Harmonization of sustainability standards under the WTO framework as the core to create an intersection of trade and environment mutually supportive

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Introduction

In the context of climate change the world faces growing environmental pressures described as planetary boundaries including air and water pollution, land degradation, natural resources depletion and extinctions of species among other environmental issues and, in particular, more frequently extreme weather-related events and natural disasters affecting negatively the human development.

In this global scenario the impacts of trade on the environment are complex and depend on many factors.

Without coordination and effective global policies in place not aligned to sustainable development, trade can lead to environmental degradation by over-exploitation of natural and human resources. For example, instead of complying with strong environmental requirements locally, companies might prefer to move their production to countries with lax environmental standards in a race to the bottom to attract foreign direct investment leading to a global "carbon or environmental leakage". Products produced in these origins are then consumed in countries with higher environmental commitments neutralizing by this way all mitigation efforts.

On the other hand, with targeted and well-designed public regulations trade promotes development and inclusive economic growth, having contributed to an unprecedented reduction of poverty levels in the last decade. Specially trade works for developing countries because

opening up to trade increases a country's economic growth as it allows each country to use its resources more efficiently by specializing in the production of the goods and services it can produce more competitively. But also trade also contributes directly to poverty reduction by opening up new employment opportunities and reducing the prices of goods and services for poor consumers, including foodstuffs. At the same time international trade facilitates not only the creation and expansion of markets for sustainable products, thereby strengthening incentives for more environmentally sustainable and socially responsible production, while boosting decent employment, green growth and improving access to clean technologies at lower cost. These public regulations tend to multiply through a "mirror effect" between markets.

From private initiatives the global value chains can facilitate knowledge sharing between participating firms on best environmental practices. Given that pioneers firms usually target markets with higher standards and requirements considering sustainability as a source of competitive advantage, a driver of efficient value chains and a gateway to tap into emerging business and trade opportunities, value chains can enable the spread of more environmentally friendly production techniques. In this scenario known as "race to the top", international trade gives export-oriented companies a strong incentive to upgrade their production to gain access to the markets with the highest environmental standards. That way happens a phenomenon of "intrachain contagion".

Driven by private action, there is also a growing regulatory effect at the border. Given the multiplicity of private standards and multilateral environmental commitments at the public level, states increasingly regulate environmental requirements by product, which applies to both domestic production and external supply based on the national treatment principle and carbon border adjustment measures. This type of regulation is multiplied through a natural "mirror effect" or via trade agreements, producing a strong conditioning of market access.

Another key driver of bringing trade and environment closer together is the growing consumer awareness of environmental issues in their purchasing decisions, being this one of the main forces behind the rapid growth of markets and trade in sustainable products in recent years, along with the proliferation of sustainability public and private standards and labels.

In this way, international trade becomes a tool of the 2030 Agenda and its accompanying Sustainable Development Goals as well as the Addis Ababa Action Agenda on Financing for Development and the Paris Agreement commitments. So international trade offers unique opportunities to build a prosperous, climate resilient and environmentally sustainable world that expand and flourish.

To support these sustainable development agenda, it will be important to create an enabling, open environment for trade, that generates equal opportunities for economic growth and development, while guaranteeing a safe environment for consumers and businesses.

Striking this balance will require a global approach that promotes dialogue and the open exchange of information between different actors, so as to fully understand the issues surrounding trade and environment tandem. There is no one-size-fits-all answer to maximize the trade opportunities to build prosperous and environmentally resilient and sustainable economies, therefore, any regulatory response must consider all cases.

Environmental standards in trade and market access

Today the business landscape involves a mix of risks and opportunities driven by population growth, global health risks, new technology, extreme weather events and resources scarcity, among other factors.

The global economy consumes around 90 billion tons of resources per year, more than three times the level in 1970. By 2050, the global population is projected to increase from today's 7.6 billion to almost 10 billion and per capita income is expected to triple, leading to a two-fold increase in global material consumption levels[109]. Finding better approaches to manage natural resources sustainably while fulfilling the material aspirations of a growing world population have become increasingly urgent.

One of the tools used has been sustainability standards and their corresponding labels applied to both local and imported products. Voluntary measures that guarantee that the products we buy do not hurt the environment and the workers that make them such as public-private partnerships and guidelines for environmental performance by companies (by single businesses, business associations, environmental or social non-governmental organizations, or governments) are increasingly being used to complement government mandated measures. The standards cover a full range of environmental impacts throughout a product's lifecycle, identify and promote best practice and support continuous improvement.

In agriculture, the use of sustainability certification and labelling schemes has increased markedly, being the best-known examples: coffee, cocoa, palm oil, soybeans, cotton and tea, among others. Even more these certifications have shown that the life cycle of imported goods (even if imported by air) can have an environmental footprint much lower than goods produced locally. That is because other factors such as production, packaging or disposal can represent most of a product's environmental impact. Further trade can in fact help to bridge relative differences in resource endowments across countries, thereby relieving resource scarcities in some regions and allowing for a more economically and environmentally efficient allocation of resources globally.

As part of this, it is important to ensure that sustainability requirements are transparent and based on relevant international standards, while not creating any unnecessary barriers to trade,

109. WTO/UN. 2018. Environment. Making Trade and Work for the Environment, Prosperity and Resilience.

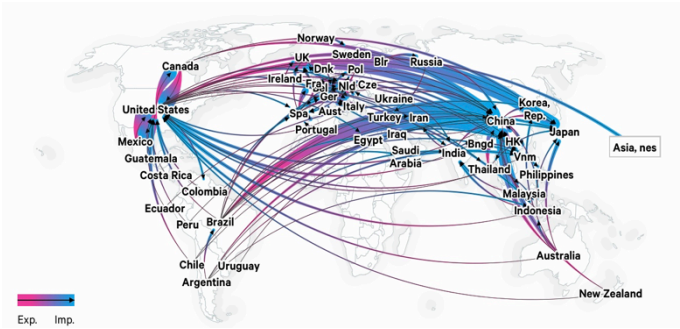
especially for developing countries limited to participating in sustainable trade due to poor access to finance, know-how and quality infrastructure. Decision makers in developing countries often say they have problems with sustainability standards because there is multiplicity of them, the compliance is costly, and they are not harmonized. So, sustainability standards have become a market reality and non-compliance can lead to the exclusion of producers from Global Value Chains. They turn into de facto mandatory requirements when market penetration is so intense that companies aiming to participate in markets have no other option than using them. In turn, if local quantitative information is not available, default values should be reported, that leave products imported from developing countries out of the market.

According to the ITC Standards Map the number of voluntary sustainability standards has continued to grow; currently, there are around 264 actives in 194 countries and 15 sectors, and about 457 ecolabels (according to Ecolabel Index) in 199 countries, and 25 industry sectors. The growth in the number of certified products is driven by the strong demand for products that are certified according to sustainability standards and is primarily driven by large retailers and newly public regulations. According to the same source the most frequently covered products are agricultural products, followed by processed food. Sustainability standards now apply to millions of farms, plantations, and factories worldwide.

The potential impact of sustainability standards in the global food trade

International agricultural trade reach US$1.2 trillion in 2019, representing 22% of global merchandise trade (see Graph 1). This shows that the global food system has become highly complex and interconnected. Every country in the world is dependent, to a greater or lesser extent, on trade to fulfil its overall food needs (Benton, 2017).

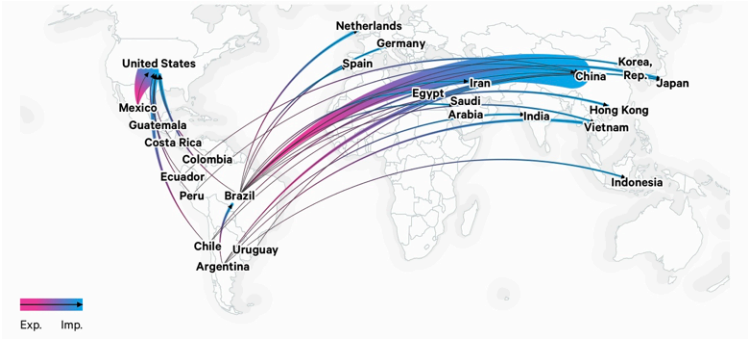
Graph 1: Main trade exports flows of agricultural goods. Year 2019



Source: resourcetrade.earth

Agriculture is critically important for many developing countries. In the Least Developed Countries (LDCs) the sector accounts for 69% of the total employment, with an equal proportion of men and women[110]. In addition to providing trading opportunities, agriculture provides an important means of adding value through agro-processing. In turn, in most developing countries, food trade has great significance, either by virtue of ensuring the food security of its population or as the main source of foreign exchange earnings from exports. Considering specifically the case of America Latina and the Caribbean, as a food exporter, it represents 19% of the total trade of these goods globally, reaching US$ 227 billion in 2019. The main exporters were Brazil (US$ 82.6 billion), Argentina (US$ 40.2 billion), Mexico (US$ 26.3 billion), Chile (US$ 17.3 billion) and Ecuador (US$ 10.6 billion).

Graph 2: Main trade exports flows of agricultural goods from Latin America and Caribbean. Year 2019



Source: resourcetrade.earth

For their part, the main destinations for agro-industrial exports from Latin America and the Caribbean during 2019 were China (US $ 45.5 billion) the USA (US $ 41.9 billion), the European Union (US $ 38.7 billion)[111], Japan (US $ 7.1 billion) and Russian Federation (US $ 4.8 billion). In consequence, considering the growing demands of sustainability standards (public and private) in the main food importers destinations, more than 60% of the volume of agri-food exports from Latin America and the Caribbean are under sustainability standards or could be affected in the very short term.

The key question is therefore how to design reliable, comparable and verifiable standards that help stimulate innovation, promote a high level of environmental protection with objective scientific verification and keep the overall costs of compliance as low as possible without providing misleading and unfounded environmental information known as green washing.

110. WTO. 2018. Mainstreaming trade to attain the Sustainable Development Goals.
111. UE-28. United Kingdom account imports from Latin America for US $ 3.4 billions in 2019.

The current approach of the WTO regarding environment trade related measures

At the global level, a major step forward was taken in 1995 when the members of the WTO made sustainable development an explicit guiding principle for the newly created organization. In consequence, the first paragraph of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) states that "sustainable development and the protection of the environment are central objectives of the multilateral trading system". Recalling the joint UN-WTO initiative Healthier Environments through Trade, the Nairobi Ministerial Declaration and the 2030 Agenda for Sustainable Development in 2015 that emphasis on the role that trade plays in promoting sustainable development, the members of the WTO acknowledge that trade and environment are mutually supportive.

In this sense, this issue is addressed within the WTO in the context of the WTO Committee on Trade and Environment (CTE) established in 1994 but also in other WTO regular Committees or Bodies where environment issues arise such as in the Negotiating Group on Rules (fisheries subsidies), the Technical Barriers to Trade and Application of Sanitary and Phytosanitary Measures as well as in the Committee on Agriculture and Committee on Trade and Development. Additionally, the WTO Secretariat constantly collaborates with UN environmental entities to ensure mutual supportiveness between trade and environmental policies.

Particularly the CTE was created to identify the relationship between trade measures and environmental measures, in order to promote sustainable development and to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system. The CTE also serves as a forum where UN Environment and the secretariats of several multilateral environmental agreements (MEAs) regularly brief WTO members on their work.

At the Doha Ministerial Conference, in 2001, WTO members recognized that under WTO rules no WTO member should be prevented from taking measures for the protection of the environment at the levels it considers appropriate as long as they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

As a general clause, WTO members are free to adopt environmental policies, such as environmental requirements and taxes, at the level they choose, even if they significantly restrict trade, as long as they do not introduce unjustifiable or arbitrary discrimination or disguised protectionism as an excuse to protect domestic producers. As it has been clarified by environment-related disputes at the WTO the environmental trade related measures have to be 1) coherent, 2) fit-for-purpose, 3) mindful and holistic and 4) flexible in order to reduce distortionary effects of non-tariff measures and to provide the stability and predictability needed for international trade to play its full role for the achievement of sustainable development.

The WTO's legal framework always tried to strike a very delicate balance between the interests of protecting legitimate values such as human animal and plant health and the environment and maintaining markets open. To preserve this balance WTO members when adopting non-tariff measures need to ensure that these are non-discriminatory, no more trade restrictive than necessary measures to achieve their objective, based in scientific studies or international standards, and administered through efficient administrative procedures (Article XX GATT). Additionally, something that is important is to provide developing country exporters affected by the measure with the technical and financial assistance to be able to comply with its requirements, including conformity assessment and development of international standards. To provide this assistance the WTO together with other international agencies (FAO, WHO, OIE and the World Bank established the Standards and Trade Development Facility (STDF)). The aim is not only to ensure that environment and trade are mutually supportive, but to promote the use of trade as a vehicle to deliver on the environmental and resilience agenda.

In Doha the members agreed on three negotiating topics: relationship between the WTO and MEAs, elimination of trade barriers on environmental goods and services, and clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.

At the WTO's 10th Ministerial Conference held in Nairobi in 2015, WTO members delivered a major part of this target by adopting the WTO Ministerial Decision on Export Competition. This decision eliminates agricultural export subsidies and sets out new rules for export credits, international food aid and exporting state trading enterprises.

In Buenos Aires, at the WTO's Eleventh Ministerial Conference held in December 2017, ministers agreed to continue to engage constructively in fisheries subsidies negotiations and to set themselves a goal for the conclusion of these negotiations by the next Ministerial Conference.

In November 2020 sponsored by 53 members a structured discussion on trade and environmental sustainability (TESSD) was organized to complement the existing work of the Committee on Trade and Environment and other relevant WTO committees and bodies. The first meeting took place virtually on 5 March 2021. During it, Brazil, Ecuador, El Salvador, and Paraguay introduced a written proposal highlighting the key role of the agricultural sector in achieving sustainable development and calling on TESSD participants to look at the environmental impacts of agricultural subsidies, along with the role of environment-related standards and regulations on agricultural trade. In the successive meeting of the TESSD participants outlined their views on what the priority issues for discussion should be and what concrete outcomes could be delivered at the WTO's 12th Ministerial Conference (MC12) and beyond. During the last meeting (September 2021) participants reviewed a revised draft elements text, which underscores the role of trade policy in helping address climate change and other environmental challenges. It sets out commitments on future work and objectives as well as a work program for the TESSD discussions in 2022.

The need to harmonize all the sustainability standards to concrete benefits for trade and environment in the global food value chain

For trade to play its full role in supporting markets for sustainable goods, a key step is to correct the trade restrictions and distortions faced by producers of such goods when accessing foreign markets. Ensuring that sustainability standards in particular are transparent, that they do not discriminate or restrict trade unnecessarily and that they are based on WTO principles, can go a long way towards opening up new trade opportunities, especially for small and medium-sized producers in developing and least-developed countries. Although there is a legal scaffolding that covers different aspects of the trade related environmental measures imparted by the governments at the WTO the last control resides in the dispute settlement body, which terms are not always suitable for development countries and their local export-oriented value chains. In turn, it is necessary to start incorporating producer countries in the development of these standards in order to include within the life cycle analysis the particularities of the production systems in these origins with an effective transfer of knowledge strengthening the capacity of small and medium-sized producers to seize trade opportunities for sustainable goods. Al least, the impact of their non-incorporation due to their exclusion from the market could endanger food safety.

Additionally, the implementation of mitigation measures related to trade must be associated with financial aid in a binding manner from the requesting countries to the producing countries, mainly developing, in accordance with the principles of the multilateral environmental agreements.

On the other hand, it is necessary to incorporate all the advances in the science of calculation / estimation of potential environmental impacts and the voluntary and official market regulations together with the criteria to avoid double counting to the WTO rules. It is necessary to keep the trade rules up to date in order to prevent environmental measures from illegally hindering trade.

Beyond these adjustments necessary in the procedures already established in the legal framework of the WTO, a waste range of voluntary sustainability standards imposed mainly from private marketing chains are outsider from the WTO legal framework. These do pose a de facto exclusion from the trading system of producers from developing countries causing competitive disadvantages and ultimately loss of market access, re-impacting then in the other indicators of sustainable development.

So, turning the relationship between trade and the environment into concrete benefits imposes new and urgent demands for effective cooperation among countries and the private sector. In this order Governments need to advance on simplification and harmonization of all schemes with proven impact on the environment as a totally necessary condition. In this

all the environmental standards will be doble checking by the principles and mechanisms established in the WTO framework to create a virtuous intersection between environment and trade and ensuring that environmental standards do not become barriers to trade. There is an urgent need to fulfil the WTO's role as a steward of sustainability in global trade.

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