

G2 HACKATHON CHALLENGE

How to Make the WTO
Fit for Future Trade



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2021 Hackathon Submission

How To Incorporate Sustainability Standards Into The WTO's Regulatory Structure

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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 WTO is a negotiating forum to settle rules that render trade more predictable and, moreover, legal instruments to adjudicate measures when such rules are not followed. Throughout the years, the WTO has compiled a body of treaties that have dealt with a plethora of tariff and non-tariff barriers to trade. Regarding the latter, the TBT and SPS treaties were established in 1995 to regulate the legal provisions concerning the general exceptions in the GATT's article XX.

Although these treaties work as "interpretation guides" for article XX, they are rather broad with respect to standardization procedures. In general lines, they set forth that where relevant international standards exist, they should serve as a basis for national regulations. However, there is no indication of what makes an international standard relevant.

This is of interest when we move to the realm of sustainability standards. Sustainability is a topic that has gained momentum mostly after 1992 and, therefore, was not as well-treated as it could have been under the TBT and SPS. Moreover, the late 1990s and early 2000s marked the apogee of roll-out liberalism, and the hands-off attitude of States began a process of private agents proposing standards of what and what was not to be considered sustainable.

This process led to several consequences, some of which are of importance to the WTO. First, a multitude of private standards, many of which regulate the same industries. Secondly, confusion and inefficiency in production, as many suppliers do not know which standard to abide by. Lastly, the inability to access markets that would be open otherwise. Therefore, private sustainability standards pose a hurdle to the WTO's goal of reducing trade protectionism, contributing to the overall level of discredit over the WTO.

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Nevertheless, tackling the aforementioned issues might reignite the WTO's mechanisms. As climate action failure increasingly becomes the major threat to human life, States are evermore pressured to deliver on the topic of sustainability. The WTO, being one of the world's most prominent forums, is equally expected to advance on the matter. And achieving an agreement on the issue of private sustainability standards might prove as an instrumental initial steppingstone.

Our team's proposal, then, is for the WTO, instead of debating the merit of private standards, to use them as the basis for baseline practice directions on sustainability standards. This would allow for rapid convergence on a scientific-based initial text that, afterward, could be distilled according to political desideratum. Consequently, member states would have a body of relevant international standards to resort to when developing their national standards.

Through this swift delivery, not only will the WTO implement a much-needed transformation in the realm of sustainability, but it will also reclaim its position as the linchpin of international trade by doing what it does best: serving as a negotiating forum to settle rules that render trade more predictable.

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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.

Practice Directions are rooted in the 2030 Agenda for Sustainable Development. These Directions aim to facilitate a mutually supportive relationship between global trade and sustainable development by fulfilling the gaps of the WTO mechanism in addressing the sustainable standards that are endorsed by non-governmental entities.

1. Integrate private and public standards

Members shall take steps to harmonize standards adopted by private sectors within their domestic market, through the way of introducing general guidelines on sustainable development, monitoring both the content of these standards and the process of standard adoption.

2. Encourage scientific-based sustainable standards

Members are expected to follow the scientific guidelines issued by the UNFSS Academic Advisory Council on sustainable development, and they shall ensure that private sectors within their domestic market do not adopt contradictory standards or the standards that constitute major barriers for Members to fulfil their obligations under the WTO agreements.

3. Facilitate reports and publication

Members shall provide accurate and timely information related to the development of private standards within their domestic market. Members are encouraged to publish annual reports about their actions taken on implementing Practice Directions.

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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)

Our proposal has two main challenges that need to be addressed: i) whether the WTO legal structure would allow for the import of private standards for the formulation of a baseline agreement, and; ii) how to facilitate the convergence of countries on the standards, given their different resource availability.

Regarding the import of standards into the WTO, the main avenue for that through stakeholder consultation. Indeed, the Committee on Trade and Environment (CTE) issued a Communication on November 17th, 2020, which organized a structured discussion forum for trade and environmental sustainability and, moreover, called for inputs from external stakeholders. The main goal was to use their expertise to guide future work by the CTE on the confluence between trade and sustainability, following the discussions on an Agreement on Climate Change, Trade and Sustainability (ACCTS). Thus, we can see that external consultation is already a practice legalized under the WTO structure.

Given this legal availability, we ought to explain how to best facilitate the convergence on an agreed-upon set of standards.

First, we understand that there must be economic reasons to support such effort. Our proposal is to demonstrate how the proliferation of private standards has been detrimental to trade, as it causes a lack of transparency and confusion along supply chains, thereby reducing efficiency and adding costs. That is, that the issue stands with the fragmentation of standards, rather than with their existence, which can be beneficial to the sustainable development goals present in the WTO Charter's preamble.

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Though the harmonization of existing standards might contribute to overall productivity, being able to comply with them depends largely on resource availability. This is so because adapting a production line is an expensive enterprise that often requires access to credit lines. Therefore, developing countries, and MSMEs enterprises regardless of State, find themselves in a conundrum when seeking to comply with such standards.

Therefore, the establishment of practice directions is an alternative that might push for the harmonization of standards while providing leeway for firms and states that, currently, cannot comply with them. Furthermore, should the existing private standards be harmonized through practice directions, countries would have a legal, internationally recognized text to resort to when building their own national standardization procedures. That is, they would have interpretation notes, as in the TBT and SPS, but on matters of sustainability.

Furthermore, the practice directions might provide unified standards on a common basis, thereby reducing the gray zone of arbitrary or unjustifiable discrimination under deceptive protectionist measures. In doing so, they can simplify the investigation process and contribute to the judicial economy of the WTO. Moreover, they could be used as ancillary instruments to potential litigations on topics of sustainability that might arise in the WTO's dispute settlement system, much like the US – Tuna Dolphin II case.

Thus, our proposal is legally sound according to the WTO structure. Moreover, it provides a yardstick to evaluate potentially unjustifiable discrimination on the topic of sustainability, contributing to the WTO's objective of reducing trade protectionism.