

# Sustainable Development: Is WTO Part of the Problem?

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***WTI Brown Bag seminar series***

***Tuesday 7 March 2023***

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# Proposed Menu

1. SDG+PIL+IEL+Other Sustainability Sources
  1. Superseding Norms?
  2. Research Questions
2. WTO Problems?
  1. SPS, TBT, Art.III, Art.XX, Disputes, Waivers
  2. Pluri- and Unilaterals
3. Research Hypothesis
4. Discussant (10') and Q/A (20')



# 1. SDG+PIL+IEL

«GOALS» are just goals?



Who adopts SDG/PIL?  
Who adopts WTO Rules?

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2 ZERO HUNGER



SDG 2

<https://sdgs.un.org/goals/goal2>

SDG 13

<https://sdgs.un.org/goals/goal13>

13 CLIMATE ACTION



## Public International Law / **PIL**

[UNO, Gen.Pr., Cust.Law, Univ.Decl.HR 1948, HR Law, ILO, WHO, FAO, *ius in bello/ius ad bellum*]

Codex/  
OIE/IPPC

## International Economic Law / **IEL**

[**WTO**, BWI (IBRD+IMF), ICSID, RTA/AfCFTA, GSP]

## Sustainability Sources

[UNCTAD, **ICESCR**, OECD, UNFCCC/CBDRR, Basel, Montreal]

Vienna Convention /VCLT/*ius cogens*



Can Objectives  
Impact Trade?

Relative  
Production  
Costs?

"SOFT" Law?

# Self-Ruling? Self-Assessment? Splendid Isolation?

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Who chooses  
adjudicators?

Many SDGs need Trade!  
Can WTO make it  
more sustainable?

Who pays WTO?



COMPLET



# Question: How does WTO make **Rules** / assess **Measures**?

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some sustainability issues have actually reached WTO



# Sustainability vs Trade Issues

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**the big sustainability issues remain substantially unaddressed in WTO**



**No DSB Decision ever made PIL prevail over IEL!**

# My Research Questions

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1. WTO  $\neq$  good or bad policies – will it only look at (discriminatory) '**measures**'?

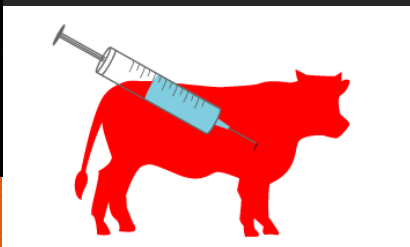
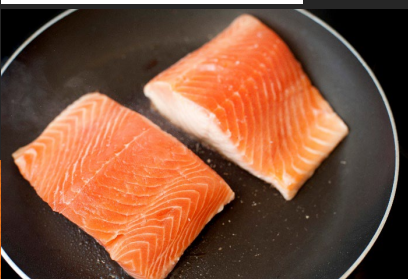
2. WTO = **Policy Space** constrained only by **Market Access** commitments?

3. What if «sustainable» (ppm) **costs** more? Should relevant PIL (+VCLT) prevail over unconstrained trade?



## SPS – The Easy One?

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A «binary»  
agreement – all  
measures fit, or  
misfit, the SPS  
Agreement.  
(But nobody  
makes a proper  
risk assessment.)

# TBT (and SPS) - a perfect «process»?

But what about some  
sustainability **tools**?



## Regular work at the WTO helps members ease trade tensions

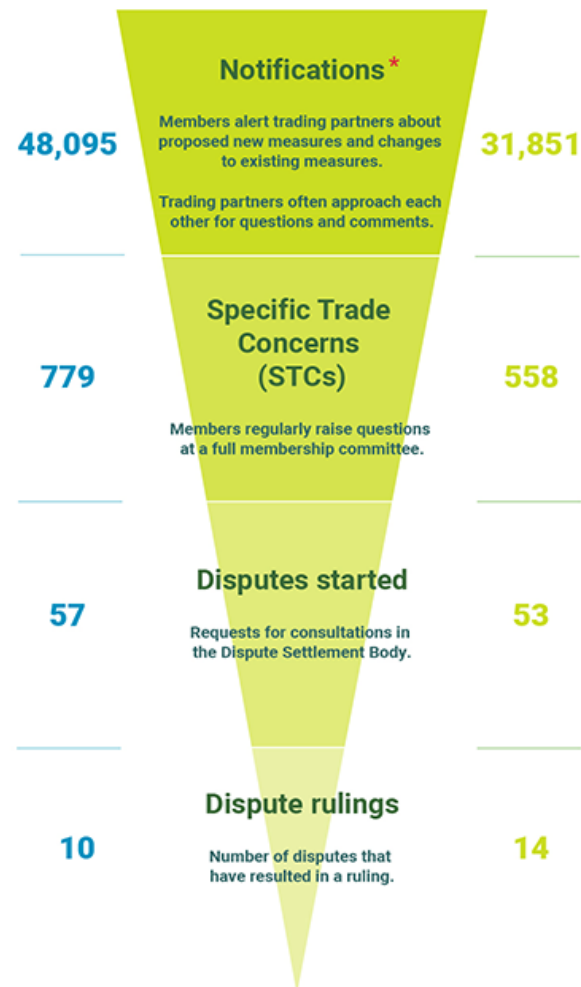
1995 - 2022\*  
\*until 31 December

### TBT

Technical requirements  
affecting trade in all products  
(both industrial and agricultural)

### SPS

Measures relating  
to food safety, and  
animal and plant health



\* All types of notifications included. The same measure may be associated with more than one notification.

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# What about Corona? Why can WTO not stop the global value chain breakages?

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## Pandemic Handling

- ❖ trade restrictions vs liberalisation
- ❖ a subsidy race

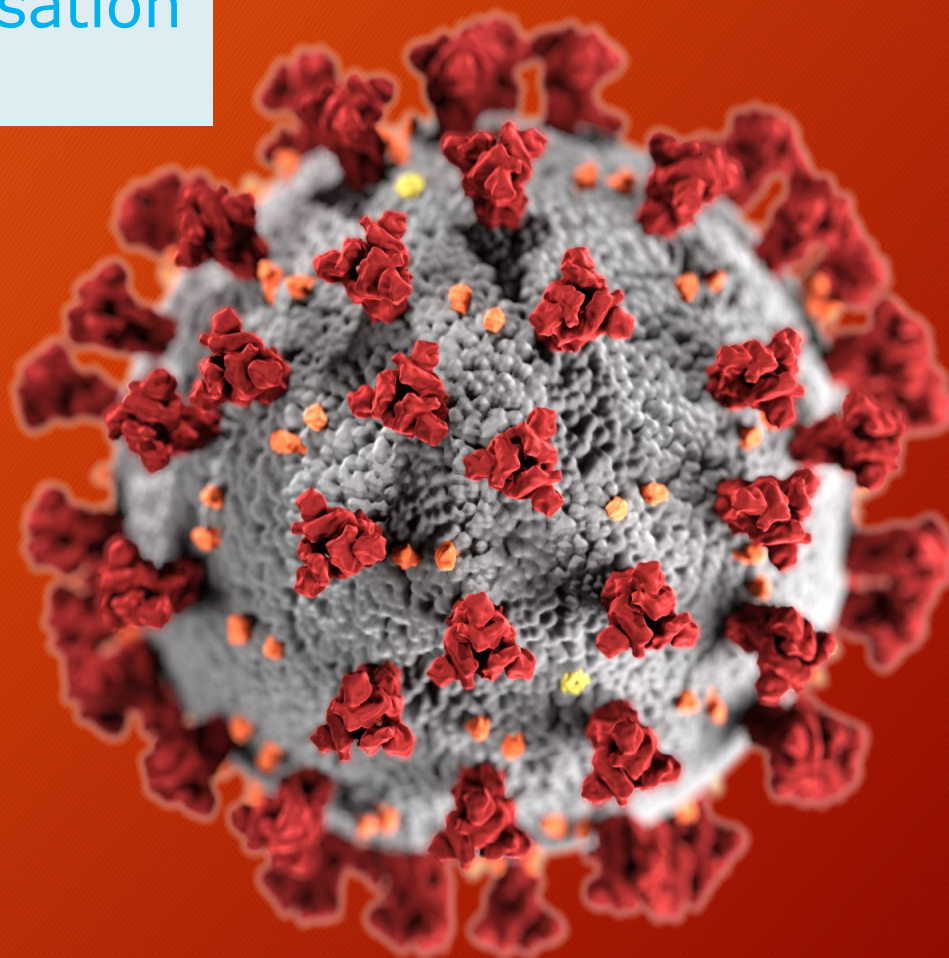
COVID-19 and Trade Policy:  
Why Turning Inward Won't  
Work

Edited by Richard E. Baldwin  
and Simon J. Evenett



A Woodrow Wilson Book

£19.95





Marine  
Stewardship  
Council

# How about a little label?

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Traffic light labels  
on all UK  
breakfast cereals  
(2018)

ente: Elaboración propia a partir de Reglamento Sanitario de los Alimentos, Decreto N° 13, 2015.

Chile prescribes **health warnings**, for (too much) Sugar, Fat, Salt and Calories (2016)

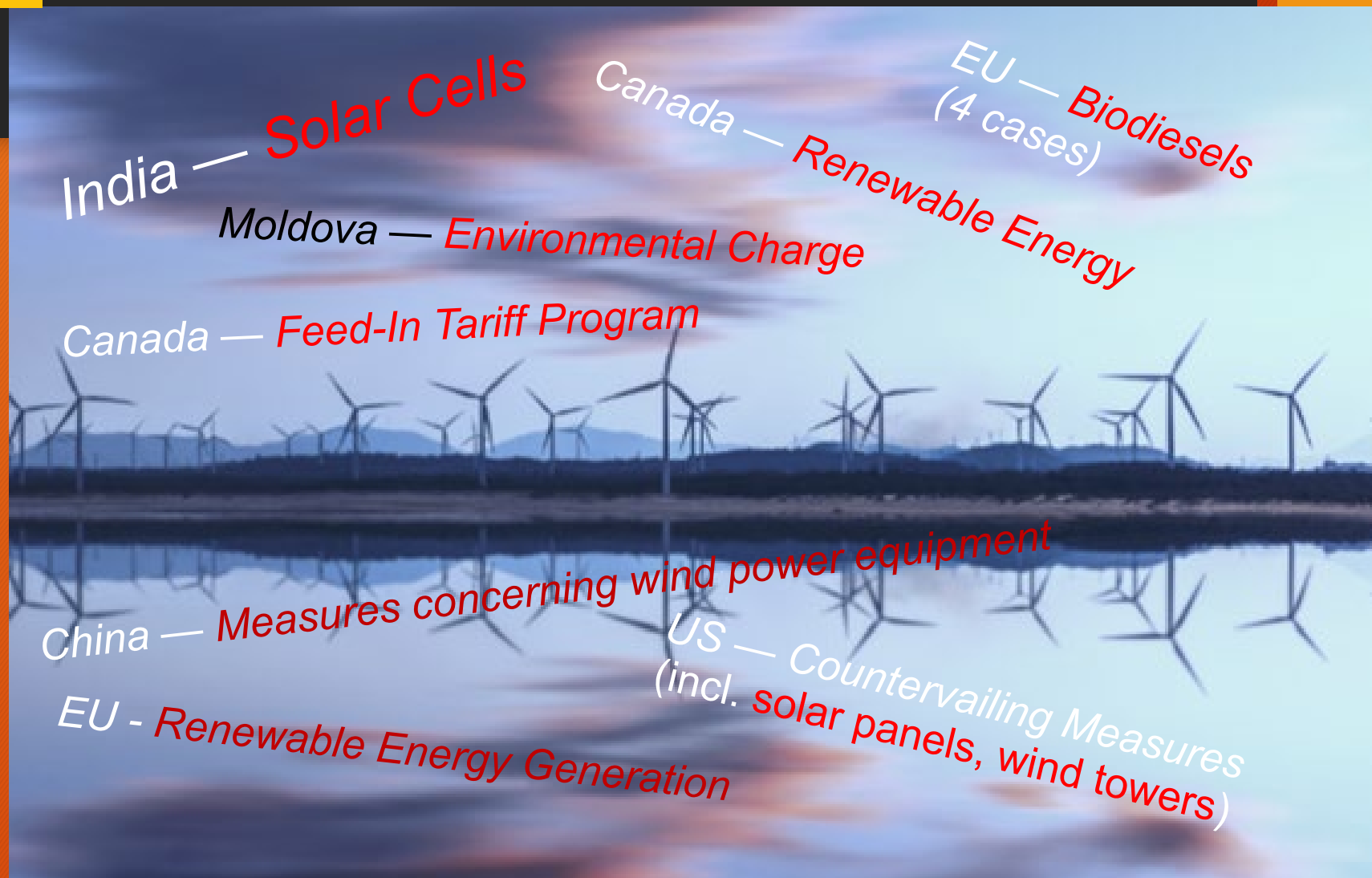


Quelle: Boza 2016, Limenta 2017, Häberli 2017, Polanco 2020



# Renewable Energy in the DSB Respondents NO WIN

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7 March 2023  
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Source: IISD (160706) + Häberli (2017)

Nicola Woodroffe and Erica Westenberg, Governments and companies must address climate and governance risks when petroleum assets change hands. Columbia FDI Perspectives #352, March 2023



1kg of avocados requires 1'000 litres  
of “**virtual water**”...

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The “**export bias**” of WTO/ASCM leaves national regulators free to “**ecodump**” (= allocate water below the market price to cash crops and other exports)



“Race to the Bottom”  
with Free Trade and  
unpaid Virtual Water?

# WTO rules for workers' protection?

The ILO DG was disinvited from the WTO Ministerial in Singapore (1996).

- General, stringent and enforceable non-discrimination rules
- No WTO rules specifically address the issue of labour standards or Social Dumping
- TBT and SPS Agreements have implementation standards
  - e.g. US + BRA Factory inspection resources
  - a basis for “social antidumping”?

**No PIL – even *ius cogens* – ever trumped WTO Law.**

## Obesity and Trade

- Freer trade makes more and cheaper food available, but also safe but unhealthy «junk» food.
- Obesity, malnutrition and overweight as a **globally bigger problem** than hunger – and with a BIG trade impact. **Why?**
- Policy space allows for surplus disposal by rich countries (e.g. turkey tails and mutton flaps in Samoa).
- Health policies can prevent and promote trade. **How?**



**Tax it! (?)**



**Health concerns vs trade : Which tools?**

# What are my rights under TBT-Art. 2.2?



Photo Credit: Nigel Barker ©

© [http://wflendangeredstreamlive.org/seal\\_03\\_02\\_08-016-001\\_448x322.jpg](http://wflendangeredstreamlive.org/seal_03_02_08-016-001_448x322.jpg)



© <http://www.isuma.tv/inuit-knowledge-and-climate-change/movie>

Animal welfare vs Traditional way of life vs Economics?  
What about International Standards?

# Sustainability concern: 'Animal welfare'



- A (hot) issue of differences in standards – and some regulations.
- The standards (in Europe) are imposed by society. **Are they?**
- Differences of this kind imply higher production costs.
- Animal welfare under WTO rules are (only) an issue of competition and market access.

**Public morals, any?**

**Extraterritorial effects, any?**

**How to allow for “readiness to pay”?**

**Which Articles SPS & TBT?**

## Public Morals (Foster 2019)

- “Public morals defences entered international economic law at a time predating the current highly legalized dispute settlement processes with which we are now familiar, and that they are unsuited by nature to international adjudication in its present form.”
- “Legitimate public policy objectives featuring in certain recently negotiated regional free trade agreements poses fewer concerns of this nature.”

# New Literature on Standards

- Santeramo & Lamonaca, Standards and regulatory cooperation in regional trade agreements: What the effects on trade? (Wiley 4 March 2022 - DOI: 10.1002/aepp.13276)
- Boza, Saco & Polanco, Front-of-package nutrition labelling in Latin America: review of the cases of Chile and Peru (Boletim do Instituto de Saúde Volume 21, Número 1, Julho 2020, Páginas 141-150)

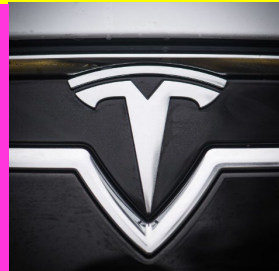


# Sustainable Production requiring Industrial Policies? WTO-compatible?

## Unilateralism = Domestic matters?

- «Good Protectionism»
- «Development First»
- EU Green Deal/CBAM («Carbon Leakage»)
- US Inflation Reduction Act/IRA ("Jobs First")

US Retaliation =  
170'000 US  
jobs lost (WTO)



Art.XXI vs SDG 9?



A GOVERNMENT / OF THE PEOPLE /  
BY THE PEOPLE / FOR THE PEOPLE

© Reading Room, Library of Congress,  
Washington DC (1896)



# Global Deforestation – not for sale in Europe

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«Acknowledging that the EU is responsible for around 10% of global deforestation, we don't have a choice but to ramp up our efforts to halt global deforestation»

(MEP/EPP Christophe Hansen, Luxembourg, EP Rapporteur, 220712)

Comments: (1) CDP, Deforestation-Free Products on the EU Market (2022)

(2) Hedemann-Robinson, Legislative Pioneer on Global Forest Protection? (2022)



DSU for  
SDG 1?



WTO OMC

«Negotiate or Litigate» SD?

# Sustainable Palm Oil

Two Markets?

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Short Term Food Security  
for cash croppers and poor  
consumers

Long Term Sustainability  
with import and demand  
regulation and consumer  
preferences/private standards



## SUSTAINABLE DEVELOPMENT GOALS





# 3. Research Hypothesis

WTO impedes SDG

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## Dumping

**Ecodumping, Social Dumping and Agrifood-Dumping** are incompatible with PIL.



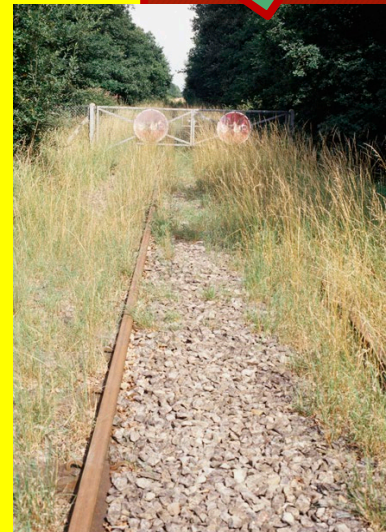
## Like Products

If energy sources (or two cows) with a different foot print cannot be treated *differently*, the **Climate Agreement** commitments cannot be implemented.



## NTB

Border measures without **international standards** may fail WTO compatibility.



WORLD TRADE ORGANIZATION

# Discussant Comments (10')

## Q/A (20')

- Please disagree with me!
- I need your comments to write my article for the University College Dublin / Sutherland School of Law.



Thank you for your attention  
– come back anytime!



Want my slides? ➤ [christian.haeberli@wti.org](mailto:christian.haeberli@wti.org)

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