

Sustainability-Oriented Trade Policies and Measures: An Emerging Challenge for Global Trade

I INTRODUCTION

As nations strive to align their trade policies with sustainability objectives, a new wave of regulations, incentive mechanisms, and policy frameworks is fundamentally reshaping the global trade landscape. Recognizing the urgency of addressing climate change, biodiversity loss, and environmental degradation, governments are increasingly integrating sustainability considerations into trade policy to ensure that economic growth does not come at the expense of the planet. This shift is reflected in a range of regulatory measures aimed at curbing carbon emissions, promoting responsible resource management, and fostering environmentally-conscious trade practices.

Developed countries, such as the European Union (EU), have been frontrunners in initiating trade policy measures that seek to address the global climate change and sustainability challenge. Examples of such trade policy measures include the EU's Carbon Border Adjustment Mechanism (CBAM) and Deforestation Regulation (EUDR). Developing countries have raised concerns that these measures ignore principles of fairness and equity in their implementation design and put a disproportionate burden on economically disadvantaged participants in the global economy, thereby undermining the broader objectives of sustainable development.

Specifically, the major point of contention is the extra-territorial reach of the measures since they require foreign producers to comply with their requirements, effectively extending domestic regulatory standards beyond national borders. The extra-territorial reach of such measures raises concerns regarding their potential to act as non-tariff barriers to trade, particularly for developing countries and least-developed countries (LDCs), which often lack the financial, technical and technological resources to meet the stringent compliance requirements.

A fundamental contradiction of such measures crafted by developed country policymakers is that it ignores ground realities. Developing nations may struggle to adapt to new regulatory standards without adequate capacity-building, and financial and technical assistance. This creates a paradox – while sustainability-oriented trade policies aim to address pressing environmental challenges, they risk exacerbating economic disparities

by restricting market access for those with fewer resources to comply. It needs to be recognized by policymakers at large that the implementation of sustainability-oriented trade measures presents a complex challenge – striking a balance between environmental objectives and equitable trade practices.

The evolving nature of global trade policy highlights the need for a more inclusive and cooperative approach to sustainable trade governance. Ensuring that these measures do not create unintended economic distortions requires deeper dialogue between developed and developing countries, enhanced technical assistance, and mechanisms that account for the principles of equity and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) while designing environment-related trade policies and measures. Additionally, multilateral institutions such as the WTO and regional trade blocs must play a critical role in harmonizing sustainability regulations to prevent trade fragmentation and regulatory inconsistencies.

Ultimately, while sustainability-oriented trade policies are crucial in addressing global environmental challenges, their effectiveness will depend on how well they balance ecological imperatives with the principles of fairness, inclusivity, and economic development. As trade and sustainability continue to intersect in new and complex ways, international cooperation and policy coordination will be key to ensuring that sustainability measures serve as enablers of global trade rather than obstacles to economic progress.

2 TRADE AND ENVIRONMENTAL SUSTAINABILITY: INTERSECTIONS AND CHALLENGES

While countries have become proactive in trying to address the issues of environmental degradation and sustainable development, the approaches they are taking to address these issues differ widely. We have examples from the EU that focus more on creating disincentives within global value-chains for the use of carbon-intensive products (for e.g., CBAM) or production that results in environmental degradation (for e.g., EUDR). On the other

hand, we have examples of policies from the United States that have been more focused on the creation of incentives for the development of green alternatives or the use of green sources of energy for production aimed at global trade, for example, the Inflation Reduction Act (IRA).

As emphasized earlier, these measures raise concerns about fairness, regulatory consistency, and potential non-tariff barriers, particularly for developing economies that may struggle with compliance due to resource constraints. But an equally important challenge lies in the fragmented nature of these sustainability regulations which emanate from the very different philosophies and approaches of some of the most important global economies in seeking to address the challenge of global climate change and environmental degradation.

This fragmented approach creates additional compliance complexities for businesses operating across multiple jurisdictions. Without harmonized frameworks, unilateral measures risk exacerbating trade disputes and economic disparities. Ensuring an equitable transition would be best served by a multilateral approach, with institutions like the WTO playing a central role in promoting regulatory coherence and safeguarding against protectionist distortions.

Achieving a balance between environmental objectives and economic inclusivity necessitates global cooperation, capacity-building support for developing countries, and adherence to international environmental law principles such as the CBDR-RC. As trade and environmental sustainability considerations continue to intersect, effective policy coordination will be crucial to ensuring that sustainability measures serve as facilitators of global trade rather than impediments to economic development.

3 WASTE MANAGEMENT, DIGITAL TRADE, AND POLICY CONSIDERATIONS FOR SUSTAINABLE TRADE

The evolving landscape of trade policy extends beyond climate regulations to encompass broader environmental governance, digital trade, and trade facilitation. The EU's Waste Shipment Regulation exemplifies the growing complexity of sustainability-driven trade measures, particularly in the context of global waste management. Stricter controls on waste exports, coupled with selective enforcement of international agreements such as the Basel Convention, raise concerns about the disproportionate impact on developing economies. These restrictions risk limiting participation in circular economy initiatives, thereby hindering global efforts toward sustainable resource utilization.

Similarly, the intersection of digital trade and sustainability presents new regulatory challenges. The rapid expansion of digital commerce has significant environmental and socio-economic implications, particularly concerning the carbon footprint of digital infrastructure

and the sustainability of supply chains in e-commerce. Addressing these concerns requires a proactive approach to integrating sustainability considerations into digital economy agreements, ensuring that trade facilitation efforts align with broader environmental objectives. As sustainability-oriented trade measures continue to gain traction, policymakers must strike a balance between environmental imperatives and equitable global trade practices. Measures designed to promote sustainable development should be WTO-compatible, non-discriminatory, and considerate of the unique constraints faced by developing economies.

Moreover, integrating the principle of CBDR-RC into environment-related trade policies and measures is essential to fostering an inclusive and equitable trading system. WTO dispute settlement mechanisms must incorporate equity considerations when evaluating the legality of such measures to prevent them from becoming instruments of economic exclusion. A balanced approach – grounded in multilateral cooperation, regulatory transparency, and capacity-building support – will be key to ensuring that sustainability and trade policies reinforce, rather than undermine, one another in the pursuit of a more resilient global economy.

4 SYNOPSIS VIEW OF THE ARTICLES

The collection of articles presents a rigorous examination of the intersection between trade policy, sustainability, and regulatory frameworks, with particular emphasis on the implications of emerging environmental and digital trade measures for global commerce.

Jyotsna Manohar and Mumrita Gaurdwaj undertake a critical analysis of the Agreement on Climate Change, Trade and Sustainability (ACCTS), assessing its legal framework and potential influence on future trade and climate agreements.

Pallavi Arora and Dr Amit Randev evaluate the EU's Battery Regulation, examining its compatibility with WTO rules and highlighting concerns regarding its impact on developing economies, particularly in terms of financial and infrastructural limitations.

Conducting a keen economic analysis, Krithika Manoj and Mrunmayee Thatte critique the Asia-Pacific Economic Cooperation's (APEC's) Environmental Goods List. The list, Manoj and Thatte contend, reveals significant gaps, failing to consider the lower-income countries' perspective and technological progression alongside non-tariff trade restrictions that serve as limitations to green trade expansion.

The evolving jurisprudence of international trade law is also a key theme, particularly concerning trade exceptions and territorial limitations under the WTO framework. Dr Geraldo Vidigal and Sami Donoghue analyse the WTO's interpretation of General Agreement on Tariffs and Trade (GATT) Article XX, exploring its implications for

national regulatory autonomy and highlighting the tensions between trade liberalization and sovereign environmental policies.

This discussion extends into the realm of waste management regulations, where Ashutosh Kashyap and Arnav Sharma examine the EU's 2024 Waste Shipment Regulation. Kashyap and Sharma contend the selective application of international treaties under the regulation, such as the Basel Convention, with a specific focus on its trade-related aspects, while being impervious to developing states' status and capabilities.

The surge of unilateral environment-related trade measures and their implications for developing countries is a recurring theme in the articles. Vishakha Srivastava and Neha Banerjee offer a pointed analysis of the compliance requirements under the EUDR and the implications for vulnerable smallholders in developing economies. Srivastava and Banerjee advocate for a more inclusive EUDR which does not impose a disproportionate compliance burden for smallholders and developing economies.

In the same vein, Krishna Bhattacharya and Jamshed Ahmad Siddiqui address how certain measures, such as CBAM and EUDR, are affecting trade in the garb of climate change. Bhattacharya and Siddiqui also address the compatibility of these measures under the GATT, 1994, and criticize unilateral measures as a preferred policy tool to address climate change.

Dr Pralok Gupta and Monika explore the growing significance of digital trade and its sustainability implications. They examine the increasing carbon footprint associated with digital infrastructure and the absence of regulatory mechanisms in digital economy agreements to address these environmental concerns. Gupta and Monika argue that without appropriate policy interventions, the environmental, economic, and social costs of digital expansion may diminish the benefits of digital transformation.

Collectively, these articles offer a comprehensive analysis of the interplay between trade policies and sustainability objectives. They underscore the need for a balanced and inclusive approach to regulatory measures to ensure that environmental initiatives do not serve as disguised trade barriers and that developing economies are not unduly disadvantaged in the global transition toward sustainable trade practices.

Last but not least, Dr Gabrielle Marceau's interview sheds light on various facets of the trade and environment interface, including the risk of fragmentation of international trade posed by unilateral measures, challenges posed by process and production methods (PPM)-based trade measures, and Preferential Trade Agreements (PTAs) as alternative avenues for countries to deliberate on balancing trade and sustainability requirements.

5 CONCLUSION: REDEFINING GLOBAL TRADE FOR A SUSTAINABLE FUTURE

This special issue brings together a diverse set of perspectives on the challenges and opportunities presented by sustainability-oriented trade policies and measures. The debate surrounding this area underscores the evolving nature of international trade law, requiring continuous adaptation to reconcile economic and environmental priorities.

As we move forward, the conversation must focus on fostering regulatory cooperation, promoting inclusivity in sustainability standards, and ensuring that the global trading system remains fair, inclusive, and supportive of the developmental objectives of developing countries. This issue provides a timely platform for engaging in these critical discussions, contributing to a more balanced and forward-looking approach to sustainability in trade. We hope that this issue contributes to the conversation surrounding inclusiveness as an important pillar of trade policies.

We extend our sincere gratitude to Dr Gabrielle Marceau for her insightful interview in this issue and to the contributing authors for their in-depth analyses of this evolving topic. I hope readers find this special issue stimulating and valuable in shaping the discourse on sustainable trade policies.

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