

## BRIEFING NOTE

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## Securing a Just and Inclusive Global Green Economy Through Trade Policy

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We are witnessing a wave of green regulation as countries increasingly adopt trade-related environmental measures to tackle the climate crisis and protect biodiversity. At the World Trade Organization (WTO), countries are debating how trade policy can best contribute to addressing these environmental concerns. This note provides ideas for that debate. It sets forth a vision for the green transition, rules and principles for the design of trade-related environmental measures, and a diagnostic exercise for development of data-driven trade policy.

## Vision: A Just and Inclusive Global Green Economy

*We have faced a world that has cemented the right of a few to determine the fate of the rest of us. Is that acceptable to any of us in our families, in our communities, and in our countries? If it is not acceptable in our families, our communities, and our countries, I submit to you it has no place in the global order.*

H.E. Mia Mottley, QC, Prime Minister of Barbados (WTO, Geneva, 23 March 2022)

We share this vision of the global order. To achieve this vision, trade and sustainability policy should contribute to the creation of a just and inclusive global green economy where all countries—developed and developing—have equal competitive opportunities to supply goods and services in a green economy.

To that end, trade and sustainability policy should avoid establishing or entrenching a two-speed global economy through trade-distortive measures, where developed countries have the resources and capacity to seize the opportunities of a green economy, while developing countries are left in a brown economy.

In leading developed countries (Canada, European Union (EU), United Kingdom, United States), the transition to a just and inclusive internal green economy is premised on a package of regulatory “carrots and sticks.” Companies must meet demanding environmental requirements (price and non-price measures); but they are enabled to do so with the assistance of properly targeted flanking measures, such as support for green innovation and support to ease the economic and social consequences of the transition to a

green economy.<sup>1</sup> The EU explicitly recognizes that its flanking measures are designed to ensure that its internal green transition is “just and inclusive, leaving no one behind.”<sup>2</sup>

Within each economy, the mix of carrot-and-stick policies is based on national circumstances, with differentiation among sectors and regions in light of economic, social and/or environmental considerations.

To illustrate how leading developed countries are pursuing their green transition, we provide examples from the EU, because it is regarded as a leader in this policy space.<sup>3</sup>

The EU “Green Deal” sets out its own “vision” for the EU’s transition, acknowledging that “we want to be the frontrunners” in the green economy, and that the transition must work “for all and be just”, so that “no one is left behind.”<sup>4</sup>

1. The EU’s Innovation Fund will provide around €25 billion “to help businesses invest in clean energy and industry to boost economic growth, create local future-proof jobs and reinforce European technological leadership on a global scale” and thereby “support its transition to climate neutrality” using revenue from the EU’s Emission Trading Scheme (ETS).<sup>5</sup>
2. The EU funds “important projects of common European interest” (IPCEIs), including those of major importance to the EU’s Green Deal.<sup>6</sup> For example, IPCEIs will provide a total of €6.1 billion to support the development by EU industry of innovative and sustainable batteries, in a sector considered “vital for Europe’s green transition and long-term resilience.”<sup>7</sup>
3. The EU applies different carbon pricing on a sector-specific basis:
  - a. The ETS applies carbon pricing to some sectors but not others (e.g. steel vs. agriculture);<sup>8</sup>
  - b. The EU proposes to continue to offer free ETS allowances to some sectors (e.g., sugar, copper) but not others;<sup>9</sup>
  - c. The EU proposes to extend carbon pricing to fuel used in buildings and transport, but in a stand-alone ETS to ensure a lower carbon price in these sectors than in the EU’s regular ETS to allow adaptation;<sup>10</sup> and
  - d. The EU proposes to extend its ETS to the maritime sector, with explicit recognition of “Common but Differentiated Responsibilities and Capabilities.”<sup>11</sup>
4. The EU’s Effort Sharing Regulation imposes shared but differentiated responsibilities on EU member states, according to their respective levels of economic development. This is to ensure that the member states “contribute in a fair and just manner to EU climate action.” Thus, the EU imposes “higher emission reduction targets” on EU member states with “higher GDP per capita.”<sup>12</sup>
5. The EU’s Modernization Fund provides €14 billion of funding to support 10 lower-income EU member states in their transition to climate neutrality, using revenue from the EU’s ETS.<sup>13</sup>
6. The EU’s Just Transition Fund provides €17.5 billion to regions in EU member states expected to be the most negatively impacted by the green transition, supporting their economic diversification and reconversion.<sup>14</sup>

1. This note does not consider the WTO-consistency of any measures designed to support a green transition.

2. See recital (2) of the preamble to the proposed EU Social Climate Fund Regulation ([here](#)).

3. In the interests of space, we do not provide examples for other leading economies; however, the mix of carrots and sticks is similar, with very considerable government support to ensure that the transition is internally just and inclusive.

4. Speech by Ursula von der Leyen, President of the Commission, 11 December 2019 ([here](#)).

5. See Commission’s policy development update on the Innovation Fund ([here](#)).

6. See Communication from the Commission, 30 December 2021 ([here](#)).

7. See Statement by Maroš Šefčovič, Vice-President of the Commission ([here](#)).

8. EU ETS Directive ([here](#)).

9. Article 10b of the EU ETS Directive; and the Commission’s Delegated Decision 2019/708 ([here](#)). See also EU proposed revision of the ETS Directive ([here](#)).

10. See EU proposed revision of the ETS Directive.

11. See EU proposed revision of the ETS Directive.

12. See Press release from Commission on the Effort Sharing Regulation ([here](#)); EU Effort Sharing Regulation ([here](#)); and proposed amendment to the EU Effort Sharing Regulation ([here](#)).

13. See EU Modernization Fund ([here](#)).

14. See Just Transition Fund ([here](#)).

7. The EU's proposed Social Climate Fund will provide €72.2 billion to alleviate the social consequences of carbon pricing, recognizing that the transition to a climate neutral economy "should be just and inclusive, leaving no one behind;" and that the "impacts on vulnerable groups differ between Member States, and price impacts are likely to be felt more strongly in Member States, regions and population with lower average income."<sup>15</sup>

The package of measures provided by leading developed countries, such as the EU, to ensure an internally "just and inclusive" transition is instructive in assessing how international trade policy can contribute to a global green transition that is also "just and inclusive." Domestic transitions are based on a carefully-designed balance of regulatory sticks (demanding regulation) and carrots (government support) to ensure that producers have an equal opportunity to participate in the green economy. The transition is premised on principles such as equity and fairness, and it accounts for differences in circumstances, including the level of economic development and the social consequences of the transition.

The consequence is that producers in leading developed countries are not simply faced with demanding environmental requirements that they must meet or see their goods excluded from their domestic market. Instead, they are given considerable support to enable them to meet the new requirements, including through differentiation across sectors and regions based, among others, on economic capacity. Further, with the benefit of considerable government financing, producers in these countries are given a competitive edge in innovative green technology—they are, by design, the "frontrunners."

In the next two sections, we explore how to carry these ideas to the international level. We begin with rules and principles

for the design of trade-related environmental measures, and then address the mix of trade policy measures for a just and inclusive global green transition.

## Rules and Principles for the Design of Trade-Related Environmental Measures

In considering how trade policy can address environmental concerns, WTO members should deliberate on basic principles for the design of both national and international trade-related environmental measures. This is a key issue for all members, either because they are adopting measures themselves or because their trade is affected by them. The good news is that WTO members do not need to "reinvent the design wheel." They can, instead, draw on existing rules and principles that members have all already agreed for such measures in international environmental law. These rules and principles were expressly designed to ensure a just and inclusive green transition, striking an agreed balance between countries.

Going back 50 years, the rules and principles of international environmental law have been consistently articulated in numerous instruments that the international community—including the WTO membership—has formally adopted since the first global environmental conference at Stockholm in 1972.<sup>16</sup> To name a few: the Rio Declaration on Environment and Development (Rio Declaration),<sup>17</sup> Agenda 21,<sup>18</sup> the United Nations Framework Convention on Climate Change (UNFCCC),<sup>19</sup> and the Paris Agreement.<sup>20</sup> They also find reflection in the preamble of the WTO Agreement, which recognizes that trade should contribute to economic growth, while allowing for optimal use of resources, consistent with sustainable development,<sup>21</sup> and accounting for different levels of economic development. In recent years, free trade agreements have also incorporated these "internationally recognised" rules and principles of international environmental law.<sup>22</sup>

15. See Proposed EU Social Climate Fund Regulation.

16. See Stockholm Declaration on the Human Environment (1972) ([here](#)).

17. See Rio Declaration on Environment and Development (1992) ([here](#)).

18. Agenda 21 adopted by the United Nations Conference on Environment and Development, 14 June 1992, UN Doc. A/CONF. 151/26/Rev.1 ([here](#)).

19. See United Nations Framework Convention on Climate Change (1992) ([here](#)).

20. See Paris Agreement under the United Nations Framework Convention on Climate Change (2015) ([here](#)).

21. See also Ministerial Decision on Trade and Environment, adopted in Marrakesh on 15 April 1994 ([here](#)) (recalling the preamble and noting the Rio Declaration and Agenda 21).

22. Title XI, Article 393(1) of the EU-UK Trade and Cooperation Agreement ([here](#)). See also e.g. Article 267(1), (2) of the EU-Colombia/Peru Trade Agreement ([here](#)).

Trade-related environmental measures are, in fact, legal hybrids with a foot in two legal worlds: international environmental law and international trade law. These hybrid measures must, therefore, respect the rules and principles from each legal world in a coherent and consistent manner; the rules and principles—the balance of rights and obligations—of one world cannot simply be forgotten or ignored when countries operate in the other world.

In adopting national and international trade policy measures to achieve environmental objectives, WTO members must, therefore, respect the rules and principles that they have agreed apply to such measures under international environmental law. Put differently, if WTO members seek to restrict international trade in order to protect the environment, they cannot ignore the rules and principles that they have agreed in international environmental law on how to pursue environmental protection. To that end, discussion of these hybrid measures at the WTO must take proper account of the rules and principles in international environmental law.

These rules and principles include:

1. Countries should tackle transboundary environmental problems on the basis of international cooperation.<sup>23</sup> There is a strong preference for a multilateral approach, with the inclusive participation of all countries.<sup>24</sup>
2. Countries should tackle environmental problems in a manner that promotes an open and inclusive international economic system that leads to sustainable economic growth in all countries.<sup>25</sup>
3. Environmental objectives, standards and priorities should reflect the environmental and developmental situation of each country.<sup>26</sup>

23. See Principles 7, 12 of the Rio Declaration; paragraphs 2.22(h),(i), 33.7 of Agenda 21.

24. See Principles 6, 7, 12 of the Rio Declaration; paragraph 2.22(h),(i) of Agenda 21.

25. See Principle 12 of the Rio Declaration; paragraphs 2.7, 2.9, 2.15, 2.19, 2.20 of Agenda 21.

26. See Principles 2, 6, 11 of the Rio Declaration; paragraph 2.22(e), (g) of Agenda 21.

27. See Principles 2, 6, 7, 9, 11 of the Rio Declaration; paragraph 2.22(g), (i) of Agenda 21.

28. See Principle 9 of the Rio Declaration; Chapters 33 and 34 of Agenda 21.

29. See Principles 2 and 12 of the Rio Declaration.

30. See Principle 11 of the Rio Declaration; paragraph 2.22(e), (g) of Agenda 21.

31. See Principle 11 of the Rio Declaration; paragraph 2.22(e) of Agenda 21.

32. See Principle 12 of the Rio Declaration; paragraph 2.22(f) of Agenda 21.

33. See Article 3.5 of the UNFCCC.

4. Countries should take steps to protect the environment on the basis of their specific national circumstances; on the basis of equity; and in accordance with their common but differentiated responsibilities and respective capacities (CBDR).<sup>27</sup>
5. Countries should cooperate to strengthen capacity-building for sustainable development, including through collaborative approaches to research and development of technology, and enhancing technology transfers.<sup>28</sup>
6. Countries should avoid unilateral actions to address environmental problems occurring outside their respective jurisdictions.<sup>29</sup> If they take unilateral actions, they should:
  - a. recognize that standards appropriate in developed countries may be inappropriate and of unwanted social costs for developing countries;<sup>30</sup>
  - b. avoid the use of trade restrictions or distortions as a means to offset differences in costs arising from differences in environmental standards and regulations;<sup>31</sup> and
  - c. ensure that trade restrictions or distortions do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.<sup>32</sup>

In seeking to achieve the climate-related objectives of the UNFCCC, countries should also respect the following rules and principles:

1. Countries should cooperate to promote a supportive and open international economic system that would lead to sustainable growth and development in all countries, particularly developing countries, enabling them better to address climate change;<sup>33</sup>
2. Developed countries have agreed to take the lead in protecting the climate system;<sup>34</sup>

3. Developing countries will take longer than developed countries to reach peak greenhouse gas emissions;<sup>35</sup>
4. Each country is responsible for: choosing its own progressive level of ambition, through its nationally determined contribution (NDC) under the Paris Agreement, set in light of national circumstances and reflecting CBDR, special circumstances, and equity; and deciding on the economic sectors to be targeted and policies to be implemented to achieve its NDC;<sup>36</sup>
5. Enhanced support for developing countries will allow them to achieve a higher level of ambition, including financial resources for climate adaptation and mitigation, collaborative approaches to research and development of technology, and support for technology transfers;<sup>37</sup> and
6. In taking any actions to achieve the objectives of the UNFCCC, countries should act on the basis of equity and in accordance with CBDR.<sup>38</sup>

A variety of fora are available for WTO members to pursue discussion of the design principles for trade-related environmental measures. The WTO Committee on Trade and Environment (CTE) could certainly take up a discussion of such fundamental importance. The Structured Discussions on Trade and Environmental Sustainability (TESSD) have brought renewed vigour to the trade and sustainability debate at the WTO, and are open to all members. This topic fits well into the TESSD cross-cutting work theme on “how trade-related climate measures and policies can best contribute to environmental goals and commitments while being consistent with WTO rules and principles”.<sup>39</sup> From our perspective, the particular WTO venue is less important than that Members take up the discussion in a manner that is open and inclusive.

## Developing a Data-Driven Trade Policy for a Just and Inclusive Green Transition

WTO Members are in the process of identifying how trade policy can best contribute to a just and inclusive green transition. They are doing so at national level and also at the WTO, in particular, in discussions at TESSD.

As shown in the approach of leading developed countries, the right mix of policies, encompassing regulatory carrots and sticks, inevitably varies from sector to sector, economy to economy, and region to region. Specific types of policy that are well-suited to effect change in one industry, economy, or region, may not be well-suited to others, in light of different circumstances. Or, in some circumstances, the imposition of a specific policy may need to be accompanied by flanking measures—financial or technical capacity, or technology—to enable a rapid, just and inclusive transition. There is no “one-size-fits-all”, or “silver bullet,” trade policy template.

This is because the barriers to transitioning to a green economy, and the incentives needed to effect transition, depend on the products in question, the way they are produced, and the capacity of producers and governments to effect change in their particular setting. The development of trade policy should, therefore, result from a considered process of: first, diagnosing the barriers to transition in particular settings using relevant data, and second, identifying the right mix of tailored policy solutions to overcome the barriers.

Such a process of diagnosing barriers and identifying tailored solutions is, in our view, necessary for WTO members to have informed, data-driven discussions about how trade policy—whether

34. See Preamble and Article 3.1 of the UNFCCC; Article 4.4 of the Paris Agreement.

35. See Preamble to the UNFCCC; Article 4.1 of the Paris Agreement.

36. See Articles 3, 4 of the Paris Agreement; Articles 3 and 4 of the UNFCCC.

37. See Articles 3, 4.5, 7.6, 9, 10, 11 of the Paris Agreement; Articles 4.3, 4.7, 4.8 of the UNFCCC; paragraphs 7, 14, 20, 40-60, 63-65 of the Glasgow Climate Pact ([here](#)).

38. See Preamble, Articles 3.1, 3.2, 4.1, and 4.3 of the UNFCCC; Preamble, Articles 2, 4 of the Paris Agreement.

39. Ministerial Statement on Trade and Environmental Sustainability, paragraph 2 ([here](#)).

unilateral or multilateral—can contribute to overcoming the wide range of barriers to the green transition, in a WTO-consistent manner. We believe that such data-driven discussions will be more beneficial to lowering global emissions in a just and inclusive manner than abstract discussions of specific trade policy measures.

First, we propose diagnosing barriers to transition for a selection of the most highly-traded commodities, both agricultural and industrial. As the barriers will vary by country and level of development, different diagnostic exercises should be conducted for an appropriate selection of different members, including developed, developing, least developed, and small island and landlocked developing countries.<sup>40</sup> Ideally, the international community would support such an exercise on as broad a basis as possible.

Second, in light of the barriers identified, members would then be in a position to have informed discussions about the

appropriate mix of trade policies—carrots and sticks—to secure a just and inclusive global green transition, in light of the rules and principles of international environmental law outlined above.

What regulatory requirements will work in which particular settings? What flanking measures are needed to enable transition in a just and inclusive manner?

The members' discussion should also be informed by the experiences of members that have already taken steps to effect a green transition, including experience with specific sectors, encompassing both the regulatory requirements and the accompanying flanking measures.

The venue for these discussions could, again, be the CTE or TESSD. The proposed diagnostic exercise, and identification of tailored policy solutions, should also be conducted with the support of other stakeholders (e.g. international organizations, industry, and civil society).

40. The World Bank has launched a diagnostic tool to identify barriers to general industrial competitiveness for developing countries ([here](#)). This initiative also uses a data-driven approach to the development of policy.

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