

Green Trade and Trade Greener: The Wto Trade and Environmental Sustainability Structured Discussions

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The initiative on Trade and Environmental Sustainability Structured Discussions (TESSD) was launched in 2020, as part of an ambitious WTO package to gain worldwide relevance on the conversation on trade and environment. It has been portrayed as a non-negotiating initiative, conceived to encourage discussion and transparency over a wide number of topics. In its three years of existence, it has gained popularity and its discussions became more technical and focused; it is expected to deliver a Ministerial Declaration in the forthcoming thirteenth WTO Ministerial Conference. This paper questions whether the WTO acquis is suitable to deal with what we consider the two main aspects of sustainable trade: trade facilitation of sustainable goods and services (a 'trade greener' standpoint), and trade that remedies the externalities caused by trade and production (the 'green trade' approach). We also argue that the current WTO initiatives on sustainable trade are not mature enough to support the green transition at an organization that needs to balance trade liberalization with environment protection.

Keywords: WTO and environment, TESSD, sustainable trade, WTO reform, green trade, environmental goods and services, subsidies, trade-related climate measures, circular economy, MC13, COP 28

I INTRODUCTION

1.1. The initiative on Trade and Environmental Sustainability Structured Discussions (TESSD) was launched by the WTO Committee on Trade and Environment (CTE) on 17 November 2020, during the 2020 Trade and Environment week.¹ It was conceived to 'complement and support the work of the CTE and other relevant WTO Committees and Bodies' and to work 'in cooperation with relevant international organizations and relevant actors, including the private sector', focusing on sustainable trade. Since then, the TESSD has held five plenary meetings in 2021,² seven in 2022,³ and has six

scheduled in 2023.⁴ It also organized three regional sessions in 2022⁵ and a stocktaking event on 2 December 2022.⁶ The TESSD issued a Ministerial Statement on 14 December 2021⁷ (The Ministerial Statement), and it is preparing a new one for the next Ministerial Conference which will be held in Abu Dhabi from 26 to 29 February 2024.

1.2. In terms of participation, the communication that launched the initiative on 17 November 2020 (the TESSD Communication) was supported by 28 Members, whereas the Ministerial Statement of 14 December 2021, by 44. Since then, another thirty-one Members have joined; the current 75

Notes

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¹ WTO Committee on Trade and Environment, Communication on trade and environmental sustainability, WT/CTE/W/249 (17 Nov. 2020).

² 5 Mar. 2026–28 May 2019 Jul., 16–17 Sep., and 4 Nov.

³ 7 Feb. 2031 Mar., 11 Apr. 2017–18 May 2019–20 Jul., 4–5 Oct., and 11 Nov.

⁴ 16–17 Mar. 2010–11 May 2011–12 Jul., and 19–20 Sep. To the date of delivery of this paper (15 Nov. 2023), there are two more meetings scheduled for 2023: 21–22 Nov., and 12 Dec.

⁵ In Africa, Asia-Pacific and South and Central America. (Summary in the TESSD meeting of 19–20 Jul. 2022 (INF/TE/SSD/R/12)).

⁶ WTO Trade and Environmental Sustainability Structured Discussions, High-level stocktaking event, 2 Dec. 2022: Informal summary by the Co-Convenors, INF/TE/SSD/R/15 (15 Mar. 2023).

⁷ At a joint event on 15 Dec. 2021 of three environmental initiatives – TESSD, the Informal Dialogue on Plastics Pollution and Sustainable Plastics Trade (IDP), and the Fossil Fuel Subsidy Reform (FFSR), in which the three groups submitted their statements. (WTO Trade and Environmental Sustainability Structured Discussions, Ministerial Statement on Trade and Environmental Sustainability, WT/MIN(21)/6/Rev.2 (14 Dec. 2021)).

Members represent around the 90% of world trade.⁸

1.3. The TESSD is part of an ambitious WTO initiative to gain relevance on the trade and environment fora worldwide. It was launched together with the Informal Dialogue on Plastics Pollution and Sustainable Plastics Trade (IDP). One year later, together with the TESSD Ministerial Statement of 14 December 2021, the Fossil Fuel Subsidy Reform (FFSR) initiative was launched. These three initiatives also interplay with other parallel negotiations at the WTO CTE like the Environmental Goods Agreement (EGA), that is now inactive. Moreover, other WTO Committees hold special sessions on environmental matters, such as the Council for Trade in Services (CTS-SS), the Committee on Agriculture, the Subsidies and Countervailing Measures Committee (SCM), and the Committee on Technical Barriers to Trade (TBT). It should be noted that the FFSR initiative is the only one with regulatory ambition since the Agreement on Fishery Subsidies was reached during the twelfth Ministerial Conference in 2022, as the negotiations on the EGA stalled in 2016.

1.4. The TESSD stands out as one of the most successful WTO green initiatives concerning participation⁹ and level of activity.¹⁰ It also presents the broadest scope and the seemingly least ambitious purpose, mainly consisting of a non-negotiating initiative,¹¹ conceived to encourage discussion and transparency.

1.5. The objective of this paper is to evaluate the role of the TESSD in the context of the current environmental activities at WTO, as well as its objectives and purpose. It will be argued that the TESSD had to categorize the topics of discussion and to construct a space for pragmatic exchange with the ultimate goal of supporting the other initiatives that touch upon similar subjects. Balancing this technical and supportive nature with its goal of promote transparency and to base

on international values is no simple task. While the discussions are organized and technical, possible long-term deliverables are still in the air. The forthcoming thirteen WTO Ministerial Conference will put into perspective the capacity of the TESSD as supportive tool in the context of the WTO's environment-related efforts.

1.6. Exploring WTO environmental initiatives will also require a review of the capacity and suitability of the WTO overall to promote sustainable trade and to advocate for environmental values. The role of WTO as a forum for policy dialogue and coordination has been recognized, along with other international organizations.¹² But one may wonder whether institutional support and multilateralism are the only assets that the WTO can contribute with in the green trade discussion. The so-called 'green agenda' of the WTO is not devoid of problems. Aside from promoting dialogue, this paper questions whether the WTO *acquis* is suitable to deal with what we consider the two main aspects of sustainable trade: trade facilitation of sustainable goods and services (a 'trade greener' standpoint), and preconizing environmental values in all aspects of trade (and even at the expense of it, focusing on trade and production externalities: the 'green trade' approach). One step forward, we also question whether the current WTO initiatives on sustainable trade are mature enough to support the transition towards sustainability in an organization that needs to balance trade liberalization with environment protection.

1.7. This paper will explore first the context in which the TESSD was created and its relationship to the WTO green agenda. We will follow with an analysis of its goals and challenges, to continue reviewing the topics discussed, the creation of the Working Groups and its evolution. We will finally conclude with possible deliverables of the TESSD at the upcoming WTO thirteenth Ministerial Conference, as well as speculations of its future and relevance in future WTO negotiations.

Notes

⁸ Albania; Australia; Austria; Bahrain, Kingdom of; Barbados; Belgium; Brazil; Bulgaria; Cabo Verde; Canada; Chad; Chile; China; Colombia; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Ecuador; Estonia; European Union; Fiji; Finland; France; the Gambia; Germany; Greece; Honduras; Hong Kong, China; Hungary; Iceland; Ireland; Israel; Italy; Japan; Kazakhstan; Korea, Republic of; Latvia; Liechtenstein; Lithuania; Luxembourg; Macao, China; Maldives; Malta; Mexico; Moldova, Republic of; Montenegro; Netherlands; New Zealand; North Macedonia; Norway; Panama; Poland; Portugal; Romania; Russian Federation; Saudi Arabia, Kingdom of; Senegal; Singapore; Slovak Republic; Slovenia; Spain; Suriname; Sweden; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Tajikistan; Türkiye; Ukraine; United Arab Emirates; United Kingdom; United States; Uruguay; and Vanuatu.

⁹ The IDP has 76 supporting Members, the FFSR is co-sponsored by 48, and the EGA by 18 (representing 46 WTO Members).

¹⁰ The IDP held four meetings in 2023, five in 2022 (with some pre-plenary meetings and one workshop), and three in 2021. The FFSR held three meetings since its creation on Dec. 2021. The negotiations on the EGA stalled in Dec. 2016, https://www.wto.org/english/news_e/ega_04dec16_e.htm (accessed 15 Nov. 2023).

¹¹ As suggested by Ambassador Muhammadou Kah of The Gambia during the stocktaking event of 2 Dec. 2022 (INF/TE/SSD/R/15).

¹² Mentioned in the TESSD sessions of 26–29 May 2021 (INF/TE/SSD/R/2) and in the Summary Report of TESSD discussions in 2022 (INF/TE/SSD/W/20).

2 CONTEXT

2.1. The Preamble of the Marrakesh Agreement that created the WTO indicated that development and environment protection are goals of the WTO. This evolved in the 2001 Doha Round of negotiations, which focused on achieving more efficient allocation of resources to support trade, liberalization, and the environment. These goals are aimed to remedy the externalities caused by trade, as international trade is associated with around 20–30% of the greenhouse gas (GHG) emissions.¹³

2.2. But the narrative has been reshaped since 2012, with the implementation of the Sustainable Development Goals Initiative (SDGs) at the United Nations Conference on Sustainable Development in Rio de Janeiro. Emphasizing the role that trade can play in sustainable development, trade evolved from part of the problem to part of the solution. The WTO has been reporting to the UN's High-level Political Forum on WTO efforts to achieve trade-specific targets in the SDGs since 2016. Moreover, the 2023 UN Climate Change Conference (COP 28) that will convene from 30 November to 12 December 2023 in Dubai, will highlight trade as a specific theme for the first time.¹⁴

2.3. This ideological shift has greatly accelerated the green transition at WTO. Sustainable development evolved from a WTO goal to a 'founding principle'.¹⁵ WTO Director-General Ngozi Okonjo-Iweala has stressed the urgency of climate action and has defined trade as an essential tool for mitigation and adaptation, fostering a just transition.¹⁶ The TESSD thus arises as part of a

plan to reformulate the WTO green agenda, increasing its relevance in the sustainable trade dialogue. In the context, the Director-General has defined TESSD as 'a trailblazer at the WTO, breaking down silos and cooperating across traditional structures and fields of expertise to find practical solutions to global problems'.¹⁷

2.4. The TESSD is considered to be an open forum with an agenda based on the interest of Members that could reinforce multilateral discussions and revitalize engagement in certain topics at the CTE.¹⁸ It offers a flexible approach to work on issues at different speeds and modalities, including 'soft-law' approaches such as voluntary policy coordination.¹⁹ But some Members have cautioned that references to the WTO reform agenda in TESSD statements could hamper participation.²⁰ However, it was conceived to complement the multilateral discussions.

2.5. This accessory role puts the TESSD at risk of duplicating efforts with other WTO environmental initiatives. The warnings at TESSD sessions of overlapping with other WTO fora are constant.²¹ The work programme presented on 18 February 2022 reaffirms that the TESSD does not intend to duplicate other initiatives in the WTO, or indeed any other international or global initiative or existing WTO agreements and mandates.²² Members have encouraged cooperation with the CTE, the TBT and SCM Committees, and the Committee on Agriculture,²³ by reporting the activities of the TESSD on a frequent basis. It has also been highlighted the relevance of other WTO negotiations to provide context, like the EGA,²⁴ the policy dialogue at CTE,²⁵ as well as the special sessions of the

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¹³ WTO, Trade and Climate Change: Information Brief n° 4 (revised 9 Nov. 2021).

¹⁴ <https://www.cop28.com/thematic-program> (accessed 15 Nov. 2023).

¹⁵ WTO Trade and Environmental Sustainability Structured Discussions, High-level stocktaking event, 2 Dec. 2022: Informal summary by the Co-Convenors, INF/TE/SSD/R/15 (15 Mar. 2023).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ TESSD meeting held on 19 Jul. 2021 (INF/TE/SSD/R/3).

²⁰ TESSD meeting held on 16–17 Sep. 2021 (INF/TE/SSD/R/4).

²¹ TESSD meetings held on 5 Mar. 2021 (INF/TE/SSD/R/1), 19 Jul. 2021 (INF/TE/SSD/R/3), 16–17 Sep. 2021 (INF/TE/SSD/R/4), 7 Feb. 2022 (INF/TE/SSD/R/6), 31 Mar. 2022 (INF/TE/SSD/R/7), 17–18 May 2022 (INF/TE/SSD/R/8), 19–20 Jul. 2022 (INF/TE/SSD/R/12), and 4–5 Oct. 2022 (INF/TE/SSD/R/13).

²² TESSD Work Plan 2022, INF/TE/SSD/W/17.Rev.1 (18 Feb. 2022).

²³ Among others, TESSD meeting held on 4–5 Oct. 2022 (INF/TE/SSD/R/13).

²⁴ TESSD meetings held on 5 Mar. 2021 (INF/TE/SSD/R/1), and 26–28 May 2021 (INF/TE/SSD/R/2).

²⁵ TESSD meeting held on 26–28 May 2021 (INF/TE/SSD/R/2).

Trade in Services Council,²⁶ and the Committee on Agriculture,²⁷ together with the TBT Committee.²⁸

2.6. The IDP has been reporting to the TESSD, considering its work as complementary and mutually supportive.²⁹ Besides, the FFSR has been considered as a parallel initiative that should be respected not to duplicate efforts.³⁰ The three initiatives co-organized a stocktaking event that took place on 2 December 2022.³¹

2.7. Finally, the TESSD has joined the attempt to integrate the SDGs with Aid for Trade. Aid for Trade has been identified as a possible tool to support sustainable integration for developing countries and Least Developed Countries (LDCs) in terms of finance and technical assistance.³²

3 PRINCIPLES AND GOALS

3.1. Both the TESSD Communication and its Ministerial Statement consider the SDGs as the main justification for why trade must act to support the environment. They also recognized the importance of the multilateral environmental agreements, including the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the United Nations Convention to Combat Desertification (UNCCD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Biological Diversity (CBD), among others. They stated that the transition to sustainable trade must be 'just'.

3.2. Abiding to these principles sends a strong signal regarding the positive contribution of trade and trade policy to address global environmental

challenges. However, the Ministerial Declaration focused on the environmental aspect of sustainability only, despite the proposals to consider social and economic pillars of sustainable development in addition to the environmental one, and to be based on multilaterally agreed principles and terminology, including the concept of Common but Differentiated Responsibilities.³³

3.3. Nevertheless, both stakeholders and Members have brought up the social implications of environmental reform in the TESSD meetings. The initial proposals involved a holistic approach on agriculture, subsidies, and circular economy.³⁴ Interestingly, some Members also argued that adopting the objectives of the Paris Agreement of reducing global temperature should not be part of the TESSD, as this could overlap with other fora and entail a discussion of national efforts or Nationally Determined Contributions (NDCs) to limiting global warming.³⁵

3.4. This focus on the environmental aspect of sustainability may relate to the goals of the TESSD to support the WTO green agenda, without responding to societal demands. The reference in the Ministerial Statement to a 'just' green transition is probably related to the support to developing country Members and LDCs involved in environmental reform, without further ambition.

3.5. The Ministerial Statement also dwells on the goals of promoting dialogue and transparency. These goals imply cooperation with the private sector and exchange of national experiences. Striving for transparency has some consequences as well. It has been pointed out during the meetings that broadening the scope of the discussions enhances transparency.³⁶ It can also motivate the

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²⁶ TESSD meetings held on 5 Mar. 2021 (INF/TE/SSD/R/1), 26–28 May 2021 (INF/TE/SSD/R/2), 17–18 May 2022 (INF/TE/SSD/R/8), 19–20 Jul. 2022 (INF/TE/SSD/R/12), and 4–5 Oct. 2022 (INF/TE/SSD/R/13).

²⁷ Among others, TESSD meetings held on 19–20 Sep. 2023 (INF/TE/SSD/R/19), and 16–17 Mar. 2023 (INF/TE/SSD/R/16).

²⁸ Among others, TESSD meetings held on 16–17 Mar. 2023 (INF/TE/SSD/R/16), and 4–5 Oct. 2022 (INF/TE/SSD/R/13).

²⁹ TESSD meeting held on 26–28 May 2021 (INF/TE/SSD/R/2).

³⁰ TESSD meeting held on 17–18 May 2022 (INF/TE/SSD/R/8).

³¹ WTO Trade and Environmental Sustainability Structured Discussions, High-level stocktaking event, 2 Dec. 2022: Informal summary by the Co-Convenors, INF/TE/SSD/R/15 (15 Mar. 2023).

³² TESSD meetings held on 19–20 Sep. 2023 (INF/TE/SSD/R/19), 31 Mar. 2022 (INF/TE/SSD/R/7), 26–28 May 2021 (INF/TE/SSD/R/2), and 5 Mar. 2021 (INF/TE/SSD/R/1).

³³ TESSD meeting held on 19 Jul. 2021 (INF/TE/SSD/R/3).

³⁴ WTO Trade and Environmental Sustainability Structured Discussions, High-level stocktaking event, 2 Dec. 2022: Informal summary by the Co-Convenors, INF/TE/SSD/R/15 (15 Mar. 2023), and, among others, TESSD meeting held on 19–20 Sep. 2023 (INF/TE/SSD/R/19).

³⁵ TESSD meeting held on 16–17 Sep. 2021 (INF/TE/SSD/R/4).

³⁶ TESSD meeting held on 4–5 Oct. 2022 (INF/TE/SSD/R/13).

search for collaborative tools to facilitate information exchanges or to improve the existing ones. On June 2023, the Co-convenors recommended to develop a digital trade and environmental sustainability tool,³⁷ but as we will see in section 8, the proposal was received with caution.

3.6. The Ministerial Statement supported consistency with WTO rules and principles, something also referred to in the meetings. Nevertheless, there is little discussion on WTO review and whether it is relevant to the work of the TESSD. During one of the meetings, it was brought up that frictions between WTO rules and modern environmental and climate measures could be an additional area of work, but other Members considered that this could overlap with the activities of other fora.³⁸

4 CHALLENGES

4.1. The TESSD's design can condition its effectiveness. In particular, its non-negotiating nature may hinder participation of developing country Members and LDCs, who have specific needs with relation to sustainable development different from policy exchange. The need to further increase the participation of developing countries in the discussions has been already underlined.³⁹ It is important to incorporate their views and concerns in working towards solutions, which would also support achieving the SDGs.

4.2. The ample scope of the discussions also requires considerable efforts to outline recommendations, which it is challenging given the absence of agreed definitions and standards and the regulatory fragmentation. Identifying sustainable trade and production practices (the so called 'green trade') that are consistent with WTO law can also be difficult in view of the TESSD position of not addressing the possible frictions between WTO rules and modern environmental and climate measures.

4.3. Stressing only on environmental sustainability, leaving aside labour or societal aspects of supply chains and production methods, could also result in partial outcomes that are unable to provide solutions for the complexities involved in production processes.

4.4. The TESSD role supporting other WTO multilateral negotiations and Committees demands a greater amount of collaboration than regular stand-alone initiatives, that do not serve other negotiations. The fact that the TESSD does not support negotiations leading to legislative reform may also hinder its ultimate purpose.

4.5. Finally, the Ministerial Statement envisaging a just transition to sustainable trade also requires members to address the particular demands of LDCs and developing country Members, which would entail aligning Aid for Trade and climate financing with trade integration studies. For LDCs, any effort to liberalize trade in environmental goods and services would need to be accompanied by technology transfer mechanisms and increased trade-related support to strengthen absorptive capacity.

5 TOPICS OF DISCUSSION

5.1. The TESSD dedicated its first sessions to reaching an agreement on the topics of discussion and to organize Working Groups. The TESSD Communication identified a big number of topics,⁴⁰ among which circular economy and environmental goods and services were included. The Ministerial Statement⁴¹ added as topics for consideration climate change mitigation and adaptation, sustainable oceans, facilitating access to green technology, and sustainable tourism.⁴² The Ministerial Declaration had already identified environmental goods and services, subsidies, trade-related climate measures, and circular economy as main references. The meetings held in 2021 thus focused on liberalization of trade in environmental

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³⁷ TESSD, Draft proposal for a trade and environmental sustainability tool, INF/TE/SSD/W/28 (30 Jun. 2023).

³⁸ TESSD meeting held on 19 Jul. 2021 (INF/TE/SSD/R/3).

³⁹ TESSD meeting held on 7 Feb. 2022 (INF/TE/SSD/R/6).

⁴⁰ Circular economy, natural disasters, climate change, fossil fuel subsidies reform, plastic pollution, combatting illegal, unreported and unregulated fishing and ensuring legal and sustainable trade in wildlife, the conservation and sustainable use of biodiversity, the Blue economy and sustainable agriculture and trade in environmental goods and services.

⁴¹ WTO Trade and Environmental Sustainability Structured Discussions, Ministerial Statement on Trade and Environmental Sustainability, WT/MIN(21)/6/Rev.2 (14 Dec. 2021).

⁴² Circular economy; natural disasters; climate change mitigation and adaptation; fossil fuel subsidies reform; plastic pollution; combatting illegal, unreported and unregulated fishing and ensuring legal and sustainable trade in wildlife; the conservation and sustainable use of biodiversity; sustainable oceans; facilitating access to green technology; sustainable tourism; sustainable agriculture as well as trade in environmental goods and services.

goods and services, trade-related aspects of climate change adaptation, FFSR, the circular economy, biodiversity loss, border carbon adjustment measures, subsidies, climate change adaptation and natural disasters, energy efficiency, sustainable food and agriculture, public-private partnerships and ‘greening’ Aid for Trade, among other things.⁴³

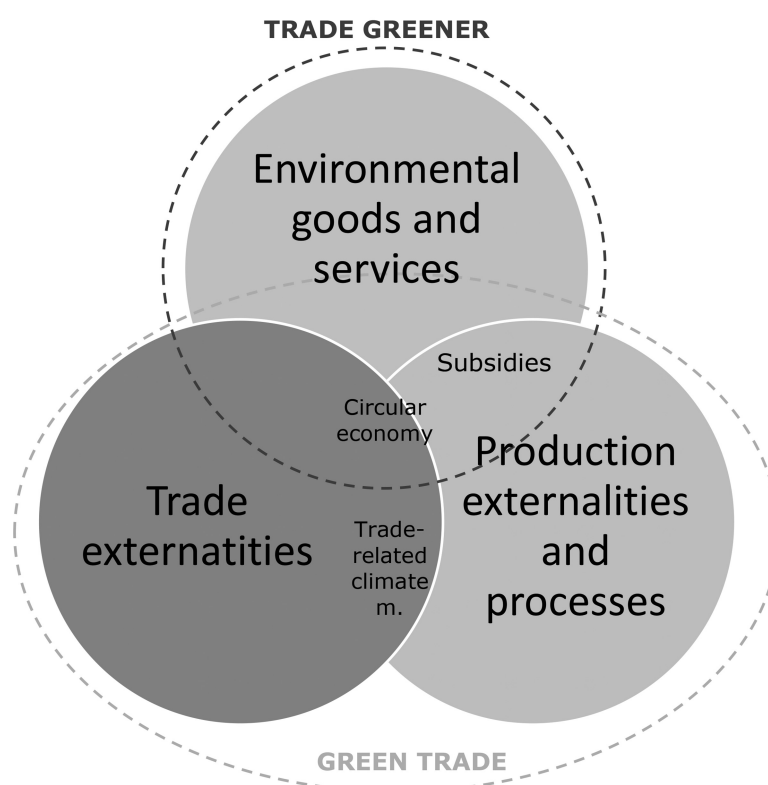
5.2. On 18 February 2022, the co-sponsors agreed on the TESSD Work Plan,⁴⁴ which was aimed to advance work intersectionally in informal Working Groups to allow for in-depth discussions. The groups were divided in subsidies, trade-related climate measures, EGS, and circular economy/circularity. The facilitators of the Working Groups were appointed at the meeting of 31 March 2022.⁴⁵

5.3. Over time the discussions of the Working Groups were staged by subject or sector. The first

proposals to stage discussions dated back to the meeting of May 2021,⁴⁶ and it seems that it was consolidated for all the Working Groups by the end of 2022.⁴⁷ Discussions in general became more technical and targeted. From 2023, the Working Groups presented a similar order of interventions with stakeholder presentations on particular topics, followed by specific questions to all participants.

5.4. Some of the topics addressed, like EGSs, can be categorized under the ‘trade greener’ concept (facilitating trade of sustainable goods and services, or that are required for sustainable production). Trade-related climate measures and circular economy correspond to the ‘green trade’ one, touching upon the externalities caused by the trade process or the production process. Subsidies would be between the two. Figure 1 below depicts the interaction between the topics based on

Figure 1: Topics of discussion



Notes

⁴³ TESSD meeting held on 5 Mar. 2021 (INF/TE/SSD/R/1).

⁴⁴ TESSD, Communication from the TESSD coordinators, INF/TE/SSD/W/17/Rev.1 (18 Feb. 2022).

⁴⁵ Trade-related climate measures (Switzerland and Türkiye), environmental goods and services (Ecuador and Norway), circular economy – circularity (Chile and Japan), and subsidies (Iceland and Uruguay). (TESSD, meeting held on 31 Mar. 2022 (INF/TE/SSD/R/7)). On Jul. 2023 they were replaced by including Ben Rake (United Kingdom) taking over from Helga Helland (Norway) in the WG on EGS; Ariel Marie Quek (Singapore) taking over from Göksu Tülümen (Türkiye) in the WG on TrCMs; and Tiffany Smith (Israel) taking over from Sveinn Einarsson (Iceland) in the WG on Subsidies. (TESDD meeting held on 11–12 Jul. 2023 (INF/TE/SSD/R/18)).

⁴⁶ TESSD meeting held on 26–28 May 2021 (INF/TE/SSD/R/2).

⁴⁷ TESSD meeting held on 4–5 Oct. 2022 (INF/TE/SSD/R/13).

their relationship with environmental goods and services, trade externalities, and production externalities.

5.5. Some of the problems addressed in the Working Groups could be considered to be transversal: lack of categorization (of products, services or processes), integration of micro, small, and medium-sized enterprises (MSMEs), value chains, developing country/LDCs support, and the measurement of environmental impact.

5.1 Environmental Goods and Services

5.6. EGSs was one of the first topics proposed, and the most prolific. It was considered that trade had responsibility in reducing costs, facilitating investment and accelerating the deployment of environmental technologies, in connection with the SDGs objectives and the Paris Agreement.⁴⁸ Definitions took a lot of the discussion during 2021 and 2022, being staged by objective and sector since 2023.⁴⁹ Climate change action, including both mitigation and adaptation, was indicated as a priority objective by many Members.⁵⁰ It was decided that the work of the EGA (currently not active) and the Doha Development Agenda could provide a good reference for product definitions, and that there should be an agreement on broad categories of environmental interest, setting threshold shares for environmental use to determine whether to include particular goods with multiple uses.⁵¹

5.7. Non-tariff barriers were addressed since the beginning; some Members suggested that they should be the main focus of the Ministerial Statement.⁵² But this was not the case and some Members regretted not having adopted stronger language concerning EGSs on the statement.⁵³ Still, it was indicated that EGS discussions should also involve a broader scope of

issues than just tariff liberalization, so that non-tariff measures, regulatory cooperation, good regulatory practices, transfer of technology, and capacity building were included, setting a framework for regulatory cooperation.⁵⁴ It was noted that tariffs on environmental goods were currently low and that addressing non-tariff measures could accelerate the dissemination of such goods.⁵⁵ There were proposals to catalogue where and how non-tariff measures impact trade in EGS identifying an indicative list of trade-related bottlenecks and trade-facilitating measures on critical products for climate action, enhancing transparency and experience sharing on non-tariff measures and their design.⁵⁶

5.8. It was suggested that the conversation on services should run in parallel with the Special Session of the Council in Services, mapping sectors or services in which there could be a contribution with special regard to not duplicating work. Services could also be identified in relation with goods; services linked to addressing climate change challenges and services linked to climate-friendly goods.⁵⁷

5.9. The discussions on market access started with four areas of consideration: (1) avoiding distortions on exports of energy goods, notably hydrogen; (2) improving market access for goods, investment, and services; (3) investment protection; and (4) regulatory convergence and domestic regulation.⁵⁸ The collaboration with the CTE and the TBT Committee was related to technical regulations, standards and labelling or echo-labelling schemes.⁵⁹

5.10. When the discussions became objective and sector specific, the first environmental goal that the Working Group pursued was climate change mitigation and adaptation, and the first sector, renewable energy.⁶⁰ Stakeholders'

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⁴⁸ TESSD meetings held on 26–28 May 2021 (INF/TE/SSD/R/2), and 31 Mar. 2022 (INF/TE/SSD/R/7).

⁴⁹ TESSD, Statement by the TESSD co-convenors, INF/TE/SSD/W/21 (30 Nov. 2022).

⁵⁰ TESSD meeting held on 4–5 Oct. 2022 (INF/TE/SSD/R/13).

⁵¹ TESSD meeting held on 26–28 May 2021 (INF/TE/SSD/R/2).

⁵² TESSD meeting held on 16–17 Sep. 2021 (INF/TE/SSD/R/4).

⁵³ TESSD meeting held on 4 Nov. 2021 (INF/TE/SSD/R/5).

⁵⁴ TESSD meeting held on 17–18 May 2022 (INF/TE/SSD/R/8).

⁵⁵ TESSD meeting held on 19–20 Jul. 2022 (INF/TE/SSD/R/12).

⁵⁶ TESSD meeting held on 4–5 Oct. 2022 (INF/TE/SSD/R/13).

⁵⁷ TESSD meetings held on 31 Mar. 2022 (INF/TE/SSD/R/7), and 17–18 May 2022 (INF/TE/SSD/R/8).

⁵⁸ TESSD meeting held on 17–18 May 2022 (INF/TE/SSD/R/8).

⁵⁹ TESSD meeting 4–5 Oct. 2022 (INF/TE/SSD/R/13).

⁶⁰ TESSD, Statement by the TESSD co-convenors, INF/TE/SSD/W/21 (30 Nov. 2022).

presentations concerned solar,⁶¹ wind, and hydro energy energies.⁶² Members debated the services that were important for the development and operation of renewable energy projects and the role of trade in these services to develop the renewable energy sector. For goods, discussions were on bottlenecks in supply chains or barriers, stressing the importance of value chain approach in identifying systematically related goods and services, stating that in many cases ex-outs could be considered since the Harmonized System (HS) nomenclature often did not differentiate between environmental goods and other goods. Members also highlighted barriers that could impact trade in services related to wind and hydropower projects. These included lack of transparency, local content requirements, performance requirements, limited access to finance, skilled workforce and advanced technologies, and restrictions on the movement of professionals.⁶³

5.11. It was questioned how trade policy and trade-related technical assistance and capacity-building, including Aid for Trade, can support developing countries and LDCs in developing their renewable energy sectors and in participating in renewable energy value chains.⁶⁴ The balance with trade liberalization is not always clear here: in response to a Member comment that an UNCTAD report appeared to challenge existing WTO rules, UNCTAD mentioned that their report found that developing countries might require industrial policy to support their green transition and development of infant industries and recommended that efforts to align trade rules and commitments with international environmental agreements should be continued and strengthened.⁶⁵

5.12. In terms of stakeholder's participation, there were useful references to UNCTAD's 2020 classification of ocean-based goods and services, the World Economic Forum (WEF) to identify non-tariff

barriers to support the HS 2027 update and relevant technologies, IRENA (International Renewable energy agency) on renewable energies (common standards on installation and maintenance, etc.), and the World Customs Organization (WCO), that could help with definitional challenges regarding environmental goods.

5.2 Subsidies

5.13. Subsidies can not only have environmental impact, but produce trade distortions. There are indications that both negative implications are correlated: trade-distorting domestic support had negative impact on the environment.⁶⁶ Specifically, it was noted that the most market-distortive support (market price support, output subsidies, and variable input subsidies) was also potentially most harmful to the environment, including in terms of GHG emissions and nitrogen balance.⁶⁷ Nevertheless, it was also considered that the focus should not only be on the negative effects of subsidies over the environment (supporting unsustainable production processes), but the positive ones as well.⁶⁸

5.14. The discussions began with subsidy classification and measurement of effects, including WTO reform, even though some TESSD participants expressed caution in debating over issues handled in other WTO fora. The first years of discussion identified types of subsidies and their implications on trade, development, and environment; together with subsidy design and transparency issues. By the end of 2022, the discussions evolved to agricultural subsidies and subsidies related to the transition to a low-carbon economy.⁶⁹

5.15. The discussions initially focused on fossil fuel subsidies and their repercussions for trade: the trade effects could arise when a subsidy strengthened the competitive position of the subsidized producer (direct effects) or the downstream producers that

Notes

⁶¹ TESSD meeting held on 16–17 Mar. 2023 (INF/TE/SSD/R/16).

⁶² TESSD meeting held on 10–11 May 2023 (INF/TE/SSD/R/17).

⁶³ *Ibid.*

⁶⁴ TESSD meeting held on 19–29 Sep. 2023 (INF/TE/SSD/R/19).

⁶⁵ TESSD meeting held on 10–11 May 2023 (INF/TE/SSD/R/17).

⁶⁶ TESSD meeting held on 4–5 Oct. 2022 (INF/TE/SSD/R/13).

⁶⁷ TESSD meeting held on 19–29 Sep. 2023 (INF/TE/SSD/R/19).

⁶⁸ TESSD, Statement by the TESSD co-convenors, INF/TE/SSD/W/21 (30 Nov. 2022).

⁶⁹ *Ibid.*

used subsidized fossil fuel products as inputs (indirect effects).⁷⁰ It was pointed out that currently fossil fuels are more subsidized than green energies.⁷¹ Before the Ministerial Statement launching FFSR initiative, the TESSD also tackled why the existing Agreement on Subsidies could not handle the complexities of fossil fuel.⁷² It is assumed that this conversation belongs now to the FFSR initiative. It was also suggested to consider industrial subsidies, and to cover the trade and environmental impact of green subsidies.⁷³

5.16. Several Members recognized the importance of phasing out inefficient subsidies that encouraged wasteful consumption, although wasteful consumption needed to be defined.⁷⁴ In that line, it was pointed out early that agriculture should be a central element in trade and sustainability discussions, tackling over the environmental impacts of agricultural subsidies, including overproduction and consumption of water as well as the impacts of agricultural subsidies on developing countries.⁷⁵ Some Members argued that they should incorporate the three dimensions of sustainability (social, environmental, and economic) in the debate, taking into account climatic and geographic considerations,⁷⁶ but this does not seem to have been the centre of the conversations.

5.17. The TESSD Work Plan for 2022 had presented three guiding questions, aimed at creating an analytical framework: (1) how the environmental effects and trade impacts of relevant subsidies could be identified; (2) what information existed to better understand these impacts and where information gaps existed; and (3) what opportunities existed to address the environmental impacts of subsidies at the WTO.⁷⁷ It was underlined that only one third

of subsidy measures were notified to the WTO, in detriment of transparency.⁷⁸

5.18. During 2023, discussions shifted to agricultural subsidies and subsidies related to the transition to a low-carbon economy. The discussions not only considered the evaluating effects and environmental impacts of the subsidies, but what kind of subsidies can be beneficial for the environment, and how to balance environmental and trade considerations.⁷⁹ It was noted that agricultural subsidies could be environmentally beneficial, as they could help provide public goods such as biodiversity preservation and GHG reduction.⁸⁰ There were also questions on how to enhance transparency and data availability.⁸¹ Subsidy design was also debated: one Member noted that market-pull incentives like carbon pricing and investment tax credits were generally less distortive than subsidies that directly encouraged manufacturing capacity.⁸² It was also noted that it was important to: (1) provide transition finance and market-based incentives to encourage the private sector to move towards more sustainable activities; (2) support technology, innovation and infrastructure; and (3) support practices that contributed to more productive, inclusive, resilient, and sustainable agricultural systems.

5.19. Stakeholders made valuable contributions to the discussions, like the International Institute for Sustainable Development (IISD) on fossil fuel and agricultural subsidies; the joint Food and Agriculture Organization-United Nations Development Programme-United Nations Environment Programme (FAO-UNDP-UNEP) report on agricultural support, and the OECD inventory of support measures on fossil fuels. Voluntary peer reviews organized in fora such as the G20 or Asia-Pacific Economic Cooperation (APEC) were also suggested.

Notes

⁷⁰ TESSD meeting held on 26–28 May 2021 (INF/TE/SSD/R/2).

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ TESSD meeting held on 5 Mar. 2021 (INF/TE/SSD/R/1).

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ TESSD meeting held on 17–18 May 2022 (INF/TE/SSD/R/8).

⁷⁸ *Ibid.*, and 4–5 Oct. 2022 (INF/TE/SSD/R/13).

⁷⁹ TESSD meeting held on 16–17 Mar. 2023 (INF/TE/SSD/R/16).

⁸⁰ *Ibid.*

⁸¹ TESSD meeting held on 10–11 May 2023 (INF/TE/SSD/R/17).

⁸² *Ibid.*

5.3 Trade-Related Climate Measures

5.20. The first part of the discussions aimed to identify the different forms of carbon measurement standards and measures used by the Members to reduce carbon emissions. On July 2022, the co-facilitators suggested that the Working Group could focus on the question of embedded emissions of traded goods and how Members are using trade policies to incentivize decarbonization.⁸³ This Working Group insisted more actively in basing on concepts enshrined in the UNFCCC, such as Common but Differentiated Responsibilities and Respective Capacities or the NDCs, while applying international energy saving and carbon reduction standards.⁸⁴

5.21. Even though the first sessions were dedicated to carbon leakage and net-zero emissions,⁸⁵ there was disagreement on whether carbon leakage should be the main topic of the conversations.⁸⁶ There was a general concern about trade protectionism, especially with carbon border adjustments⁸⁷; that carbon leaking should be addressed with fair and equitable solutions, studying the impact of non-pricing measures.⁸⁸ On March 2022, the WTO Secretariat presented a distinction between three types of measures: (1) climate requirements that condition market access; (2) price and market mechanisms; and (3) support and financial programmes.⁸⁹ It was generally accepted that global carbon pricing was the best solution (economically and environmentally), but it was considered difficult to achieve.⁹⁰ It was noted by a Member that measuring carbon pricing and carbon content was discriminatory and a disguised restriction on trade, and should not be discussed within TESSD.⁹¹ Such statement evidences the dichotomy of green trade: even

though carbon pricing could be environmentally suitable, it may imply a trade restriction justified by environmental reasons.

5.22. Some Members advocated for Mutual Recognition Agreements (MRAs) on decarbonization standards at a multilateral level. Creating additional barriers to trade underlined the positive role of the WTO in supporting the exchange of methodologies for calculating embedded emissions and as a forum for dialogue and promoting coherence on carbon standards.⁹²

5.23. In 2023, the sessions derived to decarbonization standards by sector: steel,⁹³ fertilizers,⁹⁴ and aluminium.⁹⁵ In addition to reviewing the standards and regulations to support the decarbonization of the production, there were also exchanges on best practices to cooperate with the private sector, transparency mechanisms, and the specific challenges facing developing countries. Members suggested sharing practices and experiences in the CTE, as well as referring to the TBT Committee to contribute to coordination and coherence of technical regulations, specific standards, conformity assessment procedures, and proposed regulations.⁹⁶

5.24. The input from stakeholders was significant to address the difficulties to measure carbon emissions and the need for financing. In that sense, the work of the Forum on Trade, Environment, and the SDGs (TESS) was highly regarded. The standards list of the International Trade Centre (ITC) were considered the most complete, together with the ones of the UNIDO, the United Nations Industrial Development Organization. The OECD presented its forum on carbon mitigation approaches, and the International Organization for Standardization (ISO)

Notes

⁸³ TESSD meeting held on 19–20 Jul. 2022 (INF/TE/SSD/R/12).

⁸⁴ TESSD meetings held on 16–17 Sep. 2021 (INF/TE/SSD/R/4) and 19–20 Sep. 2023 (INF/TE/SSD/R/19).

⁸⁵ TESSD meeting held on 26–28 May 2021 (INF/TE/SSD/R/2).

⁸⁶ TESSD meeting held on 16–17 Sep. 2021 (INF/TE/SSD/R/4).

⁸⁷ This meetings held on 26–28 May 2021 reveals and 7 Feb. 2022 (INF/TE/SSD/R/6).

⁸⁸ TESSD meeting held on 19–20 Jul. 2022 (INF/TE/SSD/R/12).

⁸⁹ TESSD meeting held on 31 Mar. 2022 (INF/TE/SSD/R/7).

⁹⁰ *Ibid.*

⁹¹ TESSD meeting held on 19–20 Jul. 2022 (INF/TE/SSD/R/12).

⁹² TESSD meeting held on 16–17 Mar. 2023 (INF/TE/SSD/R/16).

⁹³ *Ibid.*

⁹⁴ TESSD meeting held on 10–11 May 2023 (INF/TE/SSD/R/17).

⁹⁵ TESSD meeting held on 19–20 Sep. 2023 (INF/TE/SSD/R/19).

⁹⁶ *Ibid.*

presented its package of carbon accounting standards related to the monitoring, reporting, verification, and accreditation of GHG emissions.

5.4 Circular Economy

5.25. The subject of circular economy has been extensively debated at the CTE and the TBT and Market Access Committees, which provided solid background reference on policy dialogue. Some Members considered that the topic of circular economy required a holistic approach that followed the objective of the Basel Convention to protect the environment, and that Members' objectives to facilitate trade should not undermine the need to protect the environment and human health.⁹⁷ This strict demand for environment protection at the expense of trade liberalization questions the role of WTO: in addition to promoting trade facilitation of EGSs, the WTO would need to account for trade and production externalities (the 'green trade' demands) sometimes at the expense of trade (for example, restricting excessive or unsustainable trade flows).⁹⁸ Still, trade liberalization is important to support supply chains; as it was noted, import restrictions could inhibit sustainable remanufacturing.⁹⁹

5.26. The meetings were designed to identify specific sectors, cross-border supply chain issues, or business models that could enhance cross-border circularity.¹⁰⁰ It was argued that the main goals should be improving transparency and traceability along value chains; developing definitions and classifications of relevant products and materials; intensifying regulatory co-operation to avoid fragmentation resulting from the growing number of standards

related to the circular economy; and improving market access conditions for key services that underpin the circular economy.¹⁰¹

5.27. By the end of 2022, the Working Group decided to undertake a mapping exercise to build a broader understanding of the aspects of trade and trade policy that are relevant to each part of the life cycle. This exercise was complemented with sector-specific discussions, starting with the renewable energy and electronics, to analyse the specific trade issues associated with those sectors along the full life cycle of products.¹⁰² It was considered that the mapping work of the IDP could also serve as an example. Despite the general acceptance, there were some objections to the mapping exercise, as some Members indicated that the discussions were still at a very preliminary stage and that, while procedures to facilitate trade could be considered, if such an exercise were to be carried out it would require necessarily a whole of lifecycle approach.¹⁰³

5.28. The sector-specific discussions concerned batteries,¹⁰⁴ photovoltaics and wind energy,¹⁰⁵ and waste and electronics.¹⁰⁶ It was noted that the WTO could play an important role coordinating technical regulations, monitoring trade policies, and improving the recycling capacity and waste reduction of developing countries.¹⁰⁷ Some Members pointed out that more work for the common themes was needed, including the improvement of classification and data for circular trade, the role of standards and regulations on product design, transparency and traceability, the importance of trade facilitation, and better implementation of the Basel Convention's Prior Informed Consent (PIC) procedures to control transboundary movements of waste.¹⁰⁸ It was also noted that it may be possible to engage with the Committees on Trade Facilitation and TBT to

Notes

⁹⁷ TESSD meeting held on 17–18 May 2022 (INF/TE/SSD/R/8).

⁹⁸ TESSD meeting held on 19–20 Jul. 2022 (INF/TE/SSD/R/12).

⁹⁹ TESSD meeting held on 4–5 Oct. 2022 (INF/TE/SSD/R/13).

¹⁰⁰ TESSD meeting held on 31 Mar. 2022 (INF/TE/SSD/R/7).

¹⁰¹ TESSD meeting held on 26–28 May 2021 (INF/TE/SSD/R/2).

¹⁰² TESSD, Statement by the TESSD co-convenors, INF/TE/SSD/W/21 (30 Nov. 2022).

¹⁰³ TESSD meeting held on 4–5 Oct. 2022 (INF/TE/SSD/R/13).

¹⁰⁴ TESSD meeting held on 10–11 May 2023 (INF/TE/SSD/R/17).

¹⁰⁵ TESSD meeting held on 11–12 Jul. 2023 (INF/TE/SSD/R/18).

¹⁰⁶ TESSD meeting held on 19–20 Sep. 2023 (INF/TE/SSD/R/19).

¹⁰⁷ TESSD meeting held on 16–17 Mar. 2023 (INF/TE/SSD/R/16).

¹⁰⁸ TESSD meeting held on 11–12 Jul. 2023 (INF/TE/SSD/R/18).

advance horizontal discussions on trade facilitation as well as regulatory and design issues.¹⁰⁹

5.29. The stakeholders' work on circular economy provided for a good standpoint in the discussions. The report of the United Nations Economic Commission for Europe (UNECE) on regional circular economy, as well as the Toolbox on Transparency and Traceability, which traced the environmental and social impacts on supply chains, were particularly commented. The WEF was also represented on the Board of the Platform for Accelerating the Circular Economy (PACE).

6 CONCLUSIONS AND POSSIBLE OUTCOMES FOR MC13

6.1. Moving forward, TESSD participants have been encouraged to find points of convergence to present a Ministerial Declaration at the thirteenth WTO Ministerial Conference in Abu Dhabi on 26–29 February 2024.¹¹⁰ The content of the declaration is, to the date this paper was delivered,¹¹¹ still unknown. It could either summarize the discussions since the previous Ministerial Conference (in 2022), or to report on possible pilot actions, encouraging other Members to follow them.

6.2. On 30 June 2023, the Co-Convenors proposed developing a digital trade and environmental sustainability tool to foster transparency and cooperation, as one of the deliverables for MC13.¹¹² The proposal was not particularly welcomed; several Members requested additional information regarding the value added for the development of such a tool, in view of the already existing IT tools covering similar issues.¹¹³ In contrast, it was widely accepted to include in the MC13 package an update to the Work Plan to better reflect

the direction of TESSD discussions and to better address the needs of developing countries.¹¹⁴

6.3. The Working Groups have already started preparing their deliverables. The Co-convenors recommended: (1) that the group on EGSs identify key goods and services for renewable energy projects, barriers to their dissemination, topics of priority to developing countries, and the opportunities to promote and facilitate trade in these goods and services¹¹⁵; (2) that the group on trade-related climate measures prepare a document with Member practices¹¹⁶; (3) that the group on circular economy map the trade aspects of the circular economy along the lifecycle of products¹¹⁷; and (4) that the group on subsidies compile the experiences with subsidy design.¹¹⁸ These recommendations reveal that the discussions on EGSs are more advanced. There could be policy recommendations on EGSs on the MC13 Ministerial Statement, whereas the conversations in which the externalities of trade are involved are more difficult to balance at the WTO.

6.4. Three years after its creation, the work of the TESSD has become specific, technical, and engaging. TESSD outcomes could support future multilateral negotiations. They have certainly contributed to making the WTO a forum of discussion of sustainable trade. However, currently the TESSD at most could aim to make trade greener, which will help to facilitate the trade of more sustainable goods and services (or that are required for sustainable production). But without specific initiatives of WTO reform, the TESSD will not be able to contribute to the creation of 'green trade', that really tackles trade sustainability from a holistic perspective and balance the – sometimes incompatible – environment protection and trade liberalization.

Notes

¹⁰⁹ *Ibid.*

¹¹⁰ TESSD meeting held on 10–11 May 2023 (INF/TE/SSD/R/17).

¹¹¹ 15 Nov. 2023.

¹¹² TESSD, Draft proposal for a trade and environmental sustainability tool, INF/TE/SSD/W/28 (30 Jun. 2023).

¹¹³ TESSD meeting held on 11–12 Jul. 2023 (INF/TE/SSD/R/18).

¹¹⁴ *Ibid.*

¹¹⁵ It was suggested to indicate that the goods and services listed in the document were not exhaustive and to periodically review their linkages to HS codes, also considering the development of renewable energy products and technologies. (TESSD meeting held on 19–20 Sep. 2023 (INF/TE/SSD/R/19)).

¹¹⁶ The working document presents the following classification: (1) transparency and consultations; (2) impact assessments; (3) a review following implementation; and (4) principles guiding the policymaking of TrCMs. (TESSD meeting held on 19–20 Sep. 2023 (INF/TE/SSD/R/19)).

¹¹⁷ The working document contains three substantive sections: (1) an overview of Members' initiatives and experiences aimed at promoting the circular economy; (2) a mapping of measures in the WTO by the Secretariat from notifications and trade policy reviews (TPRs) of the WTO Environmental Database; and (3) a mapping of trade aspects of the circular economy based on presentations, analytical work, and discussions in the Working Group. (TESSD meeting held on 19–20 Sep. 2023 (INF/TE/SSD/R/19)).

¹¹⁸ TESSD meeting held on 11–12 Jul. 2023 (INF/TE/SSD/R/18).