Master of International Trade (MIntTr)
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STUDENT NOTE

Sub-Multilateral Trade-Environment Cooperation: Advancing the Global Response Through Coordination, Guardrails and Recognition

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Abstract

Climate change requires coordinated international action, but progress on trade-environment issues at the WTO has been limited. This note argues that sub-multilateral cooperation through bilateral, regional and plurilateral agreements offers the most credible near-term path forward. Effective cooperation requires three elements: (1) structured coordination with enforceable disciplines, (2) guardrails against unilateral action and (3) recognition of developing economies' needs through sequenced implementation. Sub-multilateral arrangements can coordinate faster than the WTO, make environmental obligations legally binding and reduce risks of protectionism and extraterritoriality. However, for collective action to succeed, it must include developing economies through shared responsibility. The note concludes by proposing a model clause to operationalise support for developing economies in trade-environment chapters, ensuring their meaningful participation in the global climate response.

Keywords: climate change, trade-environment cooperation, sub-multilateral agreements, WTO, developing economies

I Introduction

Climate change is inherently transboundary. Emissions generated locally accumulate globally, and shared resources, trade links and ecosystems mean no state can manage the risks alone.[1] Climate change has direct effects (such as weather events damaging infrastructure) and indirect effects (such as supply chain disruptions) on trade.[2]

Trade and trade policy are intimately connected to the global climate change response. Trade contributes significantly to global emissions, specifically through shipping. Furthermore, trade policy can facilitate more sustainable trade and development, minimise harmful environmental subsidies and reduce carbon leakage.[3] Individual states cannot unilaterally manage climate change – both the risks and responses are interdependent.

However, progress at the WTO has been slow, and building consensus on trade-environment issues has been constrained by diverging positions.[4] The entry into force of the WTO's *Agreement on Fisheries Subsidies* in September 2025 indicates that progress is possible but also reflects the tension in achieving it. Negotiations began in the early 2000s; although adopted in 2022, the agreement entered into force in 2025 only after ratification by two-thirds of WTO members (at least 111 members).[5]

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1 Ariadna Anisimov and Alexander Magnan "The Global Transboundary Climate Risk Report" The Institute for Sustainable Development & International Relations & Adaptation Without Borders <www.adaptationwithoutborders.org> at 14–16 and 20.

2 Danae Kyriakopoulou, Georgina Kyriacou and Natalie Pearson "How Does Climate Change Impact on International Trade?" Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science <www.lse.ac.uk>.

3 Carbon leakage occurs when industries or sectors relocate to a different region with less stringent climate policies.

4 Harro van Asselt "Trade" in Lavanya Rajamani and Jacqueline Peel (eds) *The Oxford Handbook of International Environmental Law* (2nd ed, Oxford University Press, 2021) 751 at 756–757, 764–765 and 767.

5 Rob Hutchins "Nations Ratify Agreement to Cease Harmful Fisheries Subsidies" Oceanographic

This constrained progress emphasises the importance of advancing trade-environment cooperation through sub-multilateral avenues. Such cooperation should be complementary and beneficial to the multilateral system, not a replacement. However, without enforceable disciplines and recognition of developing economies, it risks being ineffective, fragmented and protectionist.

II Analysis

A Structured Coordination and Enforceable Environmental Disciplines

Sub-multilateral groupings can coordinate more effectively than the WTO and can create formal, enforceable disciplines. Smaller groupings with more closely aligned interests do not face the same friction and difficulty in building consensus on matters as has been experienced at the WTO. This flexibility enables sub-multilateral groupings to make valuable advancements in recalibrating the trade-environment relationship at the global level.

These advances have not emerged in isolation, with trade-environment initiatives drawing on and building upon the WTO's norm-building and direction-setting role. An increasing number of regional trade agreements include the General Agreement on Tariffs and Trade (GATT)[6] general exceptions (Article XX) and preambular language related to the environment or sustainable development.[7] Furthermore, despite constraints in reaching consensus, the WTO can build momentum on trade-environment matters that smaller groupings can then advance.

For example, in 2012, the Asia-Pacific Economic Cooperation (APEC) – a forum of 21 member economies – created an environmental goods list that cut tariffs

<www.oceanographicmagazine.com>.

6 *General Agreement on Tariffs and Trade* [GATT].

7 Clive George "Environment and Regional Trade Agreements: Emerging Trends and Policy Drivers" Organisation for Economic Co-operation and Development <www.oecd.org> at 7–9.

on specific environmentally beneficial goods.[8] Notably, no consensus could be reached on this matter at the WTO. The APEC environmental goods list then served as a template for the subsequent Agreement on Climate Change, Trade and Sustainability (ACCTS),[9] which expanded the list to cover over 300 goods and included the first international fossil fuel subsidy provision.[10]

Logically, as smaller groupings, APEC and ACCTS can more efficiently coordinate and reach consensus on trade-environment matters. Such groupings complement the multilateral setting by innovating and providing formal examples of how trade can respond to imbalances in the trade-environment relationship.

A valid concern is that by design such groups only represent a small portion of the global trading system and that the proliferation of sub-multilateral trade agreements risks fragmentation in the international trade architecture. However, in the context of constrained progress at the WTO, sub-multilateral avenues provide the most feasible near-term alternative for addressing trade-environment imbalances. These advancements can be iterative and expanded – the APEC environmental goods list was later expanded in ACCTS and could serve as a template for eventual multilateral integration. Sub-multilateral cooperation should be viewed as complementary in this respect to the currently constrained and stalled multilateral system.

Sub-multilateral groupings have also shown the ability to commit to formal enforceability of environmental provisions. This is particularly critical because binding

8 "APEC List of Environmental Goods: Promoting Exports, Creating Jobs, and Advancing Green Growth and Sustainable Development" Office of the United States Trade Representative <www.ustr.gov>.

9 *Agreement on Climate Change, Trade and Sustainability* (opened for signature 2 June 2025, not yet in force) [ACCTS]; "ACCTS Negotiating Rounds" Ministry of Foreign Affairs and Trade <www.mfat.govt.nz>.

10 "Agreement on Climate Change, Trade and Sustainability (ACCTS) Overview" Ministry of Foreign Affairs and Trade <www.mfat.govt.nz>.

trade-environment obligations shifts environmental commitments from soft law to hard law, whereby states are legally held accountable and face actual consequences for not meeting them. In the absence of formal legal accountability, environmental commitments risk being only symbolic in nature, with limited practical impact on state behaviour or trade-environment outcomes.

The New Zealand-European Union Free Trade Agreement (NZ-EU FTA) made certain trade and sustainable development commitments subject to dispute settlement and explicitly requires both parties to "refrain from any action or omission that materially defeats the object and purpose of the Paris Agreement".[11] This obligation embeds broader climate commitments into an enforceable trade framework.

Similarly, at a regional level, the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP) created formal enforceability through dispute settlement on environmental provisions (Chapter 20).[12]

Both the NZ-EU FTA and CPTPP demonstrate that trade-environment, or climate change-related, commitments can be made legally binding within trade agreements and act as examples for how sub-multilateral agreements could embed environmental disciplines. But, at this point, this practice remains relatively new, and there are concerns with its implementation.[13] Despite this, accountability and enforceability must become an integrated and normal feature of trade-environment cooperation.

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11 See *European Union – New Zealand Free Trade Agreement* 2024/866 OJ L (signed 9 July 2023, entered into force 1 May 2024), ch 19 (for trade and sustainable development provisions), ch 26 (for dispute settlement) and art 19.6 (for the Paris Agreement obligation); see also *Paris Agreement to the United Nations Framework Convention on Climate Change* 3156 UNTS 3 (opened for signature 22 April 2016, entered into force 4 November 2016).

12 *Comprehensive and Progressive Trans-Pacific Partnership* 3337 UNTS 1 (signed 8 March 2018, entered into force 30 December 2018).

13 Gracia Marin Duran "The EU's Evolving Approach to Environmental Sustainability in Free Trade Agreements" Social Science Research Network <www.ssrn.com> at 1–2, 7, 10–11 and 14.

B Guardrails Against Unilateralism

Sub-multilateralism is also necessary because unilateral trade-environment measures can create three interconnected risks: extraterritoriality, disguised protectionism and eco-imperialism.[14] In the context of slow progress at the multilateral level, sub-multilateral cooperation presents the next best alternative to unilateralism to mitigate these risks. Seeking coordination on environmental concerns over unilateral measures is not a contemporary development. In 1992, this was outlined in Principle 12 of the Rio Declaration:

> "Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided."[15]

Although states retain the right to regulate for environmental reasons, unilateral action, specifically when applied extraterritorially, can undermine global progress through fragmentation and friction in the global trade response to climate change.

An internationally contested concern of unilateral action involves measures with an extraterritorial effect, whereby one state imposes its jurisdiction beyond its national borders, raising questions of sovereignty and legitimacy. Most common is the regulation of production processes and methods used abroad. This was the case in the well-known and contentious *Tuna-Dolphin* disputes, where the United States (US) attempted to restrict imports of tuna caught using methods that harmed dolphins outside its jurisdiction.[16] These disputes illustrated the tension created by unilateral trade-environment measures, as the affected states (such as Mexico) had no input into the design or application of the regulation. If affected states are unwilling to

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14 Van Asselt, above n 4 at 752 and 760–761.

15 *Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26/Vol.I, 14 June 1992.

16 *United States – Restrictions on Imports of Tuna* 39th Supp GATT BISD 155, DS21/R, 3 September 1991 (Report of the Panel); *United States – Restrictions on Imports of Tuna* 1994 WL 907620, DS29/R, 16 June 1994 (Report of the Panel).

comply, they could divert exports elsewhere, but such unilateral measures still create friction and disrupt trade relations.

Unilateral trade-environment measures have also been criticised for serving as disguised protectionism, where the stated intent of environmental protection masks the protection of domestic industries or interests. Such measures, specifically a ban on shrimp caught without a turtle excluder device, were challenged on the grounds of disguised protectionism in the *US-Shrimp* case.[17] It was argued that the regulation did not reflect a genuine concern for the environment and constituted a restriction on trade. The Appellate Body accepted the policy's legitimacy. While Article XX of GATT provides some flexibility to adopt measures necessary to protect the environment, the application of the measure was ruled discriminatory and inconsistent with WTO obligations. Notably, Australia observed that the US had "sought to impose a unilaterally determined conservation measure through restrictions on trade" rather than exploring cooperative solutions to "internationally shared concerns".[18] This is an inherent point of tension that characterises unilaterally imposed trade-environment measures.[19] Whether well-intentioned or not, unilateral measures that appear protectionist can undermine trust and coordination.

The risks of both extraterritorial effects and disguised protectionism reinforce the importance of cooperative approaches to trade-environment measures. With multilateral coordination stalled, sub-multilateral cooperation can ensure transparent, mutually agreed standards for environmental and climate protection between states.

This is particularly pronounced when developed economies unilaterally design and

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17 *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, 12 October 1998 (Report of the Appellate Body).

18 At para [54].

19 "Trade Protectionism Disguised as Environmental and Labour Law Should Be Eliminated, Second Committee Told" United Nations <press.un.org>.

impose trade-environment measures that shift or externalise the environmental costs of their development and consumption onto developing economies, creating perceptions of eco-imperialism. It has also been understood as the "North's" over-utilisation of the world's limited pool of natural resources and the appropriation of the "South's" natural resources.[20] Measures of this nature are often designed and imposed without the cooperation or input of developing economies, who may be disproportionately disadvantaged by their impact.

Specific concerns have been raised regarding the European Union's (EU) Carbon Border Adjustment Mechanism (CBAM), with arguments that it is a unilateral restriction on trade that disadvantages developing economies by raising the cost of their exports and affecting their competitiveness in the EU market.[21] Without corresponding support or recognition, unilateral trade-environment measures similar to CBAM threaten developing economies' ability to participate equally in the global trade architecture.

Despite this, proponents argue that CBAM, or related measures, is a necessary tool to prevent carbon leakage and pursue legitimate domestic climate objectives, specifically in the absence of comparable international measures. While domestically focused, CBAM does have supporting mechanisms, including a transition period and technical and capacity implementation assistance.[22]

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[20] Carmen Gonzalez "Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade" (2001) 78 Denv U L Rev 979 at 999–1000 and 1015–1016.

[21] CBAM applies a carbon levy to certain imported goods into the EU to measure emissions and reduce 'carbon leakage'. See "Carbon Border Adjustment Mechanisms require coordinated global action" Zero Carbon Analytics <www.zerocarbon-analytics.org>; Guilherme Magacho, Etienne Espagne and Antoine Godin, "Impacts of CBAM on EU trade partners: consequences for developing countries" (2024) 24 Climate Policy 242 at 251–253.

[22] "Carbon Border Adjustment Mechanism" European Commission, Taxation and Customs Union <taxation-customs.ec.europa.eu>.

However, the tension that these measures create is not necessarily due to their legitimate objectives; rather, it stems from the externalisation of costs onto the developing world when support or recognition is inadequate or entirely absent. Even though CBAM provides supporting infrastructure, the unilateral design and application of the mechanism raise concerns for developing economies. A credible global response to climate change requires cooperation between developed and developing economies – cooperation grounded in shared responsibility and mutual recognition.

C Cooperation and Recognition with Sequencing to Support Developing Economies

The global trade response to climate change will remain fragmented and ineffective if developing economies, which already bear the disproportionate brunt of climate change,[23] are not involved in designing commitments and lack the capacity and support to implement them. This requires cooperation to avoid risks of unilateral action, but also recognition and sequencing so developing economies can implement commitments in line with their present capacity and priorities.

Cooperation at sub-multilateral levels and between developed and developing economies is critical to a collective global response to climate change. An effective global trade response will be underpinned by coordination on trade-environment measures, where the design, application, and enforcement are shared responsibilities. Unilateral action alone cannot address climate change and its interdependent and transboundary effects. Instead, developing economies must be active participants in negotiations on trade-environment measures, specifically ones that have extraterritorial effects. As has been stated, in the context of constrained multilateral progress,

[23] "World Trade Report 2022: Climate Change and International Trade" World Trade Organization <www.wto.org>, ch B.

sub-multilateral groupings are best positioned to coordinate on trade-environment measures and must equally do so with the participation of developing economies.

For cooperation and policy commitments to be successful, there must be recognition of the different sizes, development priorities and capacities of the economies involved. Specifically, developing economies have different economic priorities and challenges shaped by both historical and structural factors. If such differences are not recognised, trade-environment measures risk being ineffective or placing a further disproportionate burden on developing economies.

Similar acknowledgement of the needs of developing economies has long been a feature of the multilateral system through the "special and differential treatment provisions".[24] These provisions provide developing economies longer time periods to implement commitments, greater safeguards and support to participate fully in the trade landscape. Without recognition of this nature, developing economies may not be incentivised or able to participate actively in sub-multilateral coordination on trade-environment measures. This will render the global trade response to climate change ineffective.

Sequencing turns recognition into practice by phasing obligations, allowing longer timelines and building capacity where needed. It is essential because the global trade response to climate change involves correcting past imbalances in the trade-environment relationship – imbalances upon which many economies, both developed and developing, were built.[25] This includes a heavy reliance on fossil fuels and resource-intensive production. Transitioning away from these practices cannot

[24] "Development: Trade and Development Commitment - Special and Differential Treatment Provisions" World Trade Organization <www.wto.org>.
[25] Samuel Fankhauser and Frank Jotzo "Economic Growth and Development with Low-Carbon Energy" (2017) 9 Wiley Interdisciplinary Reviews: Climate Change e495 at 2 and 6–8.

be achieved immediately without risking economic and social disruption, particularly in communities dependent on carbon-intensive industries. These economies are particularly vulnerable, as they may lack the economic resources to transition sustainably. Sequencing, whereby developing economies are provided extended timelines or phased implementation, enables a realistic and fair transition that avoids placing disproportionate economic and social burdens on them.

In the absence of recognition and sequencing, developing economies will lack the means and incentives to participate, undermining the effectiveness of any global trade-environment response.

III Conclusion

Therefore, to achieve a more effective trade-environment response, integrating recognition and sequencing principles into sub-multilateral agreements requires clear, obligatory language. The following model clause proposes an approach to operationalising the developing economy condition within a trade-environment chapter:

> [1] The Parties acknowledge the special needs of developing economies and recognise that these Parties may face unique challenges in implementing the trade-environment objectives and obligations of this Agreement.
>
> [2] Parties shall cooperate to strengthen the capacity of developing economy Parties to implement this Agreement.
>
> [3] Developing economy Parties may implement obligations of this Article in a progressive and sequenced manner, including through phased or staged timelines agreed between the Parties.
>
> [4] The implementation of this Article shall be reviewed periodically to ensure developing economies can meet trade-environment objectives.

The underlying principles are that developing economies must be afforded appropriate recognition, support and participation in the design and implementation of trade-environment measures to ensure their global effectiveness. Doing so enables developing economies to participate actively and contribute to the recalibration of the trade-environment relationship and, importantly, strengthens the legitimacy and effectiveness of sub-multilateral cooperation.

With constrained progress at the WTO, an effective global trade response to climate change will depend on sub-multilateral cooperation between developed and developing economies. This cooperation, to be effective, must be founded on enforceable commitments, recognition and shared responsibility for climate change over unilateral action.