CHAPTER IV

CHANCES AND LIMITS FOR ENHANCING SUSTAINABLE WASTE TRADE IN WTO LAW

§1 Rationale for Addressing Sustainable Waste Trade under WTO Law

A. Sustainable Development as an Objective of the WTO Regime

I. Sustainable Development in the WTO Regulatory Framework

The question of whether the WTO legal framework leaves room for issues beyond strict trade matters goes back to the very establishment of the multilateral trade legal framework. In 1941, in light of the war-stricken global economy, the then-heads of state – the President of the United States, Franklin D. Roosevelt, and the British Prime Minister, Winston Churchill – identified a stable world trading system as a crucial prerequisite for a better future and peace. In the Atlantic Charter they laid the foundations for the establishment of a multilateral economic trading system. At a joint conference in Bretton Woods in 1944, the opportunity to address such a new world order was seized with an agreement between the political leaders of the time to establish a multilateral system of international economic relations. Three new institutions were to be created under the auspices of the United Nations: The International Monetary Fund (IMF), the International Bank for Reconstruction and Development (World Bank) and the International Trade Organization (ITO). The Havana Charter, which would have been the ITO’s founding document, was deemed ahead of its time, with its wide scope covering not merely regulations on tariffs and trade but also encompassing provisions on labour, agriculture and investment. It is common knowledge that the ITO was never established; it was the provisional General Agreement on Tariffs and Trade (GATT), negotiated in 1947 among 23 countries, which became the contractual basis for the world trade regime until the establishment of the World Trade Organization in 1995.

1 Gehring/Cordonier Segger, 7; see also Voigt, 127–143.
2 The Atlantic Charter is reprinted in Rosenman, 314.
3 Cottier/Oesch, 19–22; Gehring, 2008, 276.
4 On the ITO and the development of international trading institutions see J.H. Jackson, 2009, 30–53; Cottier/Oesch, 19–22; Gehring/Cordonier Segger, 7. For an overview of
The 1947 GATT Preamble stated that governmental relations in the field of trade and economic endeavour

should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods.\(^5\)

Although the GATT’s Preamble did not mention the term “sustainable”, the reference made to “the full use” of the world’s resources can be read as opposed to “inefficient use” and the wasting of resources by unsustainable patterns of consumption and production, respectively.

The GATT strictly focused on regulations on tariffs and trade. At the Stockholm Conference in 1972 the fear was particularly expressed that anti-pollution measures could result in major obstacles to trade. This led to an institutional response, namely the establishment of a Group on Environmental Measures and International Trade (the EMIT Group) with a mandate to examine

any specific matters relevant to the trade policy aspects of measures to control pollution and protect the human environment especially with regard to the application of the provisions of the General Agreement taking into account the particular problems of developing countries.\(^6\)

Nevertheless, the legal framework gradually started adapting to developments in international law. Evolutions in the GATT, the ongoing negotiations in the Uruguay Round and the Earth Summit in Rio de Janeiro in 1992 took place more or less contemporaneously.\(^7\) It was presumably no coincidence that the GATT Panel explicitly acknowledged the “objective of sustainable development” in the \textit{US – Tuna II} case at that time.\(^8\) The Uruguay Round finally

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\(^5\) Preambular paragraph 2 of GATT 1947.
\(^6\) GATT, Trade and Environment: Factual Note by the Secretariat, 18 September 1991, L/6896; Sampson, 2005, 17–22, particularly on the role of the EMIT Group throughout the developments in the GATT.
\(^7\) On the Earth Summit’s role in the emergence of the concept of sustainable development on the international agenda see above, Chapter III, §1, A.
\(^8\) GATT Panel, \textit{US – Tuna II}, para. 5.42. Notably however, the GATT Panel did not adopt the notion of “sustainable development” in terms of an integrative principle, as applied here (see above, Chapter III, §2, C). It rather referred to this objective as particularly encompassing the protection and preservation of the environment. Furthermore it is noteworthy that, despite this reference, the GATT Panel decision finally seemed to reflect a deep reluctance to draw upon extra-GATT law; although reference was made to Article 31(3)(a) and (b) VCLT, Article 31(3)(c) VCLT was not applied. See Sands, 2001, 51; see also Sampson, 2005, 23–27, on the institutional developments in the GATT in the run up to the establishment of the WTO.