizations.
2. The Commission shall submit an annual budget proposal to the General Council for approval.

Article 7: Review and Evaluation

1. The effectiveness of the WILCC shall be reviewed every five years by an independent panel.
2. The panel shall assess the Commission's impact on aligning WTO Rules with international law, preventing misuse of provisions, and harmonizing trade and environmental policies.

Article 8: Final Provisions

1. This document shall be considered a draft proposal for the establishment of the WILCC and shall be subject to further discussion and amendment by WTO member states.
2. The Commission shall commence its work upon the adoption of these articles by the WTO General Council.

IV. Discussion

A. Sustainable Trade: Definition, Policy Coherence and the Role of the WTO

Sustainable trade encompasses practices that promote economic growth while ensuring environmental protection and mitigation of climate risks. Within the frameworks of the World Trade Organization (WTO) and the United Nations Framework Convention on Climate Change (UNFCCC), sustainable trade seeks to harmonize trade policies with climate objectives, thus addressing the dire need for a low-carbon economy.

Sustainable trade refers to the exchange of goods and services in a manner that advances economic prosperity, ensures environmental stewardship, and promotes social justice. The economic dimension of sustainable trade emphasizes the stimulation of economic development by generating employment opportunities, enhancing productivity, and fostering innovation. It encourages nations to engage in trade practices that bolster their economies while being cognizant of the long-term repercussions on the environment and society.

The environmental aspect of sustainable trade focuses on minimizing the ecological impact of trade activities. It involves mitigating resource depletion, pollution, and biodiversity loss through the adoption of cleaner production methods, the promotion of renewable resources, and the implementation of sustainable supply chains. Social equity is an integral facet of sustainable trade, recognizing the significance of labor rights, equitable wages, and community well-being. It seeks to ensure that the dividends of trade extend to all stakeholders, particularly marginalized and vulnerable populations, thereby contributing to social justice and inclusivity.

A comprehensive definition of sustainable trade is imperative to address the ambiguities frequently associated with sustainability. The Vienna Convention on the Law of Treaties underscores that international instruments should be interpreted according to established legal principles, thereby promoting clarity and consistency (United Nations, 1969).

The United Nations Conference on Environment and Development (UNCED), convened in Rio de Janeiro in 1992, was a seminal event that shaped the global discourse

on sustainable development. This conference had yielded pivotal documents, including Agenda 21, which delineates strategies for sustainable development across various sectors, including trade (United Nations, 1992). UNCED underscored the necessity of integrating environmental considerations into all facets of development, including trade, to achieve sustainability. This integration is crucial to ensure that economic activities do not compromise ecological integrity.

Several guiding principles of sustainable development were established at UNCED, such as the precautionary approach, which advocates for preventive action in the face of uncertainty regarding environmental harm. The principle of intergenerational equity was also emphasized, highlighting the responsibility to safeguard the environment for future generations. Moreover, UNCED called for global partnerships, encouraging international cooperation among governments, the private sector, and civil society to advance sustainable development. By anchoring sustainable trade within these definitions and interpretations, stakeholders can work towards a more coherent and actionable approach that aligns trade with sustainable development goals.

The World Trade Organization (WTO) plays a pivotal role in shaping the global trade landscape, and its framework is increasingly aligned with sustainable development objectives. As a multilateral organization, the WTO provides a comprehensive framework that governs international trade. While its agreements primarily focus on trade liberalization, they also acknowledge the imperative of sustainable development. The *Marrakesh Agreement*, which established the WTO, explicitly includes a commitment to sustainable development as a core principle (World Trade Organization, 1995).

The WTO facilitates the adoption of environmental trade policies by enabling member countries to implement measures that promote environmental sustainability. For instance, countries may adopt tariffs or subsidies that encourage the utilization of environmentally friendly products, provided these measures comply with WTO rules to avoid being deemed protectionist. For instance, the organization has also engaged in deliberations regarding the relationship between trade and climate change, particularly in light of the Paris Agreement. By facilitating the transfer of green technologies and promoting sustainable practices across borders, the WTO encourages member states to consider how trade policies can support their climate commitments.

The intersection of trade and climate change is increasingly recognized as a critical arena for international cooperation. Trade can serve as a potent tool for climate action by promoting climate-friendly technologies and practices. For instance, the global trade of renewable energy technologies can expedite the transition to a low-carbon economy, while sustainable trade policies can incentivize the production and consumption of goods with lower carbon footprints. However, it is to be recognized that this is to be inferred as

far-fetched since many rudimentary challenges are yet to be resolved before such benefits can be unlocked.

The prompt integration of trade-related measures into Nationally Determined Contributions (NDCs) under the Paris Agreement (UNFCCC, 2015), including commitments to reduce tariffs on green technologies or to promote sustainable agricultural practices, displays progress. It is obvious that aligning trade policies with climate objectives would allow countries to enhance their efficacy in combating climate change. However, trade barriers can impede the adoption of sustainable practices. To facilitate the flow of environmentally friendly goods and services, the WTO encourages the reduction of trade barriers, including non-tariff barriers that disproportionately affect sustainable products.

Achieving policy coherence between trade and environmental measures is essential for advancing sustainable trade. The WTO emphasizes the necessity of mutual supportiveness between trade and environmental policies, ensuring that trade agreements do not undermine environmental protection efforts, and vice versa. This harmonization is explored in further detail under *Part 3* of this paper.

Pursuant to Article XX of the GATT Agreement, member countries are mandated to ensure that non-restrictive environmental measures be applied without discrimination, allowing countries to implement necessary environmental regulations without affecting the outcomes of export-reliant countries. The 1982 Panel Report on “United States - Prohibition of Imports of Tuna and Tuna Products from Canada” noted the following:

“The Panel noted the preamble to Article XX. The United States' action of 31 August 1979 had been taken exclusively against imports of tuna and tuna products from Canada, but similar actions had been taken against imports from Costa Rica, Ecuador, Mexico and Peru and then for similar reasons. The Panel felt that the discrimination of Canada in this case might not necessarily have been arbitrary or unjustifiable. ...” (World Trade Organization, 1982)

The aforementioned provision accurately represents the current nature of sustainable trade policy - a confused amalgamation of theoretical brilliance and inconsistent application. The WTO has been notoriously inconsistent with its enforcement, and this is best displayed through the WTO's deafening silence on the EU's procedural flaws in its trade measures, most notably the Carbon Border Adjustment Mechanism (CBAM). Whether this is due to pressures exerted by one of the most thriving trade markets in the world or not remains as pure speculation.

Sustainable trade, as defined within the frameworks of the WTO and UNFCCC, embodies an approach to international trade that prioritizes economic development,

environmental protection, and social equity. By fostering cooperation and dialogue among member states, the WTO has the potential to ensure that trade contributes positively to climate objectives while promoting sustainable economic growth.

B. Mitigating Adverse Economic Effects on Developing Countries

The challenge faced by attempts to address climate change is no longer to encourage cognizance induce the adoption of domestic policy on the matter, but rather it is to prevent adoption of unilateral measures that would impose an unfair environmental cost on countries that are reliant on trade and exports.

Most notably, the system of Border Carbon Adjustments has notoriously been adverse for several developing countries. The European Union in 2023 introduced the Carbon Border Adjustment Mechanism (CBAM) as a response to the Paris Agreement. The Agreement allowed nations to set their own greenhouse-gas emissions targets, thus the EU sought to prevent “leakage” of jobs and investment from committed nations to less ambitious ones (Young, 2022). Limiting the greenhouse gas emission price signal is a theoretical masterstroke with deafening practical repercussions.

Impact Assessments tell us that countries in Africa, South America and the Russian region will see exports to the EU fall as a result of the CBAM (Xiaobei, 2022). Ranging from 1% in the case of Korea to more than 5.5% in the case of Mozambique (Xiaobei, 2022), the exports of CBAM Products represented as GDP underscore an important challenge with respect to competitiveness and economic stability. This potential reduction in exports could have significant implications for the economies of these regions, leading to shifts in trade patterns, potential job losses, and changes in national income. Policymakers in affected countries will need to consider strategies to mitigate these impacts, such as finding new markets, enhancing product value, or negotiating trade adjustments. The overarching aim should be to support these economies in adapting to the new trade realities imposed by the CBAM, ensuring sustainable growth and development while balancing environmental objectives.

The Ad Hoc Working Group on Long Term Cooperative Action (AWG-LCA) is a subsidiary body under the UNFCCC tasked with facilitating the implementation of the Convention. In the Doha Conference, the AWG-LCA was deemed to be far from the appropriate forum to discuss matters relating to restrictive trade practices under the guise of climate change (Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA), 2012). It is difficult to understand why the idea of accommodating the question under the Conference’s already exhaustive agenda was so vehemently shut down. The suggestion that these questions must be dealt with by the WTO is not a flawed one although the very purpose of Working Group is to hold discourse on matters like these. However, it is to be noted that it was affirmed in the same

conference that Parties should cooperate to promote sustainable economic growth (Xiaobei, 2022).

There is another problematic loophole in the text of the GATT Agreement that is commonly exploited by developed countries. Article 20 (b) and (g) specifically allows members to circumvent provisions within the GATT Agreement with the aim of protecting “human, animal or plant life or health; or related to the conservation of exhaustible natural resources” (World Trade Organization, January 1948), essentially interpreted as ‘to protect the environment’. This empowers countries to bypass other GATT obligations under the guise of protecting the environment. It leaves room for misinterpretation and contradictions that can be exploited to execute political agendas.

All of the aforementioned issues point to a larger ‘trickle-down’ effect – essentially referring to a situation where these restrictive trade policies will not only hamper the economies of the countries whose export industry is impacted but also countries and regional economic groups like the ASEAN that are reliant on these exporting countries. The economic shifts as a result of policies that arise out of these loopholes snowball into much larger systemic disturbances and imbalances. At its worst, it will only exacerbate an already wide disparity in capital and economic stability. It need not be specifically mentioned that economic stability directly impacts political, social and environmental stability both, domestically and internationally.

C. Institutional Frameworks

International Law is best described as Janus-faced when it comes to its ambition contrasted with the outcomes of its letter. The principle of sovereignty under international law makes a mockery of the enforceability of any instrument whatsoever. While national sovereignty is indispensably paramount, it leaves much to be desired regarding effectual international policy, especially environmental policy. The significance of domestic courts and administration has only escalated in recent years with regard to the application of international law and policy at the national level. As Lord Bingham noted:

“Times have changed. To an extent almost unimaginable even thirty years ago, national courts in this and other countries are called upon to consider and resolve issues turning on the correct understanding and application of international law, not on an occasional basis, now and then, but routinely, and often in cases of great importance.” (Fatima, 2005)

It is important to recognize at this stage that cardinal issues like enforceability fall strongly outside the scope of this paper and its true aim to underscore gaps in present institutional frameworks and propose solutions that, if implemented appropriately, could bridge said gaps. However, an evaluation of institutional mechanisms would go beyond

those already explored under Part 2 of this paper, extending into a more explorative realm.

A discussion into international policy that is primarily contingent on inter-State cooperation and consensus cannot be had without mention of the political and diplomatic backdrop that engulfs every inch of the International Law domain. The sensitive fabric of the global order dictates the direction of international policy, the nations with the greatest leverage, i.e., the greatest resources (primarily money), exert influence to control the actions of those reliant upon them. In the present scenario, this results in the collective of nations being pulled in two opposite directions with the United States on one side and the People's Republic of China on the other. In fact, it is not merely the polar pressures being applied on nations; it is also the political volatility of liberal democracies today that contribute the ginger nature of international policy.

For example, in July of 2020, Germany aborted its attempt at drafting a thematic resolution on Climate Change in the Security Council after the Trump Administration threatened to veto any thematic resolutions. Similarly, the Trump Administration was responsible for the United States' withdrawal from the Paris Agreement. Contrasting this with the Biden Administration's willingness to work on Climate Change is in sharp contrast to their predecessors, especially with Vice President Kamala Harris taking on a central role in advocating for better policy. The conversation on the effect of such theatrics is entirely separate and not within the bounds of this paper.

The effect of geopolitics on environmental law and policy is perhaps best evidenced by the fact that the United Nations Security Council is yet to pass a resolution systematically addressing the matter. Considering the binding nature of its resolutions, the urgency of the subject matter and universality of the issue, it is remarkable that one has not made it all the way. A draft resolution authored by Ireland and Niger was put to vote in 2021, which unsurprisingly was vetoed. The resolution by no means was the quintessential solution to the issue but it was a start and an opening for the Security Council to encourage discourse on the matter.

D. S. Olawuyi in her primarily legal discourse on the systemic integration of various trade and climate change organizations emphasizes the need to harmonize institutions such as the UNFCCC and the WTO to leverage their independent strengths which would subsequently maximize outcomes (Olawuyi, 2014). The UNFCCC narrowing down into tracking progress of the goals of mitigating climate risk would allow its workforce to specialize with their unique skills to suggest climate-specific provisions in addition to the existing letter of the Convention. The WTO with its uniquely exhaustive experience on matters of inter-State disputes relating to application of the letter of agreements, can ensure that the decided provisions have the desired execution. This

“harmonization” amongst international institutions is precisely the solution that can rectify what has always been the Achilles’ heel for International Law.

The United Nations Secretary General in his High-Level Panel Report in 2004 noted:

“There still remains a need for a body that brings together the key developed and developing countries to address the critical inter linkages between human rights and the environment, climate change, trade, finance, the handling of pandemic diseases and economic and social development. To be effective, such a body must operate at the level of national leaders” (United Nations Secretary General, 2004)

A body operating at the domestic level seeking to connect the interests of developed and developing countries is the unerring approach that must be taken. However, there are a few practical hurdles/questions that arise. First, an international body having any semblance of operational jurisdiction at a national level is only possible upon ratification of the establishment of said body. This in and of itself is a mammoth of a task, consensus among all concerned/target nations in a global dynamic as volatile as the present seems almost mythical. Second, the Secretary General in his report fails to mention the powers of this body. To venture an educated estimate, such a body could best assess the domestic impact of various trade measures and present its findings in a joint meeting where resolve could be sought regarding mitigating the problem of unilaterally destructive measures.

As per *Article 31(3)(c) of the Vienna Convention on the Law of Treaties*, interpretation of international law cannot be done independent of previously accepted rules of International Law (United Nations, 1969), thus there is a need for amendments to various provisions of the WTO Legal Instruments to ensure harmonization. This was further recognized in *Article 3 (2) of the Dispute Settlement Understanding* (World Trade Organization, 1994) of the WTO; it is interpreted as stating that loopholes in the WTO Rules do not override accepted principles of customary international law. *Part 3.1* of this paper contains draft articles for establishing a Compliance Commission under the ambit of the WTO. The Compliance Commission primarily seeks to address the aforesaid provisions that are used to circumvent both established principles of international law and regulatory bodies.

The importance of ensuring consistency in both the letter and interpretation of International Law cannot be overstated and thus the Compliance Commission must also take it upon itself to review the provisions present in the WTO Legal Instruments and suggest amendments to the General Council. Additionally, acting as a liaison between the WTO and the UNFCCC will ensure that the efforts conducted by both institutions can be

harmonized to be more fruitful.

Conclusion

The nexus between international trade and climate change is a complex and multifaceted issue that requires a nuanced and comprehensive approach. Sustainable trade, as defined within the frameworks of the WTO and UNFCCC, offers a promising path forward by prioritizing economic development, environmental protection, and social equity. However, the challenges posed by unilateral measures, such as Border Carbon Adjustments, underscore the need for a more equitable and harmonized approach.

To address these challenges, this paper proposes the establishment of a WTO International Law Compliance Commission (WILCC) to align the WTO Rules with accepted principles of international law and prevent the misuse of its provisions. The WILCC would conduct a comprehensive review of existing WTO Legal Instruments, propose amendments where necessary, and act as a liaison between the WTO and UNFCCC to harmonize environmental and trade policies.

By fostering cooperation and dialogue among member states, the WTO and WILCC can ensure that trade contributes positively to climate objectives while promoting sustainable economic growth. This approach recognizes the sensitive fabric of the global order and the need to balance the interests of developed and developing countries. Through mutual supportiveness between trade and environmental policies, countries can create synergies that enhance both economic and environmental outcomes.

Ultimately, the path to sustainable trade is paved with challenges, but with a concerted effort and a commitment to international cooperation, the international community can navigate these obstacles and forge a more sustainable and equitable global economy. The establishment of the WILCC represents a significant step in this direction, providing a framework for aligning trade policies with environmental objectives and ensuring that the benefits of trade are shared equitably among all stakeholders.

Bibliography

- Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA). (2012). Doha Outcome Document. UNFCCC.
- Brack. (Jul. 1995). Balancing Trade and the Environment. *Ethics, the Environment and the Changing International Order*, 71(3), 497-514.
- Fatima, S. (2005). *Using International Law in Domestic Courts*. Hart Publishing, Oxford.
- Olawuyi, D. S. (2014). Harmonizing International Trade and Climate Change Institutions: Legal and Theoretical Basis for Systemic Integration. 7 *LAW & DEV. REV.* 107.
- Taylor, L. a. (July 2004). Unmasking the Pollution Haven Effect. *NBER Working Paper No. 10629*.
- UNFCCC. (2015, November). The Paris Agreement, COP21. *Paris Climate Conference*.
- United Nations. (1969, May 23). Treaty Series, Art. 31(3)(c). *Vienna Convention on the Law of Treaties*, 1155, 331. United Nations.
- United Nations. (1992). Agenda 21. *UNCED*.
- United Nations Secretary General. (2004). Report of the UN Secretary General's High-Level Panel on Threats, Challenges and Climate Change.
- World Trade Organization. (1982, February 22). L/5198. *GATT Agreement*.
- World Trade Organization. (1994). Dispute Settlement Understanding, Art. 3.
- World Trade Organization. (1995). Preambulatory Clauses. *Marrakesh Agreement*.
- World Trade Organization. (January 1948). *General Agreement on Tariffs and Trade, Article 20 (b)-(g)*.
- Xiaobei, F. J. (2022, March). The Global Impact of a Carbon Border Adjustment Mechanism: A Quantitative Assessment. *Task Force on Climate, Development and the International Monetary Fund*.
- Young, M. (2022, May). Working Paper 09: Improving Border Adjustment Mechanisms. *Institute for International Trade*. The University of Adelaide.