Managing the Trade-Climate Policy Interface Through Open Plurilateral Agreements: Learning from the EU Deforestation Regulation Experience[*]

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Abstract

Trade policies motivated by security or commercial interests are increasingly complemented by trade measures that seek to induce foreign producers to green their production processes. A prominent example is the EU Deforestation Regulation (EUDR). Such unilateral measures are unlikely to be efficient, and at the limit may simply be ineffective. In this paper we use the EUDR experience to make the case for countries seeking to use trade policies to negotiate jointly defined approaches to achieve nontrade goals. We consider the scope for doing so in the framework of trade agreements and through stand-alone, issue-specific open plurilateral agreements (OPAs). We argue OPAs are likely to offer a superior basis for cooperation. Whether countries decide to leverage trade or development institutions multilateral institutions have an important role to play in facilitating negotiation of environmental policies that support local communities while encouraging trade, and in assisting states to implement the resulting agreements.

Keywords: trade-related climate measures, trade agreements, environmental regulation, international cooperation

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Introduction

As great-power rivalries intensify and the world trade order frays, major economies are turning to trade policy activism, implementing unilateral measures that condition access to their markets and regulate exports. Some trade actions seek to limit the expansion of rivals in the name of national security or are responses to the coercive use of trade measures by foreign states. Others reflect protectionist motivations – a desire for products to be made at home, with policy designed to protect domestic producers from foreign competitors. Trade policies motivated by security or commercial interests are increasingly complemented by what can be characterized as "make it my way" interventions. The aim of unilateral action in this third category is to use trade taxes, regulation, certification and other non-tariff measures (NTMs) to induce foreign producers to green their production processes or improve treatment of workers in their supply chains.[1]

The EU, long a champion of human rights and environmental standards, has been a leader in implementing the third type of trade measures, reflected in legislation requiring firms to police their supply chains to detect and correct violations of bans on the use of forced labor and other human rights norms.[2] In support of the green transition the EU has adopted the Carbon Border Adjustment Mechanism (CBAM), requiring foreign producers to pay the difference between the carbon tax they pay at home and the tax that would have been due had the same products been made in the EU, and the Deforestation Regulation, requiring foreign producers of commodities such as soy and palm oil to warrant that their products do not originate on land deforested after a certain date. These instruments extend EU production process requirements to third countries, constraining the techniques and methods used by companies seeking to export their products to the EU.

The costs of unilateral action are likely to be especially high in connection with make-it-my-way intervention. Modern international supply chains are complex and must constantly be adjusted as conditions change. To be even minimally workable, supply-chain due diligence requirements and other NTMs must reflect the context of the sectors and places where they are to be applied. But unilateral action precludes the kind of engagement with supply chain actors that could guide the customization required. Unless policy takes account of the starting positions of the producers to whom it is addressed and allows those producers to find the most efficient way to the desired ends, any given unilateral measure, uninformed by consultation with ground-level actors, is a shot in the dark. Only by accident will it be the lowest cost means of achieving a particular regulatory goal. At the limit, unilateral rule making is self-defeating, neither effective nor efficient. To make matters worse, given that implementation of unilaterally developed regulatory measures may

[1] Between 2009 and 2020, countries around the world reported having taken 3,460 trade-related climate measures to the World Trade Organization (WTO). See WTO (2023).

[2] For instance, measures to ban imports of goods produced with forced labor. (https://www.euractiv.com/section/economy-jobs/news/meps-experts-ask-to-shift-burden-of-proof-in-forced-labour-products-ban/); strengthened anti-subsidy regulation (https://competition-policy.ec.europa.eu/foreign-subsidies-regulation_en); and mandatory supply chain due diligence requirements (https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145). On the shift by the EU towards mandatory regulation of commodity supply chains, see e.g., Berning and Sotirov (2023; 2024).

impede trade, they often raise concerns that they hide protectionist motivations, thus becoming a source of trade tensions and disputes.[3]

A necessary condition for trade policy to help achieve nontrade objectives efficiently is clarity in the objectives to be attained and transparent, objective assessments whether they are effective in achieving their stated purpose. In principle, both the effectiveness and efficiency of trade measures used in the service of attaining nontrade objectives will benefit from engagement with trade partners. Insofar as other states share policy goals, negotiations to establish equivalent domestic regulatory regimes and policy frameworks to attain them will make interventions more effective and efficient.

Policies that seek to incentivize firms to "make it here" are the bread and butter of traditional trade agreements and the GATT/WTO. Make-it-my-way in contrast do not have an analogous institutional framework for states to cooperate to reduce policy-induced spillovers. In this paper we argue that rather than conditioning imports of agricultural commodities and industrial products on unilaterally determined production process standards, states should seek to form "green clubs" that establish mutually acceptable conditions for trade in covered products.

The obstacles to pursuing this path are, however, as obvious as the advantages they promise. One is the need to agree on standards and metrics to gauge progress toward the desired outcomes. Others concern agreement on methods to determine the equivalence of alternative domestic policy interventions as different but equally valid means to the shared end. Yet another is the WTO non-discrimination principle. Insofar as members of a green club deem it necessary to use trade measures to safeguard firms that meet high environmental standards against low cost-competitors who, avoiding expensive investments in clean technology, do not, this is likely to give rise to disputes.[4]

Another challenge is that trade representatives remain focused on trading market access to the home country for access to export markets that benefit client domestic sectors and are largely indifferent to the complexities of agreeing process controls to improve the sustainability of production or respect for human rights. In the large countries of the global south, such as Brazil, India and Indonesia, trade ambitions and strategies are shaped by the guiding principle of common but differentiated responsibility (CBDR). This principle, crystallized at the end of the Cold War, exempts countries outside the advanced global core from full reciprocity in trade

[3] Developing countries have often criticized EU regulatory measures that condition access to the EU market as discriminatory, as well as being dismissive of national environmental laws and regulatory interventions (Azevedo and Ruhle, 2025; Lamy et al. 2023).

[4] WTO rules require nondiscrimination in the treatment of imports, unless a member can argue that to achieve a legitimate domestic regulatory objective it is necessary to condition access to its market on foreign products satisfying national production process standards. A key question in this regard is whether this nondiscrimination requirement is violated if foreign products are required to satisfy nationally applicable technical production process regulations. WTO case law suggests this will depend in part on whether a WTO member can argue that products that do not satisfy a production process requirement differ from those that do not, justifying imposition of a trade measure. In this paper we abstract from legal debates on the WTO compatibility of conditioning access to markets on technical product and production requirements. See Mavroidis (2016) and Baetens, Hoekman and Mavroidis (2022) for in-depth discussion.

negotiations (the principle of special and differential treatment in the GATT/WTO) and from the burdens of climate change mitigation because of injuries suffered in the colonial past, and for similar reasons arguably entitles them to substantial support from rich partners in these matters as well. This "macro" perspective often precludes consideration, let alone a considered response to "micro" issues concerning the regulation of the production of individual traded goods. It offers no guidance in responding to decisions by a major trade power to condition market access on highly specific environment- or labor-related performance standards.

Further complicating matters, large firms in the global south, bypassing formal legal systems, have long made a practice of protecting their interests through private standards agreements with OECD-based corporate trade partners. Similarly, non-governmental organizations have developed voluntary sustainability standards systems for supply chain due diligence. The associated private systems of trade governance may well even exceed eventual regulatory norms in major markets, but at the cost of unintended consequences. Vulnerable groups such as smallholders, small firms and forest-dwelling communities typically lack the capital and technical expertise to participate in such arrangements; only exceptionally will they have the influence to remedy these deficiencies politically. Left to themselves, such groups will frequently have no choice but to resort to short-term, cost-cutting measures that degrade the environment and undercut respect for human rights. Excluding consideration of their needs by inattention or design in the transition to green tropical agriculture increases the chances of costly social conflicts, the likelihood of delays in adjustment when time is precious and could ultimately limit the success of efforts to green the economy.

These risks are especially pronounced in the case of unilateral measures to condition access to markets. Consider the tropical agricultural commodities covered by the EUDR. Some 90% of world cacao production originates in small farms in developing countries; for coffee the small holders' share in production ranges from 38%, in Brazil, to 70–95% in Honduras, Ethiopia, Uganda, and Vietnam. In palm oil, where Malaysia and Indonesia alone supply 73% of EU imports, small holders produce respectively 28% and 42% of the crop. And of course, even, or especially, when small holders do not officially participate in export supply chains, as in cattle raising in Brazil, their marginality often leads to unsustainable practices that endanger forests and other biomes. Subsistence agriculture, is, after commercial farming, estimated to be the second largest driver of deforestation (Pacheco et al., 2021).

Recent experience illustrates that in the absence of specialized support, increasing the stringency of requirements for participation in sophisticated supply chains pushes many producers towards marginality. For instance, Okello et al. (2011) report that smallholders' share of green bean production in Kenya fell by 50% in the two decades after 1980 as EU retail buyers insisted on strict compliance with private food safety standards; the outcome was similar when Senegalese bean farmers were subjected to the same pressure after 1999 (Maertens and Swinnen, 2009). Green trade measures like the EUDR that ignore— indeed in some ways repeat and ratify— these earlier mistakes from the imposition of food safety standards on small holders may therefore well be creating obstacles to its own success (Zhunusova et al. 2022; Muradian et al. 2025).

In this paper we argue that plurilateral cooperation can reduce the chances of self-defeating unilateral interventions. Defining rules of the road for using trade to support the goal of de-

carbonizing economic activity without jeopardizing the livelihoods of vulnerable groups requires trade representatives to invest in forming inclusive domestic coalitions that support plurilateral negotiations on the environmental standards and approaches to be pursued by club members. As to the formalities of plurilateral group formation, we propose the establishment of open plurilateral agreements (OPAs). Under an OPA, producers and buyers of relevant products – green steel, sustainable cocoa or soy – trade preferentially with each other on condition that similar (equivalent) climate (or labor) related regulatory regimes apply to production processes and new members are admitted on fair terms, meaning especially they are welcome to meet the group's goals by the means most appropriate to their situation. These characteristics distinguish OPAs from current plurilateral initiatives in the WTO, in which benefits are extended to non-members of the plurilateral group without asking for reciprocity,[5] and preferential trade agreements that liberalize substantially all trade amongst signatories not just trade in one or another sector.

Addressing the problem of defining the objectives of policy interventions and agreeing on performance standards requires connecting trade representatives to a broader constituency of actors and stakeholders than those that traditionally have been the focus of trade policy and trade negotiations. This is a task that applies to both the major trade powers such as the EU and to the countries that are affected by unilateral imposition of trade measures. This is challenging given rising geopolitical and geoeconomic rivalry and the policy silos that prevail within national administrations in both the EU (Clarke, 2024) and other OECD nations and the global south. New connections will arise, if at all, through a long process of experimentation, as novel constellations of interests negotiate innovative agreements that enlarge ideas of what trade is for, and whom it serves.

Here we propose only initial, general steps in that direction: convening multi-country, multi-stakeholder meetings to explore the design and operational modalities of increased emphasis on using trade to enhance sustainability and protect human rights. The initiative will likely need to come from the countries that are most affected by unilateral 'make it my way' measures such as the EUDR, leveraging regional institutions to develop common approaches to realizing shared nontrade goals that are effective and efficient and that can be tabled in response to, and ideally preempting unilateral action by major importing countries or blocs. The hope is that efforts to include actors central to improving environmental or labor standards performance in the supply chains used to produce traded goods and services will reduce trade conflicts and enhance the effectiveness and efficiency of national efforts to green the economy and safeguard human rights. Moving in this direction can be facilitated by support of multilateral development institutions that have the mandate, resources and convening power to bring together actors across Latin American countries to reflect jointly on alternative approaches to combatting deforestation and other shared nontrade goals as the basis for dialogue with major trade partners pursuing these objectives.

The plan of paper is as follows. Section 1 starts with a discussion of the EUDR as the leading, current illustration of a unilaterally defined 'make it my way' policy with significant trade impacts on developing-country suppliers in a range of specific sectors. We focus on the EUDR not to single

[5] These so-called Joint Statement Initiatives are discussed in Hoekman and Sabel (2021).

out the EU, but because it is of great current salience to many countries in Latin America and more broadly illustrates the multi-faceted downsides and opportunity costs of unilateral action, not only for trade but for the environmental objective that motivates intervention. Section 2 briefly summarizes the rapidly evolving interest in sponsoring plurilateral agreements: initiatives which commit signatories to adopt jointly agreed practices in specific areas of trade-related regulation. Most such initiatives do not penalize non-participating trade partners for the failure to do the same, but some involve 'conditionality' in the sense that trade benefits are only obtained if parties pursue similar regulatory standards. Section 3 turns to issues related to the pursuit and design of OPAs in which trade benefits are restricted to participating jurisdictions that agree to adopt domestic regulatory regimes to achieve shared environmental or climate mitigation goals, including the need for institutional support for negotiation of OPAs. Section 4 concludes.

1. The EU Deforestation Regulation (EUDR)

The EUDR aims to exclude from the EU market forest risk commodities — cattle, cocoa, coffee, palm oil, rubber, soya and wood products and derivatives— implicated in tropical deforestation or the abuse of human rights. As these commodities together accounted for some 85% of EU imports between 2005 and 2017 of embedded carbon emissions (Grabbe and Moffat, 2024; Schilling-Vacaflor and Lenschow (2023),[6] and the EU is a large importer of embedded carbon, the measure is expected to make an appreciable contribution to climate change mitigation by limiting demand for forest risk commodities.

Under the law, "operators," who initially place imported products on the EU market, and "traders," who circulate them within the EU, are to establish systems of due diligence that geo-tag products at their place of origin to show that the source plot was not deforested after December 31, 2020 and to allow each shipment to be traced from the source through the entire supply chain to the end user. The due diligence systems must additionally demonstrate that the production process conformed at every stage with domestic environmental and forestry laws, as well as international human rights norms. The EU (through competent authorities in the 27 member states) is to monitor the effectiveness of the due diligence systems by random inspection of shipments, whose scope increases as the EU's confidence in the institutions of an exporting country decreases: only one percent of the exports of countries that the EU places at the lowest (of three) levels of risk of noncompliance will be inspected annually; for countries the EU deems to be at the highest risk of noncompliance, fully 9% of exports will be inspected.[7] The cost of noncompliance can be very high, including fines of up to 4% on the worldwide turnover of violators.

As noted by Capuzzi (2024), the EUDR traceability requirements imply that extant systems to combat deforestation in source countries are not considered. Capuzzi gives the example the

[6] EU demand has been estimated to represent 15% of worldwide destruction of forests associated with production of goods that are exported (European Commission, 2021).

[7] For low-risk origin countries, the EUDR specifies that annual control efforts should cover at least 1% of operators; for standard risk this rises to 3% and 9% of the volume of shipments sources from high-risk states.

Amazon Soy Moratorium (ASM) in Brazil, a sectoral agreement under which commodities traders commit to avoid purchasing soybeans from areas that were deforested after 2008. This initiative has been effective in reducing deforestation (Kastens et al., 2017; Rausch, 2021).[8] ASM certified soy from Brazil would not meet EUDR criteria because it does not come with full traceability, i.e., it is not possible to document that specific soybeans originate in specific parcels of land.[9]

With the passage of the EUDR the EU abandoned some 15 years of efforts to establish forest protective regimes with major exporters of timber from the global south. In 2004 the EU launched the Forest Law Enforcement Governance and Trade (FLEGT) initiative to limit trade of illegally logged wood through Voluntary Partnership Agreements (VPAs) with developing-country producers such as Indonesia, Ghana, Vietnam, and the Democratic Republic of Congo. Through the VPAs, the EU and its partners jointly fix legal rules for sustainable forestry in each exporting country, making unsustainably harvested timber illegal, and thus ineligible for export. Ideally, civil society stakeholders, particularly from forest-dwelling communities participate both in rule making and in monitoring the resulting timber legality system. For its part, the EU is to help build the capacity of public and private regulators. In 2010 the EU complemented this initiative with legislation — the European Timber Regulation (EUTR) – obligating all operators introducing wood products on the European market to warrant that these goods meet EU forest legality requirements. Goods produced under completed VPAs acceptable to both parties, however, are presumed to be legal, and benefit from special "green lanes" at the border to expedite formalities. These restrictions on trade are expected to be acceptable to the WTO because they are mutually agreed by the importing and exporting countries.

The EU turned its back on the FLEGT/EUTR regime because the focus on illegal logging proved too narrow to serve the EU's broader purpose of protecting tropical carbon sinks, and because even within the domain of sustainable forestry, VPAs are difficult to negotiate and enforce. Illegal logging, long seen as the most conspicuous threat to tropical forests, proved but one of many, and often far from the most ominous. Frequently, in fact, the greatest danger to forests and to related carbon sinks in savannas and peat bogs came from agricultural conversion – the cultivation of crops such as soy and palm oil – or cattle grazing. The EU came to realize that by focusing literally on the trees it was losing sight of the broader forest of sustainability goals.

These problems of scope were compounded by difficulties in agreeing and operating under VPAs. Property rights in and adjacent to tropical forests are typically contested. Claims by forest dwelling individuals and communities, based on traditional or tribal law, clash with claims based on formal law (often inherited from a colonial power) by powerful commercial interests, frequently in league with local or national political cliques. Making these disputes a matter of national political attention, with the aim of agreeing a set of uniform rules to be applied countrywide, is as likely

[8] Hellmayr et al. (2020) found that less than 2% of the traded 2018 soy crop in Brazil could be linked to locations in which deforestation was occurring.

[9] The ASM is based on batch certifications or mass balance in production lines, not item-specific traceability along the supply chain. To fulfil EUDR requirements, around 2.6 billion bags of soybeans from Brazil would need to be individually assigned a unique identification tying each bag to plot of land (Capuzzi, 2024), with the burden on EU importers to ensure that the plots are not classified as deforested after 2020 by the EU. See also De Oliveira et al. (2024a).

to inflame controversy as to resolve it. It should not perhaps be a great surprise that of the seven countries that undertook to negotiate VPAs, only Indonesia produced a reliable forest legality regime establishing a green lane for timber exports to the EU.

Finally, the legality-focused regime established under VPAs proved easy to game: forgers, operating locally and nationally, quickly produced documents fraudulently attesting the pristine origins of illegally harvested timber. As such concerns mounted, the European Commission scrutinized the program in a series of reports, stakeholder consultations and roadmaps, all pointing, with increasing urgency, to the need to broaden the scope of legislation to include agricultural supply chains, address the problem of forgery through the imposition of geo-located records, and heighten the due-diligence responsibilities of operators and traders.

The cumulative result by 2020 was a consensus within the European Parliament and the Commission of the need to address the root causes of tropical deforestation by extending the reach of legislation. Prominent social democratic and green advocates of new legislation in the Parliament favored retaining some elements of the VPA regime. But within the Commission, the Environment Directorate, impatient for results, and preoccupied by its ambition to reduce the EU's carbon footprint, favored unilateral action, and it prevailed.

In retrospect, the law seems a faithful reflection of younger voters' understandable impatience with the fitful, at times hypocritical global response to climate change, but also of the accidents of Brussels' politics. While developments in the Brazilian Amazon under the Bolsonaro government were a constant goad to police supply chain behavior in this period, there appears to have been next to no consultation with Brazilian stakeholders in the preparation of the legislation; the handful of comments that have been reported came exclusively from Brazilian NGOs who shared the concerns and values of their EU counterparts.

Given that the EUDR was thus as much an assertion of moral principle as a thought-through plan for using the EU's central position in world trade to induce more sustainable land use in the tropics, it was to be expected that the new legislation would be as dogged by implementation problems as the old approach, and it was. Although large multinational enterprises were less opposed given their ability to comply with requirements and the potential competitive advantage associated with the regulatory requirements insofar as they expect some firms will not be able to comply,[10] many EU farmers complained that their exports would have to meet the same sustainability and human rights requirements imposed on foreign producers. Austria, together with Finland, Italy, Poland, Slovakia, Slovenia and Sweden, formed a group to protest the increased reporting burden; eventually 20 of the EU's 27 agricultural ministers joined in the complaint as part of a broader wave of pushback by EU agricultural interests against the increasing constraints of environmental regulation.

EU traders in agricultural commodities likewise complained of the extension of reporting responsibilities – limited under the EUTR to the operators who first placed imported products on

[10] See for example Kennard (2020) who argues that heterogeneity in adjustment costs induces a preference for regulation among low-cost firms. Firms facing import pressure—or export competition—may prefer stringent regulation if costs are sufficiently asymmetric. Firms embedded in global value chains also benefit if regulation raises the costs of domestically produced intermediate goods.

the market – to them. Both groups would have welcomed the introduction of a fourth, zero-level or no-risk category, with pro forma, or no reporting responsibilities, at the base of the EU proposed three-stage risk classification scheme. But the main beneficiaries of such a new category would be EU member states, in violation of the WTO national treatment principle, which prohibits preferential treatment of domestic, as against foreign producers. In the absence of a solution, the implementation of the law, originally scheduled to take effect at the end of 2024, was delayed by a year.

Responding to the EUDR

The response in Brazil, a principal addressee of the measure, has large been indifference, tinged with suspicion of the EU's motives and irritation at its presumption of moral superiority as a steward of the Earth. Almost out of habit the government accused the EU of protectionism. Given that the EU is not a significant producer of the commodities covered by the legislation, however, it is unclear what interests exactly it might be protecting. The accusation is thus perhaps better understood as a general misgiving that the EU is somehow acting in its own interest, professions to serve the global good notwithstanding. The reaction of the large agricultural supporters and associated interest varies with their precise position, but is largely one of indifference, born of confidence in the ability to meet EU requirements while continuing with business as usual.

Brazilian beef, producers, for example, currently export little to the EU, and can easily find alternative markets in China in elsewhere as production increases. Coffee exporters, many already habituated by experience in markets for specialty beans with the requirements of geo-tagging shipments and assuring their traceability through the supply chain, made a show of distancing themselves from demands to delay implementation of the law, signaling their readiness to comply. Soybean exporters can supply the EU market with parts of the supply chain that are already in compliance with the law and have ready markets outside the EU for all the rest.[11] Cutting across the divisions among producer groups, and between them, government officials, and NGOs is a shared sense that the EU is too self-absorbed to take an interest in, let alone fully appreciate the extensive efforts Brazil has been making to improve the sustainability of production. Compliance with the EU requirements is consequently seen as a business chore, not participation in a shared urgent project.

If Brazil can be said to be preparing a national, official response to the problem of deforestation it is doing so only indirectly, in closely related proposals for a global system for payment by results in climate change mitigation: the Tropical Forest Forever Fund (TFFF) and the tropical Forest Mechanism Fund (FMF), to be presented, presumably in synthesis, at the COP30 in Belém in 2025. Differences in detail aside, both are programs for continuing, indeed perennial, transfer of substantial funds from high income countries to forest countries in the global south for purposes of climate mitigation, and thus squarely within the tradition of CBDR which has shaped Brazilian diplomacy for decades. Both proposals combine a novel funding mechanism with novel incentive schemes to overcome persistent problems in previous payment-by-results programs, such as

[11] Motta Veiga and Polonia Rios (2024) discuss the positions taken by different industries and producer groups, NGOs and government agencies in Brazil towards trade-related climate measures, including the EUDR.

REDD+,[12] with the same ends. The TFFF, for example, would raise funds in two steps: first, high income countries would borrow at the favorable rates available to credit-worthy sovereigns. The proceeds are invested in a high yield portfolio whose expected returns substantially exceed the cost of repaying the loan, and the excess goes to forested countries in the global south for climate mitigation.[13] The hope is that characterizing the transfer as a loan at conventional (sovereign) rates will make it politically palatable to rich country electorates who balk at the idea of foreign assistance, and thus provide more, and more consistent support then presently available.

The governance innovations include a radical simplification in the definition of benchmarks, metrics and monitoring methods that together go under the name of cash on demand. Traditional payments for results in climate mitigation have been vexed by the problem of establishing baselines – what the world would look like if there were no project – against which to measure the contribution of projects, and in the evaluation of project results themselves. The difficulty is that under many circumstances the country hosting the investment and (if private) the investor as well, have a strong incentive to exaggerate how bad things will get in a business-as-usual scenario to magnify the returns of an investment; the same goes for the benefits attributed to the project itself. These distortions frequently turn what was intended to be a market transaction, unencumbered by bureaucracy, into an administrative nightmare.

In the interest of administrative feasibility and political acceptability the TFFF adopts a single baseline – the territory under forest cover as measured by satellite – and a single measure of success – maintenance (or extension) of the initial area, net of any measured loss of forest coverage due to deforestation, multiplied by 100 (to deter conversion of the land to commercial purposes by more than offsetting the gains of doing so). As ever, the devil is in the details. Just changing the measure of success from territory under forest cover to total biomass conserved would make the metric more comprehensively reflective of the benefits of conservation, but also significantly redistribute returns in favor of more humid forests, and so on.

This is not the place to consider whether the proposal escaped the problems which frustrated earlier attempts to pay for environmental performance, or rather, as we suspect, reproduces them in a new form. For present purposes, it is sufficient to observe that even assuming that the TFFF can work it will take many years to establish the program at scale and more to confirm its promise. In the interim, the lack of reaction to the EUDR will entrench business-as-usual without appreciably reducing the risks to tropical forests, yet perversely furthering the marginality of the smallholders and forest dwellers whose participation in the design and implementation of measures that will transform how they live and work is part and parcel of an effective, efficient and just green transition in tropical agriculture. Conversely, advancing projects in response to the EUDR that improve the sustainability of the supply chains covered by the law while including groups who might otherwise endanger the environment could provide compelling

[12] Reducing emissions from deforestation and forest degradation in developing countries. See https://unfccc.int/topics/land-use/workstreams/redd/what-is-redd#:~:text='REDD'%20stands%20for%20'Reducing,enhancement%20of%20forest%20carbon%20stocks.

[13] https://globalfoundation.org.au/wp-content/uploads/2024/06/Brazil-Government-Tropical-Forests-Forever-Initiative.pdf

demonstrations of the indispensability of a source of substantial and reliable green finance of the sort the TFFF would create.

Seen this way, concrete counterproposals to the EUDR and the COP 30 TFFF project are complements not substitutes. The near absence in Brazil of anything like public discussion of the EUDR – as indicated by the rarity of references to it in the newspapers – implies an opportunity cost in developing such counterproposals. The limited attention given to designing policy interventions to enhance sustainability has been noticed with some concern at the highest levels of national trade diplomacy: Andre Correa do Lago, Brazil's chief climate negotiator, has recently announced a series of public consultations to “align” the interests of various sectors of the economy and civil society in anticipation of COP 30 (Martins, 2024).

By itself, then, the EUDR is a modest misstep. It will likely change very little in the short and medium term, though in the long-term, the failure of yet another loudly trumpeted measure may contribute to cynicism about the efficacy of trade regulation as an instrument to advance environmental sustainability and human rights and bolster claims of protectionism. But whatever the long-term costs, the EUDR is right now first and foremost a missed opportunity. High-income economies need the active cooperation of developing countries in the race to decarbonize the world economy, and that dependence is at its most pronounced when it comes to safeguarding critical land areas in the tropics and the communities living in them. A world of geopolitical rivalry without a hegemon needs a trade order that reflects the tensions and shared interests of the present, not the market power balance and negotiating habits of the past. The EU, because of its long-standing commitments to global climate action and advocacy of human rights, as well as its natural place as an intermediary between the US and China, is in an ideal position to lead the way in addressing these problems. With unilateral action it forgoes those possibilities.

Two types of international cooperation can be pursued by states seeking to use trade and trade policy as an instrument to improve social and environmental standards in partner countries. This may take the form of preferential trade agreements (PTAs), where liberalization of trade among signatories is conditioned on mutual acceptance of environmental standards as well as reciprocally agreed market access liberalization commitments. Such provisions are generally motivated by “level playing field” concerns – ensuring that trading partners do not engage in a race to the bottom by relaxing or not enforcing national environmental legislation.

Cooperation may also be pursued through plurilateral agreements that include provisions on trade as an instrument to attain treaty-defined nontrade goals. Such provisions can be trade restrictive or trade promoting, but in both cases trade policy is regarded as part of the solution to the problem to be addressed. Open plurilateral agreements (OPAs) are akin to PTAs in that they seek to facilitate trade but differ by focusing on specific regulatory policies in a particular sector, not reciprocal liberalization of access to markets of trade partners.

Although PTAs that include environment-related provisions potentially provide a platform for dialogue and cooperation on domestic regulatory matters, their focus on trade makes them unlikely to be instruments for improving environmental outcomes. Empirical research finds little association between PTAs with environmental provisions and environmental outcome indicators, nor does it find evidence for the presumption that acceptance of environmental commitments is

accompanied by more development assistance (Francois et al. 2025). Disciplines on the use of nontariff measures included in PTAs are designed to constrain governments from using such measures to protect domestic industries from greater competition from partner countries. The goal is to ensure that domestic regulation – whatever the underlying motivation – does not unnecessarily restrict trade. While NTM disciplines are an important dimension of PTAs, they are inherently limited as a basis for addressing unilaterally imposed regulatory measures such as the EUDR. This is because trade agreements – including EU-Mercosur – do not limit the right of governments to regulate economic activity as long as measures apply equally to domestic and foreign products and producers (the national treatment rule).[14]

In the remainder of this paper, we look at how it might be possible to seize the moment. In the next section, we show that the foundations for plurilateral agreements that address the trade-environment nexus have already been laid, so that forerunners in the green transition are not forced to choose between voluntary cooperation or unilateral action. In the following one, we discuss the need for multilateral institutions to construct fora within which national trade representatives and stakeholders can begin to explore, sector by sector, how plurilateral cooperation can further decarbonization that is both environmentally and economically sustainable.

2. Domain-specific plurilateral cooperation is already here

As pressure to reform WTO rules to reflect new circumstances increases, but long-standing blockages continue to immobilize the organization, groups of nations are turning to plurilateral initiatives to achieve their purposes. Much of this plurilateral cooperation focuses on reducing differences in domestic regulatory policies that increase transactions costs for foreign firms and products, and many of these differences in turn originate in NTMs serving non-trade purposes. Typically, plurilateral cooperation builds on and institutionalizes prior regulatory cooperation among signatories and is thus a response to the parties' direct experience of the costs and causes of friction. Within this family of initiatives, some are unrestricted or implemented on an MFN basis: participants do not discriminate between signatories and non-signatories, as in an arrangement identifying good regulatory practice in an area and inviting commitments to adopt these in national regulatory regimes. The benefits to the signatories from mutual compliance are not diminished by the failure of nonmembers to comply (although the benefits would increase if membership did). In restricted plurilateral agreements, in contrast, participants set terms that must be met for foreign and domestic goods or services to be treated equally, as in an agreement on procedures by which to recognize foreign regulatory practices as equivalent to those applied to domestic products or production processes.

Following decisions in 2017 by groups of WTO members to pursue joint statement initiatives focusing on specific issues, WTO members have turned increasingly to plurilateral negotiations (Hoekman and Sabel, 2021). An agreement on Services Domestic Regulation was concluded in 2021, with some 50 participating WTO Members incorporating the associated provisions on

[14] Accordingly, dispute settlement provisions are unlikely to help.

regulatory practices into their services (GATS) schedules.[15] Other examples include the Agreement on Investment Facilitation for Development, spanning more than 100 WTO members and the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), under which signatories (including China, the EU and Japan) agreed to a process for appealing dispute settlement panel reports while the Appellate Body is in abeyance.[16] Plurilateral negotiations involving 80+ WTO members on electronic signatures, e-invoicing, cross-border payments, consumer protection and other aspects of e-commerce are ongoing, as are plurilateral, discussions on Trade and Environmental Sustainability,[17] Plastics Pollution and Environmentally Sustainable Plastics Trade,[18] and Fossil Fuel Subsidies.[19]

Side-by-side with these agreements, plurilateral initiatives are being negotiated outside the WTO that combine a focus on trade and the environment. An example is the 2024 Agreement on Climate Change, Trade and Sustainability (ACCTS) between New Zealand, Costa Rica, Fiji, Iceland, Norway and Switzerland.[20] The ACCTS comprises policy commitments by signatories to foster the greening of the economy, including the reciprocal removal of tariffs on environmental products and technologies and a commitment to abolish fossil fuel subsidies.

The Indo-Pacific Economic Framework for Prosperity (IPEF),[21] a US-led initiative, is organized around four policy areas, one of which concerns measures to green the economy (renewable energy and decarbonization). An IPEF Clean Economy Agreement was concluded in June 2024. The IPEF Clean Economy Agreement seeks to support regional cooperation to accelerate deployment of clean energy technology, develop offshore electricity infrastructure for cross-border electricity trade, promote carbon market activities, collaborate on regional and international carbon capture, utilization and storage value chains, and promote sustainable transport through carbon measurement and traceability.[22] Cooperative work programs have been established to exchange information on methodologies, standards, and certification to assess the carbon intensity of hydrogen and its carriers, on mapping regional carbon market priorities and strategies, and on emissions intensity accounting – sharing information on existing standards, reporting systems and methodologies for the assessment, identification and trade of emerging low emissions products. Notwithstanding the hostility of the Trump administration towards international cooperation, this type of collaboration may lay the groundwork for an eventual negotiation of green commodity producer clubs.[23]

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[15] See https://www.wto.org/english/tratop_e/serv_e/jsdomreg_e.htm.

[16] https://wtoplurilaterals.info/plural_initiative/the-mpia/.

[17] WTO, WT/MIN(21)/6/Rev.2 (2021).

[18] WTO, WT/MIN(21)/8/Rev.2 (2021).

[19] WTO, WT/MIN(21)/9/Rev.1 (2021).

[20] https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/agreement-on-climate-change-trade-and-sustainability-accts.

[21] Australia, Brunei, Fiji, India, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand, Vietnam & USA. https://ustr.gov/ipef.

[22] https://www.ipef.gov.sg/clean-economy-agreement/.

[23] These may complement bilateral arrangements such as the 2022 Singapore-Australia Green Economy Agreement. This is a sectoral agreement that builds on PTAs, including the Singapore-Australia FTA and the CPTPP, and therefore

Plurilateral agreements have of course long been used to address specific environmental objectives. International environmental agreements (IEAs) often embody trade-related provisions. Thus, for example, the CITES convention bans trade in endangered species and the Montreal Protocol bans production, consumption and trade in specific ozone depleting substances. These are not exceptional examples. Morin et al. (2024) identify 48 types of trade provisions in some 1,500 IEAs. Most of these agreements are clubs with limited membership, i.e., they are plurilateral in nature. Morin et al. (2024) find trade liberalizing provisions in IEAs increase trade among signatory states relative to their trade with non-members, arguing that this provides evidence that systems of IEAs provide club goods to members. Conversely, trade restrictive provisions do not increase trade among parties relative to non-signatories but still exhibit a club effect, as trade among signatories decreases less because of the restrictions then trade among non-signatories. In a subsequent paper, Morin et al. (2025) find that inclusion of a trade dimension in an IEA is associated with both adaptation of the rules of an agreement and accession by new countries – reflecting learning and adaptation and the incentives that are created for outsiders to become members of the club, both because of commonality of interest in pursuing club objectives and because of associated trade benefits.

Taken together, the plethora of plurilateral initiatives and agreements suggests that there is ample room in the shadow of the WTO, if not directly within the edifice of the institution itself, for restricted plurilateral agreements that define conditions for using trade policy for climate-change mitigation and other public regarding purposes, provided these agreements are transparent in their terms, provide for establishing the equivalence of climate-related regulatory regimes, reflect the principle of CBDR and are accessible to new members on the same basis that applies to existing members.

Whether green climate clubs that provide for trade policy instruments (tariffs, taxes, quantitative restrictions/bans) can be housed directly within the current WTO is a matter to be determined by the WTO membership. Currently, there is a bright line between restricted and unrestricted OPAs. The WTO permits members to negotiate plurilateral agreements that liberalize or facilitate trade if the benefits are applied to all WTO members equally, independent of whether they participate in the agreement. The associated new disciplines can be incorporated into signatories' WTO commitments by participants, whereas nonparticipating WTO members do not change their schedule of commitments (Hoekman and Mavroidis, 2017). In contrast, a proposed plurilateral agreement that conditions negotiated benefits on adoption of specified domestic regulatory practices requires consensus: all WTO members, including non-participating states to which it will not apply, must agree to its incorporation. This constraint is in practice all but a prohibition. To date the WTO has formally registered only one restricted OPA, the Agreement on Government Procurement.

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does not embody market access commitments. It is a framework for cooperation to green the economy. The agreement "blends trade, economic and environmental objectives, and adopts multi-pronged approaches to advance the transition to a green economy [by facilitating] trade in environmental goods and services as well as promote investment to propel this growth …actively draw[ing] on the participation of relevant stakeholders, including businesses and investors (Introduction, para. 3). See https://www.dfat.gov.au/geo/singapore/singapore-australia-green-economy-agreement.

At the same time, in a kind of parallel universe, the WTO allows members to facilitate trade through regulatory cooperation. This is typically formalized in Mutual Recognition Agreements (MRAs), under which a WTO member recognizes that for certain ranges of decisions, action by a trading partner's regulatory regime is equivalent to action that would have been taken by the member's own authorities. The WTO Agreements on Technical Barriers to Trade (TBT), Trade Facilitation and Trade in Services foresee such cooperation within restrictive agreements that condition the facilitation of trade on determinations of equivalence of domestic regulatory regimes or certification systems.[24]

The global climate change diplomacy conducted alongside WTO deliberations, notably the Paris Agreement, provides a basis for the formation of OPAs to support domain-specific decarbonization regimes.[25] It authorizes countries to set national decarbonization targets and to form sector-specific 'climate clubs' for joint pursuit of national targets outside Paris and to count progress achieved there towards their voluntary goals. But because national commitments to Paris goals are voluntary, penalties for violations of trade restrictions imposed by climate clubs fall outside the Paris Agreement. As mentioned, the challenge from a trading system perspective is whether, and if so when, traditional trade policy instruments — a tax or fee on products based on carbon content or emissions from production and transport, as in CBAM, or an import ban on non-compliant products, as in the EUDR — can be used to enforce compliance with an OPA's rules without violating WTO commitments.

The most familiar way to do this is to invoke the general exceptions provisions of the WTO (Art. XX GATT) to justify the use of trade measures as part of decarbonization initiatives. But to invoke Art. XX is to risk protracted controversy and costly litigation. Allowing restrictive OPA can reduce those risks by making explicit how trade sanctions will be applied to attain agreed decarbonization targets. OPAs broaden the traditional WTO concept of non-discrimination in trade from unconditional equal treatment of club members and non-members (the MFN principle) to one that encompasses conditioning trade on satisfaction of specific regulatory requirements and ensuring fair and equal treatment of accession candidates.

There is substantial precedent for such broadening. Landmark decisions of the WTO Appellate Body in the shrimp/turtle and tuna/dolphin cases allow an importing country to unilaterally require foreign producers to minimize incidental, ecologically damaging bycatch of sea creatures such as turtles or dolphins while fishing for shrimp or tuna, but not to require that foreigners use the same methods demanded of domestic producers.[26] The choice of methods must rather be a

[24] Bilateral MRAs can be "plurilateralized" to create de facto restrictive OPAs. Thus, an agreement for certification of authorized economic operators (AEOs) meeting the World Customs Organization (WCO) standards for supply chain security in the international movement of goods originated in an MRA by Chile, Colombia, Mexico and Peru in 2018, and was extended in 2022 to span 11 Latin American states (WCO 2021). Similarly, in ASEAN, a plurilateral MRA has been agreed, ensuring that an AEO that has obtained certification in one ASEAN member will be recognized as an AEO by other the authorities of another ASEAN member, thus benefiting from faster cargo clearance when trading goods within ASEAN. The AEO MRA references international (WCO) standards to secure and facilitate global trade (the SAFE Framework). See https://asean.org/asean-member-states-sign-arrangement-to-facilitate-trade-customs-clearance/.

[25] Sabel and Victor (2022).

[26] See, e.g., Mavroidis (2019).

matter of negotiation to ensure that means suitable to the situation of exporters of various counties meet the requirements of the importing countries. The creation of OPAs would simply authorize the formation of product or sector specific clubs on these principles in the process providing a framework for states to agree on objectives and metrics to assess the equivalence of domestic regulatory policies regimes put in place in pursuit of agreed objectives and performance standards.

An additional and more important advantage comes from the fact that, in their formation, restricted OPAs must confront the regulatory heterogeneity of potential members. However, much they share goals, proponents of a new climate club will inevitably differ in their understanding of the means to achieve them because of the idiosyncrasies of their industries and legal systems. In coming to agreement on which means to count as equivalent, they will also create procedures and precedents for subsequent requests for membership. Put another way, the formation of a green club, if it is not just the façade for protectionism, requires the creation of a rudimentary international standard, including, implicitly at least, the methods for further elaborating it.

WTO law, despite its insistence on consensus as a condition of accepting OPAs, looks with favor on international standards agreements as a basis for trade restrictions. The TBT agreement requires countries adopting trade-restrictive regulations to base them on an applicable international standard if one exists and there is no compelling reason not to do so. The broad implication for current purposes is that a state contemplating application of production requirements to imports should set standards collaboratively, not unilaterally. Restricted plurilateral agreements are a way to do exactly that. The bottom line is that if states make market access conditional on jointly agreed regulatory standards, they have significant leeway to do under current WTO rules. Put differently, what a state can do unilaterally, but awkwardly, can be done more effectively and elegantly in a concerted manner. In a world without a hegemon, where building alliances and avoiding unnecessary provocation is a matter of rudimentary prudence, that is an important difference.

3. Preparing the ground for trade-climate OPAs

Assuming, arguendo, that space exists or can be made for green climate clubs within the precincts of the WTO, the foregoing discussion of the EUDR – which applies mutatis mutandis to similar unilateral initiatives such as the CBAM and corporate sustainability due diligence regulation – makes clear that a precondition for pursuit of plurilateral cooperation is that states share specific sustainability-related policy objectives and have developed an understanding how these are best pursued within their jurisdictions.

In practice, countries will have adopted national regulatory policies and garnered experience with local, regional and country-wide programs aimed at improving the sustainability of economic activities. These will inevitably and appropriately be heterogenous, reflecting specific national and local contexts and circumstances, and differ in their effectiveness in attaining underlying policy objectives. At the national level, there may not be a common understanding of the effectiveness, efficiency and distributional consequences of local and/or national policy

measures, and differences in views on the appropriate policy mix. At the international level, states pursuing unilateral action to leverage trade in the pursuit of climate change mitigation efforts need to understand whether affected countries share sustainability goals, the effectiveness of regulatory programs and systems that are in place in exporting countries, and the incentive effects of applying unilaterally defined performance standards or specifying what type of intervention must be in place in an exporting state in order for firms to be regarded as operating under equivalent regimes as those that apply to domestic firms.

Clearly this is inherently a complex and challenging endeavor. Substantial investment in analysis is called for to inform processes of deliberation at both the national level among stakeholders and economic actors and at the international level between governments. Exploring the scope and potential contours of OPAs calls for sector-specific expertise, willingness of economic actors to engage and assistance to enable constituencies to participate. Given the resource-intensive, multi-country nature of the challenge, support from multilateral development institutions that have the mandate, country presence, trade and climate mitigation-related expertise and the ability to finance national projects and programs can make an important contribution to prepare the ground. Such support has been put in place for specific policy domains in the past. An example is the program to support the epistemic community that prepared the ground for and informed the content of the Trade Facilitation Agreement (Hoekman and Sabel, 2021).

As discussed further below, this can be pursued by building on existing fora through which parties engage in dialogue and identify areas for cooperation on economic policy matters. What is needed is a forum could map out what is already in place in major producing countries, identify local and national programs that are tailored to local circumstances and that could be scaled up, and political economy factors that constrain the wider adoption of approaches that have proven to be effective in attaining sustainability goals and addressing the needs of local communities and producers. The aim would be to develop alternative proposals in response to unilateral trade measures in major export destinations, including potential for use or development of international standards and performance metrics that in turn could be an input into processes to assess the equivalence of national regulatory regimes and sustainability systems.

The earlier discussion suggests two general points of orientation. First, as we have repeatedly emphasized, the disconnects between (potential) constituents and trade representatives, south and north, are pervasive and long-standing. Trade representatives will have to learn what their stakeholders need from them today, even as they re-examine who those stakeholders should be; stakeholders who expected nothing from trade, or nothing but protection from competition or access to export markets, will have to come to grips with what trade can be in a world of NTMs. A lingua franca for mutual understanding among near strangers will have to be invented. Recasting relations between stakeholders and representatives is thus not only a problem of coordination – connecting individuals and groups that should be in conversation but are not – but also of capacity building: learning to think in new ways about familiar problems and their solutions in the light of both the constraints and new possibilities that the changing trade order affords. Such capacity building is inherent in the vocation of multilateral development institutions.

A second point of orientation is provided by the structure of the EUDR itself. The regulation requires sector-specific responses, and within each sector the construction of a system of traceability that can follow a product from its origin in a particular plot to its arrival at a user or consumer half a world away. Discussions in the new plurilateral fora should likewise be organized, initially at least, by sector; they too should focus particularly on local developments and contexts, because that is where the strains on producers, and the tensions among them, are most evident and accessible.[27] Careful examination of local experience in adjusting or not to increasingly demanding requirements for supply chain organization can then point the way to national measures and trade adjustments that support and generalize promising responses. As the breakdown of many VPA negotiations in the context of earlier EU efforts to address illegal trade in timber shows, the failure to take account of local experience in its diversity from the beginning can hamstring national discussion.

Brazil has a rich recent history of learning from local experience in just this way. During Lula's earlier two terms in office (2003–2010) the government, as part of a larger program of intensified environmental enforcement, listed 50 "priority" municipalities, together accounting for some 40% of deforestation in the Amazon. Landowners within the listed municipalities were ineligible for subsidized agricultural credits, and subject to other penalties, making reductions in deforestation, and increased respect for environmental norms generally, a collective responsibility. To be removed from the list, or to avoid being added to it, municipalities began to innovate: One result was a digital rural cadaster, later adopted at the national level; another was a series of efforts– ultimately unsuccessful, for want of technical support and other resources – to improve the productivity of small cattle ranchers to reduce soil degradation, and hence the clearing of new land in the forest. This legacy of local innovation, sometimes supported and sometimes not by national measures, can surely be one starting point for discussion of these problems today, not in the nostalgic hope of reviving earlier solutions, but rather to avoid repeating known mistakes, and to build on current initiatives shaped by the earlier wave of innovation.

An example of this continuing ferment is the project of a group of municipalities in the Southeast of the state of Pará, among the most deforested areas in the Amazon, in cooperation with NGO's and a private-sector association, to develop and diffuse a sustainable model of family ranching.[28] Ironically, the fact that the draconian sanctions threatened by the EUDR so little challenge business as usual for Brazilian export interests that there is no new flight to such local reform, while parts of the Amazon continue to burn, is yet another indication of how inconsequential the measure is likely to be—and of how much the EU and tropical forest countries could benefit from revisiting it.

But not all the important issues will be sector-specific or amenable to change at the local level. A crucial problem that cuts across all the sectors included in the EUDR and must be addressed by revision of the regulation itself is the recovery of degraded lands. This could be a second

[27] In the case of Indonesia, for example, natural resource extraction is a greater cause of deforestation than land use for production of agricultural products (Azevedo and Ruhle (2025), but this activity and its outputs is not covered by the EUDR. A context-specific dialogue and engagement will help to recognize such heterogeneity.
[28] Proforest (2023). For another example, see The Nature Conservancy (2021).

convening theme for the rethinking trade fora. It is estimated that some 70 million hectares of land have been degraded in the Amazon. The consensus, widely shared among Brazilian agronomists and other informed observers, is that much of this soil is recoverable to the benefit of the environment and sustainable economic activity, and often at surprisingly low cost.

The EUDR, despite its overarching goal of mitigating climate change, ignores this potential resource. As discussed, the regulation was a response to the realization that tropical forests were not just threatened by illegal logging, but also, and often more significantly, by encroachment from commercial agriculture. But in broadening the scope of the threats that it addresses, the new regulation remained attached to a narrow understanding of the goal: preservation of the existing forest cover. This can be questioned given that national legislation or regulation aiming to increase the "environmental services" of biomes in the tropics may be more effective. Such a bottom-up focus may promote recovery of depleted soils through reforestation by monocrops such as eucalyptus, through agroforestry, combining cultivars like cacao with silviculture, or by what the Brazilians call ILPF (integração lavoura-pecuária-floresta), an extension of agroforestry to include stock raising. This is just the kind of consideration, obvious to one side and invisible to the other, that unilateralism can easily ignore, but collaborative decision-making will flag.

Moving forward: Leveraging extant platforms and institutions

Various institutional frameworks exist that may offer opportunities to support the type of engagement sketched out above. We discuss three in what follows: trade agreements (PTAs), development cooperation and associated international organizations, and the WTO.

1. PTAs

Regional trade agreements such as MERCOSUR and the Pacific Alliance in Latin America, as well as large PTAs such as EU-Mercosur may provide institutional mechanisms for parties to discuss not only the trade the effects of domestic regulatory measures but to cooperate on the substance of environment-related policies and work jointly to improve environmental outcomes. There are two potential entry points for such engagement, which may be complementary: chapters and associated committees on technical barriers to trade (TBT) (i.e., regulatory requirements for product and producers) and provisions that directly address environmental policy and sustainability.

As environmental standards are simply one type of technical regulation, building on the TBT infrastructure in PTAs offers a potential path for governments and stakeholders to negotiate MRAs that address environmental standards. Both Mercosur and the Pacific Alliance include MRAs on specific areas of technical product regulation (Blyde, 2024). The focus of such MRAs is on reducing the trade costs of regulatory heterogeneity through adoption of common approaches, e.g., international standards where these exist, or cooperation among regulators to determine the equivalence of national regimes. The challenge of using existing arrangements as a framework is that trade agreements generally do not consider what makes for good environmental regulation, and, as mentioned, explicitly protect the right of governments to regulate.

As has been noted in the literature, e.g., Hoekman and Sabel (2019), cooperation on the design of regulatory standards must be led by regulatory agencies, not trade officials, and those agencies

must have the mandate to work with foreign regulators in the development of regulatory instruments. The experience to date with efforts to pursue international regulatory cooperation on issues that are only indirectly related to trade suggests it will be difficult to use the TBT route to address the problems of unilateral environmental policies such as the EUDR. A necessary condition will be a willingness to consider production process-related regulations as opposed to the traditional focus of trade agreements on product-specific standards, and using the TBT committees as fora in which to not only discuss alternative approaches to regulating an economic activity and their respective effects on trade, but to agree on what constitutes good regulatory practices and the equivalence of national regulatory regimes. As argued by Blyde (2024), there is precedent in LAC for deeper cooperation on TBT matters, and it may be feasible to expand the mandate of TBT-related bodies under LAC trade agreements to develop common approaches t environment-related regulation.

An alternative entry point is to leverage environmental chapters in PTAs. In the case of the EU, Trade and Sustainable Development (TSD) chapters have been included in its PTAs since 2010. The TSD chapter in the EU-Mercosur trade agreement is very similar to those included in other EU trade agreements (Oliviera et al. 2024b). The chapter commits parties to promote sustainable development through …"enhanced cooperation and understanding of their respective labour and environmental trade-related policies and measures, taking into account the different national realities, capacities, needs and levels of development and respecting national policies and priorities" (TSD chapter, Art 1.4(c). Signatories retain the right to determine their sustainable development policies and priorities, levels of domestic environmental protection and adopt or modify laws and policies (TSD chapter, Art. 2.1). Moreover, all parties may invoke the General Exceptions provision of the agreement in relation to environmental measures (Art. 5.6).

The upshot is that measures such the EUDR are not affected by the agreement. However, Art 8, entitled Trade and Sustainable Management of Forests, calls for the parties to cooperate, "as appropriate, bilaterally, regionally and in international fora on issues concerning trade and the conservation of forest cover as well as sustainable forest management, consistent with the 2030 Agenda for Sustainable Development (Art. 8.3(b). The TSD chapter may provide some scope for attenuating the EU-centric approach to defining standards. Specific measures and initiatives to provide increased market access opportunities for products obtained sustainably and in accordance with domestic laws from smallholders, cooperatives, indigenous peoples and local communities are to be discussed in the TSD Sub-Committee or another body established under the Agreement, as appropriate (Arts. 28-29).

An annex to the TSD chapter, which is specific to EU-Mercosur, reflecting discontent created by EU unilateral measures, includes several provisions related to the implementation of trade-related environmental measures. When assessing compliance with such measures, information provided by the exporter's authorities are to be used (Annex on Trade and Sustainable Development, Art. 55). Moreover, regarding sustainability measures affecting trade and the placement on the market related to the protection of wooded ecosystems, "where EU law so allows, the EU recognises that this Agreement and actions taken to implement commitments thereunder shall be favorably considered, among other criteria, in the risk classification of countries; and documentation, licenses, information and data from certification schemes and

traceability and monitoring systems officially recognized, registered or identified by Mercosur countries shall be used as a source by the relevant authorities in the EU for the purpose of verifying compliance of products covered by such measures with traceability requirements placed on the EU market" (Art. 56).[29]

These provisions are steps in the right direction, but do not question the substance of environmental regulation or the use of trade-related climate measures by the EU. They are limited to providing some flexibility regarding implementation modalities.

This does not mean it is not possible to use the TSD committee structure to pursue cooperation on how best to combat deforestation. But to do so would require changes in the mandate and composition of the committees and institutional entities that govern implementation of EU trade agreements. Harrison and Paulini (2024), among others, argue that TSD chapters are not effective instruments to improve environmental performance, which helps explain why empirical research finds that EU agreements do not improve environmental performance of signatories.[30] Bögner (2024) argues that the potential of EU trade agreement to address environmental issues is limited because implementation typically focuses on trade matters, not substantive environmental performance, but this tendency is most pronounced when the trade partner is large.

The upshot is that, as a practical matter, a major change to the modus operandi of trade agreements will be needed if they are to become useful instruments to constrain let alone preempt the use of unilateral measures like EUDR. In principle, as we have variously, suggested, trade agreements could be turned to such purposes. As argued by Oliviera et al. (2024b), for example, EU-Mercosur could become a tool for improving sustainability governance in trade between the two regions by establishing a structured and legally stable platform for cooperation and implementing joint initiatives. However, this will require changing the goal and mandate for negotiators and revisiting the tools used to structure the agreements, including: (i) the ex-ante sustainability impact assessment, which currently does not engage domestic regulation, and does not even establish priorities for cooperation outside of trade policy narrowly defined; (ii) the dialogue mechanisms and committees, whose mandate would have to be broadened to allow discussion of the substance of nontrade regulatory regimes, and not just ways to reduce the trade effects of regulatory heterogeneity, which is the current focus; and (iii) the terms of reference, composition and logistics of the domestic advisory groups that serve as a vehicle for interaction with NGOs and stakeholders in partner countries following the entry into force of a trade agreement and thus are a crucial source of feedback and guidance on its implementation.[31]

Even if such desirable changes could be achieved, moreover, pursuing regulatory cooperation through PTAs is inherently limited as this will apply only to members of agreements. For global

[29] In the context of due diligence requirements firms may use of traceability, certification or other third party verified schemes. The EU, when requested by Mercosur authorities, is to provide support for transparent and independent assessments of traceability, certification or third-party verification schemes and their alignment with requirements and good practices (Art. 57).

[30] See e.g., Caliendo et al. (2024) and Francois et al. (2025).

[31] Space constraints preclude an in depth discussion of the current state of play and how these institutional elements of EU trade agreements could be re-purposed to address the trade-environment nexus. See e.g., Hoekman and Roja-Romagosa (2022) and Potjomkina, Orbie and Shahin (2023).

climate issues more flexible approaches are called for that are able to encompass many countries across the globe. Insofar as countries decide to use PTA structures to reduce the incidence of unilateral trade-climate measures, a plethora of individual PTAs doing so will be associated with potentially significant redundant costs. Extending specific elements of such PTA-based cooperation into an OPA would enable economies of scale to captured on many dimensions, including implementation, monitoring and evaluation and learning from experience that informs adaptation of disciplines and approaches.

2. Economic development organizations and institutional frameworks

A alternative approach, one that is not incompatible with expanding extant PTA mechanisms, would be to build on bilateral and multilateral development institutions: national development agencies in OECD nations, regional institutions – such as the IDB and CAF in LAC or the Global Gateway and DG International Partnerships in the EU – and multilateral development agencies such as the World Bank. At the regional level this could take the form of leveraging the convening power of regional institutions such as the IDB to create forums in which Latin American countries can begin to develop counter proposals to the EUDR and similar unilateral measures as part of a broader reconsideration of their environmental and trade strategies. As the repercussions of unilateral action may – and often will – span the globe, such an effort could rely on a network approach in which the different regional development banks work together, along with multilateral institutions such as the World Bank, to establish platforms for dialogue and deliberation. Given the multi-regional consequences of decisions by major trade powers to condition access to their markets on domestic regulatory policies and associated performance metrics used to assess compliance, such fora should be open to participation by countries located in other parts of the global south as well as representatives of states that have taken or are considering unilateral trade action in pursuit of environmental or labor standards.

The potential for negotiating OPAs based on the outcome of such engagement is of course to be determined. The prospects may, counterintuitively, be enhanced by the rise of geopolitical tensions, China-US rivalry and the hostility of the Trump Administration to multilateral cooperation and increasing emphasis on unilateral trade policy measures. The EU, for example, in response to such pressures, is seeking to enhance its access to critical raw materials through partnerships with source countries, supported by financing from the Global Gateway. It has mooted the idea of a global Critical Raw Materials Club with interested LAC partners, to strengthen sustainable supply chains and diversify sourcing (Jütten, 2024). This type of cooperation is being driven by concerns to bolster the economic security of the EU.

The explicit pursuit of a cooperative club approach by the EU suggests the EU is open to plurilateral cooperation. LAC countries could seek to link consideration on such clubs to cooperation on the deforestation issue and more broadly the use of trade-related climate measures and EU supply chain due diligence regulations. The process of determining the contours of an OPA that parallels a critical raw materials club could be supported with funding from the IDB and the EU. An entry point for this is offered by the Cooperation Protocol in the EU-Mercosur agreement, which commits the parties to pursue cooperation partnerships, utilizing financing mechanisms under the EU-LAC Global Gateway Investment Agenda.

3. The WTO

The WTO membership has long struggled with the trade-environment nexus given that trade policy will have both direct and indirect impacts on environmental outcomes, and environment-related regulation will have implications for trade. Space constraints preclude a discussion of efforts to "green" the GATT and its successor. There is to date no WTO agreement on trade and the environment, but there is a Committee on Trade and Environment and there are active plurilateral discussions on a range of environmental issues – e.g., plastics pollution and sustainable plastics trade, and reform of fossil fuel subsidies. To date there have been no successful negotiations to establish binding agreements on environmental matters, either on a MFN basis or in the form of what we have called restrictive OPAs. Long-running negotiations to remove tariffs on a range of environmental goods are illustrative.

As discussed above, there are serious constraints to pursuing restricted OPAs under the WTO umbrella, which is why many IEAs that include trade provisions (incentives), have been concluded outside the WTO. There is a good case for seeking to build bridges between IEAs that encompass trade and the WTO institutional framework (Voituriez, 2023), but this will require both resolving the impasse on the willingness of the WTO membership to accept restricted OPAs, and addressing the silo problems that affect the institution (Bellman, 2024). Even if, as seems likely, this cannot be achieved in the near term, the WTO offers a good platform for states to discuss the objectives and impacts of domestic regulatory policies that link trade and the environment. In previous work we have advocated that WTO bodies do more to engage in policy dialogue, foster transparency of policy, share information on the effectiveness of trade-related climate measures, and engage in deliberation to assess the spillover effects of national environmental measures.

4. Conclusion

The increasing willingness of major trade powers to link trade to sustainability goals – unilaterally conditioning market access on satisfying specific production requirements – is a source of trade tensions—tensions that will be all the more costly because unilateral intervention also makes it unlikely that the measures will realize the nontrade benefits purportedly motivating them. Research suggests that the environmental impact of trade policies will be limited at best (Francois et al. 2025; Caliendo et al. 2024). Trade-related emissions, on average, account for only one-third of overall emissions, even including land-use emissions (WTO, 2023). Therefore, achieving significant emissions reductions will have to primarily rely on domestic regulations and robust OPAs through which states jointly define and cooperate on the design and implementation of environmental policies.

Rather than engaging in unilateral responses, targeted countries are likely to be better off cooperating amongst themselves to determine if and how they share the objectives that motivate intervention by importing states. In practice, insofar as a foreign partner's environmental goals drive trade conditionality, a concerted (collective) response centered around national actions that aim at achieving the same goal arguably should be an element of any response.

Many if not most countries have programs in place to address deforestation, reduce carbon content of production/consumption, etc. The challenge is to scale up those that are most effective without undercutting the ability of firms in the global south to use trade to create job opportunities and increase real incomes. Identifying where there is an opportunity to do so and the associated political economy constraints that may need to be overcome is important. The threat of unilateral action by large trading partners may be useful in this regard, but the key is that the focus be on interventions targeting the underlying environment goal and that these are effective. We expect that home grown approaches will be far superior to imposed diktat by a trading partner.

Problems involving regulatory design to respond to climate change or to strengthen oversight and control of supply chain processes call for cooperation to identify what constitutes good practice considering national contexts and circumstances and balancing the achievement of underlying objectives against competitive (trade) spillovers. OPAs can help parties understand and learn about alternative policy options and identify approaches that are more effective and efficient than recourse to unilateral efforts to leverage access to markets. Engaging with trade partners on the design and operational implementation of mechanisms to support the green transition in ways that minimize trade costs for firms and incentivize joint action by state and non-state actors in foreign countries to bolster sustainability will increase the prospects for achieving underlying policy objectives.

We do not pretend here to provide anything like a fully worked out proposal for addressing the challenge of supporting the negotiation of OPAs to govern the use of trade policy as part of climate change mitigation efforts. Our aim rather is to suggest some considerations to guide a process that can only succeed if it is open to discoveries and prepared to fail often on the way to success. A first step would be to discuss planned initiatives on issues such as deforestation, carbon border adjustment or supply chain due diligence in multilateral fora. Regional and multilateral institutions can – and arguably should – play an important role in providing a venue for the needed deliberations at both the national and regional level to develop counter proposals that are superior in terms of both effectiveness and efficiency to unilateral imposition of standards by major import markets.

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