



# EU trade and the environment:

## Development as the missing side of the triangle

There is little doubt that the impact on developing countries of the EU's greening of its trade policy will feature quite prominently during the next EU trade policy review scheduled to take place next week in Geneva. We believe,

at Europe Jacques Delors, that this issue needs to be addressed more upfront than until now. This is the purpose of this paper, the n°14 in Greening Trade series.

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## 01

# Introduction

For the last four years, the greening of the EU's trade policy has progressed at a fast speed, as evidenced by a series of initiatives by the EU Commission which have resulted or will result before the end of the present legislature in the adoption of a host of new "greening trade" measures. Besides the two flagship Carbon Border Adjustment Mechanism (CBAM) and the Deforestation-Free Products Regulation, Europe Jacques Delors has been researching and publishing on the Corporate Sustainable Due Diligence Directive (CSDD), as well as on other envisaged instruments such as mirror measures in the agrifood domain or product regulations.

The overall purpose of the EU's green trade initiatives is to align the EU's import regimes with changes in the EU's domestic regimes stemming from its new environmental ambitions known as the "EU Green Deal" and the "fit for 55" package – while respecting international trade rules. Such an alignment is based on both offensive and defensive considerations. Offensive, as the EU's green initiatives often aim to incentivise similar greening efforts by EU's trade partners, leveraging the EU's market power. Indeed, due to the fragmented nature of global value chains, limiting environmental initiatives to the EU will be insufficient in addressing the block's environmental footprint. Defensive, as they also respond to fears from domestic producers that the lack of a level playing field negatively impacts their competitiveness when compared to foreign producers importing into the EU that are not subject to similar or comparable environmental requirements. This, in turn, could result in the further externalisation of the EU's environmental impact.<sup>1</sup>

<sup>1</sup> European Commission (22 June 2022). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region. *The power of trade partnerships: together for green and just economic growth*. Available at: <https://circabc.europa.eu/ui/group/8a31feb6-d901-421f-a607-ebbdd7d59ca0/>

This new corpus of green legislative and regulatory instruments is in line with the political will of European citizens as it was expressed in the European elections in 2019. Although the discussions by the Council and the Parliament of green instruments, such as the CBAM and the Deforestation-Free Products Regulation, have been difficult as various interest groups have unsurprisingly manifested different positions, these instruments have been adopted in both chambers with comfortable majorities confirming the support of domestic public opinion. Only recently have some measures met more resistances, such as the termination of combustion engines production by 2035.<sup>2</sup>

But reactions from the EU's trade partners have been more negative, underlining what Europe Jacques Delors called in 2021 the "first mover disadvantage",<sup>3</sup> and leading to criticism of "green protectionism" or even, more recently, of "regulatory imperialism".<sup>4</sup> Whereas such positions were to be expected, as exports to the EU will be affected by the adoption of the EU's green instruments, they need to be qualified depending on the specific situations of the countries impacted. Some countries whose production conditions provide them with a "green" comparative advantage will benefit from a large and deep market where their products offer a premium. Others will not and will have to adjust. Some countries have the resources to change or can find alternative markets, others will struggle and lose part of the EU's market which they may depend on. What makes the difference often has to do with discrepancies

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<sup>2</sup> Hanne Cokelaere (3 March 2023). *Approval of EU's 2035 combustion engine ban postponed*. Available at: <https://www.politico.eu/article/approval-of-eus-2035-combustion-engine-ban-postponed/>.

<sup>3</sup> Europe Jacques Delors (July 2021). *GT6 – Towards a European CBAM – Three 'Ds' to overcome the EU's first mover disadvantage*. Available at: <https://www.europejacquesdelors.eu/publications/gt6-towards-a-european-carbon-border-adjustment-mechanism>.

<sup>4</sup> Hanne Cokelaere (3 March 2023). *Approval of EU's 2035 combustion engine ban postponed*. Available at: <https://www.politico.eu/article/approval-of-eus-2035-combustion-engine-ban-postponed/>.

in levels of economic development, hence in capacities to adapt production systems to new standards.

These reactions and their differences matter for geopolitical reasons at a time when North-South relations have soured as a result of an accumulation of frustrations of various origins, from past colonialism to the perception of double standards in the conduct of international affairs or energy policies, and from the scars of unequal treatment during Covid to attitudes towards the Russian aggression of Ukraine.<sup>5</sup> They also matter, perhaps more importantly, for specific environmental reasons as issues like climate change or biodiversity loss are inherently characterized by the asymmetry between causes of environmental degradation residing mostly on the side of developed countries, and their consequences which are felt more severely by some developing countries and Least Developed Countries (LDCs).

For all these reasons, the authors of this publication believe that the EU should acknowledge that greening its trade is affecting, and will disproportionately affect, some of its most vulnerable trading partners and re-integrate more of the development dimension in the conduct of its green trade policy. Our position is not new and was already expressed in several of our previous publications in the “Greening Trade” (GT) series.<sup>6</sup> Yet we believe that the negative dynamics which have appeared recently deserve a strong and rapid reaction on the EU side. Designing the contours of this reaction is the purpose of this paper.

<sup>5</sup> Joseph Borrel (28 March 2023). *Geopolitics of the green transition and improving EU's economic security*. Available at: [https://www.eeas.europa.eu/eeas/geopolitics-green-transition-and-improving-eu%E2%80%99s-economic-security\\_en](https://www.eeas.europa.eu/eeas/geopolitics-green-transition-and-improving-eu%E2%80%99s-economic-security_en).

<sup>6</sup> The “Greening Trade” series is available at: <https://www.europejacquesdelors.eu/policy-areas/trade-environment>.

## 02

# Unpacking critique against the EU's green trade instruments

Criticisms against the EU's green trade instruments come predominantly<sup>7</sup> from developing countries and LDCs, turning this into a North-South issue. While trading partners' critique focus on different unilateral measures depending on their anticipated impact (e.g., India focuses on the CBAM, while Malaysia and Indonesia direct most of their critique against the Deforestation-free Products Regulation) trading partners' negative reactions to the EU's green trade instruments centre on green imperialism, the anticipated economic impact of the measures, and climate justice concerns – each reinforcing the other.

## 2.1. Green imperialism

A key critique against the EU's green trade instruments focuses on the unilateral nature of the EU's green trade instruments, and that “Brussels sees itself as an exporter of rules to third countries – as the legislators of the world.”<sup>8</sup> The critique around regulatory imperialism does not attack the EU's climate agenda *per se* but rather focuses on a lack of agency. Developing country trading partners do not want to be told by the EU how to go about addressing environmental issues, but rather do it as part of their own sovereign agenda. This is aptly reflected in remarks by the Indonesian President Joko Widodo to European leaders at the EU-ASEAN summit in December 2022 that “there must

<sup>7</sup> While this paper focuses on the development dimension, non-EU OECD countries have also been critical of the EU's unilateral sustainability measures. In particular, non-EU OECD countries have centred their criticism on the fragmentation that emerges as a result of different policies adopted by different countries.

<sup>8</sup> Barbara Moens and Karl Mathiesen (16 January 2023). *Trade partners see red over Europe's green agenda*. Available at: <https://www.politico.eu/article/eu-green-agenda-has-its-trading-partners-seeing-red-climate-neutrality/>.

be no coercion, no more parties who always dictate and assume that my standards are better than yours.”<sup>9</sup>

In the context of the EU’s Deforestation-Free Products Regulation, Indonesia and Malaysia, in a communication at the WTO council, agreed “that the fight against climate change and the conservation and sustainable management of forests are urgent tasks” but “regret that the EU has chosen the option towards unilateral legislation”, and call upon a coordinated approach.<sup>10</sup> Even before it has entered into force, the “Brussels” effect of the EU Deforestation-free Products Regulation is already felt. On May 30th, more than 20 Brazilian banks announced they will only provide export credits to bovine meat exporters if such producers can prove compliance with the EU Deforestation-Free Products Regulation.<sup>11</sup>

The unilateral imposition of a set of standards with extra-territorial extension<sup>12</sup> can lead to a disregard for local conditions and relevant legislative and regulatory frameworks in trading partners. For example, in the context of deforestation, Indonesian and Malaysian government officials have criticized the fact that their progress on tackling

deforestation has not been taken into account.<sup>13</sup> Malaysian Deputy Prime Minister Fadillah Yusof has highlighted that more than 90 per cent of palm oil farmers in Malaysia are certified to be deforestation-free, which should be sufficient to address deforestation. Yet, compliance with local deforestation standards is not considered sufficient to demonstrate compliance with the EU’s Deforestation-free Products Regulation.<sup>14</sup>

Similarly, the EU’s green trade instruments have been criticized for being politically motivated, and not fully grounded in science. Referring to the benchmarking scheme incorporated in the EU’s Deforestation free Products Regulation that will categorize countries as high, standard or low risk of deforestation, the Indonesian Coordinating Minister for Economic Affairs, Airlangga Hartarto, highlighted that “the EU is not a rating agency. No one single country can classify another country as high risk or small risk.”<sup>15</sup> Developing countries and LDCs are concerned that risk classifications are strongly influenced by political and economic considerations – and not science.

## 2.2 Economic challenges

A second set of critique centres on the economic implications of the EU’s green trade instruments, which some countries consider to be green protectionism. Once adopted, the EU’s green trade instruments will condition access to the EU market on compliance with the require-

<sup>9</sup> Edi Suhardi (26 December 2022). Indonesia’s strong foreign and international trade policy for EU. Available at: <https://www.thejakartapost.com/paper/2022/12/26/indonesians-strong-foreign-and-international-trade-policy-for-eu.html>.

<sup>10</sup> WTO (29 November 2022). *Joint letter European Union proposal for a regulation on deforestation-free products. Submission by Indonesia and Malaysia*. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/GEN213.pdf&Open=True>.

<sup>11</sup> Beatriz Bulla and Adriana Fernandes (29 May 2023). *Medida da Febraban contra desmatamento segue linha de nova legislação da Europa que afeta o Brasil*. Available at: <https://www.estadao.com.br/economia/medida-da-febraban-contra-desmatamento-segue-linha-de-nova-legislacao-da-europa-que-afeta-o-brasil/>.

<sup>12</sup> Europe Jacques Delors (April 2023). *GT 13: Exploring the Interface between unilateral and bilateral approaches to greening EU trade*. Available at: [https://europejacquesdelors.cdn.prismic.io/europejacquesdelors/abe76433-ea95-4986-8740-c245e3f0960b\\_GT13\\_EN.pdf](https://europejacquesdelors.cdn.prismic.io/europejacquesdelors/abe76433-ea95-4986-8740-c245e3f0960b_GT13_EN.pdf).

<sup>13</sup> According to Global Forest Watch (GFW), the rate of forest loss has drastically decreased since 2017 in both Malaysia and Indonesia. GFW’ rates and statistics can be found at: <https://www.globalforestwatch.org/dashboards/global/>.

<sup>14</sup> Samantha Ho (16 March 2023). *EU deforestation law risks making sustainable palm oil certification irrelevant, says grower*. Available at: <https://www.eco-business.com/news/eu-deforestation-law-risks-making-sustainable-palm-oil-certification-irrelevant-says-grower/>.

<sup>15</sup> Louise Guillot and Leoni Kijeweski (31 May 2023). *“EU is not a Rating Agency”: Indonesia, Malaysia hit out at deforestation rules*. Available at: <https://y3r710.r.eu-west-1.awstrack.me/L0/https:%2F%2Fpro.politico.eu%2Fnews%2F164310/1/0102018871813eae-7119196d-12f2-43e1-922b-e893a92cfcb9-000000/xWxzQzmnwalQsyvCH34DxGJ-8us=324>.

ments set out in these instruments. This will create market access barriers for EU trading partners, especially developing countries and LDCs, as well as small and medium enterprises (SMEs) that may not be in a position to meet the EU's stringent environmental requirements. It will also add significant costs to those producers that are exporting to the EU market.

A related critique is that the impact of the EU's regulations will not be felt similarly across the board. For example, the CBAM exempts countries with carbon pricing schemes in place, such as countries that are part of the European Free Trade Association (EFTA). However, countries that have adopted stringent climate policies but without carbon pricing will not be exempt, even when such policies exhibit similar environmental outcomes.<sup>16</sup>

Similarly, and especially in areas such as agriculture, EU producers are considered to have a significant advantage over foreign producers due to the availability of subsidy schemes. For example, if mirror clauses were adopted for certain pesticides,<sup>17</sup> and the regulatory requirements imposed on EU importers are largely equivalent to the regulatory requirements that apply in the EU, the availability of EU subsidy schemes would create an inherently uneven playing field, economically disadvantaging foreign producers that do not have access to similar subsidies.

With respect to the Carbon Border Adjustment Mechanism (CBAM), some developing countries are concerned about the Mechanism's economic consequences – especially when their exports to the EU are based on carbon-

intensive production.<sup>18</sup> A recent study conducted by the London School of Economics (LSE) found that Africa as a continent could lose up to USD 25 billion per annum as a direct result of the CBAM.<sup>19</sup> Impacts will vary for different countries: For example, Mozambique, accounts for 7.7% of the EU's imports of aluminium and is expected to be the African country to be more affected by the CBAM.<sup>20</sup> With respect to the EU's Deforestation-free Products Regulation, a study conducted by the Centre for International Forestry Research (CIFOR) found that while it would help reduce deforestation in the region, it would also reduce palm oil production by 500,000 metric tons and lead to job losses in the sector. In other words, environmental benefits would come at the expense of the economic considerations – at least in the short term.<sup>21</sup> The premium prices that would be available for the products sold on the EU market would not counterbalance these negative economic impacts.

Ultimately, the impact of different EU green trade instruments on its trading partners will depend on the final text of these regulatory instruments, including timely clarifications with regards to their implementation. At the same time, impact of these unilateral measures on its trading partners will also depend on a country's trade dependency on the EU, level of export concentration, as well as a country's ability to adapt, invest, and redirect to different export markets. This, in turn, will depend on the strength of a trading partner's economy and a country's political will to adopt a long-term, strategic approach to green growth.

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<sup>16</sup> The African Climate Foundation and LSE Firoz Lalji Institute for Africa. (2023). *Implications for African countries of a Carbon Border Adjustment Mechanism in the EU*. Available at: <https://www.lse.ac.uk/africa/assets/Documents/AFC-and-LSE-Report-Implications-for-Africa-of-a-CBAM-in-the-EU.pdf>.

<sup>17</sup> Europe Jacques Delors (April 2022). *Grape 2: A narrow path for EU agri-food mirror measures*. Available at: <https://www.europejacquesdelors.eu/publications/grape-2-a-narrow-path-for-eu-agri-food-mirror-measures>.

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<sup>18</sup> Pawel Zerka (15 May 2023). *Multilateral trade: The green European genie at the WTO*. Available at: <https://ecfr.eu/article/multilateral-trade-the-green-european-genie-at-the-wto/>.

<sup>19</sup> The African Climate Foundation and LSE Firoz Lalji Institute for Africa. (2023). *Implications for African countries of a Carbon Border Adjustment Mechanism in the EU*. Available at: <https://www.lse.ac.uk/africa/assets/Documents/AFC-and-LSE-Report-Implications-for-Africa-of-a-CBAM-in-the-EU.pdf>.

<sup>20</sup> *Ibid.*

<sup>21</sup> Hans Nicholas Jong (4 January 2023). *For Indonesian smallholders, EU deforestation rule is a threat- and an opportunity*. Available at: <https://news.mongabay.com/2023/01/for-indonesian-smallholders-eu-deforestation-rule-is-a-threat-and-an-opportunity/>.

### 2.3 Justice and fairness

A third set of critique centers on issues of justice and fairness. Given that many developing countries and LDCs have made only negligible contributions to environmental challenges such as climate change, it would be unfair to require the same mitigation standards from these countries as from developed countries with high levels of greenhouse gas emissions.<sup>22</sup> This concept is embedded in the Paris Agreement as Common But Differentiated Responsibilities (CBDR) but is relevant also to environmental issues beyond climate change, such as biodiversity loss. Indeed, in a communication at the WTO council, Indonesia and Malaysia, recall the CBDR principle, as well as the EU Member States' historical role in deforestation activities and climate change.<sup>23</sup>

Related to this argument is the "development first" narrative, i.e., developing countries should not be deprived of economic opportunities that were available to the West for decades, notwithstanding a global environmental crisis. The EU's green trade instruments do not provide exemptions to producers from countries whose negative environmental impacts have been and are minor, thus inviting criticisms with regards to justice and fairness. While exemptions for LDCs were originally considered in the CBAM negotiations, they were not adopted into the final text, despite the fact that these nations reportedly pose a lower comparative risk of carbon leakage.<sup>24</sup>

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<sup>22</sup> Bruce Byiers, Alfonso Medinilla and Karim Karaki (20 March 2023). *Navigating Green Economy and Development Objectives: Opportunities and Risks for African Countries*. Available at: <https://ecdpm.org/work/navigating-green-economy-development-objectives-opportunities-risks-african-countries>.

<sup>23</sup> WTO (29 November 2022). *Joint letter European Union proposal for a regulation on deforestation-free products. Submission by Indonesia and Malaysia*. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/GEN213.pdf&Open=True>.

<sup>24</sup> Andrei Marcu, Michael Mehling, and Aaron Cosbey (1 October 2020). *Border Carbon Adjustments in the EU: Issues and Options*. ERCST Roundtable on Climate Change and Sustainable Transition. Available at: <https://ssrn.com/abstract=3703387>.

While the CBAM's preamble reiterates the EU's commitment to supporting low- and middle-income countries "through the Union budget, especially LDCs, in order to contribute to ensuring their adaptation to the obligations under this Regulation",<sup>25</sup> the regulation does not create a binding obligation for the EU to do so. Thus, EU's trading partners are left with no guarantee as to whether, and to what extent, this mechanism will be in fact accompanied by adequate support measures.<sup>26</sup> Similarly, exemptions for developing countries and LDCs are currently absent in the other EU green trade instruments.

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<sup>25</sup> Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0956>

<sup>26</sup> Basile Chartier (21 January 2023). *Agreement on CBAM: A long way to go*. Available at: <https://ieep.eu/news/agreement-on-cbam-a-long-way-to-go/>.

### 3. Developing an EU response

The EU's environmental agenda should not come at the expense of development objectives. It is, therefore, imperative for the EU to develop a reaction to the increasingly intense criticism levied against its unilateral green trade measures. Such a reaction should, in our view, be constructed and deployed on the basis of three different pillars: an improved narrative; a diversified approach; and new instruments.

#### 3.1 An improved narrative

The need to better engage with and assist developing countries and LDCs has not gone unnoticed at the European level. In fact, the EU has in several instances stated its willingness "to work with low and middle income countries, in particular LDCs, towards decarbonisation and transformation of their manufacturing industries" and provide "technical and financial assistance to support climate mitigation and adaptation in LDCs, as well as investment support".<sup>27</sup> However, not only are these claims reactive, and made on an *ad hoc* basis they are too vague to have practical relevance. Instead of this piecemeal approach, the EU needs to develop a comprehensive "doctrine" articulating coherently the different **shaping factors** of its stance: responsibility, leadership, justice with strong links between them. This doctrine would address concerns expressed around justice and fairness of the EU's unilateral green trade measures.

Whereas restoring the health of our planet is a collective task, the EU, like other developed economies, has a special **responsibility** stemming from history to redress environmental degradation, particularly as a large carbon dioxide emitter since the industrial revolution, as well as the

EU's high material footprint, i.e., the amount of extracted raw materials needed to produce the goods and services consumed by EU residents.<sup>28</sup> Due to the fragmentation of production, an effective environmental strategy requires addressing the EU's environmental footprint beyond its borders. The EU also has an economic and technological capacity to take a leadership role in addressing environmental challenges, commensurate with its duties. In greening its trade relationships, the EU must therefore be driven by "precautionism" (a way to protect people and nature from environmental risks), as opposed to protectionism (a way to protect its producers from foreign competitors having a comparative advantage).

The EU must also seek to exercise **leadership** in the ecological transition in setting a benchmark of ambition capable of inspiring other major players by example and in organizing mobilization of efforts by public institutions, business, and civil society.<sup>29</sup> Striving to be the first climate-neutral continent, in 2019 the EU broke new ground with its bold climate commitments established under the European Green Deal and the subsequent adoption of a number of ambitious initiatives. Under the European Climate Law, the EU's political ambitions of reaching carbon neutrality by 2050 and cut down emission by at least 55% by 2030 were turned into a legal obligation, and a series of new and revised climate laws have already been adopted as part of the 'Fit for 55' package. This is all the more necessary in the case of climate that the present international governance framework does not provide for strong collective disciplines as long as it relies on Nationally Determined Contributions of a

<sup>27</sup> EEAS (13 February 2023). *United Nations Conference on Trade and Development – Trade and Development Board – 73rd executive session – Agenda Item 3 – EU Statement*. Available at: [https://www.eeas.europa.eu/delegations/un-geneva/united-nations-conference-trade-and-development-trade-and-development-board\\_en?s=62](https://www.eeas.europa.eu/delegations/un-geneva/united-nations-conference-trade-and-development-trade-and-development-board_en?s=62).

<sup>28</sup> European Commission. *Eurostat statistics explained. Material flow accounts statistics - material footprints*. Available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Material\\_flow\\_accounts\\_statistics\\_-\\_material\\_footprints](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Material_flow_accounts_statistics_-_material_footprints).

<sup>29</sup> The authors are, by no means, implying that this role can or should be claimed solely by the EU. We acknowledge that other countries have in recent years set ambitious climate goals and objectives and are committed to pursuing them through the adoption of green policies and regulations.

voluntary nature, with a soft process of peer review within the UN system, de facto limited accountability and no real coordination.

**Justice** should be the third component of the EU's revamped narrative. This principle has been explicitly recognised in the Paris Agreement through the CBDR, as noted earlier, and in the WTO context through the concept of special and differential treatment (SDT). According to these principles, a country's capacity to deliver and, in the context of climate change, a state's contribution to its degradation, must be taken into account in establishing a country's obligations. Here, attention must be paid to increase capacity to decarbonize or to regenerate soils and the hydrosphere where it is lacking. As part of the new narrative, it is imperative that the EU integrates the justice dimension as a central part of its trade and climate leadership narrative. In doing so, it must both consider and openly acknowledge the trade dependency on the EU of some developing countries and LDCs and prioritize developing a proactive approach to avoid that the EU's leadership on trade and climate negatively impacts these countries' development trajectories.

Outlining and projecting such discourse should be part and parcel of what Ursula Von der Leyen, the EU Commission President, and Josep Borrell, the EU High representative of the Union for Foreign Affairs and Security have called a "green diplomacy" encompassing, of course, a larger set of international considerations about European values and interests.<sup>30</sup>

### 3.2 A diversified approach

This specific "green trade diplomacy" needs to be deployed along channels of interaction with EU's trade partners combining, as is the tradition in the trade field (and, to some extent in the environment field), a multilateral approach, a bilateral one, and an ad hoc plurilateral

one. Doing so could potentially address criticism focused on regulatory imperialism and would provide opportunities to adopt tailored approaches to engaging with different developing countries, thereby also potentially addressing developing countries and LDCs' economic concerns.

There is, unfortunately, no **multilateral** forum where trade, the environment and development are dealt with together.<sup>31</sup> The trade-development nexus is within the mandate of both WTO and UNCTAD (and of their joint agency, the International Trade Centre). The trade-environment nexus is meant to belong to the WTO, but its mandate in this area is not fully recognized.<sup>32</sup> Indeed, some developing countries are resisting attempts to discuss and negotiate disciplines that would help reducing trade frictions stemming from the heterogeneity of decarbonisation policies, for fear of legitimizing green protectionism.<sup>33</sup> Europe Jacques Delors had suggested the creation of a "comparability forum" at the WTO where environment-related trade measures would have been notified and discussed, with expert contributions from UNEP, the OECD, the World Bank, the IMF on topics such as the measurement of the carbon footprint of products.<sup>34</sup> The OECD, which has built

<sup>30</sup> Susi Dennison and Mats Engstrom (4 May 2023). *Decarbonisation nations: How EU climate diplomacy can save the world*. Available at: <https://ecfr.eu/publication/decarbonisation-nations-how-eu-climate-diplomacy-can-save-the-world/>.

<sup>31</sup> Various initiatives have emerged, such as the OECD's Inclusive Forum on Carbon Mitigation Approaches and the Environment and Climate Sustainability Group under India's G20 Presidency. While major emerging markets take part in these discussions, their focus is not predominantly on the trade-environment-development nexus.

<sup>32</sup> The trade-environment-development nexus is also addressed as part of the UNFCCC process in the context of reporting requirements. Specifically, Scope 3 of UNFCCC reporting requires that countries report, among other things, on the adoption of policies and measures - including trade-related measures - aimed at cutting greenhouse gas emissions, as well as on the financial and technical support provided to developing countries.

<sup>33</sup> Pascal Lamy and Geneviève Pons (January 2023). *Environment and International Trade: The New European Posture*. Available at: <https://geopolitique.eu/en/articles/environment-and-international-trade-the-new-european-posture/>.

<sup>34</sup> Europe Jacques Delors (February 2022). *Greening Trade 8 - Domestic and International Aspects of the EU CBAM: Two sides of the same coin*. Available at: <https://www.europejacquesdelors.eu/publications/domestic-and-international-aspects-of-the-eu-cbam>.

a solid expertise on carbon pricing in our humble opinion, has recently launched the “Inclusive Forum on Carbon Mitigation Approaches” (IFCMA) initiative. It remains to be seen, however, if emerging markets among developing countries (e.g., China, Brazil and Indonesia) will actively engage in this process in a forum to which they do not belong.

The environment-development nexus is part of the Paris Agreement on climate but the conversation about the necessary considerable augmentation of financial resources to deal with it has just seriously begun after years of unfulfilled promises, with one step on the “loss and damage” issue at the COP27 in Sharm El Sheik, and possibly, another one at the “summit for a new global financial pact with the South” convened by the French President next June.

As a consequence, the prospects for the EU to initiate a multilateral conversation encompassing the three sides of the “triangle” look grim, unless it starts and succeeds in developing a campaign to create a “**Global Triangle Forum**” located in one of the main international organizations. The WTO would be, in our view, the most natural place to implant it.

**Bilateral** approaches, by definition, offer more room of manoeuvre as they are more adapted to tailor-made discussion, agreements or partnerships. Indeed, the EU should avoid a “one-size-fits-all” approach that is blind to the structural and economic differences among its trading partners. Adopting a country-specific approach has also been emphasized in the Commission’s review of Trade and Sustainable Development chapters.<sup>35</sup> Doing so would enable to fine-tune commitments made to developing countries and LDC’s specific environmental challenges, EU market dependency, and economic and technological capabilities. In particular, two distinct groups of countries should be targeted: (i) major emerging markets; and (ii)

<sup>35</sup> European Commission (22 June 2022). *The power of trade partnerships: together for green and just economic growth*. Available at: <https://circabc.europa.eu/ui/group/8a31feb6-d901-421f-a607-ebbdd7d59ca0/library/8c5821b3-2b18-43a1-b791-2df56b673900/details>.

LDCs. This is because major emerging markets will be critical for effective climate action, while LDCs will have high levels of sensitivity to the EU’s green trade instruments due to capacity constraints.

In the first category, specific dialogues already exist under some form or another and should be given more importance and visibility. In addition, as argued in GT13, free trade agreements between the EU and major emerging markets could be leveraged to complement the EU’s unilateral sustainability measures by creating country-specific and sector-specific technical and financial support.<sup>36</sup> The EU-Mercosur trade agreement in the making is an obvious candidate to adopt such an approach, in particular with regards to addressing the implications of the EU’s Deforestation free Products Regulation. More recently the CBAM featured on the agenda of the first meeting of the EU-India Trade and Technology Council, leading to the parties’ agreement to “intensify their engagement to address the issues that emerge in implementation of carbon border measures”.<sup>37</sup> The palm oil topic has been there for a long time in the EU’s trade relationship with Indonesia and Malaysia.<sup>38</sup>

In the second category, the EU should identify among its LDC trading partners, starting with various African countries, those whose sensitivity to environment-related trade measures can easily be assessed and are the highest. For these countries, the EU should develop “Trade and Environment Partnerships” (see below). In fact, examples

<sup>36</sup> Europe Jacques Delors. (April 2023). *GT13 - Exploring the Interface between unilateral and bilateral approaches to greening EU trade*. Available at: [https://europejacquesdelors.cdn.prismic.io/europejacquesdelors/abe76433-ea95-4986-8740-c245e3f0960b\\_GT13\\_EN.pdf](https://europejacquesdelors.cdn.prismic.io/europejacquesdelors/abe76433-ea95-4986-8740-c245e3f0960b_GT13_EN.pdf).

<sup>37</sup> European Commission. (16 May 2023). *EU-India Joint Statement 1st Meeting of the Trade and Technology Council*. Available at: <https://digital-strategy.ec.europa.eu/en/library/eu-india-ttc-joint-statement>.

<sup>38</sup> Reuters (16 January 2023). *Growing tensions between Asian palm oil producers and the European Union*. Available at: <https://www.reuters.com/markets/commodities/growing-tensions-between-asian-palm-oil-producers-european-union-2023-01-13/>.

of such country and sector-specific EU initiatives already exist. Such as the Forest Partnerships aimed at reversing deforestation and enhancing climate and biodiversity protection in five partner countries,<sup>39</sup> and the Sustainable Cocoa Initiative which led to the endorsement of an ambitious roadmap to improve the sustainability of the cocoa production and trade in West Africa. The latter is particularly noteworthy as it will support producing countries in preparing for the forthcoming Deforestation-Free Products Regulation and the CSDD Directive, and it henceforth constitutes – in the words of the Executive Vice-President and Commissioner for Trade, Valdis Dombrovskis – “an example of innovative ways of working together to implement sustainable trade and development policies and turn some of the objectives of the Green Deal into reality”.<sup>40</sup> At the country-level, the EU has allocated €150 million to supporting green growth projects in Mozambique,<sup>41</sup> including the country’s shift to renewable energy, notably for the production of aluminium, which is currently dependent on coal imported from South Africa and would be severely impacted by CBAM at a later stage of implementation of the regulation if this shift is not done in time.

*Ad hoc plurilateral* approaches should complement the two channels mentioned above. The EU already participates in several plurilateral fora, such as the G7, the G20, and on the model of purpose-based coalitions some of which have already been set up recently, such as the Global Methane Pledge, an initiative to lower global methane emissions, and the Climate & Clean Air Coalition, a global network committed to reducing short-lived climate pollutants and improve air quality. Particularly relevant in this regard is the

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<sup>39</sup> European Commission (8 November 2022). *COP27: EU launches Forest Partnerships with five partner countries*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6653](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6653).

<sup>40</sup> EU, Côte d’Ivoire, Ghana and the cocoa sector endorse an Alliance on Sustainable Cocoa (28 June 2022). Available at: [https://policy.trade.ec.europa.eu/news/eu-cote-divoire-ghana-and-cocoa-sector-endorse-alliance-sustainable-cocoa-2022-06-28\\_en](https://policy.trade.ec.europa.eu/news/eu-cote-divoire-ghana-and-cocoa-sector-endorse-alliance-sustainable-cocoa-2022-06-28_en).

<sup>41</sup> European Commission. *Republic of Mozambique. Multi-annual Indicative Programme 2021-2027*. Available at: [https://international-partnerships.ec.europa.eu/system/files/2022-01/mip-2021-c2021-9271-mozambique-annex\\_en.pdf](https://international-partnerships.ec.europa.eu/system/files/2022-01/mip-2021-c2021-9271-mozambique-annex_en.pdf).

“Coalition of Trade Ministers on Climate” jointly launched by the European Commission, EU member states, and 26 partner countries in January 2023 establishing the first global forum at Ministerial level dedicated to the trade, climate and sustainable development nexus.<sup>42</sup> As the development angle is not central to these fora, however, efforts must be undertaken to integrate the development dimension as the missing part of the triangle.

These different work streams should, of course, be coordinated with EU member states, many of which are active in climate or development international endeavours, as it has been the case recently under the auspices of the EU “ambassador at large for climate diplomacy” at the European Union’s External Action Service.

### 3.3 A new panoply of instruments

A new stage in the evolution of the EU trade policy that would integrate not only the environmental dimension but also the development one would, in many ways, reaffirm the EU’s long-standing commitment to provide preferential treatment to developing countries and LDCs. Indeed, through the General System of Preferences, and the “Everything but arms” initiative for LDCs established in 2001, the EU provides tariff-free market access. The purpose of these unilateral preference programs was to facilitate access to the EU market for exports of developing countries and LDCs with lower tariff barriers than usual. However, such differentiated treatment has not been applied to non-tariff measures based, for instance, on sanitary and phytosanitary requirements which are understandably, administered *erga omnes*.

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<sup>42</sup> European Commission (19 January 2023). *Trade and Climate: EU and partner countries launch the ‘Coalition of Trade Ministers on Climate’*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_248](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_248).

Environmental measures belong to the same category of “precautionary” (and not “protectionist”, as already mentioned above) dispositions that are controlled at or (more frequently nowadays) beyond the border. This is why specific waivers that would allow the entry of below EU environmental standards, (for instance carbon or biodiversity-related) for LDCs did not pass the test of acceptability in the Council of member states or in the Parliament. That said, the Commission should not close the door, based on principle, to the possibility of regulatory differentiation for a subset of developing countries and LDCs in the context of the EU’s green trade instruments. Indeed, to effectively tackle climate change or other environmental issues such as the overuse of pesticide, it would not make a material difference to exclude the world’s lowest emitters or countries that use negligible amounts of agricultural inputs, respectively. Doing so would not endanger the health or well-being of the EU population, unlike in the SPS context, given that the majority of environmental standards set out by the EU’s green trade instruments are process and production methods (PPMs) that do not change the final product. Thus, for each EU Green trade instrument, the Commission should conduct a cost-benefit analysis of developing a *de minimis* threshold for the applicability of the regulation, or carving out exemptions for a subset of developing countries/LDCs.

In addition, a new panoply of instruments should be explored to address the various sets of criticism focused around economic opportunities, fairness, and green imperialism as set out above. Such a new panoply would have some resemblance with past policies trying to better articulate precaution and development, but specifically geared to what is becoming a wide range of environmental non-tariff measures. The basic principles would remain the same: provide for capacity building, transparency and predictability in order to enable exports from developing countries and LDCs comply with the EU’s green trade instruments. While some activities are already taking place in this area, it must be significantly scaled up to make them an inherent part of the EU’s green trade measures, as opposed to a mere afterthought.

**Capacity building** in the environmental area is mainly about financial support and access to green technology. As far as financial support is concerned, the EU is not short of resources allocated to development action in third countries. In fact, the EU’s 2021-2027 long-term budget earmarks € 110.6 billion; in 2018 prices; for external action and allocates 30% of its total expenditure, together with the Next Generation EU recovery instrument, to climate-related projects.<sup>43</sup> The EU could deploy them within or outside the Global Gateway/Team Europe frameworks under the form of **Environment and Trade Partnerships (ETEPs)** inspired by initiatives such as JETPs (Just Energy Transition Partnerships) already concluded with South Africa, Vietnam, Indonesia, and in negotiation with others like Senegal; AFT (Aid for Trade); or ACT (Act on Climate and Trade), a new WTO/WEF/World Bank Group collaboration to provide tailored advice to developing economies on how to leverage trade to achieve their climate goals.<sup>44</sup> Indeed, this is in line with former Europe Jacques Delors’ suggestion to establish an “Aid for Green Trade” programme, an AFT-like initiative to assist developing countries in increasing producer capacity to meet European standards while serving as an entry point for policy dialogue.<sup>45</sup> Even though the AFT already finances climate-related and green projects, it lacks an underlying framework or specific requirements applicable to these initiatives. Besides, the procedures in place to apply for and receive funding under the AFT, as well as under other climate finance programmes, are often-times complex and burdensome, which poses some challenges to developing countries and LDCs.<sup>46</sup>

<sup>43</sup> European Commission. *2021-2027 long-term EU budget & NextGenerationEU, spending categories*. Available at: [https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2021-2027\\_en](https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2021-2027_en).

<sup>44</sup> WTO (20 April 2023). *WTO, World Bank, WEF launch joint effort to provide tailored trade and climate analysis*. Available at: [https://www.wto.org/english/news\\_e/news23\\_e/envir\\_20apr23\\_e.htm](https://www.wto.org/english/news_e/news23_e/envir_20apr23_e.htm).

<sup>45</sup> Europe Jacques Delors (April 2021). *GT5 - Greening International Trade Through EU Regulation and Standardisation*. Available at: <https://www.europejacquesdelors.eu/publications/greening-international-trade>.

<sup>46</sup> Leslie Sajous (March 2023). *Be more holistic! Why the WTO and UNFCCC should work together more closely in the area of financing*.

As noted earlier, beneficiary countries would be LDCs with the biggest export sensitivity to EU's environment measures. Support could be offered as a proportion of the forecasted impact to a range of actions to help production match for instance a lower carbon footprint or a biodiversity friendly farming practice. The amount could be a function of the proportion of the forecasted export impact of new standards.

Access to green technology also seems, in this area, to represent an obstacle for developing countries to transition to renewables, save energy, adapt to climate change, capture carbon via nature-based or industrial possibilities. In fact, according to a recent UNCTAD report, very few developing countries have the capacity, resources, and knowhow needed to harness frontier technologies and thus "cannot on their own take advantage of these green windows of opportunity".<sup>47</sup> Calling for immediate support from the international community, the report recommends the establishment of an international programme of guaranteed purchase of tradable green items and a multilateral fund to stimulate green innovation. Most notably, UNCTAD goes one step further to suggest following the approach used during the Covid-19 pandemic, when some countries were allowed to produce and supply vaccines without the consent of the patent holder.

To be serious about integrating the development dimension in its green agenda, it is imperative to advance access to relevant technologies for the most vulnerable developing countries. For instance, the EU could take the lead of a coalition to build a "Green Tech Bank", in the orbit of the World bank, or on a smaller scale, of the EIB.<sup>48</sup> This Bank

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Available at: <https://library.fes.de/pdf-files/international/20163.pdf>.

<sup>47</sup> UNCTAD (2023). *Technology and innovation report 2023*. Available at: [https://unctad.org/system/files/official-document/tir2023\\_en.pdf](https://unctad.org/system/files/official-document/tir2023_en.pdf).

<sup>48</sup> This should be aligned with and builds on existing initiatives related to the transfer of green technologies, such as those promoted by the UN Technology Bank for LDCs and the World Intellectual Property Organization, in order to ensure a coordinated approach and avoid duplication of efforts in an already rather fragmented field.

would buy patents on the market and open them for free, or with reduced royalties, when they appear as a condition *sine qua non* for the green transition in developing nations. Doing so would require identifying critical green technologies. A starting point could be the 25 technologies listed in a recent publication by the WEF<sup>49</sup> or the 17 frontier technologies featured in the aforementioned UNCTAD report.

**Transparency and predictability** are also often major parameters to help producers to adjust with the necessary preparation and transitions before a measure affecting their products enters into force. In this respect, a range of options should be considered, from the easiest to the most difficult. These would include:

- Supporting more economic and social research about the impact of EU green trade instruments in the countries concerned;
- Conducting sustainable impact assessments of EU green trade instruments by the EU Commission with a higher attention to trade consequences for vulnerable countries;
- Enhance dialogue and cooperation with developing countries and LDCs when unilateral EU regulations are being developed and, most ensure that the feedback received is adequately considered and reflected in the drafting and negotiation of the regulation; proof of such dialogue would be of importance in cases where EU regulations are challenged under the WTO;
- Take into account local environmental measures and standards developed in trading partners, and explore how to better use concepts such as equivalence and mutual recognition;
- Seek to include in Trade Policy reviews in the WTO a specific chapter on environment-based trade measures;
- Adopt clarifications, in a timely manner, about the next stages of EU green trade instruments, in particular the spectrum covered by the future expansion of the EU CBAM after the prototype that will be implemented from 2026 onwards; as well as the EU-Deforestation-free Products Regulation. This will be critical to ensure pro-

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<sup>49</sup> World Economic Forum (20 September 2022). *Trade in 25 technologies can help climate action. What's needed to make it happen?* Available at: <https://www.weforum.org/agenda/2022/09/trade-technologies-climate-action/>.

ducers in developing countries and LDCs have sufficient time to adapt accordingly.

- A renewed effort by the EU to prioritize the adoption of internationally agreed green product and production standards within the International Standards Organization (ISO) or in the UN universe of specialized organizations and programs. For example, this could include developing internationally agreed upon environmental standards for agri-food production, as is being advocated by WWF in the form of a Codex Planetarius.<sup>50</sup> Other initiatives should focus on developing internationally agreed upon standards for eco-design for sustainable products and standards for circularity, *inter alia*.

Ultimately, to ensure that the development dimension forms an integral part of the EU's green trade agenda, it is critical to change the siloed way in which the Commission makes policy. Indeed, the existing approach is one where different Directorate-Generals (DGs) are in charge of different elements of the triangle: DG TRADE is responsible for the Generalized Scheme of Preferences, as well as Trade and Sustainable Development provisions in FTAs; DG INTPA is in charge of partnerships and development policy; DG TAXUD took the lead to develop the CBAM; and DG ENV proposed the EU Deforestation-free Products Regulation. As a result, the Commission's policy process is not conducive to develop a holistic approach that identifies the development implications of trade and unilateral green measures. This calls for the development of a triangle forum within the Commission, to ensure that new initiatives in the area of green trade are aligned with development priorities and vice versa. Such an "triangle forum" would further facilitate an effective dialogue around the issues of resources allocation and development finance. In particular, it could be conducive to set up a "green budget support fund", which could be used to compensate,

where appropriate, developing countries and LDCs for the negative implications of the EU's green trade instruments, as well as to coordinate tailored financial support. As already proposed in our GT 3 policy paper on CBAM, part of its revenues should be used to support the green transition in LDCs and would, therefore, feed this fund.<sup>51</sup>

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<sup>50</sup> Jason Clay (2016). *Codex Planetarius: reducing key environmental impacts of producing globally traded food*. Available at: [https://files.worldwildlife.org/wwfcmprod/files/Publication/file/96xmqm9rp4\\_CLAY\\_CODEX\\_PLANETARIUS\\_08\\_21\\_v6.pdf?\\_ga=2.3835125.414750440.1684492323-922979136.1684492323](https://files.worldwildlife.org/wwfcmprod/files/Publication/file/96xmqm9rp4_CLAY_CODEX_PLANETARIUS_08_21_v6.pdf?_ga=2.3835125.414750440.1684492323-922979136.1684492323).

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<sup>51</sup> Europe Jacques Delors (June 2020). *GT 3 - A European Border Carbon Adjustment Proposal*. Available at: [https://europejacquesdelors.cdn.prismic.io/europejacquesdelors/3704fd55-9d5c-4c6a-acf9-5771cabf4800\\_GT3.pdf](https://europejacquesdelors.cdn.prismic.io/europejacquesdelors/3704fd55-9d5c-4c6a-acf9-5771cabf4800_GT3.pdf).

## Conclusion

The authors of this paper believe that the EU must adopt a new approach to greening trade that reintegrates the development dimension. Strong critique that has been levied against the EU's unilateral trade measures signals that without acknowledging that greening trade is affecting and will disproportionately affect some of its most vulnerable trade partners, and taking strong action to address this, the EU's green trade agenda will not flourish.

This paper has outlined various actions the EU can take to signal it is serious about affirming the development dimension of its green trade policy. It focuses on three pillars: an improved narrative; a diversified approach; and the development of new instruments. Parts of the recommendations would be aligned with previous efforts the EU has undertaken in the form of preferential treatment for developing countries, while other elements such as designing capacity-building programs are already happening – albeit at a scale that is much smaller than what is envisioned in this paper.

Other recommendations, such as shifting the narrative to include the EU's responsibility in the environmental ambit, as well as integrating justice into the EU's trade and climate narrative, will require a more intentional approach. This could be done by establishing an inter-ministerial "EU Triangle Forum" to discuss the interface between green trade and development, while developing a more ambitious finance plan. Compared to the Global Triangle Forum that has also been advocated for in this paper, the EU Triangle Forum could be the low hanging fruit.

Ultimately, what matters is that the EU takes seriously the criticism directed at its green trade agenda and works expediently to develop an appropriate reaction. Only by reintegrating the development dimension – the missing piece of the triangle – into its green trade policy will the EU be able to ensure that its environment and development objectives do not become mutually exclusive, but are mutually reinforcing, as a strong illustration of the sustainable development philosophy.

### Managing Editor

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