

# G2 HACKATHON CHALLENGE

How to Make the WTO  
Fit for Future Trade



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Geneva Trade  
Platform

Akin Gump  
STRAUSS HAUER & FELD LLP

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& KO 법무법인(유) 광장

## 2021 Hackathon Submission

Enforcing Green trade through a plurilateral  
WTO Agreement on Trade Related Aspects  
of Environmental Protection

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**Watch the Video**



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### Question #1

Define the substantive issue that your team is addressing, why it's a problem, and why your team believes the WTO is the right forum to address it.

The relationship between trade policy and environmental protection is complex. While the expansion of industries is necessary for the continuity of trade, as industrialization flourishes and the world economy grows, rampant environmental degradation occurs. Expansion of industries, e-commerce activities, and agricultural expansion has led to increased deforestation, loss of biodiversity and a rapid increase in waste.

The laws that regulate environmental protection are extremely fragmented. While there exists a plethora of MEA's that members of the WTO have signed onto, most of the commitments in them have been seen to be largely unenforceable. Provisions in RTA's that include provisions for sustainable trade have also been argued to be largely unenforceable due to the lack of adequate monitoring practices and efficient sanctions on breach. Unilateral measures that are taken by members to protect the environment create a problem of market access and at times disguised trade protectionism. These avenues, can therefore be said to be at best, insufficient in the promotion of sustainable trade.

As trade plays a crucial role in the sustainability of the global economy, it is important that members of the WTO specifically commit to environmentally sustainable practices in trade related aspects of environmental protection to ensure that commitments in the MEA's are enforced and sustainable trade is ultimately promoted. Conceptual frameworks developed by trade economists form the basis of the fact that trade liberalization will increase the availability of environmentally sustainable goods, services and technologies. This is known as the technique effect.

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While GATT Article XX, TBT, SPS and other agreements do tackle issues of environmental sustainability, there is a need to address issue specific environmental problems through an agreement that offers greater substantial and procedural protection. Having an agreement on a plurilateral level that specifically fosters trade in environmentally sustainable goods and green technologies to produce these goods, will also overall have a market access effect which is good for developing competitiveness in them. This can be done through a WTO Plurilateral Agreement on Trade Related Aspects of Environmental Protection.

The WTO is the right forum to address the problem as members share a common purpose of sustainable development, as reflected in the preamble of the Marrakesh Agreement. Members are aware of the dire need to ensure environmental sustainability in trade as the crisis of climate change and environmental degradation affects each one of the members. There have been considered efforts by members to reduce tariffs on environmental goods as well as some negotiations on an environmental goods agreement. The WTO offers a stable, institutional framework for sustainability through its various divisions, monitoring and enforcement mechanisms, substantive rules as well as case law in environmental protection. Through the rules, WTO preserves the policy space of members while ensuring adherence to the rules to ensure no disguised protectionism takes places. This, is the crucial balance that needs to be struck, when aiming to achieve environmental sustainability as a key pillar of sustainable development through trade policy and the WTO is rightly placed to achieve this.

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## Question #2

Propose a specific treaty text, or more informal commitment/declaration text, that addresses either the concern or a particular, detailed aspect of it.

The WTO Agreement on Trade Related Aspects of Environmental Protection  
Preamble

The Parties to this Agreement (hereinafter referred to as 'the Parties'),

Recognizing the need for an effective framework for trade related aspects of environmental protection, with a view to promoting trade in environmentally sustainable products;

Recognizing the sovereignty of each party to establish, adopt or modify its own domestic environmental laws, regulations and policies;

Affirming the importance of multilateral environmental agreements to which they are party to in contributing to global sustainability development;

Reinforcing their commitment to strive to promote trade in environmentally sustainable goods by lowering tariff and other barriers as well as through investments.

Hereby agree as follows:

Article 1

The contracting parties shall adopt and enforce measures necessary to:

- a) implement each contracting party's commitments in multilateral environmental agreements;
- b) promote trade in environmentally sustainable products like internal taxes, investment incentives;
- c) secure compliance with laws and regulations relating to processing, production, consumption and disposal of the products.

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Provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction to international trade.

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### Question #3

Suggest a legal/technical or institutional way to implement your textual proposal within the broader WTO framework (500 words)

The Agreement on the Trade Related Aspects of Environmental Protection which will take the form of a plurilateral agreement under the framework of the WTO.

The proposal for a plurilateral nature of the agreement, fully considers the legal and practical hurdles of addressing such an issue through multilateral negotiations in the world order today. It recognizes the divergent interests, economic and technical capacity that members face today and appreciates that while the issue of environmental sustainability applies universally, the practicality of achieving a multilateral agreement remains to be seen.

Although the proposers of this agreement acknowledge the fact that a multilateral agreement would be better suited to achieve the objective of promotion of environmentally sustainable trade and consequently the advancement of environmental sustainability, they deem that the plurilateral route is more feasible as the issue at hand remains crucial and needs to be addressed in the most quick but efficient manner and with a substantial support of a number of members.

- i. The plurilateral agreement will have commitments that will be applied on a Most Favoured Nation basis. The principle of National Treatment will also be applied. The basis of having the agreement on an MFN and National Treatment basis is to ensure that the core principle of non-discrimination will be adhered to in this agreement.
- ii. The agreement will be open access to all WTO members meaning that it will not be restricted to the founding members
- iii. The Participation of all members is welcomed in the negotiation process but an objection should not be entertained at the time of adoption of the agreement, if the member will not be implementing it immediately.

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- iv. The implementation of the agreement will be on the basis of categories of commitments in accordance with the principle of common but differentiated responsibilities. Members will voluntarily commit to the different categories.
- v. The agreement will be without prejudice to the rights of the WTO members to be able to bring any measures they deem WTO inconsistent through the preexisting WTO Agreements
- vi. Compliance with the agreement will be enforced through the WTO Dispute Settlement Body.

It is anticipated that there will be wide support for the agreement due to the considered importance of the issue at the WTO, the existing work of the Committee on Trade and Environment, the preexisting MEA provisions that will form a basis of commitments, as well as the considered practice of some members to have issue specific environmental provisions in their FTAs.

The divergent economic capacities of members is recognized and it is deemed that the categories of commitment and the capacity building provisions will help to limit opposition due to these issues. The existing institutional framework of the trade policy review mechanism that will also alleviate some of the issues of transparency. It is also considered that public participation in the negotiation process for private actors may limit the commercial opposition.