

ORIGINAL ARTICLE

# Green Regionalism in World Trade Law

Pasha L. Hsieh

Singapore Management University Yong Pung How School of Law, Singapore

Email: [pashahsieh@smu.edu.sg](mailto:pashahsieh@smu.edu.sg)

(Received 28 November 2023; revised 12 February 2024; accepted 27 February 2024)

## Abstract

Multifaceted geopolitical conflicts have led to disruptions in the trade regime and multilateral negotiations. As a paradigm shift, green regionalism has emerged as a new normative process for regional economic frameworks to integrate and operationalize environmental sustainability. The article offers the first interdisciplinary analysis of green regionalism in world trade law. It argues that green regionalism, which has evolved amid various waves of global regionalism, constructs the normative foundation for ‘Trade and Sustainability 2.0’. The article employs the concept of recognition in international relations to unveil the motivations and actions of major states in catalyzing green regionalism. Legal and political challenges confronting the Environmental Goods Agreement of the World Trade Organization, environmental agreements, and mega-trade agreements are also examined. Second, the article explores the multipolar frameworks for implementing green regionalism. Case studies involving recent developments of US and EU trade pacts, as well as of new Asia-Pacific green economy agreements, shed light on the trade-sustainability nexus. Hence, the theoretical and empirical implications of the research are valuable for devising trade law approaches to advancing Sustainable Development Goals.

**Keywords:** APEC; CPTPP; EGA; green economy agreement; IPEF

## 1. Introduction

The neoliberal international order that constructed the postwar economic architecture is facing unprecedented challenges. The Covid-19 pandemic, the impasse of World Trade Organization (WTO) negotiations, the US–China rivalry, and the Ukraine war have exacerbated multilayered trade protectionism.<sup>1</sup> These global crises have reshaped supply chains and economic order. The discourse and policy surrounding trade and sustainability are not immune to geopolitical tensions.

Since the Brundtland Report defined and substantiated the concept of sustainable development, climate change actions have gained prominence in key initiatives such as the United Nations (UN)’s 2030 Agenda for Sustainable Development and the Paris Agreement.<sup>2</sup> Both the UN and the WTO recognize the role of the international trade framework in promoting climate

<sup>1</sup>E.g., S. Lehne (2023) ‘After Russia’s War against Ukraine: What Kind of World Order?’, 28 February 2023, <https://carnegiereurope.eu/2023/02/28/after-russia-s-war-against-ukraine-what-kind-of-world-order-pub-89130> (last visited 20 July 2023).

<sup>2</sup>Report of the World Commission on Environment and Development: Our Common Future’ (Brundtland Report) (1987), Ch. 2, para. 1; United Nations General Assembly (UNGA) (2015) ‘Transforming Our World: The 2030 Agenda for Sustainable Development’, A/Res/70/1, goal 13. See also Paris Agreement (2015), art. 2 (limiting global warming to 1.5°C).

© The Author(s), 2025. Published by Cambridge University Press on behalf of The Secretariat of the World Trade Organization. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

governance and a green economy.<sup>3</sup> Nevertheless, the implementation of the trade-sustainability linkage remains controversial. According to the 2023 UN report, regions of developing countries, including Africa, the Asia-Pacific, and Latin America, have not yet achieved even half of the climate action targets set by Sustainable Development Goals (SDGs).<sup>4</sup> The absence of significant and tangible outcomes from international talks on climate change and trade measures related to the environment have resulted in the bleak reality.

Significantly, the greatest disruptions to the global economy since the inception of the Bretton Woods system are escalating geopolitical conflicts at regional and global levels. These confrontations are manifested by armed conflicts and a new Cold War deriving from the US–China competition. Distinct from previous eras, trade became weaponized to safeguard national security. To implement sanctions and decoupling strategies, states frequently employ import restrictions, export controls, or investment screening measures. These tensions are further compounded by the North–South disconnection in trade and development. The declining hegemonic power of the trans-Atlantic alliance and emerging powers in the world trading system have made multilateral negotiations for the ‘Grand Bargain’ increasingly challenging.<sup>5</sup> The changing power struggles have crippled embedded liberalism based on the Washington Consensus.<sup>6</sup>

These multifaceted disruptions have prevented meaningful outcomes from global trade and environmental negotiations, thus promoting the shift to ‘green regionalism’. In recognition of the urgent need for economic resilience and environmental protection, several governments, influenced by industry interests, have developed innovative trade law approaches to sustainability. These approaches substantiate and enrich the development of green regionalism. I define green regionalism in world trade law as a normative process for regional economic frameworks to integrate and operationalize environmental sustainability. I argue that green regionalism, which substantially evolved during the most recent wave of global regionalism, constructs the normative basis for the new dynamic of ‘Trade and Sustainability 2.0’. This trend also reflects the reorientation of the trade regime following disruptions resulting from geopolitical conflicts.

Overcoming multilateral paralysis, new developments of green regionalism not only facilitate the cross-disciplinary integration of trade and environmental laws, but also advance the economic incentives for climate change efforts under predictable legal frameworks. Against this backdrop, this research fills a gap in the existing literature for three reasons. First, the article provides the first analysis of green regionalism from an interdisciplinary perspective. It employs the international relations (IR) concept of recognition and explains how the pursuit of identity and status has motivated states to promote green regionalism.<sup>7</sup> This angle thus sheds new light on economic, legal, and political debates over sustainable development.

Second, most policy reports and academic works in the field concentrate on the proportion of free trade agreements (FTAs) that incorporate environmental or climate change provisions and their classification.<sup>8</sup> Most common environmental provisions relate to carve-out exceptions for

<sup>3</sup>E.g., UNGA, supra n. 2, para. 68; United Nations Environment Programme (UNEP) (2011) ‘Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication: A Synthesis for Policy Makers’, 2–3; World Trade Organization (WTO) (2011) ‘Harnessing Trade for Sustainable Development and a Green Economy’, 1–8.

<sup>4</sup>United Nations (UN) (2023) ‘Message of the Regional Forums on Sustainable Development’, 2–11.

<sup>5</sup>S. Ostry (2002) ‘The Uruguay Round North–South Grand Bargain: Implications for Future Negotiations’, in D.L.M. Kennedy and J.D. Southwick (eds.), *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec*. Cambridge University Press, 285, 285–289; G. Shaffer (2021) *Emerging Powers and the World Trading System*. Cambridge University Press, 1–39.

<sup>6</sup>J.G. Ruggie (1982) ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’, *International Organization* 36(2), 379, 392–398; M.C. Webb and S.D. Krasner (1989) ‘Hegemonic Stability Theory: An Empirical Assessment’, *Review of International Studies* 15, 183, 183–184.

<sup>7</sup>T. Lindemann (2014) ‘Concluding Remarks on the Empirical Study of International Recognition’, *The International Politics of Recognition*. Routledge, 209, 209–219.

<sup>8</sup>Organisation for Economic Co-operation and Development (OECD) (2023) ‘OECD Work on Regional Trade Agreements and the Environment: Policy Perspectives’, 6–8; World Trade Organisation (2022) ‘Trade and Climate

trade measures based on environmental grounds, multilateral environmental agreements (MEAs), environmental cooperation, and specific issues such as biodiversity, energy, and climate change.<sup>9</sup> Legal scholars are typically concerned with the question of whether and how environmental provisions can be effectively enforced through FTA dispute settlement mechanisms (DSMs).<sup>10</sup> The effectiveness of enforcement, often seen by them as ‘sanctions’, determines the quality of agreements. The article does not only focus on the enforcement of trade and sustainable development (TSD) chapters of FTAs. It highlights market-oriented FTA provisions for enhancing ‘green exports’ by liberalizing environmental goods and services or by reducing fossil fuel subsidies that hinder the development of renewable energy.<sup>11</sup>

Finally, the article looks beyond FTAs that aim to be ‘comprehensive’ by covering environmental and climate provisions. It reveals the new evolution of sectoral and soft-law initiatives devoted to a green economy. Cardinal examples include Singapore’s green economy agreements and frameworks with Australia, Malaysia, and the United Kingdom (UK). The prospective US-led Indo-Pacific Economic Framework for Prosperity (IPEF) and the Agreement on Climate Change, Trade and Sustainability (ACCTS) also exemplify this trend.

To buttress my contention regarding the systemic impact of green regionalism on Trade and Sustainability 2.0, the article proceeds as follows. After this introduction, Section 2 discusses the interdisciplinary transfer of green regionalism from ecology to IR and examines why certain countries are motivated to incorporate environmental sustainability into regional integration. It also explains how MEAs and WTO negotiations have influenced the trade-sustainability nexus and how the notion of green regionalism has progressed during the three waves of global regionalism.

Section 3 assesses the multipolar evolution of trade and green economy initiatives and their implications for climate change. In addition to discussing the enforceability of TSD chapters of US and EU FTAs and the procedural barriers, the section unpacks relevant FTA disputes and provisions that address environment-related tariff and non-tariff barriers. It also explores rising transnational green norms in Asia, which are established through mega-FTAs, resolutions of the Asia-Pacific Economic Cooperation (APEC), and other green economy initiatives. Finally, Section 4 concludes with the legal and political implications of green regionalism for future trade and sustainability policies.

## 2. Green Regionalism in the Global Context

Green regionalism signifies a paradigm shift in world trade law. To overcome the sluggish UN and WTO talks hampered by economic nationalism and power politics, countries have turned to green regionalism that merges economic resilience with environmental sustainability. Green regionalism crystalizes legal and value-based aspirations. Its normative basis is built upon multilayered hard-law and soft-law instruments that have emerged in different waves of global regionalism.

### 2.1 Theoretical and Normative Dimensions

As an interdisciplinary concept, the term ‘green regionalism’ first appeared in the theory and practice of sustainability science and urban planning. Timothy Beatley advocated regional

Change Information Brief N. 2: Climate Change in Regional Trade Agreements’, 4–6; J.-A. Monteiro and J. Trachtman (2020) ‘Environmental Laws’, *Handbook of Deep Trade Agreements*. World Bank Group, 553, 568–573.

<sup>9</sup>OECD, supra n. 8, 8.

<sup>10</sup>E.g., C. O’Toole (2022) ‘TPP Trade and Environment Chapter’, in J.A. Huerta-Goldman and D.A. Grantz (eds.), *The Comprehensive and Progressive Trans-Pacific Partnership: Analysis and Commentary*. Cambridge University Press, 633, 645–648; K. Kuhlmann (2021) *Handbook on Provisions and Options for Trade in Times of Crisis and Pandemic*. ESCAP, 180; Monteiro and Trachtman, supra n. 8, 574–575.

<sup>11</sup>World Bank (2012) ‘Inclusive Green Growth: The Pathway to Sustainable Development’, Main Report (English), World Bank Group, Washington, DC, <http://documents.worldbank.org/curated/en/368361468313515918/Main-report>, 71; 86; United Nations Conference on Trade and Development (UNCTAD) (2023) ‘World Investment Report’, 86.

sustainability planning to address environmental issues. He suggested that as ‘a true shift toward sustainability’, green regions represent ‘spatial units that mix urban settlements with surrounding hinterlands and ecosystems’ and result in ‘compact, sustainable cities and settlement patterns’.<sup>12</sup> Reinforcing ‘the value and importance of the natural and ecological qualities of place’, green regionalism denotes ‘the practice and perspective that arise from’ green regions.<sup>13</sup> Hence, green regionalism is a holistic approach to advancing values and policies of sustainability and climate change.<sup>14</sup> This concept is grounded on Ian L. McHarg’s idea to integrate sustainable development into regional planning. McHarg’s view culminated in his revolutionary book, ‘Design with Nature’, and gained more attention following the UN’s Brundtland Report.<sup>15</sup>

Beatley’s elaboration on green regionalism has influenced similar projects such as green infrastructure.<sup>16</sup> The term was also referred to in the literature on environmental politics, as well as research and development in environmental technology.<sup>17</sup> From a legal aspect, I define green regionalism as a normative process for regional economic frameworks to integrate and operationalize environmental sustainability. The ambit of legal frameworks extends beyond conventional FTAs and covers new green economy agreements and initiatives. The definition and its theoretical and normative implications are essential to the trade-sustainability nexus in international law.

A fundamental question for green regionalism is why selected countries, including hegemonic powers and middle powers, have actively pursued green regionalism through bilateral or plurilateral agreements. The power struggles between the Global North and the Global South have hindered multilateral negotiations. A realist assumption that countries are inclined to increase their material power does not provide a satisfactory answer. Unlike market access or intellectual property, environment and climate-related provisions are not perceived to directly ‘empower’ states that impose these WTO-plus and extra rules.

In the context of green regionalism, IR explanations offer a sound understanding of state behavior. Both international law and IR notions of recognition can be traced back to G.W.F. Hegel’s recognition theory, which explains why and how the pursuit of recognition motivates human actions.<sup>18</sup> In international law, recognition involves constitutive and declaratory doctrines, which differ in their views on whether diplomatic recognition is essential to establish statehood.<sup>19</sup> Thus, legal recognition is a zero-sum exercise. Distinctly, recognition in IR involves varying degrees of intersubjective affinity and is often an ongoing process. Influenced by Hegel’s theory, IR scholars analyzed interstate relations based on countries’ identity construction and status claims, which collectively form the basis for the IR concept of recognition.<sup>20</sup>

<sup>12</sup>T. Beatley (2011) ‘Green Region, Green Regionalism’, in E. Seltzer and A. Carbonell (eds.), *Regional Planning in America: Practice and Prospect*. Columbia University Press, 140, 140.

<sup>13</sup>*Ibid.*, 140–143.

<sup>14</sup>*Ibid.*, 160–171.

<sup>15</sup>I.L. McHarg (1969) *Design with Nature*. American Museum for Natural History by the Natural History Press; F. Steiner (2011) ‘Plan with Nature: The Legacy of Ian McHarg’, in Seltzer and Carbonell (eds.), *supra n. 12*, 17–37.

<sup>16</sup>University of San Diego (2016) ‘Innovations in Planning & Public Engagement for Community Resilience. Task 3 – Scenario Planning Model Report’, 3–6.

<sup>17</sup>M.A. Shapiro (2014) ‘Establishing “Green Regionalism”: Environmental Technology Generation across East Asia and Beyond’, *Journal of Contemporary Eastern Asia* 13(2), 41, 41–49; J. Won and B. Park (2019) *Regional Environmental Politics in Northeast Asia: Conflict and Cooperation*. Routledge, 42, 61; S.Y. Lin (2023) ‘Localization of the Corporate Food Regime and the Food Sovereignty Movement: Taiwan’s Food Sovereignty Movement under “Third Regionalism”’, *Food, Culture & Society* 26(3), 621, 636–638.

<sup>18</sup>G.W.F. Hegel (1977) *Phenomenology of Spirit* (A.V. Miller trans.). Oxford University Press, 111–115.

<sup>19</sup>J. Crawford (2012) *Brownlie’s Principles of Public International Law*, 8th edn. Oxford University Press, 145–146.

<sup>20</sup>E.g., Lindemann, *supra n. 7*, 209–219; E. Ringmar (1995) ‘The Relevance of International Law: A Hegelian Interpretation of a Peculiar Seventeenth-Century Preoccupation’, *Review of International Studies*. Cambridge University Press, 87, 96–98; E. Erman (2013) ‘The Recognitive Practices of Declaring and Constituting Statehood’, *International Theory*. Cambridge University Press, 5, 129, 130.

The struggles for recognition in IR denote the practice in which states seek acknowledgment from significant counterparts to have their self-constructed identities confirmed on the world stage.<sup>21</sup> Subscribing to constructivist ontology, IR theorists look beyond the realist lens by deciphering the role of states' psychological needs for 'prestige' in energizing state actions.<sup>22</sup> Hence, the self-constructed identities of Washington and of Brussels as global hegemonic or normative powers have prompted them to pursue new rules on sustainability.<sup>23</sup> The new green norms are considered value-based as they aim to uphold the core non-economic objectives of the US and EU trade pacts. For middle powers, such as Australia, Singapore, and New Zealand, their positions as green economies and as thought leaders in sustainable development have propelled their sustainability agreements.

The other pillar of recognition in IR is the status claim, which refers to the normative rather than the psychological dimension of recognition.<sup>24</sup> Based on the 'principle of participatory parity', a country's motivation is not to pursue a distinct or unique self-image in global politics.<sup>25</sup> Instead, its aims are to be treated as an equal member according to the acknowledged standard of respect.<sup>26</sup> This status claim represents the pursuit of 'dignity', in order to obtain self-esteem by securing equal status in interstate relations.<sup>27</sup> The IR view therefore supplements Richard Baldwin's 'domino theory' that explains the driving force for regionalism.<sup>28</sup>

The fear of exclusion has driven states to join key agreements and safeguard their trade status. The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2023 and the pending applications of other economies, including China and Taiwan, furnish evidence for this hypothesis.<sup>29</sup> Green regionalism follows the same rationale. Under their Indo-Pacific strategies, the US and EU trade pacts articulated key sustainable development areas, including the environment and climate change.<sup>30</sup> Smaller states participate in these trade agreements with comprehensive environmental obligations or additional green economy initiatives because they are concerned about being 'left out' of new international standards. The status dimension in IR also explains small nations' worry about losing opportunities for potential market access. As a compromise, they became more willing to accept green rules advanced by large economies.

<sup>21</sup>M. Murray (2010) 'Identity, Insecurity, and Great Power Politics: The Tragedy of German Naval Ambition before the First World War', *Security Studies* 19, 656, 658–661; L. Hagstrom and K. Gustafsson (2015) 'Japan and Identity Change: Why It Matters in International Relations', *Pacific Review* 28(1), 1, 2–5.

<sup>22</sup>A. Wendt (2003) 'Why a World State is Inevitable?', *European Journal of International Relations* 9(4), 491, 510–512; Lindemann, supra n. 7, 210.

<sup>23</sup>M.C. Webb and S.D. Krasner (1989) 'Hegemonic Stability Theory: An Empirical Assessment', *Review of International Studies* 15(2), 183, 183–186; I. Manners (2002) 'Normative Power Europe: A Contradiction in Terms?', *Journal Common Market Studies* 40(2), 235, 236–252.

<sup>24</sup>T. Lindemann (2013) 'The Case for An Empirical and Social-Psychological Study of Recognition in International Relations', *International Theory* 5(1), 150, 152; M. Iser (2015) 'Recognition between States? Moving beyond Identity Politics', in C. Daase et al. (eds.), *Recognition in International Relations*. Palgrave Macmillan, 27, 27–29.

<sup>25</sup>A. Blunden (2007) 'Subjectivity, Redistribution and Recognition', in J. Connolly et al. (eds.), *Recognition in Politics: Theory, Policy and Practice*. Cambridge Scholars, 84, 90–93.

<sup>26</sup>P. Hayden and K. Schick (2016) 'Recognition and the International Meanings, Limits', in P. Hayden and K. Schick (eds.), *Manifestations, Recognition and Global Politics: Critical Encounters between State and World*. Manchester University Press, 1, 3–4.

<sup>27</sup>Lindemann, supra n. 7, 210–213; R. Wolf (2011) 'Respect and Disrespect in International Politics: The Significance of Status Recognition', *International Theory* 3(1), 105, 116.

<sup>28</sup>R. Baldwin (1993) 'A Domino Theory of Regionalism', NBER Working Paper Series, No. 4465, 2–5.

<sup>29</sup>A. Arasasingham et al. (2023) 'The United Kingdom Is Joining the CPTPP. What Comes Next?', Center for Strategic and International Studies, 31 March 2023, [www.csis.org/analysis/united-kingdom-joining-cptpp-what-comes-next](https://www.csis.org/analysis/united-kingdom-joining-cptpp-what-comes-next) (last visited 27 July 2023).

<sup>30</sup>E.g., White House (2022) 'Indo-Pacific Strategy of the United States', The American Presidency Report, 9–11 and 14; European Commission & High Representative of the Union for Foreign Affairs and Security Policy (HR) (2021) 'Joint Communication to the European Parliament and the Council: The EU Strategy for Cooperation in the Indo-Pacific', 1–5.

## 2.2 Trade and Sustainability 1.0

The IR concept of recognition that rests upon the core elements of identity and status clarifies states' quests for green regionalism, which yields paramount implications for sustainable development and international law. To contextualize green regionalism, I now turn to its evolution vis-à-vis fundamental shifts in climate change and sustainability movements during the three waves of global regionalism.<sup>31</sup> Influenced by the UN's efforts for sustainable development, including multiple MEAs, green regionalism emerged in the first two waves of regionalism from the 1950s to 1990s. In this era of 'Trade and Sustainability 1.0', the two issues were largely governed by separate yet parallel regimes and their nexus was fragile. Since the 2000s, green regionalism has substantially expanded during the third wave of global regionalism. The new trade agreements and green economy initiatives establish the normative basis for 'Trade and Sustainability 2.0'.

Trade and Sustainability 1.0 encompasses the first two waves of global regionalism and signifies the initial shift from multilateral WTO and UN efforts to regional initiatives. A predominant driver is the evolution of enhanced green rules incorporated into European and North American integration frameworks. The First Regionalism, which denotes the first wave of global regionalism between the 1950s and the 1960s, shows limited focus on sustainability issues in trade agreements.<sup>32</sup> After the Second World War, the 1947 General Agreement on Tariffs and Trade (GATT) functions as an indispensable pillar of the Bretton Woods system. Article XX of the GATT provides general exceptions for GATT-inconsistent measures. Absent the direct reference to environmental measures, Article XX(b) and (g) justify measures that are 'necessary to protect human, animal or plant life or health' or 'relating to the conservation of exhaustible natural resources'.<sup>33</sup> Presumably not envisioned by the drafters, these justifications became hotly contested in WTO litigation and feature Trade and Sustainability 1.0.

In the First Regionalism, sustainability grounds were considered to accord governments public space and seen as defensive tools for environment-related trade measures in actual disputes. Trade pacts have followed provisions on Article XX-style exceptions. The 1957 Treaty of Rome that established the European Economic Community (EEC) emerged as the first economic integration agreement with environmental provisions.<sup>34</sup> In addition to Article 36, which incorporates the exceptions under Article XX(b) of the GATT, Article 92 justifies state aid to remedy 'the damage caused by natural disasters'.<sup>35</sup> To a certain extent, European integration influenced the creation of the Association of Southeast Asian Nations (ASEAN) as Asia's initial regionalism endeavor in 1967.<sup>36</sup> Nevertheless, ASEAN's founding document focuses predominantly on political solidarity and does not mention the environment.<sup>37</sup> The economic integration mandate only addresses collaboration in agriculture, industries, and trade without providing detailed rules.<sup>38</sup>

The EEC and ASEAN cases suggest that sustainability was not envisioned as a policy priority at the initial stage of regionalism. In tandem with global movements for sustainable development, the watershed moment for green regionalism took place during the Second Regionalism from the 1970s to the 1990s. In less than two decades, sustainability and climate change ascended to be the core of the global development agenda. The 1972 Stockholm Conference on the Human Environment, the 1987 Brundtland Report entitled 'Our Common Future', and the 1992 Rio

<sup>31</sup>P.L. Hsieh (2021) *New Asian Regionalism in International Economic Law*. Cambridge University Press, 4–12.

<sup>32</sup>J. Bhagwati (2008) *Termites in the Trading System: How Preferential Agreements Undermine Free Trade*. Oxford University Press, 29–31.

<sup>33</sup>General Agreement on Tariffs and Trade (1947) (GATT), art. XX(b) and (g).

<sup>34</sup>Monteiro and Trachtman, *supra* n. 8, 564.

<sup>35</sup>Treaty Establishing the European Economic Community (1957) (Treaty of Rome), arts. 36 and 92(2)(b).

<sup>36</sup>R.C. Severino (2006) *Southeast Asia in Search of an ASEAN Community: Insights from the Former ASEAN Secretary-General*. ISEAS, 1–11.

<sup>37</sup>Association of Southeast Asian Nations (ASEAN) Declaration (1967) (Bangkok Declaration), preamble and point 2.

<sup>38</sup>*Ibid.*, point 2(5).

Conference on Environment and Development raised global awareness of sustainable development and made it the UN's primary objective.<sup>39</sup>

These developments spurred the proliferation of MEAs and resulted in the normative linkages and tensions between environmental law and trade law. In particular, the MEAs contain trade measures to enforce sustainability obligations. The first of such MEAs is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which encompasses provisions on 'Regulation of Trade in Specimens of Species' listed in Appendices I to III.<sup>40</sup> Therefore, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal further imposes obligations on parties not to export hazardous wastes to or import them from non-parties.<sup>41</sup>

It became a norm for environmental and climate agreements to utilize trade mechanisms. This trend is well illustrated by the Montreal Protocol on Substances that Deplete the Ozone Layer, the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), and the Paris Agreement.<sup>42</sup> On the one hand, the fact that more than 80% of the parties to these MEAs are WTO members has reinforced the trade-sustainability nexus. On the other hand, the potentially overlapping jurisdictions of MEAs, the WTO, and FTAs will inevitably complicate enforcement.

In line with the MEAs, the newly established WTO also emphasizes sustainability. The preamble of the Marrakesh Agreement considers 'the objective of sustainable development' and aims 'to protect and preserve the environment'.<sup>43</sup> An important institutional milestone is the 1994 Ministerial Declaration on Trade and Development, which takes into account the Rio Declaration and Agenda 21 and created a Committee on Trade and Environment within the WTO.<sup>44</sup> In the meantime, GATT and WTO disputes on environmental issues shed new light on normative tensions between trade and sustainability.

In the 1980s and the 1990s, US quantitative restrictions on tuna and tuna products led to panel reports on *US-Canadian Tuna*, *US-Tuna (Mexico)*, and *US-Tuna (EEC)*.<sup>45</sup> Panels on these cases held that US trade measures could not be justified under Article XX(b) and (g). The latter two panel reports were not adopted due to the weakness of the GATT DSM. The subsequent establishment of the Appellate Body and the adoption of the negative consensus rule transformed the WTO DSM. One of the most significant trade-environment cases is *US-Shrimp*, which also involves Article XX. In contrast with GATT panels that undisputedly regarded 'fish' as 'exhaustible natural resources', the Appellate Body considered the Appendix I of the CITES and found that 'sea turtles' also fall within the Article (g) ambit.<sup>46</sup>

Although the Appellate Body ruled that the United States failed to meet the Article XX chapeau requirements, it stressed the concept of sustainable development within WTO agreements, which integrate three pillars – economic development, social development, and environmental

<sup>39</sup>M. Chi (2018) *Sustainable Development Provisions in Investment Treaties*. ESCAP, 4–6; S. Schacherer (2021) *Sustainable Development in EU Foreign Investment Law*. Brill, 20–23.

<sup>40</sup>See WTO, Matrix on Trade-Related Measures Pursuant to Selected Multilateral Environmental Agreements, WT/CTE/W/160/Rev.9 TN/TE/S/5/Rev.7 (2021), 6–11 (referring to Articles III–V of the Convention).

<sup>41</sup>*Ibid.*, 143–148.

<sup>42</sup>*Ibid.*, 114–142.

<sup>43</sup>Marrakesh Agreement Establishing the World Trade Organization (1994), preamble.

<sup>44</sup>Decision on Trade and Environment (1994), [www.wto.org/english/docs\\_e/legal\\_e/56-dtenv.pdf](http://www.wto.org/english/docs_e/legal_e/56-dtenv.pdf) (last visited 30 July 2023).

<sup>45</sup>GATT Panel Report, *United States – Prohibition of Imports of Tuna and Tuna Products from Canada*, L/5198, adopted 22 February 1982, BISD 29S/91; GATT Panel Report, *United States – Restrictions on Imports of Tuna*, DS21/R, DS21/R, 3 September 1991, unadopted, BISD 39S/155; GATT Panel Report, *United States – Restrictions on Imports of Tuna*, DS29/R, 16 June 1994, unadopted.

<sup>46</sup>Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, p. 2755, para. 132.

protection.<sup>47</sup> WTO trade-environment disputes have continued to involve general exceptions, but issues have subsequently extended to more complex areas, such as the local content requirement of renewable energy programs.<sup>48</sup>

In the Second Regionalism, MEAs and WTO developments propelled green regionalism. Different from the First Regionalism, where the ‘environment’ was considered solely as a carve-out exception, the trade agreements in the new era started to incorporate affirmative environmental obligations. As a constitutional basis for the EU, the 1992 Maastricht Treaty highlights environmental protection as a policy goal of the bloc.<sup>49</sup> Signed in the same year, the North American Free Trade Agreement (NAFTA) and its side agreement, the North American Agreement on Environmental Cooperation (NAAEC), constitute ‘landmark precedents’ in green regionalism.<sup>50</sup> They represent the first attempt of trade pacts to cover detailed provisions on environmental law enforcement and cooperation, as well as institutional designs such as a commission.<sup>51</sup> The United States–Mexico–Canada Agreement (USMCA), negotiated during the Trump era, incorporates the NAFTA and the side agreement into the main text.<sup>52</sup>

Green regionalism has spillover effects on the Global South. Unexpectedly, the first climate change provision appeared in an African agreement, as the 1993 Common Market for Eastern and Southern Africa (COMESA) stipulates the requirement for members to accede to the UNFCCC.<sup>53</sup> The COMESA also includes provisions for cooperation in the areas of environmental and natural resources protection, wildlife management, and the prevention of hazardous wastes.<sup>54</sup> Although these provisions are not as detailed as the NAFTA and the NAAEC, they demonstrate that green regionalism is not exclusive to the Global North and can be crucial for South–South integration.

### 2.3 Trade and Sustainability 2.0

Constructing the normative basis for Trade and Sustainability 2.0, green regionalism has rapidly evolved since the inception of the Doha Round. In this latest wave of global regionalism, known as the Third Regionalism, the trade-sustainability nexus has faced significant geopolitical upheaval. From the 2000s to the present, multifaceted disruptions have inhibited multilateral talks and global supply chains, thus making the reorientation of the trade regime inevitable.

Thomas L. Friedman’s idea on the path of globalization, outlined in his book *The World is Flat*, has become much less convincing.<sup>55</sup> As Shannon K. O’Neil asserted, regionalism premised on the multipolar reality has surpassed globalization and influenced decisive issues such as climate change governance.<sup>56</sup> A key factor that distinguishes the Third Regionalism from previous waves of regionalism is the decline of America’s ‘unipolar moment’ due to its economic and military preeminence.<sup>57</sup> The White House’s perceived unwillingness and incapability to lead its allies

<sup>47</sup>Ibid., para. 129 and n. 107 and paras. 176–184; M.-C.C. Segger and M.W. Gehring (2005) ‘Introduction’, in M.W. Gehring and M.-C.C. Segger (eds.), *Sustainable Development in World Trade Law*. Kluwer Law International, 1, 12–14.

<sup>48</sup>E.g., Appellate Body Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector/Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS412/AB/R/WT/DS426/AB/R, adopted 24 May 2013; Appellate Body Report, *India – Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456/AB, adopted 14 October 2016; D.S. Olawuyi (2022) ‘Environment’, in D. Bethlehem (eds.), *The Oxford Handbook of International Trade Law*. Oxford University Press, 673, 678–680.

<sup>49</sup>Treaty on European Union (1992), art. 130r; Schacherer, *supra* n. 39, 105.

<sup>50</sup>OECD, *supra* n. 8, 4; WTO, *supra* n. 8, 6.

<sup>51</sup>North American Agreement on Environmental Cooperation (1992), parts. 2 and 3; O’Toole, *supra* n. 10, 633–34.

<sup>52</sup>Kuhlmann, *supra* n. 10.

<sup>53</sup>WTO, *supra* n. 8, 7; Common Market for Eastern and Southern Africa (1993) (COMESA), art. 124.1(c).

<sup>54</sup>See COMESA, ch. 16 (including articles 122 to 126).

<sup>55</sup>See generally T.L. Friedman (2007) *The World Is Flat 3.0: A Brief History of the Twenty-First Century*. Picador.

<sup>56</sup>S.K. O’Neil (2022) *The Globalization Myth: Why Regions Matter*. Yale University Press, 6–13, 138–139.

<sup>57</sup>C. Krauthammer (1990) ‘The Unipolar Moment’, *Foreign Affairs* 70(1), 23, 24–27.



made it difficult to replicate the success of the Washington Consensus in global environmental issues.

I identify three decisive developments of green regionalism in world trade law. First, geopolitical conflicts have disrupted the critical judicial and legislative functions of the WTO. The WTO appeals mechanism ceased to function in 2019 due to Washington's refusal to appoint and reappoint Appellate Body Members on grounds such as juridical outreach.<sup>58</sup> This crisis is also interpreted as enhancing US leverage to push for broader WTO reforms aimed at addressing China's 'unfair' trade practices that are arguably WTO-consistent.

So far, 24 cases demonstrate the strategy of selected WTO members, including the United States, Russia, and Korea, to appeal unfavorable panel decisions 'into the void'.<sup>59</sup> Although these cases predominantly concern anti-dumping and subsidies and do not directly relate to environmental issues, the lack of the Appellate Body will have long-term implications for green regionalism. Evolving technology has advanced and transformed environmental goods and services. New forms of disputes will not be confined to carve-out exceptions under WTO law. Without a functioning Appellate Body to interpret WTO agreements, existing jurisprudence cannot effectively address the new trade-sustainability nexus. Presumably, another development will be the increasing use of regional dispute settlement mechanisms to solve these cases. Nevertheless, a structural weakness will be to worsen the fragmentation of the judicial interpretations of green norms.

As for WTO negotiations, a rare notable achievement is the 2022 Agreement on Fisheries Subsidies (AFS), which marks the first-ever WTO pact addressing environmental concerns.<sup>60</sup> This AFS incorporates the disciplines of fisheries subsidies that have previously been adopted in the CPTPP, the USMCA, and UK FTAs with Australia and New Zealand.<sup>61</sup> Despite the AFS, the promise of the Doha Ministerial Declaration, which reaffirms 'the objective of sustainable development' under the Marrakesh Agreement, has failed.<sup>62</sup> The most effective trade mechanism to meet the goal of the Paris Agreement is 'the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services'.<sup>63</sup> Environmental goods include components of hydraulic and wind turbines, rechargeable batteries, and renewable fuels. The close complementarity between the exports of environmental goods and services cannot be underestimated.<sup>64</sup> To exemplify, solar panels require pertinent installation, cleaning, and repair services.

The definitions and scopes of environmental goods and services are major challenges. Regional institutions, including APEC, the EU, and the Organisation for Economic Co-operation and Development, as well as the WTO and the UN, have proffered proposals with different classifications.<sup>65</sup> The lack of universal consensus has obstructed negotiations.

<sup>58</sup>J. Galbraith (2019) 'United States Continues to Block New Appellate Body Members for the World Trade Organization, Risking the Collapse of the Appellate Process', *American Journal of International Law*. 113(4), 822, 822–23; Briefing, International Trade Dispute Settlement: WTO Appellate Body Crisis and the Multiparty Interim Appeal Arrangement, European Parliamentary Research Service (2021), 3.

<sup>59</sup>P. Ungphakorn (2023) 'Technical Note: Appeals "Into the Void" in WTO Dispute Settlement, 19 September 2023, <https://tradedeblog.wordpress.com/technical-note-appeals-into-the-void-in-wto-dispute-settlement/> (last visited 1 January 2024); A.R. Mishra (2023) 'India Appeals to the Void in WTO Dispute over ICT Tariffs on Mobile Phones', *Business Standard*, 5 May 2023, [www.business-standard.com/economy/news/india-appeals-to-the-void-in-wto-dispute-settlement-body-over-ict-tariffs-123052501105\\_1.html](http://www.business-standard.com/economy/news/india-appeals-to-the-void-in-wto-dispute-settlement-body-over-ict-tariffs-123052501105_1.html) (last visited 1 August 2023).

<sup>60</sup>B.M. Hoekman (2023) 'Managing Externalities in the WTO: The Agreement on Fisheries Subsidies', *Journal of International Economic Law* 26(2), 266, 268.

<sup>61</sup>*Ibid.*, 274–275.

<sup>62</sup>Doha Ministerial Declaration (2001), para. 6.

<sup>63</sup>*Ibid.*, para. 31(iii).

<sup>64</sup>H.K. Nordås and R. Steenblik (2021) 'Environmental Services in the APEC Region: Definition, Challenges and Opportunities', 6–7.

<sup>65</sup>*Ibid.*, 9–11; P. Brenton and V. Chemutai (2021) 'The Trade and Climate Change Nexus: The Urgency and Opportunities for Developing Countries', 55–62.

For instance, Brazil and the EU hold opposing views on whether biofuels should be included as environmental goods.<sup>66</sup> The ‘dual use’ problem also applies to products such as mufflers, which can reduce noise but can be used in both wind turbines and diesel trucks.<sup>67</sup> The fact that the negotiations for the plurilateral WTO Environmental Goods Agreement (EGA) began in 2014, but broke down in 2016, highlights these challenges.<sup>68</sup>

The legitimacy of the EGA is also questionable, as only 46 out of 164 WTO members participated in the negotiations.<sup>69</sup> Although the global average tariff on environmental goods is low, it still exceeds 10% in developing countries such as China, Chile, India, and Korea.<sup>70</sup> Ironically, only three developing economies (China, Costa Rica, and Turkey) joined the talks, as many developing countries were frustrated with the Global North’s reluctance to provide financial commitments under the Kyoto Protocol.<sup>71</sup>

The EGA coverage similarly complicated the negotiations. It is generally agreed that bicycles help decrease carbon footprint and should be classified as environmental goods. However, the EU and the United States opposed China’s request to include bicycles in the EGA list. This opposition stemmed from concerns about the potential influx of Chinese bicycles, which have been subjected to EU and US antidumping duties.<sup>72</sup> As the world’s No. 1 producer of bicycles, China manufactures 40% of all exported bicycles, thus making these environmental products politically controversial.<sup>73</sup> In addition, China’s demand for the revised list of tariff reductions, which substantially differed from the originally discussed list, arguably made it impossible for other parties to reach a conclusion on the EGA.<sup>74</sup>

Outside the scope of the EGA, the liberalization of environmental services has been under the auspices of another plurilateral Trade in Services Agreement (TiSA), currently being negotiated among 23 WTO members.<sup>75</sup> Nevertheless, the TiSA negotiations have not produced any concrete results since 2013. Presently, 75 WTO members are engaged in discussions on trade in environmental goods and services in the Trade and Environmental Sustainability Structured Discussions.<sup>76</sup> Other WTO initiatives focus on discussions about plastic pollution and fossil fuel subsidies.<sup>77</sup> Although the Doha Ministerial Declaration does not mandate the reduction of fossil fuel subsidies, these subsidies have jeopardized the development of renewable energy.

<sup>66</sup>Brenton and Chemutai, *supra* n. 65, 56.

<sup>67</sup>K. Bondietti (2023) ‘Report on the Environmental Goods Trade Policy Dialogue’, 13–18; J. Bacchus and I. Manak (2021) ‘Free Trade in Environmental Goods Will Increase Access to Green Tech’, *Free Trade Bulletin*, No. 80, 3.

<sup>68</sup>J. de Melo and J.-M. Solleder (2020) ‘The EGA Negotiations: Why They Are Important, Why They Are Stalled, and Challenges Ahead’, *Journal of World Trade* 54(3), 333, 333–335.

<sup>69</sup>There were 18 parties representing 46 members. WTO, Environmental Goods Agreement (EGA), [www.wto.org/english/tratop\\_e/envir\\_e/ega\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/ega_e.htm) (last visited 1 August 2023); WTO, Members and Observers, [www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last visited 1 August 2023).

<sup>70</sup>Brenton and Chemutai, *supra* n. 65, 58.

<sup>71</sup>de Melo and Solleder, *supra* n. 68, 338–339; WTO, *supra* n. 69.

<sup>72</sup>Bacchus and Manak, *supra* n. 67, 4; William A. Reinsch et al. (2021) ‘Environmental Goods Agreement: A New Frontier or An Old Stalemate’, 10–11.

<sup>73</sup>D. Workman, ‘Bicycles Exports by Country’, [www.worldstopexports.com/bicycles-exports-country/](http://www.worldstopexports.com/bicycles-exports-country/) (last visited 1 August 2023).

<sup>74</sup>Reinsch et al., *supra* n. 72, 9–10.

<sup>75</sup>de Melo and Solleder, *supra* n. 68, 338–339; Global Affairs Canada, ‘Trade in Services Agreement (TiSA)’, [www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/tisa-acs.aspx?lang=eng](http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/tisa-acs.aspx?lang=eng) (last visited 1 August 2023).

<sup>76</sup>WTO, Trade and Environmental Sustainability, [www.wto.org/english/tratop\\_e/tesd\\_e/tesd\\_e.htm](http://www.wto.org/english/tratop_e/tesd_e/tesd_e.htm) (last visited 1 August 2023); Ministerial Statement on Trade and Environmental Sustainability, Trade and Environmental Sustainability Structured Discussions (TESSD) WTO/MIN(21)/6/Rev.2 (2021), 2.

<sup>77</sup>Other two initiatives are called ‘Informal Dialogue on Plastics Pollution and Sustainable Plastics Trade (IDP)’ and ‘Fossil Fuel Subsidy Reform (FFSR)’. WTO (2021) ‘New Initiatives Seek to Put Environment at Heart of Trade Discussions’, 15 December 2021, [www.wto.org/english/news\\_e/news21\\_e/envir\\_15dec21\\_e.htm#:~:text=The%20co%2Dsponsors%20of%20the,trade%20rules%20can%20play%20a](http://www.wto.org/english/news_e/news21_e/envir_15dec21_e.htm#:~:text=The%20co%2Dsponsors%20of%20the,trade%20rules%20can%20play%20a) (last visited 1 August 2023).

The amount of fossil fuel subsidies has already exceeded \$1 trillion, which is eight times the level of subsidies allocated to renewable power generation technologies.<sup>78</sup> The lack of WTO agreements on these urgent sustainability issues has prompted states to expedite green regionalism.

Second, the emergence and expansion of mega-trade agreements have augmented the normative impact of green regionalism in the new dynamic of Trade and Sustainability 2.0. These agreements go beyond conventional bilateral or trilateral FTAs. The economic scale and collective political power of parties to these agreements energized paradigm shifts in world trade law. In terms of the share of global gross domestic product (GDP), the world's largest trade blocs are the Regional Comprehensive Economic Partnership (RCEP), the USMCA, the EU, and the CPTPP.<sup>79</sup> Accounting for 30% of the world's GDP, the RCEP is built upon the 'ASEAN Plus Six' structure comprising ASEAN's FTAs with China, Japan, India, Korea, Australia, and New Zealand.<sup>80</sup> As India withdrew from RCEP negotiations, there are currently 15 parties to the agreement. The absence of an environment chapter, which the CPTPP includes, inevitably weakens the RCEP's ability to shape norms of green regionalism.

The CPTPP is based on the Trans-Pacific Partnership (TPP), which was initiated by President Barack Obama to advance Washington's 'pivot to Asia' strategy. President Donald Trump's populist stance led to his decision to withdraw the country from the TPP. The leadership of Japanese Prime Minister Shinzo Abe enabled the remaining 11 parties to conclude a legally separate pact, the CPTPP, which suspended 22 provisions of the TPP.<sup>81</sup> Chapter 20 of the CPTPP encompasses 23 articles that address issues ranging from ozone layer protection to environmental goods and services.<sup>82</sup> The UK's accession to the CPTPP and the potential accession of other applicants, such as China, Taiwan, and Ukraine, will expedite green regionalism.<sup>83</sup>

The USMCA took a step further than the CPTPP. Its environmental chapter covers new issues such as air quality, marine litter, and obligations under seven MEAs.<sup>84</sup> Remarkably, the USMCA includes 'environmental measures' as justifications under Article XX(b) of the GATT and XIV(b) of the General Agreement on Trade in Services (GATS).<sup>85</sup> As Washington's current practice, the 2023 agreement under the US–Taiwan Initiative on 21st Century Trade follows the same design.<sup>86</sup> Recent UK FTAs' inclusion of mitigation measures for 'climate change' for GATT and GATS exceptions illustrate governments' endeavors to secure policy space, particularly given WTO jurisprudence on Article XX of the GATT.<sup>87</sup>

Technically distinct from trade pacts, the EU is an economic and monetary union and a supra-national organization with a legal personality. The most ambitious agenda of the EU is the

<sup>78</sup>UN Conference on Trade and Development (2023) 'World Investment Report 2023: Investing in Sustainable Energy for All', 86.

<sup>79</sup>World Bank (2021) 'Figure 3.7.A Share of Major RTAs in Global GDP and Trade'.

<sup>80</sup>Ibid.; Hsieh, supra n. 31, 63–74.

<sup>81</sup>M.P. Goodman (2022) 'Shinzo Abe's Legacy as Champion of the Global Economic Order', 8 July 2022, [www.csis.org/analysis/shinzo-abes-legacy-champion-global-economic-order](http://www.csis.org/analysis/shinzo-abes-legacy-champion-global-economic-order) (last visited 12 June 2023); Australian Government: Department of Foreign Affairs and Trade, CPTPP Suspensions Explained (2019), 1–5.

<sup>82</sup>Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018) (CPTPP), ch. 20.

<sup>83</sup>Arasasingham et al., supra n. 29; K. Komiya and L. Craymer (2023) 'Ukraine Asks to Join CPTPP Trade Pact', Reuters, 7 July 2023, [www.reuters.com/world/ukraine-has-requested-join-cptpp-trade-pact-japan-minister-says-2023-07-07/#:~:text=TOKYO%2C%20July%207%20\(Reuters\),Zealand%20authorities%20said%20on%20Friday](https://www.reuters.com/world/ukraine-has-requested-join-cptpp-trade-pact-japan-minister-says-2023-07-07/#:~:text=TOKYO%2C%20July%207%20(Reuters),Zealand%20authorities%20said%20on%20Friday) (last visited 2 August 2023).

<sup>84</sup>United States–Mexico–Canada Agreement (2018) (USMCA), arts. 24.4 and 24.8(4); WTO, supra n. 8, 6.

<sup>85</sup>USMCA, art. 32.1(3); L. Bartels (2015) 'Social Issues: Labour, Environment and Human Rights', in S. Lester et al. (eds.), *Bilateral and Regional Trade Agreements: Commentary and Analysis*. Cambridge University Press, 364, 369.

<sup>86</sup>Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Regarding Trade between the United States of America and Taiwan (2023), art. 7.1(3).

<sup>87</sup>J. Paine and E. Sheargold (2023) 'A Climate Change Carve-Out for Investment Treaties', *Journal International Economic Law* 26(2), 285, 290.

‘European Green Deal’ launched in 2019.<sup>88</sup> To meet the SDGs, the European Green Deal aims to transform Europe into the first carbon-neutral bloc by 2050.<sup>89</sup> Comprising various regulations and directives, the European Green Deal includes notable schemes such as European Climate Law and the Carbon Border Adjustment Mechanism (CBAM).<sup>90</sup> Notwithstanding its transitional period from 2023 to 2026, the CBAM’s prospective imposition of a carbon price on imports will increase traders’ costs and cause concerns about its compatibility with WTO rules.<sup>91</sup> Like FTAs, these European experiments will contribute to legal and policy discussions on Trade and Sustainability 2.0.

Lastly, soft-law initiatives and sectoral agreements dedicated to promoting a green economy and climate change are revolutionizing the normative frameworks of the Third Regionalism. The parochial view that hard-law instruments and comprehensive FTAs underpin green regionalism no longer holds. Geopolitical and ideological clashes have propelled some states to resort to ‘unconventional’ approaches to buttress the trade-sustainability nexus. These innovative arrangements involving Asia reflect the region’s anxiety for ‘green trade’, as the region accounts for about 50% of global carbon emissions and has experienced record-high temperatures.<sup>92</sup>

Established in 1989, APEC includes 21 Asia-Pacific economies and is a transnational economic forum based on non-binding rules and decisions. It is not a venue for negotiating trade agreements but serves as an ‘incubator’ for such agreements. With different legal structures, APEC and ASEAN have been the twin engines of Asian integration. As a soft-law institution, APEC has surprisingly buttressed green regionalism. During the Second Regionalism, APEC’s developed members endeavored to push for more ambitious Early Voluntary Sectoral Liberalization for designated sectors, including tariffs and non-tariff measures for environmental goods and services.<sup>93</sup> Nevertheless, Asian economies opposed the transition from voluntary participation to WTO-style negotiations.<sup>94</sup>

APEC economies changed their positions in the Third Regionalism by making a breakthrough at the 2011 Honolulu summit in which they pledged to cut down applied tariffs on environmental goods to 5% or less by 2015.<sup>95</sup> In the following year, APEC members reached a consensus on the tariff reduction list of 54 environmental goods, including solar water heaters and renewable bamboo-based products.<sup>96</sup> This milestone was a catalyst for WTO EGA negotiations. Empirical evidence shows that APEC members regarded the 5% tariff commitments as if they are binding and that trade in 54 selected products increased by 7%, which is higher than the global rate.<sup>97</sup> However, changing technological developments and consumer demands may contribute to the more than 50% decline in exports of certain environmental products such as parts of solar heliostats and steam turbines.<sup>98</sup> Consequently, the update and expansion of the tariff reduction list are decisive for green regionalism to sustain.

<sup>88</sup>European Commission (2019) ‘Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal’, COM(2019) 640 final, 2.

<sup>89</sup>Ibid. 2–3; European Commission (2021) ‘European Green Deal: Delivering on Our Targets’, 7.

<sup>90</sup>European Commission, supra n. 88, 4–5; Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the Framework for Achieving Climate Neutrality and Amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law).

<sup>91</sup>European Commission (2023) ‘Carbon Border Adjustment Mechanism’, 2.

<sup>92</sup>Asian Development Bank (ADB) (2023) ‘Asian Economic Integration Report 2023: Trade, Investment, and Climate Change in Asia and the Pacific’, 193–196.

<sup>93</sup>I. Yamazawa (2004) ‘APEC’s Achievements and Tasks’, in R. Miranti and D. Hew (eds.), *APEC in the 21st Century*. ISEAS, 1, 7–9.

<sup>94</sup>Ibid.

<sup>95</sup>APEC (2011) ‘2011 Leaders’ Declaration’.

<sup>96</sup>APEC (2012) ‘Annex C – APEC List of Environmental Goods’, 8 September 2012, [www.apec.org/Meeting-Papers/Leaders-Declarations/2012/2012\\_aelm/2012\\_aelm\\_annexC.aspx](http://www.apec.org/Meeting-Papers/Leaders-Declarations/2012/2012_aelm/2012_aelm_annexC.aspx) (last visited 3 August 2023).

<sup>97</sup>C. Kuriyama (2021) ‘A Review of the APEC List of Environmental Goods’, *APEC Policy Support Union Policy Brief* No. 41, 2–6.

<sup>98</sup>Ibid. 4–5.

Hosted by Thailand, the 2022 APEC meetings resulted in the Bangkok Goals on Bio-Circular-Green Economy, which pledged to review tariff and non-tariff measures for environmental goods.<sup>99</sup> The 2023 US-hosted APEC meetings are expected to elevate the sustainability themes from the working and expert levels to the ministerial level.<sup>100</sup> Moreover, the agenda for the prospective Free Trade Area of the Asia-Pacific under APEC Putrajaya Vision 2040 may also enable APEC's experiment of environmental goods to transform to hard-law obligations.<sup>101</sup>

APEC's soft-law approach to tariff liberalization for environmental products is unique. Along with APEC, recent sectoral agreements on the green economy outside the WTO framework also enhance the normative content of green regionalism. Departing from comprehensive FTAs, regional sectoral agreements have emerged, starting with digital trade pacts. These include the trilateral Digital Economy Partnership Agreement, the US–Japan Digital Trade Agreement, and Singapore's bilateral deals with the EU, Korea, and the UK.<sup>102</sup> This sectoral approach allows parties to address emerging issues in depth, such as artificial intelligence and 5G technologies, which could not be incorporated into conventional FTAs.

The world's first green economy agreement is the 2022 Australia–Singapore Green Economy Agreement.<sup>103</sup> In 2023, Singapore also concluded similar, yet with a much narrower scale, framework agreements with Malaysia and the UK.<sup>104</sup> Ongoing negotiations of the six-party ACCTS also represent this sectoral approach.<sup>105</sup> The scope of these green economy agreements exceeds the APEC's focus on environmental goods. They extend to key areas of environmental services, fossil fuel subsidies, sustainable finance, and eco-labeling, thus effectively employing trade measures to meet the objectives of SDGs and the Paris Agreement.

### 3. Multipolar Frameworks for Implementing Green Regionalism

These critical developments in the Third Regionalism substantiate my argument that green regionalism constructs the normative foundation for Trade and Sustainability 2.0. The disruptions of the trade regime caused by geopolitical conflicts have intensified and transformed the hegemony-based unipolar approach into multipolar frameworks. Parallel yet divergent rules have merged in implementing green regionalism. The IR angles provide insight into these new developments.

To bolster my theoretical analysis of green regionalism, it is critical to note that the realist lens, which focuses on states' pursuit of material power, fails to accurately capture the complexities of global politics. Built on the Hegelian theory, the IR concept of recognition that comprises aspects of identity and status explains why and how certain states have led the way in green regionalism.<sup>106</sup> The quests for dignity derived from constructive ontology and dignity under normative standards of parity have driven states to prioritize values and economy-based notions of

<sup>99</sup>Asia-Pacific Economic Cooperation (APEC) (2022) 'Bangkok Goals on Bio-Circular-Green (BCG) Economy', para. 4(b)(ii).

<sup>100</sup>APEC (2022) 'APEC Rolls out Priorities for 2023 Informal Senior Officials' Meeting, Honolulu, the United States', 13 December 2022, [www.apec.org/press/news-releases/2022/apec-rolls-out-priorities-for-2023](http://www.apec.org/press/news-releases/2022/apec-rolls-out-priorities-for-2023) (last visited 2 August 2023).

<sup>101</sup>APEC (2020) APEC Putrajaya Vision 2040.

<sup>102</sup>N. Mishra and A.M.P. Valencia (2023) 'Digital Services and Digital Trade in the Asia Pacific, An Alternative Model for Digital Integration?', *Asia Pacific Law Review* 31(2), 489, 494; Ministry of Trade and Industry, Singapore (MTI) et al. (2023) 'Singapore and the European Union Sign Digital Partnership', 1.

<sup>103</sup>MTI and Ministry of Sustainability and the Environment, Singapore (2022) 'Singapore and Australia Sign Green Economy Agreement', 1.

<sup>104</sup>MTI (2023) 'Factsheet on Frameworks on Cooperation in Digital Economy and Green Economy between Singapore and Malaysia', 1; MTI (2023) 'Singapore and the United Kingdom Sign Green Economy Framework', 1.

<sup>105</sup>J. de Melo (2020) 'Negotiations for an Agreement on Climate Change, Trade and Sustainability (ACCTS): An Opportunity for Collective Action', 2–3; Joint Trade Ministers' Statement on the 'Agreement on Climate Change, Trade and Sustainability' Initiative (2020).

<sup>106</sup>Lindemann, *supra* n. 7, 209–13.

sustainability.<sup>107</sup> Below I shed light on the approaches of key actors, including the United States, the EU, and ASEAN, as well as the implications for environmental governance.

### 3.1 United States: From the USMCA to the IPEF

The IR concept of recognition offers a unique perspective to explain Washington's motivation and strategy for pursuing green regionalism. From a macro aspect, the largest disruption in the US approach to trade is to deal with the rapid rise of China in economic and political arenas. The once undisputed recognition of America's self-constructed identity as the world's sole superpower is now confronting new threats. China and, to some extent, its allies, openly proclaimed the 'perils' of multifaceted US hegemony.<sup>108</sup> Moreover, the geopolitical vacuum caused by the Trump Administration includes the withdrawal of US leadership and membership from the TPP and the Paris Agreement. While America rejoined the Paris Agreement, domestic politics compelled the Biden Administration to restore US status by resorting to trade initiatives that are not 'traditional FTAs'.<sup>109</sup> As IR scholars posit, Washington's struggles for identity and status claims have galvanized its trade-sustainability policy. Its Indo-Pacific strategy's focus on 'climate and environment' cooperation with like-minded partners exemplifies this dimension.<sup>110</sup> Hence, a 'new Washington Consensus' should be forged to enable 'embedded liberalism' to be based on an innovative approach to Trade and Sustainability 2.0.<sup>111</sup>

The NAFTA and the TPP built the normative foundation for the USMCA. The latter two agreements encompass broader environmental issues such as provisions on environmental goods and services that address non-tariff barriers and cooperation matters.<sup>112</sup> Strikingly, the legal and political discourse in America has been predominantly centered on enforcing environmental and labor provisions or imposing sanctions on FTA partners who fail to comply.<sup>113</sup> Implementing environmental rules essentially involves determining whether they can be enforced under FTA DSMs. A critical development is the bipartisan accord on FTA policy that the Bush Administration and the Democrats-controlled Congress reached in 2007.<sup>114</sup> In particular, the accord conditions the rapid FTA ratification on various issues, including FTA commitments under MEAs and domestic environmental laws, as well as subjecting environment obligations to general FTA DSMs.<sup>115</sup>

Congressional approval has energized the application of general DSMs to environmental rules under US FTAs. Nonetheless, a closer look at dispute settlement procedures reveals the obstacles to the sanction model. Under the TPP, a regular panel for environmental claims can only be

<sup>107</sup>Ibid.; Blunden, supra n. 25, 92–26.

<sup>108</sup>Ministry of Foreign Affairs of the People's Republic of China (2023) 'US Hegemony and Its Perils', 20 February 2023, [www.fmprc.gov.cn/mfa\\_eng/wjbxw/202302/t20230220\\_11027664.html](http://www.fmprc.gov.cn/mfa_eng/wjbxw/202302/t20230220_11027664.html) (last visited 4 August 2023).

<sup>109</sup>US Department of State (2021) 'The United States Officially Rejoins the Paris Agreement', 19 February 2021, [www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/](http://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/) (last visited 5 August 2023); White House (2023) 'Remarks by National Security Advisor Jake Sullivan on Renewing American Economic Leadership at the Brookings Institution', 27 April 2023, [www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/27/remarks-by-national-security-advisor-jake-sullivan-on-renewing-american-economic-leadership-at-the-brookings-institution/](http://www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/27/remarks-by-national-security-advisor-jake-sullivan-on-renewing-american-economic-leadership-at-the-brookings-institution/) (last visited 5 August 2023).

<sup>110</sup>White House, supra n. 30, 5–6.

<sup>111</sup>White House, supra n. 109; C. O'Brian (2023) 'Is US Industrial Policy Headed in the Wrong Direction?', 10 May 2023, [www.lowyinstitute.org/the-interpretor/debate/new-washington-consensus](http://www.lowyinstitute.org/the-interpretor/debate/new-washington-consensus) (last visited 5 August 2023); J.G. Ruggie (1982) 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order', *International Organization* 36(2), 379, 392–398.

<sup>112</sup>USMCA, art. 24.24; CPTPP, art. 20.18.

<sup>113</sup>E.g., United States International Trade Commission (2004) US–Bahrain Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, USITC Publication 3726, 19–20; Congressional Research Service, Environmental Provisions in Free Trade Agreements (FTAs) (2023), 1–2.

<sup>114</sup>I.M. (Mac) Destler (2007) 'American Trade Politics in 2007: Building Bipartisan Compromise', *Peterson Institute for International Economics Policy Brief*, No. PB07-5, 1–10; O'Toole, supra n. 10, 634.

<sup>115</sup>Destler, supra n. 114, 10; O'Toole, supra n. 10, 634.

established after exhausting the three-step consultation process.<sup>116</sup> The USMCA follows a similar structure. While the USMCA environment chapter falls under the jurisdiction of its general DSM, the establishment of a panel requires three levels of consultations.<sup>117</sup> Unlike normal trade-related claims that require only consultations under the dispute settlement chapter, the environment chapter stipulates two additional levels of consultations. These are conducted by the Environment Committee's representatives and ministers.<sup>118</sup>

Enforcing MEAs under US FTAs is also complex. The TPP and the USMCA enable parties to enforce selected MEAs, but the claim is confined to violations 'in a manner affecting trade or investment between the Parties'.<sup>119</sup> This restricted scope is arguably designed to prevent jurisdictional conflicts between FTAs and MEAs. Nonetheless, excluding violations of environmental obligations from the enforcement mechanisms undermines the effectiveness of FTAs in strengthening MEA commitments.<sup>120</sup> A relevant case, *Guatemala–Labor Commitments*, arose from the Dominican Republic–Central America FTA. The Panel observed that Guatemala did fail to enforce its labor laws, but it ruled against the United States due to the lack of evidence that shows the measures affected 'trade' under the FTA.<sup>121</sup> When replacing the NAFTA, the USMCA's labor and environment chapters also include measures that can affect investment and shift the burden of proof to the responding party by presuming FTA violations.<sup>122</sup> Despite these revisions, the trade or investment linkage issue is expected to be subject to judicial challenges in cases seeking to enforce MEAs. Also notably, the CPTPP even further narrows the application of obligations to enforce the CITES.<sup>123</sup>

To circumvent the domestic politics complexity and the lack of the Trade Promotion Authority, President Joe Biden initiated the 14-party IPEF as the core pillar of the US Indo-Pacific strategy.<sup>124</sup> Tantamount pacts include the Americas Partnership for Economic Prosperity and the US–Taiwan Initiative on 21st Century Trade.<sup>125</sup> With different geographical coverages, these deals commonly lack tariff commitments and hence may not be regarded as typical FTAs that require congressional approval. For US allies, the absence of tariff concessions makes these instruments 'better-than-nothing' deals. The IPEF is based on four pillars and Pillar II focuses on clean economy matters mostly relevant to the trade-sustainability nexus.<sup>126</sup> US officials claimed that the IPEF is 'enforceable', but there is neither the withdrawal of tariff

<sup>116</sup>These stages include 'Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and Article 20.22 (Ministerial Consultations)', CPTPP, art. 20.23(1); O'Toole, supra n. 10, 646–647.

<sup>117</sup>USMCA, art. 24.32.

<sup>118</sup>USMCA, art. 24.29–24.32; N.M. Hart (2021) 'USMCA: Legal Enforcement of the Labor and Environment Provisions', Congressional Research Service R46793, 21–22.

<sup>119</sup>USMCA, art. 24.8.4 and fn. 6; CPTPP, art. 20.5 and fn. 5, art. 20.17 and fn. 23.

<sup>120</sup>C. Wold (2016) Empty Promises and Missed Opportunities: An Assessment of the Environmental Chapter of the Trans-Pacific Partnership, 306; O'Toole, supra n. 10, 646–648.

<sup>121</sup>Dominican Republic–Central America FTA, Arbitral Panel Established Pursuant to Chapter Twenty, In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR, Final Report of the Panel (2017), para. 430; 489–505.

<sup>122</sup>C.D. Cimino-Isaac (2023) 'Labor Enforcement Issues in US FTAs', Congressional Research Services: In Focus, 1–2; USMCA, art. 23.3 and fns. 4–5; art. 24.4 and fns. 3–5.

<sup>123</sup>The suspended provisions are Article 20.17(5) and footnote 26. Australian Government: Department of Foreign Affairs and Trade, supra n. 81, 5.

<sup>124</sup>White House, supra n. 30, 11; US Department of State, supra n. 109.

<sup>125</sup>US Department of State, supra n. 109; Office of the United States Trade Representative (2023) 'Ambassador Katherine Tai's Remarks at the National Press Club on Supply Chain Resilience', <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2023/june/ambassador-katherine-tai-remarks-national-press-club-supply-chain-resilience#:~:text=We%20are%20turning%20the%20colonial,de%2Drisking%20and%20building%20resilience>. (last visited 7 August 2023).

<sup>126</sup>US Department of Commerce, Pillar III – Clean Economy, [www.commerce.gov/ipef/pillar-iii](http://www.commerce.gov/ipef/pillar-iii) (last visited 7 August 2023).

benefits as penalties nor a DSM to enforce it.<sup>127</sup> Although the enforceability of the IPEF is questionable, the IPEF will serve to buttress institutional frameworks for promoting a new Washington Consensus for green regionalism.

### 3.2 EU: Beyond the TSD Chapters of FTAs

The EU is a key stakeholder amid disruptions of the trade regime owing to geopolitical conflicts. Akin to the theoretical analysis of US-led green regionalism, the IR concept of recognition based on identity and status claims also reveals the EU's trade approach to environment and climate governance. Unlike the United States, the EU does not claim to be a great power or hegemony. Nevertheless, the contentions for the EU's 'normative power' or 'Brussels effect' in IR and international law aim to depict the EU's normative influence beyond its borders.<sup>128</sup> The EU's self-constructed role as a global power prompted the priority of value-based sustainable development, including environmental standards under the trade agenda.<sup>129</sup>

The pursuit of achieving a status on the world stage on par with that of America has motivated the EU's 'strategic autonomy' of foreign policy, including the implementation of SDGs.<sup>130</sup> This aspect also helps to understand Brussels' concerns about China as 'a systemic rival promoting alternative models of governance'.<sup>131</sup> FTA partners' acceptance of sustainability provisions within and beyond the TSD chapters of EU FTAs can be interpreted as their recognition of the EU's normative impact.

According to the 2006 'Global Europe' communication, the EU commenced new-generation FTAs that focus on sustainable development by including TSD chapters with detailed environmental and labor provisions.<sup>132</sup> The 2007 Treaty of Lisbon clarified and granted more robust power to the EU for enforcing trade pacts.<sup>133</sup> The Court of Justice of the EU further specified that as 'an integral part of the common commercial policy', sustainable development falls within the Union's exclusive competence.<sup>134</sup> As the EU's first-ever 'most ambitious trade deal', the 2010 EU–Korea FTA was the first new-generation FTA to incorporate a TSD chapter.<sup>135</sup> The EU views ASEAN as its vital partner for an interregional framework. Following the same FTA model, EU FTAs with Singapore and Vietnam serve as 'building blocks for a region-to-region trade and investment agreement'.<sup>136</sup>

<sup>127</sup>Wilson Center (2023) 'A Conversation on the Indo-Pacific Economic Framework with Secretary of Commerce Gina Raimondo', 25 July 2023, [www.wilsoncenter.org/event/conversation-indo-pacific-economic-framework-secretary-commerce-gina-raimondo](http://www.wilsoncenter.org/event/conversation-indo-pacific-economic-framework-secretary-commerce-gina-raimondo) (last visited 7 August 2023); Inside US Trade (2023) 'Raimondo: Countries That Flout IPEF Rules Won't 'See the Benefits'', 26 July 2023, <https://insidetrade.com/daily-news/raimondo-countries-flout-ipef-rules-wont-see-benefits> (last visited 7 August 2023).

<sup>128</sup>Manners, supra n. 23, 236–52; A. Bradford (2020) *The Brussels Effect: How the European Union Rules the World*. Oxford University Press, 26–36.

<sup>129</sup>European Commission (2015) 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Trade for All toward a More Responsible Trade and Investment Policy', COM(2015) 497 final, 15.

<sup>130</sup>Council of the European Union (2016) 'Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union's Foreign and Security Policy', 7–40.

<sup>131</sup>European Commission (2019) 'European Commission and HR/VP Contribution to the European Council, EU–China – A Strategic Outlook', JOIN(2019) 5 final, 1.

<sup>132</sup>European Commission (2017) 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Implementation of Free Trade Agreements: 1 January 2016–31 December 2016', COM(2017) 654 final, 7, 26.

<sup>133</sup>European Parliament (2020) 'Factsheet on the European Union: The Treaty of Lisbon', 1–5.

<sup>134</sup>Court of Justice of the EU (2017) Opinion 2/15 of the Court, paras. 138–147.

<sup>135</sup>E. Blot et al. (2022) 'Enhancing Sustainability in EU Free Trade Agreements: The Case for A Holistic Approach', 19; European Commission, supra n. 129, 23.

<sup>136</sup>European Commission, supra n. 129, 23–34.



Compared with US FTAs, EU FTAs are often perceived to be weaker or more collaborative because they generally do not include citizen submissions and the suspension of tariff concessions due to the exclusion of TSD chapters from general DSMs.<sup>137</sup> The fundamental change is the mandate of the 2018 15-Point Action Plan, which energizes the EU's 'enhanced implementation and enforcement' of TSD chapters in tandem with the European Green Deal.<sup>138</sup> This change is envisioned as an indispensable step for Brussels' 'value-based approach to TSD'.<sup>139</sup> The 2022 EU–New Zealand FTA reflects the change by applying the general DSM to Chapter 19 on TSD.<sup>140</sup> The FTA also incorporates additional procedural rules regarding consultations, panelists, and compliance measures for TSD-related disputes.<sup>141</sup>

As of 2023, there have been limited cases of TSD, which exposed challenges to the enforcement approach of Brussels. Akin to the previous US–Guatemala dispute, *Korea–Labor Commitments* that arose from the EU–Korea FTA concerns the trade-related requirement for labor-based claims. Distinct from the former case, the panel upheld the trade–labor linkage based on Korea's commitments to International Labor Organization Conventions and the TSD chapter's reference to provisions on sustainable development.<sup>142</sup> In essence, the panel waived the burden of proving the trade-related requirement, which can be equally critical for environmental claims.

The subsequent case, *Ukraine–Wood Export Ban*, involves the consistency of Ukraine's export ban on wood products with the EU–Ukraine Association Agreement.<sup>143</sup> The panel rejected Ukraine's justification based on forest protection by finding that the trade chapter rather than the TSD chapter governs the trade measures.<sup>144</sup> Although TSD provisions are contextually relevant for interpreting trade measures, they do not constitute 'self-standing or unqualified exceptions'.<sup>145</sup> Hence, the panel held in favor of Brussels because Kyiv failed to meet the Article 36 requirement incorporating Article XX of the GATT.<sup>146</sup> These decisions, along with the non-application of *stare decisis* to FTA panels, demonstrates the unpredictable nature of legal disputes related to the trade-sustainability nexus.

Other than focusing on enforcement, EU FTAs employ more market-oriented approaches to green regionalism, including the liberalization of environmental goods and services and the reduction of fossil fuel subsidies.<sup>147</sup> For example, the EU–New Zealand FTA encompasses an annex of environmental goods and services and includes commitments on reform programs

<sup>137</sup>L. Bartels (2015) 'Special Issues: Labour, Environment, and Human Rights', in S. Lester et al. (eds.), *Bilateral and Regional Trade Agreements: Commentary and Analysis*, Cambridge University Press, 364, 381; Blot et al., supra n. 135, 7–8; EU–Singapore FTA (2018), art. 12.16.1; EU–Vietnam FTA (2019), art. 13.16.1.

<sup>138</sup>European Commission (2022) 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The Power of Trade Partnership: Together for Green and Just Economic Growth', COM(2022) 409 final, 1–2.

<sup>139</sup>*Ibid.*, 2.

<sup>140</sup>EU–New Zealand FTA (2022), art. 26.2.2. The 2008 CARIFORUM–EU Economic Partnership Agreement is the first EU FTA that applies the general dispute settlement mechanism to sustainable development provisions. G.M. Durán (2020) 'Sustainable Development Chapters in EU Free Trade Agreements: Emerging Compliance Issues', *Common Market Law Review* 57, 1, 11; K. Hradilová and O. Svoboda (2018) 'Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness', *Journal of World Trade* 52(6), 1019, 1025–1029.

<sup>141</sup>E.g., EU–New Zealand FTA (2022), art. 26.3.3, 26.5.3(b), and 26.13.3.

<sup>142</sup>Report of the Panel of Experts, Panel of Experts Proceedings Constituted under Article 13.15 of the EU–Korea Free Trade Agreement (2021), paras. 65 and 95; G. Vidigal (2022) 'Regional Trade Adjudication and the Rise of Sustainability Disputes: Korea – Labor Commitments and Ukraine – Wood Export Bans', *American Journal of International Law* 116 (3), 567, 574.

<sup>143</sup>Final Report of the Arbitration Panel, Restrictions Applied by Ukraine on Exports of Certain Wood Products to the European Union (2020), paras. 1–11.

<sup>144</sup>*Ibid.*, paras. 132–133.

<sup>145</sup>*Ibid.*, para. 251.

<sup>146</sup>*Ibid.* para. 467; Vidigal, supra n. 142, 576.

<sup>147</sup>E.g., EU–Singapore FTA, art. 12.11.1 and 12.11.3; EU–Vietnam FTA, art. 13.10.2(b).

for fossil fuel subsidies.<sup>148</sup> Moreover, separate from TSD chapters, recent EU trade pacts also promote the green industry by including non-tariff barriers chapters on renewable energy generation.<sup>149</sup> There are FTA provisions that prohibit parties from imposing local content requirements, partnerships with local companies, and discriminatory certification and licensing procedures.<sup>150</sup>

Since 2021, the EU has also launched green alliances and partnerships with Japan, Korea, Tunisia, Morocco and Norway.<sup>151</sup> Different from traditional FTAs, these soft-law pacts based on the European Green Deal lay the frameworks for dialogues and cooperation on climate change and energy transition. In 2023, the EU concluded a different type of green economy accords with the Philippines under which the EU committed to provide a grant worth €64 million to facilitate the green economy transition of the Philippines.<sup>152</sup> These initiatives of different legal natures collectively enhanced the EU's normative power in constructing green regionalism.

### 3.3 ASEAN: Green Economy Initiatives

What will fundamentally change global politics and trade is the GDP of Asia exceeding that of the rest of the world by 2050, enabling the region to regain the dominant economic status that it once enjoyed before the Industrial Revolution.<sup>153</sup> While China and Japan have played certain roles in Asian integration, the developments of ASEAN and the ASEAN Plus Six framework have been the foundation of new Asian regionalism. This ASEAN-centered regime also led to the RCEP, the world's largest FTA by economic scale.

ASEAN is not immune from disruptions and the reorientation of the trade regime. Instead, the geopolitical conflicts have highlighted the role of ASEAN in Trade and Sustainability 2.0. Unlike the United States and the EU, ASEAN is not considered a 'power' in the traditional sense. However, the ten-country bloc is expected to shape green regionalism in Asia. Beyond the realist lens, recent IR literature has resorted to constructivism to unpack the impact of regionalism on ASEAN's quest for regional identity.<sup>154</sup> The unique status of ASEAN has channeled competing powers into a norm-based regional architecture.<sup>155</sup> ASEAN's pursuit of its identity and status at the regional and global levels has driven its internal and external integration. The recognition of 'ASEAN centrality' by major powers including China, the EU, and the United States under trade agreements and Indo-Pacific strategies, in turn, reinforced ASEAN's prestige and dignity

<sup>148</sup>EU–New Zealand FTA, art. 19.7 and annex 19.

<sup>149</sup>EU–Singapore FTA, ch. 7; EU–Vietnam FTA, ch. 7.

<sup>150</sup>EU–Singapore FTA, art. 7.4; EU–Vietnam FTA, art. 7.4.

<sup>151</sup>European External Action Service (2023) EU–Japan Strategic Partnership, 2; A. Bennis (2021) 'Power Surge: How the European Green Deal can succeed in Morocco and Tunisia', 26 January 2021, <https://ecfr.eu/publication/power-surge-how-the-european-green-deal-can-succeed-in-morocco-and-tunisia/> (last visited 8 August 2023); European Commission (2023) 'European Green Deal: New EU–Norway Green Alliance to Deepen Cooperation on Climate, Environment, Energy and Clean Industry', 24 April 2023, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_2391](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_2391) (last visited 8 August 2023); European Commission (2023) 'EU and Republic of Korea launch Green Partnership to Deepen Cooperation on Climate Action, Clean Energy and Environmental Protection', 22 May 2023, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_2816](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2816) (last visited 8 August 2023).

<sup>152</sup>European Commission (2023) 'Global Gateway: President von der Leyen Launches Green Economy Team Europe Initiative in the Philippines', 31 July 2023, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_4023](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4023) (last visited 8 August 2023).

<sup>153</sup>ADB (2011) 'Asia 2050: Realizing the Asian Century: Executive Summary', 3.

<sup>154</sup>E.g., A. Ba (2014) 'Institutional Divergence and Convergence in the Asia-Pacific? ASEAN in Practice and in Theory', *Cambridge Review of International Affairs* 27(2), 295, 304–306; A. Acharya (2000) 'The Quest for Identity: International Relations of Southeast Asia', 1–3.

<sup>155</sup>E. Goh (2007/08) 'Great Powers and Hierarchical Order in Southeast Asia: Analyzing Regional Security Strategies', *International Security* 32(3), 113, 139–140; V.K. Aggarwal and J.T. Chow (2010) 'The Perils of Consensus: How ASEAN's Meta-regime Undermines Economic and Environmental Cooperation', *Review of International Political Economy* 17(2), 262, 267–269.

in IR.<sup>156</sup> Absent the EU law concept of direct effect, the incremental ‘ASEAN way’ premised on consultations and consensus has transformed ASEAN law into hard-law obligations with structured flexibility.<sup>157</sup>

ASEAN’s first environment treaty was concluded in the Second Regionalism. The 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources has never become effective due to the lack of sufficient ratifications.<sup>158</sup> Furthermore, the agreement is not linked to the ASEAN Free Trade Area, the predecessor to the ASEAN Economic Community (AEC). A vital pact in the Third Regionalism is the 2002 ASEAN Agreement on Transboundary Haze Pollution (Haze Agreement), which seeks to eradicate air pollution resulting from the extensive use of fire for agricultural land clearance purposes. However, Indonesia, which has been a major source of haze, only ratified the Haze Agreement in 2014.<sup>159</sup> These earlier attempts reveal the systematic problem of the traditional ASEAN way.

In 2007, the ASEAN Declaration on Environmental Sustainability emphasized the specific focus of regional efforts on ‘greenhouse gas emissions and carbon sinks’ as well as the promotion of renewable energy.<sup>160</sup> Signed in the same month, the ASEAN Charter legally reconstructed the bloc from an ‘association’ to an ‘organization’ with a legal personality.<sup>161</sup> In particular, it proclaims the goal to ‘promote sustainable development’, including the protection of the environment and natural resources.<sup>162</sup> The next crucial milestone is the 2015 establishment of the ASEAN Community that will create ‘sustainable and highly integrated economies’.<sup>163</sup> The AEC, the ASEAN Socio-Cultural Community (ASCC), and the ASEAN Political-Security Community collectively formed the new Community.<sup>164</sup> Most mandates related to climate change and natural resources fall within the scope of the ASCC, whereas the AEC is responsible for implementing trade-related issues such as renewable energy.<sup>165</sup>

Notwithstanding the much lesser focus on ‘enforcement’ in comparison to US and EU trade deals, the ASEAN framework has led to bilateral and sector-based green economy initiatives that cater to market needs. The Framework for the Circular Economy for the AEC aims to enhance cooperation with the ASCC and streamline the harmonization of standards and mutual recognition arrangements for environmental goods and services.<sup>166</sup> Established in 2022, the ASEAN Taxonomy Board was created to promote the bloc’s ‘sustainable finance ecosystem’.<sup>167</sup>

<sup>156</sup>W. Woon (2016) *The ASEAN Charter: A Commentary*. NUS Press, 71–72; Joint Leaders’ Statement on the Regional Comprehensive Economic Partnership (RCEP) (2020); White House, *supra* n. 30, 9; European Commission & HR, *supra* n. 30, 5.

<sup>157</sup>A. Acharya (2014) *Constructing A Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*. Routledge, 62–67; P.L. Hsieh and B. Mercurio (2019) ‘ASEAN Law in the New Regional Economic Order: An Introductory Roadmap to the ASEAN Economic Community’, in P.L. Hsieh and B. Mercurio (eds.), *ASEAN Law in the New Regional Economic Order: Global Trends and Paradigm Shifts*. Cambridge University Press, 3, 5–10.

<sup>158</sup>National University of Singapore Centre for International Law ‘Summary Information: 1985 Agreement on the Conservation of Nature and Natural Resources’, <https://cil.nus.edu.sg/databasecil/1985-agreement-on-the-conservation-of-nature-and-natural-resources/> (last visited 8 August 2023); K.-L. Koh (2007) ‘ASEAN Environmental Protection in Natural Resources and Sustainable Development: Convergence Versus Divergence’, *Macquarie Journal of International and Comparative Environmental Law* 4, 43, 45–48.

<sup>159</sup>Library of Congress (2014) ‘ASEAN; Indonesia: Regional Haze Agreement Ratified’, 22 September 2014, [www.loc.gov/item/global-legal-monitor/2014-09-22/asean-indonesia-regional-haze-agreement-ratified/](http://www.loc.gov/item/global-legal-monitor/2014-09-22/asean-indonesia-regional-haze-agreement-ratified/) (last visited 8 August 2023).

<sup>160</sup>ASEAN Declaration on Environmental Sustainability (2007), points 14–17.

<sup>161</sup>Charter of the Association of Southeast Asian Nations (2007), arts 1(1) and 3.

<sup>162</sup>*Ibid.*, art. 1(9).

<sup>163</sup>ASEAN Community Vision 2025 (2015), paras. 5–6.

<sup>164</sup>*Ibid.*, paras. 7–12.

<sup>165</sup>ASEAN (2015) ‘ASEAN Socio-Cultural Community Blueprint 2025’, paras 14–16; ASEAN (2015) ‘ASEAN Economic Community Blueprint 2025’ (AEC Blueprint 2025), paras. 40–58.

<sup>166</sup>ASEAN (2021) ‘Framework for Circular Economy for the ASEAN Economic Community’, 9.

<sup>167</sup>ASEAN Taxonomy Board (2023) ‘ASEAN Taxonomy for Sustainable Finance, Version 2’, 2–13.

As the ASEAN Chair, Cambodia proposed the concept of the ‘ASEAN Green Deal’.<sup>168</sup> The green agenda goes beyond internal regionalism. The AEC’s ‘global ASEAN’ objective amplifies ASEAN’s normative influence over green regionalism.<sup>169</sup> The ASEAN Plus Six framework and the RCEP will form the basis for Asia’s Trade and Sustainability 2.0. The existing literature often overlooks the progression of ASEAN Plus One FTAs from merely including environmental cooperation to encompassing detailed green economy initiatives.<sup>170</sup> The trend is evidenced by the upgraded ASEAN–Australia FTA, which signifies ASEAN’s first attempt ‘to include a standalone TSD Chapter’.<sup>171</sup> Moreover, green economy issues will be integrated into the upgraded ASEAN–China FTA.<sup>172</sup>

Comparable to these ASEAN pacts, the RCEP should also be seen as an evolving process and its influence on green regionalism should not be underestimated. Environmental issues were initially included in the RCEP negotiations, but the parties made the decision to leave these issues to bilateral deals in order to expedite the conclusion of this mega-FTA.<sup>173</sup> Without a separate TSD chapter, the RCEP’s only reference to environmental matters is to affirm the obligations under the Convention on Biological Diversity, to which all ASEAN states are parties.<sup>174</sup> Nonetheless, the RCEP’s consolidation of rules of origin and the reduction of tariffs and non-tariff barriers are critical to the development of renewable and clean energy goods in Asia.<sup>175</sup>

These regional initiatives complement national green plans. Except for the Myanmar and the Philippines, ASEAN countries have respectively set their net-zero targets in 2050, 2060, and 2065.<sup>176</sup> In particular, Singapore is recognized as the bloc’s ‘climate leader’.<sup>177</sup> From an IR angle, the recognition of Singapore’s leadership in sustainability reinforces the island state’s identity and status as ASEAN’s intellectual hub. Despite its small size, Singapore’s membership in ASEAN, the CPTPP, the RCEP, and the IPEF also enables the country to substantially enhance its normative power for shaping green regionalism.

The 2003 FTA with the United States marked Singapore’s initial encounter with environmental rules in a trade agreement. This FTA arguably prompted the amendment to the Endangered Species (Import and Export) Act, which imposes criminal penalties for the transportation of certain species.<sup>178</sup> To address the weakness of the ASEAN Haze Agreement, Singapore also passed the Transboundary Haze Pollution Act. With extraterritorial jurisdiction, the Act makes it an offense for any entity that ‘causes or contributes to any haze pollution in’ the country.<sup>179</sup>

<sup>168</sup>ASEAN (2022) ‘Chairman’s Statement of the 12<sup>th</sup> ASEAN–United Nations Summit’, para. 21.

<sup>169</sup>AEC Blueprint 2025, supra n. 165, paras. 79–80.

<sup>170</sup>ASEAN–China Framework Agreement on Comprehensive Economic Co-Operation (2002), art. 7.2; ASEAN–India Framework Agreement on Comprehensive Economic Cooperation (2003), art. 6(1)(b).

<sup>171</sup>MTI (2022) ‘Annex A: Facts on the AANZFTA Upgrade, in Substantial Conclusion of the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area Upgrade Negotiations’, para. 2.

<sup>172</sup>ASEAN (2022) ‘ASEAN, China Announce ACFTA Upgrade’, 13 November 2022, <https://asean.org/asean-china-announce-acfta-upgrade/> (last visited 9 August 2023).

<sup>173</sup>A.D. Rillo (2022) ‘The Story of RCEP: History, Negotiations, Structure, and Future Directions’, in F. Kimura et al. (eds.), *Regional Comprehensive Economic Partnership (RCEP): Implications, Challenges, and Future Growth of East Asia and ASEAN 2-1*. ERIA and Ministry of Commerce Cambodia, 2–16.

<sup>174</sup>Regional Comprehensive Economic Partnership Agreement (2020), art. 17.10.

<sup>175</sup>M. Limenta (2023) ‘Shaping Trade in Goods Relevant to Renewable Energy Generation: The RCEP’s Potential and Limitation’, *Asia Pacific Law Review* 31(2), 469, 473–486.

<sup>176</sup>ISEAS–Yusof Ishak Institute (2022) ‘Southeast Asia Climate Outlook 2022 Survey’, 23.

<sup>177</sup>*Ibid.*, 7.

<sup>178</sup>United States Trade Representative (2003) ‘Final Environmental Review of the US–Singapore Free Trade Agreement’, 19–26; Organisation for Economic Co-operation and Development, Environment and Regional Trade Agreement (2007), 125. The Act was enacted in 1989 and recently amended in 2022.

<sup>179</sup>Transboundary Haze Pollution Act (2014), ss. 4 and 5; Parliament (Singapore) (2014) ‘Second Reading Bills: Transboundary Haze Pollution Bill’, (5 August 2014), <https://sprs.parl.gov.sg/search/#/sprs3topic?reportid=bill-103> (last visited 20 June 2023).

A noteworthy normative development for Trade and Sustainability 2.0 is Singapore's green economy agreements. Sectoral agreements such as the WTO Information Technology Agreement are not exceptional, but such bilateral agreements devoted to the green economy are unprecedented. Comparable to the EU's green alliances and partnerships, Singapore's green economy deals with Malaysia and the UK focus on cooperation in identified areas such as electric vehicle charging points, renewable energy, and carbon markets.<sup>180</sup> The Australia–Singapore Green Economy Agreement, which is similar to the prospective ACCTS, is fundamentally different.

The Green Economy Agreement 'does not create binding obligations' or 'alter or affect any existing agreements', including the CPTPP and the RCEP.<sup>181</sup> Yet, the comprehensiveness of the pact provides a catalyst for prospective ASEAN agreements, the EGA and the TiSA. It covers 17 areas of cooperation including the development of lists of environmental goods and services, sustainable agriculture, eco-labeling, green shipping, and aviation.<sup>182</sup> The Agreement helps fill the gap in world trade law, as it addresses brand new issues that are not covered under FTAs, such as subsea electricity cables and transboundary carbon sequestration.<sup>183</sup>

The list of 372 environmental goods that focuses on various renewable energy is much broader than the coverage of the APEC list.<sup>184</sup> It also encompasses bicycle-related products that the EGA could not include. Although the Agreement is not an FTA that could 'liberalize' covered goods and services, the Agreement helps forge consensus for green regionalism. For these reasons, ASEAN and Singapore initiatives demonstrate a market-based rather than enforcement-focused approach to the trade-sustainability nexus.

#### 4. Conclusion

The article identified geopolitical conflicts as the major source of disruptions in the trade regime. These conflicts have evolved from conventional armed conflicts to a new form of Cold War that weaponizes trade. The paradigm shift has obstructed global supply chains and multilateral negotiations. Against this backdrop, green regionalism has emerged as a new normative process for regional economic frameworks to integrate and operationalize environmental sustainability. The article provided the first interdisciplinary analysis of green regionalism in world trade law. It contended that green regionalism, which has evolved during three waves of global regionalism, constructs the normative basis for Trade and Sustainability 2.0. To fill a gap in the current literature, the study went beyond conventional FTAs and covered new soft-law and sectoral agreements. By employing the IR concept of recognition based on identity and status claims, the research unveils major states' motivations and actions for galvanizing green regionalism.

The article examined legal and political challenges confronting the EGA, environmental agreements, and mega-trade pacts. It also explored the multipolar frameworks for green regionalism. Case studies involving the recent developments of US and EU trade pacts, as well as new Asia-Pacific green economy agreements, help shed light on Trade and Sustainability 2.0. These developments have broader implications for the reorientation of the global trading system. As globalization gave way to regionalism, the prospect of reaching conclusive multilateral environmental and trade agreements seems increasingly unrealistic. A pragmatic, pathfinder approach involves establishing new trade-sustainability provisions as precedents within plurilateral, bilateral, or sectoral agreements. The overemphasis on the enforcement of sustainability, which is often

<sup>180</sup>MTI, supra n. 104, 3; MTI, supra n. 104, annex B: Factsheet on UK–Singapore Green Economy Agreement.

<sup>181</sup>Australia–Singapore Green Economy Agreement (2022), arts. 7(c) and 21.

<sup>182</sup>Ibid., annex A: List of Joint Initiatives.

<sup>183</sup>Webinar (2023) International Trade Law and Governance and Climate Change: Role, Potential and Interaction, 25 July 2023, <https://cil.nus.edu.sg/event/seminar-5-seminar-series-on-climate-change-and-investment/> (last visited 9 August 2023) (referring to the presentation of Chua Shun Loong of the MTI).

<sup>184</sup>Australia–Singapore Green Economy Agreement (2022), annex B1.1: Environmental Goods List.

politically driven, disregards business realities. Enhancing market incentives is key to ensuring the implementation of innovative green rules. Consequently, the research offers theoretical and empirical insights into green regionalism, which devises new trade law approaches to achieving the SDGs.

**Acknowledgements.** I wish to thank Mary Elizabeth Chelliah, Shun Loong Chua, Armin Cuyvers, Mandy Meng Fang, Scott Y. Lin, Stefanie Schacherer, Bryan Mercurio, Trang (Mae) Nguyen, and Weihuan Zhou for their insights and comments on earlier drafts of this article. I am also grateful to Baker McKenzie.Wong & Leow and the Singapore Ministry of Education Academic Research Fund Tier 1 for their support of this research project. Additionally, I acknowledge the valuable research assistance provided by Cai Jiaming, Lai Yi Qian, and Bill Puah. All errors are my own.