

First, ‘things’ first: prioritizing environmental goods tariff reductions at the WTO

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ABSTRACT

Negotiations to liberalize trade in environmental goods are a key indicator for the World Trade Organization’s (WTO) capacity to pursue climate and environmental objectives. Experience with Environmental Goods Agreement negotiations within the WTO demonstrates the necessity to establish obligations and/or procedures that link environment and trade law as the WTO pursues a sustainability agenda.

INTRODUCTION

Much of the trade and sustainability discussion has centred on concerns that the combination of low barriers to trade and weak environmental protections in certain jurisdictions creates incentives to produce goods in pollution havens creating a race to the bottom in global production. Debate has focused on how to set and verify minimum environmental standards for traded goods. The World Trade Organization (WTO) Doha Ministerial Declaration of 2001 commitment to negotiate the ‘reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services’¹ sought instead to use low barriers to trade to promote cleaner production processes.

While the WTO and its predecessor agreements have proven successful in fulfilling the mandate of providing a global forum for tariff reduction for industrial and agricultural products, tariff reduction on environmental goods remains elusive. The WTO is now evolving to utilize trade policy levers to achieve a myriad of environmental objectives. Can it deliver on these objectives if, as the treaty organization that specializes in tariff reduction, it is unable to reduce tariffs on

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¹ Doha Ministerial Declaration, WT/MIN(01)/DEC/1, adopted 14 November 2001.

environmental goods? Tackling other, more politically and technically complex trade and sustainability measures—including liberalizing trade in environmental services,² defining terms for trade in circular economy products,³ setting minimum standards for environmental performance in trade agreements, aligning green government procurement rules,⁴ and calculating and coordinating interoperable carbon border adjustments,⁵ to name a few—all hinge on WTO members' ability to provide basic border tax relief for environmental goods.

The common thread between achieving more ambitious trade and environment measures and eliminating tariffs for environmental goods is that there is no fit-for-purpose definition of 'environmental' within trade law and practice. This is attributable to WTO law's arm's length relationship with domestic law and regulation. The WTO is designed to protect sovereignty while facilitating international commerce by providing its parties with regulatory autonomy, so long as domestic rules are not disguised as trade barriers and do not discriminate or distort trade. This has meant in practice that the technical domains of trade law and environmental law and regulation have been distinct. While international trade and topical organizations will collaborate on headline work outlining the links between their respective technical domains,⁶ they do not have a mandate to engage in the technical matters related to trade and environmental negotiations. Effective integration of environmental disciplines into trade law to facilitate clean commerce and avoid the free-riding of weaker environmental performers, among other goals, means creating methodological links between domestic environmental law and policy and the formation of new international trade law. Lacking these links risks creating environmental trade rules devoid of technical rigour and credibility and would likely lead countries to default to the pursuit of mercantilist outcomes, as has been the case with previous attempts to liberalize environmental goods. In particular, the inability to conclude the WTO plurilateral EGA in 2016 provides an instructive case study for understanding the pitfalls of attempting to marry trade and environmental disciplines in the absence of these ties and provides insight into how the legal conduit between trade and other fields may be established in the future.

EGA NEGOTIATIONS

The WTO EGA negotiations began in earnest with the Joint Statement Regarding Trade in Environmental Goods, signed in Davos, Switzerland, in early 2014 among 14 members.⁷ The statement's intent was to advance the Asia-Pacific Economic Cooperation (APEC) Leaders' commitment to reduce tariffs on the APEC List of 54 Environmental Goods into a first-of-its-kind WTO plurilateral agreement that could achieve, with a smaller group of members, the environmental tariff relief that had been swept up in the inertia of the multilateral⁸ setting.

² The primary challenge with liberalizing trade in environmental services is that service negotiations within the WTO follow a different set of 'modalities' than goods, ballooning the definitional and technical challenges. For instance, while the work of civil engineers is coded within the WTO for negotiating purposes, engineers do not distinguish their billable time between 'environmental' and 'non-environmental' functions, making liberalizing environmental engineering extremely challenging in a WTO negotiating context.

³ Trade in recyclable end-of-life products, demanufactured products, recycling intermediaries, and recycled commodities is poorly defined in the customs nomenclature, but important in the Basel Convention on Transboundary Movement of Hazardous Wastes, OECD, and nation-state rules that govern trade in wastes.

⁴ Like environmental goods tariff negotiations, there is no agreed-upon definition of what constitutes 'green procurement'.

⁵ Emergent border taxes designed specifically to prevent the offshoring or leakage of carbon that occurs when economies import carbon-intensive products are untested in WTO jurisprudence, albeit there is arguably some architecture under GATT Article III and under the enumerated exceptions in GATT Article XX that would serve as the foundation for any measure and associated dispute. See eg Henrik Horn and Petros C Mavroidis, 'Climate Change and the WTO: Legal Issues Concerning Border Tax Adjustments' (2010) 53 *Japanese YB Int'l Law* 19

⁶ United Nations Environment Programme, 'Environment and Trade Hub' <www.unep.org/explore-topics/green-economy/what-we-do/environment-trade-hub> accessed 15 May 2024.

⁷ Joint Statement Regarding Trade in Environmental Goods (Davos, 24 January 2012) by representatives of Australia, Canada, China, Costa Rica, the European Union, Hong Kong, China, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, and the United States.

⁸ Multilateral is considered any agreement made within the WTO among the entirety of its membership.

Importantly, it was expected that tariff reductions under this agreement would be provided on a most favoured nation (MFN) basis to nonsignatories, raising the risk of free riding. Over the next 3 years and 18 negotiating rounds, the EGA membership grew to 17, and by the Ministerial in December 2016, an agreement was within striking distance as EGA members defined a tariff elimination landing zone of approximately 300 product categories⁹ and a comprehensive implementing customs nomenclature.¹⁰ Regrettably, the members failed to find consensus on a list of environmental goods during the final EGA ministerial in late 2016, and as of this writing, no agreement has been reached. Three major structural faults undermined the successful conclusion of EGA negotiations, and risk undermining future attempts to marry trade and environmental disciplines.

First, no explicit procedural link between the stated environmental objectives of the Doha Decision and the domestic environmental policy and technical expertise of members was established to determine the environmental credibility of candidate products. Prior successful sectoral plurilateral negotiations for tariff elimination within the WTO, namely the Information Technology Agreement and Expansion Agreement (ITA I 1996, ITA II 2015), benefited from baked-in technical expertise since industrial ministries are those typically tasked with trade negotiations and the language of tariffs, the Harmonized System (HS), is already divided along industrial lines. Environmental technical expertise generally does not reside within industrial ministries, but rather in environment, climate, and energy ministries. While the EGA enjoyed the full participation of environment ministries, it lacked an explicit negotiating procedure to link the science and technology expertise resulting from national regulatory efforts to the identification of candidate goods.

This was a critical oversight since technologies transparently vetted in statute or rule to fulfil the pollution mitigation objectives of said statute or rule can be explicitly tied to environmental outcomes where the legislative or administrative vetting process itself provides verifiable and reproducible scientific evidence of technologies' pollution mitigation function.¹¹ Helpfully, technologies vetted by a transparent domestic legislative or regulatory process to fulfil one or more of the legitimate objectives of protection of human health or safety, animal or plant life or health, or the environment as defined by the Agreement Article 2.2 can be presumed to be explicitly tied to environmental outcomes as they are scrutinized for their ability to implement an environmental rule. The domestic vetting process is therefore important to any tariff reduction exercise for environmental technologies because it can set up a rebuttable presumption of what is in fact an 'environmental technology', thereby effectively linking environmental law and policy with trade rules.

This process also provides a foundation for WTO members wishing to pursue a non-MFN plurilateral environmental goods tariff reduction to assert a defence under GATT Article XX. GATT Articles XX(b) (necessary to protect human, animal, or plant life or health) and XX(g) (related to the conservation of exhaustible natural resources) explicitly recognize that a departure from trade rules may be justified for environmental reasons. A modern interpretation of Article XX would justify the removal of tariffs on environmental technologies among a like-minded group, even if not on an MFN basis, because the removal of tariffs would facilitate the implementation of environmental measures by ensuring a higher level of accessibility and

⁹ At the six-digit level of specificity under the HS, which is the international system of classification for customs purposes.

¹⁰ Implementing customs nomenclature refers to the technical work customs agencies conduct in tariff negotiations to rework product definitions to address the sectoral scope of products negotiators are seeking to liberalize through negotiations.

¹¹ For example, US EPA's public description of the Clean Air Act states explicitly that, 'EPA then must issue "Maximum Achievable Control Technology" (MACT) standards for each listed source category according to a prescribed schedule. These standards will be based on the best demonstrated control technology or practices within the regulated industry...' US Environmental Protection Agency, '1990 Air Act Amendment Summary: Title III. Air Toxics' (EPA, 1990) <www.epa.gov/clean-air-act-overview/1990-clean-air-act-amendment-summary-title-iii> accessed 14 May 2024.

affordability of legitimate environmental technologies to those in the group while avoiding the free rider problem.

Second, in the absence of shared criteria, environmental credibility is in the eye of the beholder. The EGA was novel in that it sought to be both *economically significant* and *environmentally credible*. To evaluate the environmental credibility of various purported environmental goods, EGA negotiators combined typical analyses of the probable economic effects (PEEs)¹² of trade liberalization with national assessments of products' environmental suitability including those emanating from statutory processes, international standards bodies, and more dubious processes such as national and corporate green labelling, or simply through subjective interpretation. As a result, members proposed and evaluated goods for inclusion based on one or more of the following criteria: environmental function (like solar panels or water filters); preferability as a substitute with respect to its composition or other intrinsic factors (eg coniferous wood or bamboo building materials); lifecycle factors such as durability, energy efficiency, and end-of-life costs (such as LED lighting); and sustainable manufacturing (ie the environmental soundness of products' manufacturing process). Delineating legitimate environmental goods, that is, those that have a demonstrated environmental function, but are not identified through rigorous statutory or regulatory vetting, presented a formidable challenge to trade negotiators during EGA negotiations, because they are more likely to be a disguised trade barrier. Based on leaked lists,¹³ air conditioners, vacuum cleaners, and even anthracite coal have been proposed for tariff relief under the EGA, with dubious environmental justification and little or no evidence of anticipated environmental benefits from increased trade in said goods.

Here, the TBT Agreement and Code of Good Practice could again be repurposed to establish an evidence-based assessment of a good's environmental bona fides. Performance-based goods that meet international standards as defined by the TBT Agreement and the Code of Good Practice could use the performance data and analysis produced during the international standards development process to establish environmental efficacy. The TBT Code of Good Practice requires international standards development organizations to produce standards in a transparent, objective, and fair manner. Objectivity and transparency requirements translate into standards that must establish their efficacy through reproducible measurement and testing across a spectrum of performance measures. Albeit a lower threshold for the international standards development data and requirements could be particularly useful for delineating environmental performance differences in like goods and for taking into consideration lifecycle factors. For example, standards data would provide negotiators with comparable data on the energy efficiency, lifecycle, and recyclability of various kinds of light bulbs be they incandescent, compact fluorescent, or light-emitting diode.

Third, attempting to define environmental goods without consideration of the impact of changes in trade patterns caused by tariff reduction weakens the environmental credibility of a resulting agreement. Legitimate environmental goods, whether defined statutorily or through an international standards process, alone do not account for the demonstrable environmental effects of eliminating or reducing tariffs. That is, it is necessary to ask what (if any) environmental effects can be anticipated from the modified trade patterns resulting from tariff liberalization? Liberalization outcomes could include anything from increase in global demand in response to lower prices (ie higher consumption), changes in trade patterns through product substitution, changes in origin and import volumes (ie changes in which countries produce, export, and import and at what levels), or a combination thereof. These effects depending on the

¹² PEEs refer to econometric studies that negotiating economies undertake to determine their schema of potential tariff concessions and reciprocal market access demands prior to initiating a trade negotiation.

¹³ Inside US Trade (eds), 'Full EGA Product List Leaked by European Enviro Group Shows Nominations by U.S., China, Others' (16 September 2015) <<https://insidetrade.com/content/full-ega-product-list-leaked-european-enviro-group-shows-nominations-us-china-others>> accessed 1 May 2023.

products under consideration, would have diverse and heretofore unevaluated environmental outcomes.

The EGA was mired in prolonged discussions over product scope because, without an objective way to score the impact that liberalized trade in candidate goods would have on environmental outcomes, negotiators had no recourse to objective, rigorous, fit-for-purpose, and most importantly, trade-specific criteria that could define environmental credibility within the scope of a tariff liberalization agreement. In the absence of objective methods and criteria for determining environmental credibility of tariff liberalization, environmental goods tariff negotiations remain susceptible to subjective definitions, mercantilist green-washing,¹⁴ and perhaps most damning, a chronic inability to demonstrate to the public that liberalizing trade in environmental goods leads to improved environmental outcomes. The absence of trade-specific measures of the anticipated environmental outcomes from tariff liberalization risks both the credibility of the WTO and the use of trade tools to facilitate environmental goals and combat climate change.

Fourth, WTO requirements designed for fairness unintentionally undercut like-minded partners' ability to incubate and conclude novel trade arrangements that intersect with social objectives. Despite reporting that the EGA failed solely because of technical matters such as product scope and staging,¹⁵ the WTO requirements for plurilateral agreements hinder new efforts to conclude novel trade and environmental agreements. WTO plurilateral tariff agreements require two mutually reinforcing disciplines: first, the extension of MFN privileges to all WTO members (required as a practical if not a legal matter) without reciprocal market access from those outside of the plurilateral framework and, second, to balance out the free-rider problem created by the first, the requirement for 'critical mass'—that the plurilateral membership must include 'most'¹⁶ of the global trade in the products covered in the agreement. The critical mass requirement is designed to reduce the free-rider problem created by the grant of MFN treatment, where major exporters could choose to remain outside of the plurilateral framework to gain MFN market access for their exports without providing reciprocal domestic tariff relief for imports. Given the size and scope of the WTO membership, these dynamics mean that environmentally like-minded members must negotiate with members who are not environmentally like-minded, putting downward pressure on ambition.¹⁷

While addressing the free-rider problem through the critical mass requirement has worked for industrial negotiations on information technology products,¹⁸ it had a chilling effect on the EGA negotiations and would likely lead to a similar outcome for other key social sectors such as health, as explained further below. Countries participate in environmental goods market access negotiations because they share both economic *and* environmental ambition. That is, they have a demand-side pull for foreign environmental technology (ie they have or are raising their domestic environmental standards), and/or they have a supply-side push for domestically produced environmental goods.

Figure 1 plots the overall cleantech market size between the Yale Environmental Performance Index score and the cleantech market size per capita, poverty adjusted by purchasing power parity. The positive linear relationship between per capita investment in environmental quality,

¹⁴ Mercantilist greenwashing is the act of claiming dubious or unjustifiable environmental benefits for products that have high existing tariff rates in export markets, also known as disguised mercantilism.

¹⁵ Tariff Staging refers to the practice of allowing members to stage or phase in their tariff reduction over time. While also used to address members' sensitive products, staging is considered an essential element of Special and Differential Treatment for developing country members.

¹⁶ 'Most' is subjective and defined by the members but is often understood to be 80% or more of the trade, which is itself defined by the members. Member-defined 'Trade' can be quantified as solely exports or imports or both exports and imports.

¹⁷ Since this paper addresses approaches to the trade and sustainability agenda within the WTO, alternatives for environmental goods tariff liberalization outside of the WTO are not offered here.

¹⁸ WTO Secretariat, '20 Years of the Information Technology Agreement', <www.wto.org/english/res_e/publications_e/ita20years2017_e.htm> accessed 3 December 2024.

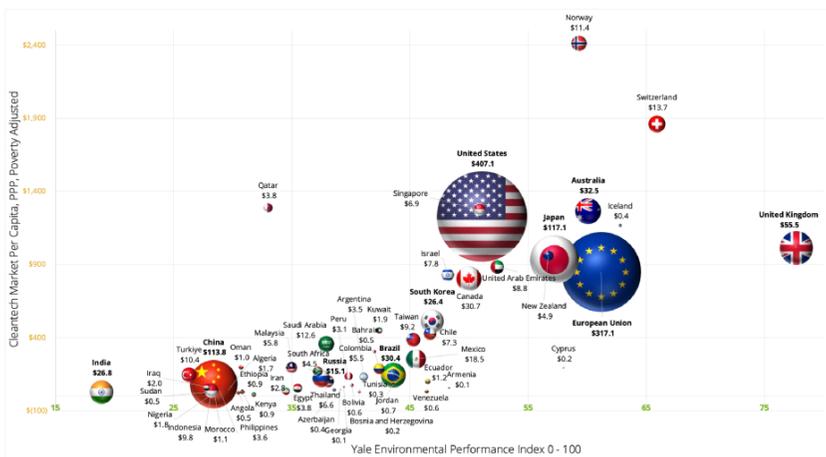


Figure 1. Annual cleantech market size plotted between the cleantech market size per capita and Yale Environmental Performance Index score.

Sources: Yale Environment 360; Environmental Business International with Silverado Analysis.

quality of environmental performance, and overall market size yields the following conclusion: countries that invest more in environmental technologies on a per capita basis (Y-axis) have better environmental performance (X-axis) and have larger and more stable domestic environmental markets (plot points). Apart from Chile and the United Arab Emirates, all the members plotted in Fig. 1 that invest around \$400 per capita or more in cleantech and score above 45 on the EPI were ambitious participants in EGA negotiations with clear mandates to negotiate a comprehensive list of environmental products, as evinced by their efforts to nominate and support products early and often during EGA negotiations.

The plurilateral critical mass rules that governed the original EGA negotiations forced environmentally like-minded partners to include members that had little environmental or economic incentive to liberalize environmental goods. The collapse of EGA in late 2016 was instigated by one such member, China, which at the time was—and continues to be—the world’s largest exporter of environmental technology, despite underperforming on implementation and uptake of environmental technologies in its domestic market, as evidenced by its low EPI score. Nonetheless, China remains a leading global manufacturer of cleantech producing 97% of the world’s solar wafers, 84% of solar cells, 80% of solar inverters, 78% of solar modules, 77% of battery cells, and 91% of battery anodes.¹⁹ In contrast to the EU, Japan,²⁰ and the

¹⁹ The data are production or production capacity for the latest available year (2021, 2022, or 2023). Global Trade Tracker database, <www.globaltradetracker.com/> accessed 3 December 2024; Gaëtan Masson Melodie de l’Epine and Izumi Kaizuka, ‘Trends in Photovoltaic Applications 2023’ (International Energy Agency, 2023) PVPS T1-43 <https://iea-pvps.org/wp-content/uploads/2023/10/PVPS_Trends_Report_2023_WEB.pdf> accessed 3 December 2024; Statista ‘Market Share of the Solar PV Inverter Market Worldwide in 2022, Based on Shipments’ <www.statista.com/statistics/1003705/global-pv-inverter-market-share> accessed 3 December 2024. The data for anodes are approximate values; OECD, *Strengthening Clean Energy Supply Chains for Decarbonization and Economic Security: OECD Report for the G7 Finance Ministers and Central Bank Governors*, 2023; Govind Bhutada ‘Visualizing China’s Dominance in Battery Manufacturing (2022–2027P)’ (Visual Capitalist, 2023) <www.visualcapitalist.com/chinas-dominance-in-battery-manufacturing/#google_vignette> accessed 3 December 2024; Antoine Vagneur-Jones and Stephanie Muro Padilla, ‘The Race to Localize Clean Technology Supply Chains’ (BloombergNEF, 2023) <<https://about.bnef.com/blog/the-race-to-localize-clean-technology-supply-chains/>> accessed 3 December 2024.

²⁰ Japan’s applied MFN rates for environmental goods track closely with those of the USA and therefore are not represented here.

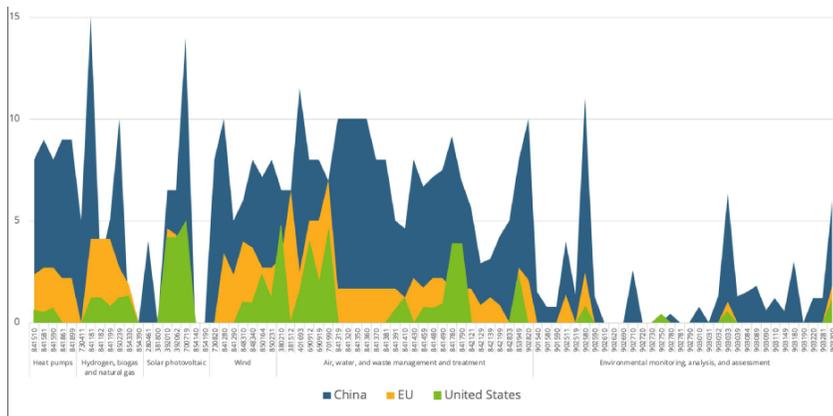


Figure 2. Applied average tariff rates for select environmental products.

Source: WTO Tariff Download Facility, <http://tariffdata.wto.org/>. Notes: Data are for select environmental goods. Simple average tariff rate at the HS six-digit level, which includes some national tariff lines that do not contain environmental goods. Tariff rates are based on the 2021 HS.

USA' low MFN rates, China maintains relatively high applied tariffs²¹ on environmental goods. Given the fact that its exports also meet relatively low tariff barriers abroad, China has little economic incentive to reduce its tariffs, as it would then effectively have to pay a premium in domestic tariff reduction for less overall improved market access for its exports (Fig. 2). Add to this the fact that China uses other well-documented means to improve the competitiveness of its exports²² and the nominal market access barrier from the remaining tariffs of major importing markets is further diminished. In other words, the cumulative effect of China's nonmarket export policies drives down the price of its exports so effectively that importers' tariffs are neutralized.

The resulting like-mindedness mismatch between China and other EGA members meant that there was little incentive for China to participate in—let alone conclude—the EGA. In practice, this led China to propose relatively few products compared to other EGA participants. A count of China's product proposals from a leaked EGA²³ list demonstrates this low ambition, showing that China nominated just 75 products compared to Australia (147), Chinese Taipei (293), the EU (166), Singapore (122), and Turkey (144).

REFORM PROPOSALS

Establish procedural links between national and international environmental regulatory and standards bodies and the WTO

The WTO could, through ministerial decision, establish a technical working group to task members' environment, oceans, energy, and climate ministries; international environmental bodies (eg the International Energy Agency (IEA)); and customs officials with cataloguing technologies identified and vetted through domestic regulatory procedures with special attention paid

²¹ Bound tariff rates are those a WTO member agrees to not exceed. Members often apply lower rates in practices, known as their 'applied rates'.

²² WTO Secretariat 'Trade Policy Review: Report by the Secretariat, China', WT/TPR/S/415 (2021) <www.wto.org/english/tratop_e/tp_r_e/s415_e.pdf> accessed 3 December 2024; United States Trade Representative, '2021 National Trade Estimate Report on Foreign Trade Barriers' <<https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf>> accessed 3 December 2024.

²³ Inside US Trade (n 13).

to referencing environmental efficacy data. This effort could establish a procedure for technologies that are vetted through scientifically rigorous technical regulation processes to receive a rebuttable presumption of environmental efficacy.

Customs authorities would work alongside environmental authorities to translate qualifying technologies into usable customs nomenclature. Such an exercise would be technical in nature but would provide a defensible, and with customs language, implementable foundation for environmental goods lists for utilization across various multilateral, plurilateral, and regional trade agreements. It would also provide members with the ability to establish a baseline for technology convergence across members' different regulatory approaches, which could speed the elimination of trade barriers by enabling non-MFN plurilateral agreements to take place for those technologies under the umbrella of GATT Article XX exceptions. A similar process could convene international standards development organizations and trade and environment officials to aggregate environmental efficacy data across a variety of candidate environmental goods. More importantly, these efforts would establish a basis for expert technical input among members across emergent trade-environmental disciplines including those pertinent to identifying customs nomenclature and standards for the circular economy, establishing product-level boundaries for carbon border adjustments, and disciplining climate subsidies.

Assess the 'Probable Environmental Effects' of tariff liberalization

Before engaging in tariff negotiations, economies typically conduct econometric analyses of the PEEs of tariff reductions on their economy. Such analyses inform negotiators' decision-making by enabling them to anticipate where tariff reduction will benefit or harm their domestic economies.

An environmental analogue to PEE analyses would ameliorate the challenge of defining environmental goods for their purpose of tariff elimination. The scope and definition of 'environmental goods and technologies' should be grounded in an empirical appraisal of trade's value as an engine of acquisition for goods and technologies that result in positive environmental outcomes. By focusing on only those products for which tariff reduction translates into more widespread adoption of that technology—and, as a function of tariff liberalization itself, results in positive environmental outcomes—countries can arrive at a workable and effective list of liberalized environmental goods.

Consider, for instance, bicycles. A trade-driven assessment of bicycles' environmental suitability would ask: Will cheaper bikes, driven by tariff reduction, equate to greater demand for bicycles and subsequently more bicycle commuters? If lower prices for bicycles do not lead to more drivers foregoing their cars for cycling, the net environmental impact of lower tariffs on bicycles would be negligible. To date, the only known substantive effect of tariff reduction on the global bicycle market has been a shift in production to lower-cost regions—including those with less stringent environmental standards—rather than a change in overall demand. Unless lower tariffs are spurring greater demand for a product with beneficial environmental outcomes, trade liberalization has no effective environmental benefit.

One major caveat to this approach is that increased demand cannot be permitted to lead to environmental degradation or risks to human health elsewhere. An obvious example is the potential for increased demand for wood products to exacerbate deforestation. While expanded demand for timber products may appear to be environmentally beneficial if it reduces demand for less environmentally favourable alternatives, such as those made of single-use plastics, meeting that demand is hardly justifiable if doing so is likely to lead to deforestation or other negative environmental outcomes.

Combined with regulatory and potentially standards-driven procedures to identify candidate environmental goods, the probable environmental effects of trade study would establish objective procedures for weighing the net environmental and economic benefits of environmental goods tariff liberalization. By providing an objective and measurable means to score products' environmental credibility, they move negotiations back into the data-driven and economic wheelhouse of trade negotiators. Similarly, they would allow negotiators to immediately disqualify low-credibility items that are proposed without measurable environmental benefit, which could damage the overall integrity of the deal. Finally, results-driven definitions would create a mechanism to establish and monitor the environmental value of expanded market access, providing the WTO and its members with a verifiable yardstick for communicating the EGA's value to society.

Learn to play CHESS

While non-MFN justification could be provided by stronger regulatory efficacy links to environmental goods tariff liberalization lists, the WTO's members may be reluctant to renege on MFN-based tariff plurilateral agreements. Members may be more receptive to a procedure that would allow for non-MFN plurilateral agreements on an expanded set of common issues like Climate, Health, Environment, Security, and Safety (CHESS). As demonstrated with the EGA, the size and scope of the WTO's membership limits the incentives for members to negotiate on common issues inside the WTO, and the interests of many large, industrialized economies are incompatible with expanded market access for environmental goods. As a result, a new model must emerge that is consistent with the spirit of the WTO agreements while also allowing for WTO members to pursue and conclude non-MFN plurilateral agreements addressing CHESS-related issues. Such an approach is likely to incentivize more members to join agreements on CHESS-related issues so they can reap the benefits of trade agreements that are good for their economies as well as their people and the environment.

Members should first discuss this new architecture. These discussions could focus on pressing questions such as (i) how would CHESS plurilateral benefit all types of WTO members, and in particular developing country members, due to the 'common' issues they seek to address; (ii) why they are consistent with the reasoning underpinning established exceptions to MFN compliance for environment, health, and security; (iii) what are the criteria for establishing a CHESS issue, such that it would justify invocation of the procedure; and (iv) what types of objectively measured data would WTO members need to demonstrate to show like-mindedness. (This latter consideration is necessary to ensure that CHESS plurilateral are not just clubs for friends and in fact serve a real purpose that justifies a departure from long-standing MFN principles, such as driving high ambition among plurilateral members.)

CONCLUSION

The WTO has the tools to harness the power of trade policy for the greater environmental good, and it can begin this work by charting a new course towards establishing global free trade in environmental goods. This effort would bolster the WTO's legitimacy and provide a negotiating template that the world urgently needs to address carbon leakage, build a circular economy, and protect natural resources through trade measures.