Chapter 5

Sustainable Development in WTO Context

5.1 Introduction to WTO Law

It is now opportune to introduce another important international regime that attracts an equal amount of global attention. The World Trade Organization (WTO) has become one of the most interesting, albeit controversial, intergovernmental organizations of our time. The WTO provides a forum for continued negotiations on the promotion and liberalization of free trade in goods and services. It also oversees and administers the complex matrix of international treaty law governing the global trading system, and it operates the busiest and perhaps most important international dispute settlement systems.

The reason for choosing a discussion of the international trade system is two-fold. For one, the international trading system also attempts to support sustainable development, and examining the concept in the light of liberalization of international trade should provide some elucidation of its substance. Second, as part II will explore, there is potential for conflict between the norms of the international climate and the international trade regimes. One major point of this thesis is that sustainable development actually provides a legal tool for dealing with these normative conflicts.

In order to discuss how sustainable development relates to the scheme of trade regulation, a brief overview will now be given of the coverage and scope of the WTO and its legal framework, without, of course, intending to give an exhaustive account of international trade law. Not only is the scope of this thesis limited, but countless sources exist already that explore international trade law in great detail and accuracy.¹

5.1.1 Coverage

After having come into existence in 1995 as the successor to the General Agreement on Tariffs and Trade (GATT), the WTO has now 151 Members, which makes it an important multilateral system. The WTO overlooks the ‘multilateral trade agreements’, generally referred to as the WTO agreements or the ‘covered agreements’, which are legally binding upon their Members. The package of agreements consists of various multilateral and plurilateral trade agreements annexed to a single document, the Marrakesh Agreement establishing the WTO (WTO Agreement). Among these agreements, the GATT, newly promulgated as ‘GATT 1994’, is the fundamental trade agreement administered by the WTO. The other agreements include, inter alia, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Technical Barriers to Trade, The Agreements on Trade Related Investment Measures, the Agreement on Subsidies and Countervailing Measures and the General Agreement on Trade in Services.

The international trading regime exists to ‘facilitate the implementation, administration, and operation as well as to further the objectives’ of the WTO agreements. The system’s primary purpose is to help trade in goods and service to flow as freely as possible while avoiding undesirable side effects. The WTO agreements’ purpose of facilitating relations in the field of trade and economic endeavour is pursued with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services.

5.1.2 Rules and Concepts

The WTO’s ‘mission’ is trade liberalization by reducing barriers to trade and to market access, such as tariffs, quotas and custom rules, but also internal regulations, e.g. subsidies and technical barriers to trade. The system of trade liberalization is guided by non-discrimination principles, which impose both

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3 GATT Art. III:1
5 Agreement Establishing the WTO, 1995, Preamble.