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TRADE POLICY LINKAGES AND DISCONNECTS / LES LIENS ET DÉCONNEXIONS DE LA POLITIQUE COMMERCIALE

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Understanding Trade Linkages and Trade Disconnects

Cover description
Cette couverture met en scène une travailleuse concentrée sur un moteur, pour représenter l’économie concrète et le travail sur le terrain. En arrière-plan, la carte du monde et les symboles monétaires évoquent les flux et les échanges internationaux. Le contraste entre la figure humaine et l’univers graphique coloré suggère les liens, mais aussi les déconnexions, entre les politiques commerciales et la réalité productive.
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Vincent Deblock

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Louise Dalingwater, Richard Ouellet, Gabriel Siles-Brügge et Jean-Baptiste Velut

01. Introduction

Reconnaissance de financement

Des parties de l'introduction s'appuient sur un travail de recherche effectué par Gabriel Siles-Brügge dans le contexte d'un projet plus large financé par le *UK National Institute for Health Research* (NIHR204663). Les opinions exprimées sont celles de l'auteur/des auteurs et ne représentent pas forcément celles du NIHR ou du Département de la Santé et de la Protection sociale.

1 Le choc de la Chine, la montée du nationalisme, la crise climatique, la pandémie de Covid-19, l'invasion russe de l'Ukraine et le retour de Donald Trump à la Maison Blanche ont tous une conséquence commune pour le système commercial international : ils ont conduit à une refonte majeure des politiques commerciales et de leurs relations avec d'autres domaines politiques.

2 Tout d'abord, l'ascension fulgurante de la Chine en tant que premier producteur et exportateur mondial de produits industriels a entraîné un mouvement tectonique de la politique et l'économie mondiales, avec des effets socio-économiques dramatiques qui ont été – et continuent d'être – ressentis dans tous les pays industrialisés (Autor et al. 2013 ; Autor 2023 ; Autor 2024). Cela a eu trois conséquences notables sur les liens de la politique commerciale. Premièrement, l'afflux d'importations chinoises a redéfini les liens entre la politique nationale et la politique internationale en mettant à mal le consensus politique sur la libéralisation des échanges et le libre marché, au profit d'une résurgence de l'interventionnisme économique sous de multiples formes, comme le

protectionnisme ou de nouvelles politiques industrielles (Bulfone, 2023 ; Criscuolo et al., 2022 ; McNamara, 2023 ; Velut 2024). Deuxièmement, et parallèlement, les effets perturbateurs du choc chinois ont été largement instrumentalisés à des fins électorales, conduisant les gouvernements à associer le discours protectionniste à une rhétorique nativiste (Noland, 2020 ; Polaski et al. 2020 ; Velut, 2018). Ces nouveaux liens entre commerce et migration ont normalisé le nationalisme économique. Troisièmement, l'intensification de la concurrence entre les grandes puissances a contribué à l'émergence – ou plus exactement la résurgence – de la « géopolitisation » ou « sécuritisation » du commerce, où les intérêts sécuritaires et économiques sont de plus en plus étroitement liés.

3 La concurrence géoéconomique s'est traduite par une diversification des instruments de politique commerciale. Les pays se sont éloignés des accords de libre-échange (ALE) traditionnels pour se tourner vers une liste toujours plus longue de restrictions à l'exportation, de contrôles des investissements et d'autres politiques dites autonomes ou unilatérales, de « mini-accords » sectoriels parmi lesquels des accords sur les minéraux critiques, des protocoles d'accord et des partenariats stratégiques (Cernat, 2023 ; De Ville, Happersberger & Kalimo, 2023 ; Garcia-Duran, Eliasson & Costa, 2023 ; Claussen, 2023). L'invasion russe de l'Ukraine a renforcé les liens entre commerce et sécurité et contribué à la diversification des politiques commerciales, notamment avec l'imposition d'un éventail sans précédent de sanctions économiques allant des interdictions d'importation aux restrictions à l'exportation et au gel des avoirs.

4 Autre illustration de la complexité croissante des liens commerciaux, la pandémie de Covid-19 a contraint les décideurs à reconsidérer les tensions et les conflits entre les objectifs commerciaux, sanitaires et de sécurité nationale face aux urgences de santé publique et aux goulets d'étranglement des chaînes d'approvisionnement. Cette crise a marqué une rupture avec les politiques commerciales purement axées sur le marché, comme l'illustrent l'intervention sans précédent des gouvernements dans le développement des vaccins et la résurgence du commerce réglementé, mais aussi la montée du « populisme sanitaire » ou du « nationalisme vaccinal », qui ont privilégié les intérêts nationaux au détriment de la coopération internationale et de la santé publique (Baldwin & Evenett 2020 ; Bown 2022 ; Bollyky & Bown 2020 ; Dalingwater 2023).

5 Les questions environnementales et climatiques ne sont pas à l'abri de la nouvelle politique du nationalisme économique, créant de nouvelles tensions entre les objectifs commerciaux, sécuritaires et de durabilité dans le cadre d'un nouveau trilemme. D'une part, les questions environnementales sont progressivement passées d'une considération secondaire à la partie intégrante d'un nexus commerce-environnement cherchant à concilier objectifs économiques et environnementaux (Morin & Jinnah 2020 ; Laurens, Brand & Morin 2022). Ceci a brièvement laissé entrevoir la perspective d'une matrice de politique climatique l'emportant sur les intérêts commerciaux (Velut 2022). Néanmoins, l'émergence des politiques nationalistes et la concurrence accrue entre grandes puissances – pour les minéraux, les technologies ou les marchés– est antinomique avec la notion de « biens communs mondiaux » et risque de compromettre l'« écologisation » du commerce. L'offensive brutale des États-Unis contre les efforts multilatéraux pour créer des normes de pollution dans le transport maritime de marchandises en 2025 témoigne des tensions persistantes entre le commerce et l'environnement.

6 Tout aussi perturbateurs pour la conduite des politiques commerciales, la numérisation du commerce des biens et des services et l'utilisation croissante de l'intelligence artificielle (IA) ont ouvert une boîte de Pandore de liens politiques nouveaux ou revisités, notamment en matière de politique de concurrence, de politique technologique, de cybersécurité et de protection des consommateurs (Aaronson, 2023 ; Fahey 2022, Jones 2023). Par ailleurs, certaines questions, telles que les droits du travail, les taxes numériques, la « découvrabilité » des biens et services culturels et bien d'autres encore, n'ont pas encore émergé comme des liens légitimes dans le domaine de la politique commerciale numérique (Aaronson 2023 ; Jones & Adams 2023 ; Rioux & Verdugo 2019 ; Rioux 2022). La persistance de certaines de ces « déconnexions commerciales » numériques soulève des questions concernant les obstacles qui empêchent cette forme de mise en agenda (Velut 2023) et, à l'inverse, les processus qui sous-tendent la formation de liens commerciaux durables, qu'ils soient ascendants (*bottom up*) ou descendants (*top down*) (Aggarwal 2013).

7 Enfin, le retour au pouvoir de Donald Trump a rendu omniprésente « l'arsenalisation de l'interdépendance » commerciale (Farrell et Newman 2019). Les liens politiques ont pris une nouvelle importance avec son utilisation unilatérale de droits de douane « réciproques » pour obtenir des accords commerciaux d'un nouveau genre. En rupture avec les précédents diplomatiques, le président américain a adopté une forme brutale de transactionnalisme : les politiques commerciales ont été liées à une liste toujours plus longue de concessions politiques, certaines stratégiques, d'autres ponctuelles ou personnelles, notamment en matière de lutte contre le trafic de drogue, de politique fiscale, de réglementation numérique, de dépenses militaires ou simplement de concessions foncières pour construire un terrain de golf au Vietnam. Cela a non seulement accéléré la sécurisation du commerce, mais a également conduit à la marchandisation de la sécurité, une stratégie de recherche de rente illustrée par l'extorsion d'un accord sur les minéraux critiques en échange du soutien militaire américain à l'Ukraine, ou l'utilisation des garanties de sécurité pour obtenir des concessions commerciales du Japon et de la Corée.

8 En bref, la polycrise du XXIe siècle a perturbé à la fois la logique et la conduite des politiques commerciales et, plus fondamentalement, leur « ancrage », c'est-à-dire leur lien avec la « société et les valeurs sociales » au sens large (Kolben & Rioux, 2023 : 178). La légitimation renouvelée de l'intervention gouvernementale et la diversification des instruments de politique commerciale ont donné naissance à de nouveaux « bricolages » idéologiques (Carstensen 2011), à des arrangements institutionnels et à des économies politiques dont cette sélection d'articles cherche à dévoiler et à éclairer les fondements et les enjeux. La section suivante de cet article introductif présente notre cadre conceptuel pour appréhender les liens et les ruptures commerciaux, suivie d'une section qui examine la gouvernance des liens commerciaux. La section finale résume les contributions à ce numéro spécial.

02. Conceptualiser les liens et les déconnexions de la politique commerciale

9 Loin d'être la conséquence naturelle d'un programme en constante expansion, les liens et les retombées de la politique commerciale ne sont que la partie émergée de l'iceberg d'une économie politique contestée où des batailles sont menées pour définir la mise en

agenda des négociations commerciales. D'une part, les milieux d'affaires s'efforcent depuis longtemps d'élargir la portée des négociations commerciales à de nouveaux domaines réglementaires, allant de la facilitation des investissements et des échanges (par exemple Chase, 2003 ; Ravenhill, 2016) aux droits de propriété intellectuelle (Sell & Prakash 2004 ; Muzaka 2009) et au commerce numérique (Azmeh, Foster & Echavarri 2020). D'autre part, les groupes de la société civile ont joué un rôle clé dans l'intégration de la libéralisation du commerce aux normes environnementales et du travail dans les accords commerciaux, que ce soit dans l'UE (Ahnlid, 2013 ; Hannah, 2016), aux États-Unis (Destler & Balint 1999 ; Aaronson, 2001 ; Aggarwal, 2013 ; Kay & Evans, 2018), au Canada, en Nouvelle-Zélande ou au Chili, pour ne citer que quelques innovateurs politiques (Velut et al. 2022).

10 Sur le plan conceptuel, les liens peuvent prendre différentes formes et être différenciés selon deux dimensions : a) le degré de coordination de la politique commerciale avec d'autres domaines politiques ; b) leur ancrage ou « encastrement » social ou sociétal. S’agissant de la première dimension, on s’interrogera sur la manière dont les politiques commerciales sont perçues ou pensées pour contribuer à la réalisation d'un objectif politique dans un autre domaine politique : la politique commerciale est-elle considérée comme partie intégrante d'un répertoire plus large de politiques, ou est-elle traitée comme un domaine distinct, régi par des logiques *sui generis*, même lorsqu'un lien avec un autre domaine politique est reconnu ? Nous pourrions appeler la première approche « le commerce pour » et la seconde « le commerce et ». En ce qui concerne la seconde dimension, nous nous appuyons sur la notion polanyienne d'« encastrement » évoquée ci-dessus pour affirmer que les politiques commerciales, et leur lien avec d'autres domaines politiques, peuvent être guidées par une logique de marché sous-jacente (« désencastrées ») ou ancrées dans des valeurs socio-économiques et des objectifs politiques plus larges (« encastrées »).

11 Cela nous amène aux quatre cases ci-dessous dans le tableau 1, qui correspondent à différentes combinaisons selon ces deux dimensions. Dans le coin supérieur gauche, nous avons les politiques « commerce et » désencastrées, où l'objectif principal des politiques dans le domaine de la politique commerciale reste de servir la logique économique des échanges. C'est le type de lien entre le commerce, le travail et l'environnement qui est apparu dans les discussions de l'OMC dans les années 1990 : l'organisation n'était pas considérée comme le forum approprié pour mener des débats approfondis sur ces questions, mais son nouveau système de règlement des différends offrait une certaine latitude aux États pour mener des politiques d'intérêt public dans ces domaines et dans d'autres, à condition qu'ils respectent ses principes fondamentaux de non-discrimination et de libéralisation (Hughes et Wilkinson 1998 ; Schaffer 2001). La catégorie « commerce et » intégré inclut certaines des politiques réclamées par les militants altermondialistes au cours de leurs décennies de lutte contre les accords commerciaux et d'investissement, à commencer par l’Accord de libre-échange nord-américain (ALENA) jusqu'au TTIP (Traité transatlantique ou TAFTA) et à l’Accord UE-Mercosur. L'accent mis sur la résistance à ces accords commerciaux était lié à l'impact négatif perçu que ces traités internationaux contraignants auraient sur la démocratie (nationale et européenne) et sur l'autonomie nécessaire pour définir des politiques d'intérêt public au niveau national (Siles-Brügge et Strange 2020).

Tableau 1 – Types de liens commerciaux

		RELATION ENTRE LA POLITIQUE COMMERCIALE ET D'AUTRES DOMAINES POLITIQUES	
		« Commerce et » (domaines politiques distincts ayant une incidence les uns sur les autres)	**« Commerce pour » (réponse politique coordonnée)**
ENCASTREMENT DES POLITIQUES COMMERCIALES	**Désencastrée**	Discussions de l'OMC sur le commerce et l'environnement dans les années 1990 et décisions de l'OMC en matière de règlement des différends	Chapitres sur l'égalité des sexes dans les ALE de nouvelle génération
	Encastrée	Manifestations altermondialistes (années 1990-2020)	Politiques commerciales et industrielles américaines sous l'administration Biden

12 Cette typologie commence à montrer que tous les liens ne sont pas identiques. Ce sont les politiques situées dans le coin inférieur droit du tableau 1 qui établissent le lien le plus fort entre le commerce et d'autres domaines politiques, tandis que les liens désencastrés, de type « commerce et », sont les plus faibles. La littérature existante sur les liens commerciaux s'est principalement concentrée sur les tentatives réussies de relier les questions, mais a accordé moins d'attention à la différenciation entre les différents liens ou à l'étude des tentatives infructueuses de relier les sphères politiques, c'est-à-dire les déconnexions des politiques commerciales. Ces dernières ont été précédemment définies comme « des formes délibérées et persistantes d'exclusion qui marginalisent explicitement ou implicitement certains acteurs politiques et certaines questions politiques par une combinaison de processus discursifs, institutionnels, interscalaires et de contre-mobilisation ». (Velut, 2023, p. 251). Au niveau le plus fondamental, ces processus d'exclusion servent à définir ce qui relève du commerce et ce qui n'en relève pas, par exemple en essentialisant les chapitres « principaux » (*core* en anglais) des accords commerciaux par opposition aux questions dites « non commerciales », ou en définissant les flux de données non commercialisés comme du « commerce numérique ».

13 Ce cadre conceptuel met aussi en relief aux processus d'exclusion qui conduisent aux liens plus superficiels dans la partie supérieure ou gauche du tableau 1, à savoir ceux de type « commerce et » et « désencastrés ». Par exemple, bien qu'ils ne soient pas initialement au centre des préoccupations des milieux de la politique commerciale, les accords commerciaux globaux de nouvelle génération peuvent être considérés comme plus inclusifs des domaines politiques traditionnellement considérés comme non commerciaux, tels que les droits humains et le genre (Roberts & Trommer à paraître/dans ce numéro spécial, Gammage 2025). Cette littérature nous permet d'établir des liens importants entre les sphères sociale et économique et de dissiper les hypothèses sur la domestication accrue du travail des femmes et l'exclusion fondée sur le genre du domaine économique (Roberts et Trommer, à paraître/dans ce numéro spécial). En

bref, cette typologie des liens et des déconnexions de la politique commerciale met en lumière la dynamique de répression qui empêche certaines questions et certains acteurs politiques de monter à bord du navire de la politique commerciale – ou de ne s'y connecter que de manière superficielle.

14 Il ne s'agit bien sûr pas d'affirmer que les politiques qui intègrent le commerce et prévoient qu'il joue un rôle clé dans le dosage des politiques sont nécessairement progressistes, mais simplement que cette forme de lien est la plus développée et offre le plus de possibilités de participation aux acteurs extérieurs au cercle technocratique restreint des décideurs politiques traditionnellement associés à la politique commerciale. Pour étoffer le concept d'exclusion délibérative évoquée ci-dessus, on pourrait dire que dans le domaine de la politique commerciale, cela consiste en « une pondération différente accordée aux différents arguments et acteurs dans l'élaboration des politiques », notamment en ce qui concerne la capacité à mobiliser certains types d'expertise (Velut et al. 2022 : 2). Comme l'a fait valoir Andrew Lang (2011 : 240-53), « la formalisation et la technicisation des disciplines du GATT/OMC en matière de réglementation nationale » au fil du temps ont été soutenues par un recours croissant à l'expertise technique. Au sein de l'OMC, et plus largement dans les discussions sur la politique commerciale, cela s'est souvent traduit par un recours à l'expertise juridique, souvent acquise grâce à une « expérience directe et pratique », par exemple en participant au règlement des différends commerciaux devant l'ORD (Conti, 2016 : 90 ; voir aussi Lang, 2016).

15 Ce processus rejoint les arguments avancés dans les débats à la croisée des politiques publiques et des études scientifiques et technologiques autour de la performance de l'expertise : en d'autres termes, la sédimentation de formes particulières de connaissances à travers des actes structurés, ou ce que nous pourrions appeler des « pratiques » expertes (Rhodes et Lancaster 2019 ; Bandola-Gill 2021 ; pour une définition des pratiques, voir Pouliot et Adler 2011 : 6). Les experts et les connaissances qu'ils déploient ne sont pas politiquement neutres. Par leurs pratiques, ils donnent naissance à des « épistémologies civiques » particulières (Jasanoff 2003 : 94) : la base sur laquelle les revendications de connaissances sont évaluées par différentes sociétés ou dans différents domaines, pour reprendre le terme bourdieusien (voir Adler-Nissen 2014 : 49-57). Celles-ci privilégient certains types d'argumentation par rapport à d'autres. Par exemple, le paradigme de gestion des risques fondé sur des preuves scientifiques (*sound science*) que l'on retrouve au sein de l'OMC et dans d'autres jurisprudences commerciales – un principe mis en œuvre par les pratiques juridiques de l'organe d'appel et les discussions entre les diplomates membres de l'OMC au sein du Comité des mesures sanitaires et phytosanitaires, entre autres (voir Wolfe 2005) – est considéré comme contraire aux formes plus préventives de réglementation d'intérêt public (Jasanoff 2011). De plus, il conduit à une situation où le « grand public » est considéré comme « scientifiquement illettré », incapable de contribuer de manière significative à la gouvernance (Jasanoff 2012 : 26). Dans ce contexte, la tâche du chercheur consiste à rendre explicites les hypothèses implicites qui régissent ces pratiques expertes et à les remettre en question par une comparaison entre différents contextes (Jasanoff 2011). Appliqué à notre cas spécifique, nous pourrions aller plus loin et affirmer que des liens commerciaux plus forts pourraient refléter des situations où l'« épistémologie civique » préexistante dans le domaine de la politique commerciale a été remise en question avec plus de succès ; des pratiques alternatives en matière d'expertise ont fait quelques

progrès dans ce domaine, malgré les obstacles à pénétrer une sphère politique fortement gardée par des experts juridiques et des économistes.

16 Nous pouvons également observer cette dynamique dans le cas du commerce et de la santé. D'une part, il existe une abondante littérature en matière de santé publique qui cherche à mettre en évidence les effets directs ou indirects du commerce sur la santé. S'appuyant sur ces méthodes, les études de santé publique affirment systématiquement que si certains échanges commerciaux peuvent avoir un impact positif sur la santé en fournissant des aliments plus sains, la réalité est que les marchés sont souvent inondés de produits alimentaires obésogènes. L'augmentation de l'obésité et d'autres maladies non transmissibles (MNT) peut donc être en partie liée à l'augmentation des échanges commerciaux (Labonté 2019). Des analyses quantitatives et certaines études d'impact sur la santé ont souligné davantage les effets négatifs sur la santé, qui comprennent à la fois des questions de santé publique plus générales, mais aussi plus spécifiquement la manière dont les dispositions des accords commerciaux, notamment en matière de droits de propriété intellectuelle, peuvent limiter l'accès aux médicaments (Labonté, Schram, Ruckert 2016 ; Hirono et al. 2016 ; Baker P et al. 2016 ; Weiss 2015 ; Smith 2012 ; Schram et al. 2015 ; Schram et al. 2013 ; Thow et Gleeson 2017) et/ou entravent les tentatives des gouvernements de poursuivre des objectifs optimaux en matière de santé publique en limitant leur capacité d'intervention sur les marchés internationaux (Thow et al., 2015 ; Thow et al. 2014 ; Koisuvalo, 2014). Des études de cas ont montré comment l'internationalisation des services de santé d'un pays peut conduire à un système à deux vitesses et à une réduction de l'offre de soins de santé publics (Lunt et al. 2021 ; Dalingwater 2020). Les enjeux sont également importants pour les professionnels de la santé, même s'ils considèrent souvent que le commerce n'a aucun rapport avec leur pratique. Au-delà de son impact sur la santé publique, la mondialisation, et plus particulièrement la prolifération des accords de reconnaissance mutuelle des qualifications professionnelles, a également accru les échanges de professionnels de santé, souvent au profit des économies avancées, laissant le personnel des pays en développement aux prises avec des pressions accrues dans les hôpitaux publics (par exemple, Martineau 2004 ; Kanchanachitra et al. 2011). Le commerce et l'intégration économique sont donc considérés comme entraînant une perte de ressources humaines et une perte de capacité pour les systèmes de santé en raison de la fuite des cerveaux (voir Dalingwater dans ce numéro). Malgré la documentation abondante sur ces préoccupations, les chercheurs et les praticiens de la santé publique déplorent régulièrement le manque de considération accordé à ces preuves dans les cercles décisionnels en matière de politique commerciale, qui semblent plus réceptifs aux arguments des acteurs commerciaux (par exemple, Gleeson et Labonté 2020 ; Townsend et al. 2019 ; Townsend et al. 2020). La question de savoir qui est un expert et ce qui est considéré comme une preuve est au cœur de la dynamique d'exclusion à l'œuvre ici. Certains sont considérés comme pertinents dans le domaine du commerce, d'autres non.

03. Qui régit les liens de la politique commerciale ? Obtenir une place à la table des négociations... et sur le terrain

17 Ainsi, les questions relatives aux liens et aux déconnexions commerciales sont intrinsèquement liées à la politique d'inclusion et d'exclusion dans l'élaboration des politiques commerciales, non seulement en termes de redistribution économique, mais aussi en matière de représentation et de délibération (Goff 2021a ; Velut, Siles-Brügge & Dalingwater 2022). La consultation de la société civile est depuis longtemps une caractéristique des liens sociaux et environnementaux. Pourtant, un nombre croissant de pays, dont le Canada, la Nouvelle-Zélande, la Suisse et le Chili, réclament des politiques commerciales plus inclusives qui élargissent l'éventail traditionnel des parties prenantes habituelles (industries, syndicats) et prennent en considération les intérêts des femmes, des populations autochtones, des petites et moyennes entreprises (PME), des gouvernements infranationaux ou des acteurs culturels dans l'élaboration des politiques (Broschek & Goff 2020 ; DeVille & Gheyle 2022 ; Goff 2021a & 2021b ; Lequesne & Paquin 2017 ; Schiavon 2019 ; Velut et al. 2022b).

18 Au-delà des organisations de la société civile, les ramifications des politiques commerciales ont suscité un regain d'intérêt de la part des organisations et des forums internationaux qui étaient traditionnellement moins sensibles à la gouvernance commerciale. Dans le domaine de l'environnement, par exemple, le Programme des Nations unies pour l'environnement (PNUE) a lancé en 2015 son « Centre pour l'environnement et le commerce » dans le but de mieux comprendre comment le commerce peut contribuer au développement durable au lieu d'amplifier ce que l’agence onusienne définit comme la « triple crise planétaire de l'instabilité climatique, de la perte de biodiversité et de la pollution environnementale » (PNUE, s.d.). Parallèlement, la Conférence des Nations Unies sur le commerce et le développement (CNUCED) a élaboré un nouveau programme « Commerce et environnement », avec des initiatives allant de l'économie circulaire à la pêche, en passant par le « commerce issu de la biodiversité » (*biotrade*) et les minéraux critiques. Le sommet climatique COP28 à Dubaï a peut-être été le plus marquant en organisant pour la première fois une « journée du commerce », soulignant la « nécessité croissante de placer le commerce au cœur de l'action climatique » (CNUCED 2023). Les liens entre commerce et environnement ne sont qu'un exemple parmi d'autres de la décentralisation de la gouvernance, ou du caractère « multipartite » des politiques commerciales dans cette économie politique contestée. Les exemples abondent dans d'autres domaines politiques, qu'il s'agisse des interactions accrues entre l'OMC, l'Organisation mondiale de la santé (OMS) et l'Organisation mondiale de la propriété intellectuelle (OMPI) dans le cadre du lien entre commerce et santé, ou de l'action collective des défenseurs des droits numériques pour empêcher l'agenda commercial d'absorber la gouvernance des données ou pousser les décideurs à réglementer l'IA en tenant davantage compte de l'avis des citoyens (Aaronson & Zable 2023). La question de savoir si ces parties prenantes sont mieux servies par des mécanismes institutionnels (cooptation), la mobilisation sociale (contestation) ou une combinaison de coordination politique (« commerce pour ») et de politiques encastrées reste ouverte dans les milieux universitaires et politiques. En outre, de nombreuses questions subsistent quant aux conflits potentiels entre la dynamique *top-down* des liens de sécurité et les pressions

bottom-up visant à démocratiser davantage les politiques commerciales. Il est donc essentiel de comprendre la politique et la gouvernance des liens commerciaux afin de déterminer les relations entre processus et résultats et d'expliquer les synergies, les tensions et les conflits possibles entre ce que Miller (2010) décrit comme l'équité « procédurale » et l'équité « substantielle » (voir également Martens & Orbie 2018 ; Stiglitz 2006).

19 Enfin, ces relations entre processus et résultats, causes et effets, se sont étendus à l'ensemble du processus politique, de la table des négociations à la mise en œuvre sur le terrain. Face aux pressions politiques exercées tant par la gauche que par l'extrême droite, les décideurs ont accordé une attention croissante à la phase de mise en œuvre et d'application des politiques commerciales. Ce « tournant vers l'application » (*enforcement turn*) des politiques commerciales est de plus en plus évident parmi un nombre croissant de puissances commerciales qui cherchent à garantir que les dispositions sociales et environnementales des accords commerciaux aient des effets concrets sur le terrain (Hoekman & Bondi 2022 ; Boulanger, Rioux & Zini 2021 ; Velut et al. 2022). L'une des incarnations les plus marquantes de cette tendance à un renforcement de l'application des politiques commerciales est le mécanisme de réponse rapide en matière de travail prévu par l'Accord États-Unis-Mexique-Canada (AEUMC), qui vise à accélérer et à renforcer les pétitions publiques au nom des droits du travail (Rioux et l'Homme dans ce numéro). Paradoxalement, si la politique commerciale controversée des États-Unis a largement contribué à la montée en puissance de ces règles et processus contraignants, la prolifération des *deals* commerciaux du président Trump a compromis la prévisibilité et l'applicabilité de la politique commerciale américaine.

20 Il existe donc un double besoin : premièrement, mieux comprendre les conséquences de l'intégration ou de la réintégration des politiques commerciales et, deuxièmement, démêler les multiples facteurs qui peuvent aider les nations commerçantes à atteindre des objectifs politiques dits « non commerciaux » par le biais du commerce (« commerce pour »), qu'ils soient environnementaux, sociaux, culturels ou géopolitiques. Il est également important d'expliquer comment ces différents objectifs interagissent ou entrent en conflit les uns avec les autres, par exemple si de nouvelles exigences en matière de sécurité pourraient compromettre les objectifs commerciaux et de durabilité (Orbie 2021 ; Garnizova & Velut, à paraître) ou dans quelle mesure les liens entre le commerce et l'environnement du Nord pourraient entrer en conflit avec le développement économique du Sud. Plus généralement, compte tenu de la résurgence marquée du nationalisme, on peut se demander si les approches nationales ou régionales des liens commerciaux peuvent encore être multilatéralisées (Bacchus 2022) et si le droit commercial fera l'objet de nouvelles interprétations contradictoires dans le cadre d'un « spaghetti bowl » à l'heure de la démondialisation.

04. Les contributions

21 Ce numéro spécial présente des contributions issues de diverses disciplines (sciences politiques, relations internationales, politiques publiques, droit, économie, études aréales) afin de déchiffrer les moteurs, la gouvernance et les conséquences des liens nouveaux ou renaissants en matière de politique commerciale – et, à l'inverse, les obstacles à de nouveaux mariages politiques –, c'est-à-dire les déterminants des

déconnexions de la politique commerciale. Les articles sont soit des études spécifiques à un pays, soit des études comparatives qui mettent en contraste les façons dont les pays ou les groupes de pays gèrent les liens commerciaux (ou perpétuent certaines déconnexions). L'objectif est de partager des perspectives multidisciplinaires sur les multiples ramifications des politiques commerciales dans tous les domaines politiques afin de décrypter la signification et l'importance des liens et des déconnexions en matière de politique commerciale.

22 La première contribution à ce numéro spécial, rédigée par Elgin (dans ce numéro), souligne comment une double approche axée sur les liens et les ruptures commerciaux peut nous aider à comprendre le rôle de l'économie informelle. Bien qu'elle représente une part importante de l'activité économique dans de nombreux pays, notamment dans les pays du Sud, sa contribution a tendance à être négligée : les échanges informels sont souvent plus ancrés socialement que les échanges formels, créant ainsi d'importants liens transfrontaliers. Pourtant, ils sont simultanément marginalisés et déconnectés des cadres réglementaires, au détriment d'importants segments de la population. S'appuyant sur les enseignements de l'économie du développement, Elgin plaide en faveur de « modèles hybrides » de gouvernance, notamment en ce qui concerne les instruments commerciaux, qui contribuent à réunir le meilleur des deux mondes : le dynamisme des économies informelles et l'inclusivité favorisée par une surveillance accrue de l'État et une meilleure protection sociale.

23 L'accent mis sur l'économie informelle, dans laquelle les femmes sont plus susceptibles de travailler, met en évidence la nature genrée de la gouvernance commerciale. C'est le thème central de l'article de Roberts et Trommer (dans ce numéro). Adoptant une perspective d'économie politique féministe, qui abolit les distinctions entre l'économie productive et l'économie reproductive, elles se concentrent sur la manière dont le lien entre le genre et le commerce s'est développé dans la gouvernance commerciale mondiale en réponse à la pandémie de COVID-19. Si les décideurs ont reconnu le lien entre la politique commerciale et le genre, ils l'ont fait d'une manière qui ne remettait pas en cause la primauté de l'économie productive sur l'économie reproductive. L'article de Roberts et Trommer souligne l'importance de se concentrer sur la nature des liens commerciaux et leur degré « d’encastrement » social.

24 Notre numéro spécial se penche ensuite sur une série de contributions axées sur le lien entre commerce et environnement. Le premier de ces articles, rédigé par Wellhausen et Velut (dans ce numéro), examine le commerce mondial des déchets, un sujet peu étudié, et montre comment ce lien se reflète dans les politiques nationales. Les pays du Nord dépendent souvent des exportations vers le Sud pour gérer les quantités importantes de déchets qu'ils produisent. S'appuyant sur de nouvelles données relatives au commerce des déchets et des ferrailles, les auteurs comparent les différentes réponses apportées par l'UE et les États-Unis au « choc des déchets chinois » : l'interdiction par la Chine de certaines catégories d'importations de déchets et de ferrailles. Les restrictions unilatérales à l'importation peuvent favoriser le lien entre le commerce et les préoccupations environnementales, comme cela s'est produit dans le cas de l'UE, mais cela dépend des trajectoires politiques existantes, car les États-Unis n'ont pas véritablement changé d’approche en réponse à la nouvelle politique chinoise en matière d'importation de déchets.

25 L'article d'Alons et Zwaan (dans ce numéro) se concentre également sur la manière dont le lien entre commerce et environnement est médiatisé par l'élaboration des

politiques nationales. Il examine le développement d'un autre instrument unilatéral destiné à faire progresser les préoccupations en matière de durabilité. Le règlement de l'UE sur la déforestation (RDUE) impose des exigences de diligence raisonnable aux produits vendus sur le marché de l'UE qui sont susceptibles de causer la déforestation, tels que le soja ou le bœuf. Alons et Zwaan soulignent comment les instances politiques de l'UE, notamment la Commission européenne, le Parlement européen et le Conseil de l'UE, ont offert différentes structures d'opportunités politiques aux partisans et aux opposants de la mesure : elles ont permis l'accès à certains groupes d'intérêt et ont déterminé quels arguments étaient considérés comme légitimes. Cela a conduit à l'adoption d'une mesure favorable aux acteurs nationaux pro-environnementaux, mais qui a suscité une controverse considérable au niveau national et international, en partie parce qu'elle ignorait les préoccupations des pays tiers.

26 Sur le plan juridique, l'article de Ly (dans ce numéro) examine dans quelle mesure le lien entre commerce et environnement est institutionnalisé par les accords commerciaux. Dans quelle mesure les clauses environnementales représentent-elles un lien de type « commerce pour » ou simplement de catégorie « commerce et » ? Après un aperçu de l'évolution des dispositions régissant le lien entre commerce et environnement dans les accords commerciaux multilatéraux, Ly se concentre sur le cas de l'Accord de partenariat régional global (RCEP), dont les membres dans la région Asie-Pacifique représentent une part importante de l'économie mondiale. Bien que le RCEP n'offre malheureusement qu'un lien « commerce et » limité, l'auteure soutient qu'il est possible de passer à des dispositions « commerce pour » plus ambitieuses en s'appuyant sur les engagements pris par les membres du RCEP dans d'autres accords de libre-échange, notamment avec l'UE, et sur l'Accord de partenariat transpacifique global et progressiste (PTPGP).

27 L'analyse juridique de Comont (dans ce numéro) examine également le lien entre commerce et environnement, mais pas de manière isolée. Il se concentre sur l'initiative liée à la déclaration conjointe sur le commerce électronique et examine dans quelle mesure un lien effectif est établi entre le commerce électronique et : a) le développement économique, b) l'inclusion économique des acteurs marginalisés, c) la protection des données et d) la politique environnementale. Bien que les initiatives plurilatérales offrent la possibilité de contourner l'impasse dans les négociations multilatérales, elles ont dans ce cas donné lieu à des discussions qui n'ont pas vraiment inclus les pays en développement membres de l'OMC. Il en est résulté un texte qui ne permettait pas de faire progresser de manière significative l'équité et le développement durable par le biais de la gouvernance commerciale mondiale. L'article souligne l'importance de repenser l'approche adoptée pour concevoir et négocier les initiatives plurilatérales à l'OMC si l'on veut qu'elles soient considérées comme pertinentes pour relever les grands défis politiques actuels.

28 Les trois dernières contributions examinent les liens entre le commerce et trois domaines politiques différents : la santé, les droits du travail et l'inclusion des populations autochtones. En ce qui concerne le premier de ces domaines, Dalingwater (dans ce numéro) se concentre sur les impacts que les flux commerciaux et d'investissement peuvent avoir sur les systèmes de santé publique, en se concentrant sur l'Inde. Son article documente les effets négatifs du commerce des services de santé, notamment lorsqu'il prend la forme du tourisme médical et de la « fuite des cerveaux » des professionnels de santé indiens, ainsi que du commerce des produits

pharmaceutiques, avec son régime sous-jacent de protection stricte des droits de propriété intellectuelle. S'appuyant sur les travaux de John Ruggie, l'article propose une série de recommandations visant à « réencastrer » les objectifs sociaux dans les politiques commerciales et sanitaires afin de protéger l'offre de soins de santé publique.

29 La contribution de Rioux et L'homme (dans ce numéro) se concentre sur ce qu'ils considèrent comme un lien très fort entre le commerce et les droits du travail : le mécanisme de réponse rapide (MRR) prévu par l'accord commercial entre le Canada, les États-Unis et le Mexique (ACEUM). Le MRR permet aux États-Unis ou au Canada de demander l'inspection d'installations spécifiques soupçonnées de violations des droits des travailleurs et d'imposer des mesures commerciales correctives si le problème n'est pas résolu. Les auteurs montrent que le fait d'être à l'extrémité « dure » des mesures prises dans le cadre de la gouvernance mondiale du travail a permis à ce mécanisme d'avoir un impact positif sur les droits du travail au Mexique. Cela ne veut pas dire que le MRR est sans problèmes, notamment en raison de son application asymétrique (les installations aux États-Unis et au Canada ne sont pas couvertes). Son existence même et le lien plus large entre commerce et travail dans le cadre de l'ACEUM sont remis en question compte tenu de la « sécuritisation » de la politique commerciale par l'administration Trump.

30 Le dernier article de ce numéro spécial, rédigé par Serrano Burbano (dans ce numéro), se concentre sur l'utilisation par le Canada des accords commerciaux comme outil pour promouvoir l'inclusion des peuples autochtones. Il montre comment le processus interne de réconciliation a alimenté la « politique commerciale progressiste » du Canada, en proposant une analyse des dispositions constitutionnelles et juridiques pertinentes. Il souligne l'importance des dispositions des accords commerciaux en termes de reconnaissance et de protection des droits et des intérêts des peuples autochtones. Même si ces dispositions ne sont pas soumises à des mécanismes d'application – contrairement au MRR – et que leur impact sur les communautés autochtones reste encore un peu incertain, leur inclusion dans les accords commerciaux est considérée comme un pas dans la bonne direction.

31 Ce numéro spécial se termine par une interview réalisée par Richard Ouellet avec Gabrielle Marceau (dans ce numéro). Cette conversation avec une praticienne de la politique, qui s'appuie sur sa vaste expérience de plus de trois décennies en tant qu'experte juridique à l'OMC, met en évidence la nature changeante du commerce et de la gouvernance commerciale, qui est à l'origine des liens et des déconnexions de la politique commerciale. Gabrielle Marceau s'interroge sur la question de savoir si nous assistons à une démondialisation, sur l'élargissement du champ d'action de la gouvernance de l'OMC et sur l'importance croissante de la sécurité économique dans les discussions sur la politique commerciale. Elle conclut en proposant quelques réflexions sur la nature des liens entre le commerce et d'autres domaines politiques, en s'appuyant sur la distinction entre les liens « commerce pour » et « commerce et » que nous avons établie comme cadre directeur pour cette collection.

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Trade Policy Linkages and Disconnects

Drivers, governance and effects of integrated trade policies in a fragmenting world economy

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01. Introduction

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1 The China shock, the rise of nationalism, the climate crisis, the Covid-19 pandemic, the Russian invasion of Ukraine and Donald Trump’s return to the White House all have a common consequence for the international trading system: they have led to a major rethinking of trade policies and their relation to other policy spheres.

2 To begin with, the meteoric ascent of China as the world’s first manufacturing producer and exporter has been a tectonic shift in world politics and economics, with dramatic socio-economic effects that have been – and continue to be – felt across industrialized countries (Autor et al. 2016; Autor & Hanson 2025). This has had three notable consequences for trade policy linkages. First, the China shock(s) has(/have) redefined the links between domestic and international politics by straining the policy consensus in favour of trade liberalization and free market policies, leading to a resurgence of economic interventionism in multiple forms, not least with protectionist or new industrial policies (Bulfone, 2023; Criscuolo et al., 2022; McNamara, 2023; Velut 2024). Second, and in parallel, the dislocating effects of the China shock have been widely instrumentalized for electoral purposes, leading governments to connect protectionist

discourse with anti-immigrant rhetoric (Noland, 2020; Grossman & Helpman 2018). These new trade-migration linkages have normalized economic nationalist narratives. Third, intensified great power competition has contributed to a new – or more accurately *renewed* – "geopoliticization" or "securitization" of trade where security and economic interests are increasingly interconnected.

3 Geo-economic competition has translated into a diversification of trade policy instruments. Countries have moved away from traditional free trade agreements (FTAs) to an ever-expanding list of export restrictions, investment screening and other "autonomous" or unilateral policies, as well as sectoral "mini-deals" ranging from critical mineral agreements to memoranda of understanding and strategic partnerships (Cernat, 2023; De Ville, Happersberger & Kalimo, 2023; Garcia-Duran, Eliasson & Costa, 2023; Claussen, 2023). The Russian invasion of Ukraine has reinforced the new prominence of the trade-security nexus and contributed to the diversification of trade policies, not least with an unprecedented array of economic sanctions ranging from import bans to export restrictions and asset freezes.

4 As another illustration of the growing complexity of trade linkages, the Covid-19 pandemic compelled decisionmakers to reconsider the tensions and conflicts between trade, health and national security objectives in the face of public health emergencies and supply chain bottlenecks. This marked a departure from purely market-driven trade policies, as illustrated by unprecedented government intervention in vaccine development and the resurgence of managed trade, but also by the rise of "health populism" or "vaccine nationalism" which prioritized national interests over international cooperation and public health (Baldwin & Evenett 2020; Bown 2022; Bollyky & Bown 2020; Dalingwater 2023).

5 Environmental and climate issues are not immune to the new politics of economic nationalism, creating new tensions between trade, security and sustainability objectives under a new trilemma. On the one hand, environmental issues have gradually shifted from being an afterthought in trade policy to forming part of a more robust trade-environment nexus seeking to balance out economic and environmental objectives (Jinnah & Morin 2020; Laurens, Brand & Morin 2022). This briefly hinted at a potential climate policy matrix trumping commercial interests (Velut 2022). On the other hand, the convergence between nationalist politics and great power competition – for critical minerals, technology or markets – are antinomic to the notion of "Global Commons" and risk undermining the "greening" of trade. The US assault on multilateral efforts to develop pollution standards on cargo shipping in 2025 speaks to the persistent tensions between trade and the environment.

6 Equally disruptive to the conduct of trade policies, the digitalization of trade in goods and services and the increasing use of Artificial Intelligence (AI) have opened a Pandora's box of new or revisited policy linkages, including competition policy, technology policy, cybersecurity, and consumer protection (Aaronson, 2023; Fahey 2022, Jones & Adam 2023). Meanwhile, some issues, like labor rights, digital taxes, the "discoverability" of cultural goods and services and many others have yet to emerge as legitimate linkages in the digital trade policy sphere (Aaronson 2023; Jones & Adams 2023; Rioux & Verdugo 2019; Rioux 2022). The persistence of some of these digital "trade disconnects" raises questions regarding the obstacles preventing this form of agenda-setting (Velut 2023) and conversely, the processes underpinning the formation of durable trade linkages, be they bottom-up or top-down processes (Aggarwal 2013).

7 Finally, Donald Trump's return to power has made the "weaponization" of trade "interdependence" ubiquitous (Farrell and Newman 2019). Policy linkages have taken new significance with his unilateral use of "reciprocal" tariffs to secure trade deals of another kind. Breaking with diplomatic precedents, the US President has embraced a rugged form of transactionalism: trade policies have been connected to an ever-extending list of policy concessions, some strategic, others ad hoc or personal, including drug enforcement, tax policy, digital regulation, military spending or simply land concessions to build a golf course in Vietnam. This has not only accelerated the securitization of trade, but also led to the commoditization of security, a rent-seeking strategy illustrated by the extortion of a critical minerals agreement in exchange for US military support to Ukraine, or the leveraging of security guarantees to obtain trade concessions from Japan and Korea.

8 In short, the polycrisis of the twenty-first century has disrupted both the logic and conduct of trade policies and, most fundamentally, their "embeddedness," i.e. their linkage with wider "society and domestic social values" (Kolben & Rioux, 2023: 178). The renewed legitimation of government intervention and the diversification of trade policy instruments have engendered new ideational '*bricolages*' (Carstensen 2011), institutional arrangements and political economies whose underpinnings and stakes this selection of articles seeks to unpack and shed light on. The next section of this introductory article sets out our framework for conceptualizing trade linkages and disconnects, followed by a section that considers the governance of trade linkages. The concluding section summarizes the contributions to this special issue.

02. Conceptualizing Trade Policy Linkages and Disconnects

9 Far from being the inevitable consequence of an ever-expanding trade agenda, policy linkages and spillovers are the tip of the iceberg of a contested political economy where battles are fought to define the scope of trade negotiations. On the one hand, business interests have long striven to broaden the scope of trade negotiations in new regulatory fields from investment and trade facilitation (e.g. Chase, 2003; Ravenhill, 2016) to intellectual property rights (Sell & Prakash 2004; Muzaka 2009) and digital trade (Azmeh, Foster & Echavarri 2020). On the other, civil society groups have played a key role in harnessing trade liberalization to environmental and labor standards in trade agreements, whether in the EU (Ahnlid, 2013; Hannah, 2016), the US (Destler & Balint 1999; Aaronson, 2001; Aggarwal, 2013; Kay & Evans, 2018), Canada, New Zealand or Chile to name just a few policy innovators (Velut et al. 2022b).

10 Conceptually, linkages can take different forms and be differentiated according to two dimensions: a) whether trade policy and other policy areas are seen as demanding coordinated policy responses; b) whether trade policies are socially "embedded". On the former dimension, we might think of the extent to which trade policies are seen as contributing to achieving a policy objective in another policy field. Is trade policy seen as part of a wider repertoire of policies – or is it treated as separate, being governed by distinct logics even where a connection to another policy area is acknowledged? We might call the former the "trade for" approach and the latter the "trade and" linkage. On the second dimension, we draw on the Polanyian notion of "embeddedness" evoked above to argue that trade policies, and their linkage to other policy domains, can be

driven by an underlying market logic ("disembedded") or rooted within wider socioeconomic values and policy objectives ("embedded").

11 This leaves us with the four boxes below in Table 1, corresponding to different combinations along these two dimensions. In the top-left corner, we have disembedded "trade and" policies, where the primary focus of policies in the trade policy sphere remains serving the economic logics of exchange. This is the sort of linkage between trade and labour and the environment we saw emerging in WTO discussions in the 1990s: the organization was not seen as the appropriate forum for extensive debates on these matters, but its new dispute settlement system did afford some latitude for states to pursue public interest policies in these and other fields, provided they respected its fundamental non-discrimination and pro-liberalization principles (Hughes and Wilkinson 1998; Schaffer 2001). In the embedded 'trade and' mold, we might cast some of the policies demanded by alter-globalization activists over the course of their decades-long protest of trade and investment agreements, starting with NAFTA taking us all the way to TTIP and the EU-Mercosur FTA. The emphasis when it came to resisting these trade agreements was the perceived negative impact that these binding international treaties would have on (domestic and European) democracy and the autonomy to domestically set public interest policies (Siles-Brügge and Strange 2020). Turning to the "trade for" column, we have those policies that emphasise the contribution that trade policy can make to achieving gender equality outcomes – which in the case of gender chapters in new generation FTAs have often been seen to be driven by a disembedded market logic (Hannah et al. 2022). Finally, we might describe the US's trade policies under the Biden administration as potentially a case of embedded "trade for" policies: the stated aim is no longer primarily trade liberalization for its own sake but a raft of domestic policy objectives, e.g. industrial policy and promoting the interests of organized labour, even if this remains to be implemented in practice (see Velut 2023: 253-4).

Table 1 – Types of Trade Linkage

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="2">RELATIONSHIP BETWEEN TRADE POLICY AND OTHER POLICY AREAS</td></tr>
<tr><td>"Trade and" (separate policy areas impacting each other)</td><td>"Trade for" (coordinated policy response)</td></tr>
<tr><td rowspan="2">SOCIAL EMBEDDEDNESS OF TRADE POLICIES</td><td>Disembedded</td><td>WTO discussions on trade and environment in the 1990s and WTO dispute settlement rulings</td><td>Gender chapters in new generation FTAs</td></tr>
<tr><td>Embedded</td><td>Alter-globalization protests (1990s-2020s)</td><td>US trade and industrial policies under the Biden administration</td></tr>
</table>

12 What this typology begins to illustrate is that not all linkages are the same. It is those policies in the bottom-right corner of Table 1 that provide the strongest type of

connection between trade and other policy domains, while disembedded, “trade and”-type linkages are the weakest. Existing literature on trade linkages has, for the most part, focused on successful attempts to connect issues, but devoted less attention to differentiating between different linkages or to the study of failed attempts to link policy spheres, i.e. trade disconnects. The latter have previously been defined as “persistent deliberative forms of exclusion that explicitly or implicitly marginalize certain political actors and policy issues through a combination of discursive, institutional, interscalar, and countermobilizing processes.” (Velut 2023, p. 251). At the most fundamental level, these exclusionary processes serve to define what is trade and what is not, e.g. by essentializing “core” chapters in trade agreements vs. so-called “nontrade” issues, or by defining untraded data flows as “digital trade.”

13 This conceptual framework also sheds light on the exclusionary processes that lead to the more superficial linkages in the top or left half of Table 1 – of the “trade and” and disembedded variety. For instance, while not initially central in trade policy circles, new generation comprehensive trade deals can be said to be more inclusive of policy spheres which were traditionally considered to be nontrade issues such as human rights and gender (Roberts & Trommer forthcoming/in this special issue, Gammage 2025). Such literature enables us to make important linkages between the social and economic spheres and dispel assumptions on further domestication of women’s work and gendered exclusion from the economic realm (Roberts and Trommer, forthcoming/in this special issue). In short, the study of differentiated trade linkages and trade disconnects sheds light on the dynamics of repression that prevent specific issues and policy stakeholders from boarding the trade policy vessel – or only connecting with it in more superficial ways.

14 This is of course not to argue that those policies that are both embedded and foresee trade as playing a key role within the policy mix are necessarily progressive; merely that this form of linkage is the most developed, affording the greatest amount of room for participation by actors beyond the narrower technocratic circle of policymakers traditionally associated with trade policy. Unpacking the concept of deliberative exclusion above, we might say that in the trade policy field this has entailed “the differential weight given to different arguments and actors in policymaking”, notably in relation to the ability to mobilise certain types of expertise (Velut et al. 2022: 2). As Andrew Lang (2011: 240-53) has argued, the “formalization and technicalization of GATT/WTO disciplines on domestic regulation” over time has been underpinned by an increasing reliance on technical expertise. In the WTO, and within trade policy discussions more broadly, this has often meant a reliance on legal expertise, often gained through “direct, practical experience” – e.g. participating in trade disputes before the DSB (Conti, 2016: 90 ; see also Lang, 2016).

15 This evokes arguments found in debates at the intersection of public policy and science and technology studies around the performance of expertise: in other words, the sedimentation of particular forms of knowledge as through patterned acts, or what we might call expert ‘practices’ (Rhodes and Lancaster 2019; Bandola-Gill 2021; for a definition of practices, see Pouliot and Adler 2011: 6). Experts and the knowledge they deploy are not politically neutral. Through their practices they bring into being particular “civic epistemologies” (Jasanoff 2003: 94) – the basis on which knowledge claims are assessed by different societies or in different fields, to use the Bourdieusian term (see Adler-Nissen 2014: 49-57). These privilege certain types of argumentation

over others. For example, the ‘sound science’ risk management paradigm found within the WTO and other trade jurisprudence – which is brought into being through the legal practices of the appellate body and discussions amongst WTO member diplomats in the SPS Committee, amongst other settings (see Wolfe 2005) – is seen as running contrary to more precautionary forms of public interest regulation (Jasanoff 2011). Moreover, it leads to a situation where the “lay public” are seen as “scientifically illiterate”, incapable of contributing meaningfully to governance (Jasanoff 2012: 26). The task of the researcher in this context is to render the implicit assumptions governing these expert practices explicit and challenge them through comparison across different contexts (Jasanoff 2011). Applied to our specific case here, we might go one step further to argue that stronger trade linkages might reflect situations where the existing “civic epistemology” within the trade policy field has been more successfully challenged; alternative practices in relation to expertise have made some headway here despite the obstacles to penetrate a policy sphere heavily guarded by legal experts and economists.

16 We can see such dynamics also at play in the case of trade and health. On one hand there is an extensive public health literature which seeks to evidence the direct or indirect effects of trade on health. Drawing on such methods, public health studies consistently argue that while some trade can have a positive impact on health by providing healthier foods, the reality is that markets are often flooded with obesogenic food products. The rise in obesity and other non-communicable diseases (NCDs) can thus in part be related to the increase in trade (Labonté 2019). Quantitative analysis and some health impact assessments have underlined further the negative impacts on health which include both public health issues more generally but also more specifically how provisions in trade agreements, notably concerning intellectual property rights, can limit access to medicines (Ruckert et al. 2016 ; Hirono et al. 2016 ; Baker et al. 2016 ; Weiss 2015 ; Smith 2012 ; Schram et al. 2015; Thow and Gleeson 2017) and/or thwart governments attempts to pursue optimal population health objectives by limiting their scope to intervene on international markets (Thow et al., 2015). Country specific case studies have shown how internationalization of health services can lead to a two-tier system and a reduction in the supply of publicly delivered health care (Lunt et al. 2021; Dalingwater 2020). There is also seen to be much at stake for health professionals even though they often consider trade to be unrelated to their practice. Yet beyond the impact on public health, globalization, and more specifically the proliferation of Mutual Recognition Agreements for Professional Qualifications has also increased exchanges in health professionals often to the benefit of advanced economies, leaving staff in developing countries grappling with increased pressures in public hospitals (e.g. Martineau 2004; Kanchanachitra et al. 2011). Trade and economic integration is thus seen to lead to a loss of human resources and a loss of capacity for health systems because of a brain drain (see Dalingwater in this issue). Despite extensively documenting these concerns, public health scholars and practitioners regularly bemoan the lack of consideration given to such evidence in trade policymaking circles, which appear to be more receptive to the arguments of commercial actors (e.g. Gleeson and Labonté 2020; Townsend et al. 2019; Townsend et al. 2020). Who is an expert and what is considered evidence are at the heart of the exclusionary dynamics here. Some are considered to be germane to the *trade* field, and others not.

03. Who Governs Trade Linkages? Gaining a Seat at the Table… and on the Ground

17 Thus, the questions of trade linkages and disconnects are inherently linked to the politics of inclusion and exclusion in trade policymaking, not simply in terms of economic redistribution, but also as a matter of representation and deliberation (Goff 2021a; Velut, Siles-Brügge & Dalingwater 2022). Civil society consultation has been a long feature of social and environmental linkages. Yet, a growing number of countries including Canada, New Zealand, Switzerland and Chile are calling for more inclusive trade policies that broaden the traditional range of usual trade policy stakeholders (industries, unions) and take into consideration the interests of women, indigenous populations, small-and-medium enterprises (SME), subnational governments or cultural actors in policymaking (Broschek & Goff 2020; DeVille & Gheyle 2022; Goff 2021a & 2021b; Lequesne & Paquin 2017; Schiavon 2019; Velut et al. 2022).

18 Beyond civil society organizations, the ramifications of trade policies have elicited renewed interests from international organizations and fora that were traditionally less attuned to trade governance. For instance, in the environmental field, the United Nations Environmental Programme (UNEP) launched its "Environment and Trade Hub" in 2015 with the aim of better understanding how trade can contribute to sustainable development instead of amplifying what it defines as the "triple planetary crises of climate instability, biodiversity loss and environmental pollution" (UNEP n.d.). Meanwhile, UN trade & development (UNCTAD) has developed a new "Trade and environment" agenda, with programs ranging from the circular economy to fisheries, "biotrade" and critical minerals. Perhaps most prominently, the COP28 climate summit in Dubai featured a "Trade day" for the first time, underlining the growing "need to put trade front and center in climate action" (UNCTAD 2023). Trade-environment linkages are just one example of the decentering governance, or the "multi-stakeholderization" of trade policies in this contested political economy. Examples abound in other policy spheres, from increased interactions between the WTO, World Health Organization (WHO) and World Intellectual Property Organization (WIPO) under the trade and health nexus, to the collective action of digital rights advocates to prevent the trade agenda from absorbing data governance or push decisionmakers to regulate AI with greater input from citizens (Aaronson & Zable 2023). Whether these stakeholders are better served through institutional mechanisms (co-optation), social mobilization (contestation) or a mix of both policy coordination ("trade for") and embedded policies remains an open question in both scholarly and political circles. In addition, many questions remain about the potential conflicts between the top-down dynamics of security linkages and the bottom-up pressures to further democratize trade policies. Thus, understanding the politics and governance of trade linkages is crucial to determine the links between processes and outcomes and explain the synergies, tensions and possible conflicts between what Miller (2010) describes as "procedural" fairness and substantive fairness (see also Martens & Orbie 2018; Stiglitz 2006;).

19 Finally, these links between processes and outcomes, causes and effects, have extended throughout the entire policy process – from the negotiating table to implementation on the ground. Facing political pressure from both leftwing and far-right constituents, decisionmakers have devoted increasing attention to the implementation and enforcement phase of trade policies. This "enforcement turn" in trade policies is

increasingly clear among a growing number of trade powers seeking to ensure that social and environmental provisions in trade agreements have concrete effects on the ground (Hoekman & Bondi 2022; Boulanger, Rioux & Zini 2021; Velut et al. 2022). One of the strongest incarnations of these trends toward stricter enforcement in trade policymaking is the US-Mexico-Canada Agreement (USMCA)'s rapid response labor mechanism, designed to both speed up and strengthen public submissions on behalf of labor rights (Rioux and l'Homme in this issue). Paradoxically, while the contentious politics of trade in the United States largely contributed to the rising prominence of these binding rules and processes, the proliferation of President Trump's ad hoc trade deals has undermined the predictability and enforceability of US trade policy.

20 Thus, there is a dual need, first to better understand the consequences of integrating or re-embedding trade policies and, second, to disentangle the multiple factors that can help trading nations reach so-called "non-trade" policy objectives through trade ("trade for"), be they environmental, social, cultural or geopolitical. It is also important to explain how these different goals interact or conflict with one another, e.g. whether new security imperatives might jeopardize trade and sustainability objectives (Orbie 2021) or the extent to which trade and environmental linkages in the North might conflict with economic development in the South. More broadly, given the prominent resurgence of nationalism, one may wonder whether national or regional approaches to trade links can still be multilateralized (Bacchus 2022), and whether trade law will be subject to new conflicting interpretations under a revisited "spaghetti bowl" with a deglobalization twist.

04. The Contributions

21 This special issue features contributions from a range of disciplines (political science, International Relations, public policy, law, economics, area studies) to decipher the drivers, governance and consequences of new or resurgent trade policy linkages – and conversely, the obstacles to new policy marriages – i.e. the determinants of trade disconnects. Papers are either country-specific or comparative studies contrasting the ways in which countries or groups of countries govern trade linkages (or perpetuate trade disconnects). The purpose is to share multidisciplinary perspectives on the multiple ramifications of trade policies across policy spheres to unpack the meaning and significance of trade policy linkages and disconnects.

22 The first contribution to this special issue, by Elgin (this issue), highlights how a dual focus on trade linkages *and* disconnects can help us make sense of the role of the informal economy. Despite representing a significant share of economic activity in many countries, notably in the Global South, there has been a tendency to neglect its contribution: informal exchanges are often more socially embedded than formal ones, creating important linkages across borders. Yet they are simultaneously marginalized and disconnected from regulatory frameworks, to the detriment of important segments of the population. Drawing on insights from development economics, Elgin argues for "hybrid models" of governance, including in relation to trade instruments, that help to bring together the best of both worlds: the vibrancy of informal economies and the inclusiveness promoted by greater state oversight and social protection.

23 A focus on the informal economy, in which women are more likely to work, brings to the fore the gendered nature of trade governance. This is the focus of Roberts and

Trommer's (this issue) article. Adopting a feminist political economy lens, which breaks down distinctions between the productive and reproductive economy, they focus on how the gender-trade linkage has developed in the global trade governance in response to the COVID-19 pandemic. While decision-makers recognized a linkage between trade policy and gender, they did so in a way which did not call into question the privileging of the productive over reproductive economy. Roberts and Trommer's piece highlights the importance of focusing on the nature of trade linkages and the extent to which they are socially "embedded".

24 Our special issue turns next to a set of contributions that have focused on the trade-environment linkage. The first of these pieces, by Wellhausen and Velut (this issue), examines the understudied global trade in waste products, showing how this linkage is reflected in domestic policies. Countries in the Global North often rely on exports to the Global South to manage the significant amounts of waste they produce. Drawing on new data on trade in waste and scrap products, the authors compare the different responses of the EU and US to the "China garbage shock": a Chinese ban on certain categories of waste and scrap imports. Unilateral import restrictions can advance the linkage of trade and environmental concerns, as happened in the case of the EU, but this depends on existing policy trajectories, as the US did not substantially alter course in response to China's new waste import policy.

25 Similarly focusing on how the trade-environment linkage is mediated through domestic policymaking is the piece by Alons and Zwaan (this issue). This examines the development of another unilateral instrument intended to advance sustainability concerns. The EU Deforestation Regulation (EUDR) imposes due diligence requirements on products sold on the EU market that are likely to cause deforestation, such as soya or beef. Alons and Zwaan highlight how policy venues in the EU, including the European Commission, European Parliament and Council of the EU, provided different political opportunity structures for advocates and opponents of the measure: they allowed access to certain interest groups and shaped which arguments were considered legitimate. This led to the adoption of a measure which was sympathetic to domestic pro-environmental actors but which faced considerable controversy domestically and abroad, in part because it ignored the concerns of third countries.

26 Turning to legal questions, Ly's (this issue) paper considers the extent to which the trade-environment linkage is institutionalized through trade agreements. To what extent do environmental clauses represent a "trade for" or just a "trade and" linkage? After providing an overview of the evolution of provisions governing the trade-environment linkage in multilateral trade agreements, Ly homes in on the case of Regional Comprehensive Partnership Agreement (RCEP), whose membership in the Asia-Pacific covers a significant proportion of the global economy. While unfortunately RCEP offers only a limited "trade and" linkage, the author argues that there is scope to move to more ambitious "trade for" provisions by drawing on the commitments made by RCEP members in other FTAs, most notably with the EU, and on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

27 Comont's (this issue) legal analysis also considers the trade-environment linkage, but not in isolation. His focus on the proposed plurilateral Joint Statement Initiative (JSI) on E-Commerce addresses the extent to which an effective linkage is established between electronic commerce and: a) economic development, b) the economic inclusion of marginalized actors, c) data protection d) and environmental policy.

Although plurilateral initiatives offer an opportunity to bypass deadlock in multilateral negotiations, in this case they resulted in talks that were not very inclusive of developing country WTO members. The outcome of was a text that could not meaningfully advance equity and sustainable development through global trade governance. The article highlights the importance of rethinking the approach taken to designing and negotiating plurilateral initiatives at the WTO if these are to be seen relevant to tackling the major policy challenges of the day.

28 The final three contributions consider the linkages between trade and three different policy domains: health, labour rights, and indigenous inclusion. Turning to the first of these, Dalingwater (this issue) focuses on the impacts that trade and investment flows can have for public healthcare systems, focusing on India. Her article documents the negative impacts of healthcare services trade, notably when this takes the form of medical tourism and the "brain drain" of Indian healthcare professionals, as well as trade in pharmaceuticals, with its underpinning regime of strict intellectual property rights protection. Drawing on the work of John Ruggie, the piece offers a series of recommendations for "re-embedding" social objectives into trade and health policy in order to protect public healthcare provision.

29 Rioux and L'homme's (this issue) contribution homes in on what they consider to be a very strong "trade for" labour rights linkage: the Rapid Response Mechanism (RRM) under the US-Mexico-Canada (USMCA) trade agreement. The RRM allows the US or Canada to request that specific facilities be inspected for suspected violations of workers' rights and allows for the imposition of trade remedies if the issue remains unresolved. The authors show that being at the "hard" end of measures within global labour governance has allowed the mechanism to have a positive impact on labour rights within Mexico. This is not to say that the RRM is not without its problems, including its asymmetric application (facilities in the US and Canada are not covered). Its very existence and the wider trade-labour linkage within USMCA hang in the balance given the Trump administrations' "weaponization" of trade policy.

30 The final article in this special issue, by Serrano Burbano (this issue), focuses on Canada's use of trade agreements as a tool to promote the inclusion of indigenous people. It documents how the internal process of reconciliation has fed into Canada's "progressive trade policy", offering an analysis of relevant constitutional and legal provisions. It highlights the importance of trade agreement provisions in terms of the recognition and protection of indigenous rights and interests. Even if the provisions are not subject to enforcement mechanisms – in contrast to the RRM – and their impact on indigenous communities is still a little uncertain, their inclusion in trade agreements is argued to be a step in the right direction.

31 Concluding this special issue is an interview conducted by Richard Ouellet with Gabrielle Marceau (this issue). This conversation with a policy practitioner, which draws on her extensive experience of more than three decades as a legal expert in the WTO, highlights the changing nature of trade and trade governance, which is driving the politics of trade policy linkages and disconnects. Marceau reflects on whether we are experiencing de-globalization, the expanding scope of WTO governance and the increasing importance of economic security in trade policy discussions. She concludes by offering some thoughts on the nature of links between trade and other policy areas – engaging with the distinction between "trade for" and "trade and" linkages that we set out as the guiding framework for this collection.

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The Role of Informality in Shaping Economic Policy Integration

Le rôle de l'informalité dans l'intégration des politiques économiques

Ceyhun Elgin

01. Introduction

1 The landscape of global trade has undergone significant transformations in recent years, shaped by a confluence of systemic shocks and structural changes. The meteoric rise of China as a global economic powerhouse, especially after its World Trade Organization membership, the resurgence of nationalism, the ongoing climate crisis, the COVID-19 pandemic, the Russian invasion of Ukraine and the recent rise in the protectionist rhetoric in trade policy have all contributed to a major rethinking of trade policies and their relationships with other policy spheres (Tooze, 2021). As the editors of this special issue argue, these developments have not only disrupted established trade patterns but have also led to a diversification of trade policy instruments and a renewed focus on the interconnections between trade and other domains such as security, environment, and social policy.

2 In this context, the concept of trade linkages has gained prominence, reflecting the increasing embeddedness of trade policies within broader social and economic frameworks (Ingram et al. 2005). Simultaneously, the notion of trade disconnects has emerged, highlighting the persistent deliberative forms of exclusion that marginalize certain political actors and policy issues in trade governance (Velut, 2023). These dynamics of inclusion and exclusion in trade policymaking have significant implications for both economic redistribution and democratic representation (Goff, 2021). Amidst these shifts, one crucial yet often overlooked factor in shaping trade linkages and disconnects is the role of the informal economy. The informal sector, encompassing economic activities that occur outside of state regulation and observation, plays a significant role in many economies worldwide, particularly in developing countries (Elgin and Oztunali, 2014). Despite its importance, the informal

economy often remains a blind spot in trade policy formulation and analysis, creating both challenges and opportunities for policymakers and scholars alike.

3 This paper argues that the informal economy plays a crucial role in shaping trade linkages and disconnects, influencing the effectiveness and inclusivity of trade policies in ways that are not fully captured by traditional economic models or policy frameworks. By examining the role of informality in shaping trade linkages and disconnects, this paper aims to contribute to a more nuanced understanding of the challenges and opportunities facing trade policymakers in the 21st century. In doing so, it seeks to bridge the gap between theoretical conceptualizations of trade policy and the complex realities of economic activity on the ground, particularly in contexts where informal economic activities play a significant role.

Recent quantitative work has begun to examine these dynamics more systematically. Notably, Dix-Carneiro et al. (2025) develop a structural model to analyze how trade liberalization affects economies with large informal sectors, finding that the gains from trade are significantly amplified when informality is prevalent, up to twice as large as in economies without informality. Their work demonstrates that trade openness triggers a reallocation of resources from less distorted informal firms to more distorted formal firms, generating substantial efficiency gains. This finding reinforces our argument that informality plays a crucial role in shaping both the magnitude and distribution of trade's effects, though our focus extends beyond quantitative measurement to examine the governance implications and the embedded social dimensions of informal trade networks

The informal economy represents a significant share of GDP and employment in many countries, particularly across the Global South. According to ILO estimates, informal employment accounts for over 90% of total employment in countries such as India and Burkina Faso, and over 80% in Bolivia and Indonesia (ILO, 2018). In Sub-Saharan Africa, the informal sector contributes more than 50% to GDP in some economies (Elgin et al., 2021). Additionally, Table 1 below presents regional estimates of the informal economy as a percentage of GDP, using both GDP-weighted and unweighted averages. The figures illustrate substantial variation across world regions, with the highest levels of informality found in Latin America, Sub-Saharan Africa, and post-socialist transition economies, where informal economic activity often exceeds one-third of total GDP. These estimates are based on the 2024 update of the Dynamic General Equilibrium modeling approach originally developed by Elgin (2020), and reflect the author's own calculations using harmonized macroeconomic indicators. The distinction between GDP-weighted and unweighted averages highlights how regional economic size affects aggregate informal economy shares, especially when comparing smaller but highly informal economies with larger, more formalized ones. These figures highlight that informality is not a marginal phenomenon but the dominant mode of economic life for a majority of the global workforce. This structural reality has profound implications for how trade policies are formulated, especially with respect to labor standards, regulatory enforcement, and the terms of trade negotiated between countries with vastly different economic compositions.

Table 1. Informal Economy (% GDP) throughout the World

Region	GDP-weighted	Unweighted
OECD-EU	15.01	15.55
Latin America	34.2	36.4
Post-Socialist Transition	32	31.8
Middle East North Africa	18.99	22.59
Sub-saharan Africa	33.2	36.4
Asia-Oceania	18.9	26.59

Source: Author's own calculations for 2024 using the method provided in Elgin (2020)

4 The remainder of the paper is structured as follows: First, next section establishes a conceptual framework that brings together the notions of trade linkages, disconnects, and informality. Then, section three explores how the informal sector can act as a source of trade disconnects, challenging conventional approaches to trade policy formulation. Section four considers the potential of informality to catalyze new and unexpected trade linkages, opening up possibilities for innovative policy approaches. Following this, section five discusses the governance implications of these dynamics, with a focus on developing more inclusive trade policies that account for both formal and informal economic activities. Finally, the last section concludes by synthesizing key arguments and outlining directions for future research and policy development in this critical area.

02. Conceptual Framework: Trade Linkages, Disconnects, and Informality

5 This paper builds on and contributes to the conceptual typology of trade linkages and disconnects articulated by Velut et al. (2022) and the editors of this special issue. In this regard, it builds on a framework that distinguishes between "trade and" and "trade for" approaches while emphasizing the critical dimension of social embeddedness in trade policy. Informality, as analyzed in this paper, provides a unique perspective on these dimensions. Informal economic practices often operate in spaces of embedded social relationships, resisting the disembedded logics of global trade governance that prioritize market efficiency and economic rationality. Informal trade practices are deeply intertwined with local socio-economic systems, reflecting both the dynamics of survival and entrepreneurial adaptation. This duality reflects broader efforts to align trade with inclusive development objectives.

6 However, informal economies also highlight the exclusionary dynamics that perpetuate "trade disconnects." Trade disconnects may manifest through discursive and institutional processes that marginalize certain stakeholders and issues, often due to the technocratic nature of trade policymaking (Velut et al. 2022). Informality embodies

this marginalization, existing largely outside formal governance frameworks and data systems (Elgin and Oztunali, 2014; Elgin, 2021). For instance, international trade agreements, with their stringent rules on tariffs, regulations, and dispute resolution, frequently overlook the realities of informal cross-border trade. This disconnect creates challenges in aligning trade policies with the lived experiences of millions who participate in informal economic activities.

7 Additionally, the typology's distinction between the "trade and" and "trade for" approaches offers insights into the policy dynamics surrounding informality. Informal economies are often treated within the "trade and" framework, where trade policies and informal economic activities exist in parallel but rarely intersect. This separation reflects a disembedded logic that prioritizes formal trade agreements over the realities of informal economic activities. However, the potential for "trade for" policies, where trade is mobilized to achieve broader socio-economic goals, offers a pathway for integrating informality into formal trade frameworks. For example, digital platforms such as mobile payment systems have facilitated the inclusion of informal sector actors into global trade networks, creating hybrid models that bridge formal and informal economic activities (Nguimkeu and Okou, 2021). By situating informality within this typology of linkages, this paper underscores the importance of rethinking the governance of trade policies in a fragmented global economy. Informality, while often seen as a challenge, also holds the potential to create resilient and adaptive trade linkages. As Velut et al. (2022) highlight, the governance of trade linkages is inherently political, involving contestation over whose interests are represented and whose are excluded. Addressing this requires policymakers to move beyond a narrow focus on formal economic activities and embrace a more inclusive approach that recognizes the socio-economic realities of informal economies.

8 This perspective aligns with the growing recognition that trade policies must be socially embedded to achieve their broader objectives. The embedded "trade for" policies described in the typology, such as those incorporating labor and environmental standards, offer a model for how informality can be integrated into formal trade governance. By embedding trade policies within broader socio-economic systems, it is possible to bridge the gap between formal and informal economies, creating trade linkages that are not only more inclusive but also more effective in addressing the complexities of the contemporary global economy.

9 To effectively analyze the role of informality in shaping economic policy integration, it is also crucial to establish a clear conceptual framework that brings together the notions of trade linkages, disconnects, and informality. This framework will serve as the foundation for our subsequent analysis and arguments. Trade linkages, as a concept, refer to the interconnections between trade policies and other policy domains. These linkages have become increasingly prominent in recent years, reflecting a growing recognition of the complex interdependencies that characterize the global economy. According to Ingram et al. (2005), trade linkages can be understood as the ways in which trade policies are embedded within broader social and economic contexts. This embeddedness manifests in various forms, from the inclusion of labor and environmental standards in trade agreements to the consideration of cultural and security concerns in trade negotiations. The evolution of trade linkages can be traced through several key developments in the global trading system. Howse et al. (2005) highlight how the traditional focus on tariff reductions has given way to a more

complex agenda that encompasses a wide range of regulatory issues. This shift has been driven by both economic and political factors, including the rise of global value chains, the growing importance of services trade, and increasing public concern about the social and environmental impacts of trade. However, the process of creating and maintaining trade linkages is far from straightforward. Velut et al. (2022) show that the expansion of trade policy into new domains is often contested and subject to complex political dynamics. Different stakeholders, including business interests, civil society groups, and government agencies, may have divergent views on which issues should be linked to trade and how these linkages should be operationalized.

10 In contrast to trade linkages, the concept of trade disconnects highlights the persistent forms of exclusion that exist within the global trading system. Velut (2023) defines trade disconnects as "persistent deliberative forms of exclusion that explicitly or implicitly marginalize certain political actors and policy issues through a combination of discursive, institutional, interscalar, and countermobilizing processes." These disconnects can take various forms, from the exclusion of certain stakeholders from trade negotiations to the failure to address key social or environmental concerns in trade agreements. The dynamics of trade disconnects are closely related to what Goff (2021) describes as the politics of inclusion and exclusion in trade policymaking. This perspective emphasizes that trade policy is not merely a technical exercise but a deeply political process that involves choices about whose interests are represented, and which issues are prioritized. Understanding these dynamics is crucial for developing more inclusive and equitable approaches to trade governance.

11 Informality, as the third key concept in our framework, refers to economic activities that occur outside of state regulation and formal institutions. The informal economy encompasses a wide range of activities, from small-scale street vending to large, unregistered businesses. According to Elgin (2020) as well as Elgin et al. (2021), the informal sector plays a significant role in many economies, particularly in developing countries, where it can account for a substantial portion of economic activity and employment. The relationship between informality and trade policy is complex and multi-dimensional. On one hand, the informal economy can be seen as a challenge to effective trade governance, as it operates outside of formal regulatory frameworks and may not be fully captured by official economic statistics. This can create difficulties in assessing the true impact of trade policies and in ensuring compliance with trade agreements. On the other hand, the informal sector can also be a source of economic dynamism and innovation, potentially offering new opportunities for trade and economic integration.

12 Elgin et al. (2021) provide a comprehensive analysis of the informal economy's role in the global economic landscape. Their work highlights how informality interacts with various aspects of economic policy, including trade. They argue that the size and characteristics of the informal sector can significantly influence the effectiveness of trade policies and the distribution of their benefits. It is important to note that the informal economy has been extensively studied in development economics, labor economics, and social policy for decades. What is more recent, however, is its integration into mainstream trade policy analysis. This disjuncture reveals a disciplinary silo, where trade scholars and decision-makers often operate independently from literatures that have long grappled with informality. Bridging this gap is one of the central aims of this paper, bringing insights from development studies

into closer conversation with trade governance debates. In this regard, this typological framing outlined here sets the stage for a deeper examination of how informality creates tangible trade disconnects in practice, to which we now turn.

03. The Informal Sector as a Trade Disconnect

13 This section explores how informality acts as a trade disconnect, examining the ways in which large informal sectors complicate trade governance and policy effectiveness. It will analyze the theoretical implications of these disconnects and consider case studies that illustrate the challenges posed by informality in the context of international trade.

14 Traditional approaches to trade policy, which often focus primarily on formal economic activities and institutions, may fail to fully capture the realities of economies with large informal sectors. For example, in several West African countries, trade liberalization policies, implemented in alignment with international trade agreements, have led to an influx of cheap, subsidized agricultural imports from developed countries. While such policies are intended to lower consumer prices and promote integration into global markets, they have often undermined local informal agricultural markets. Small-scale farmers operating informally, without access to subsidies or formal market protections, have struggled to compete, resulting in income loss and reduced food security. This outcome highlights how formal trade policy, when detached from the realities of informality, can exacerbate economic vulnerability rather than promote inclusive development (Carr and Chen, 2002; Meagher, 2018). Moreover, the presence of a significant informal sector can itself be seen as a form of trade disconnect. As Schneider and Enste (2013) argue, the informal economy often operates in parallel to formal economic structures, creating challenges for policy coordination and implementation. This disconnect can be particularly pronounced in the context of international trade, where formal agreements and regulations may have limited reach into informal economic networks. At the same time, the informal economy can also create opportunities for new forms of trade linkages. For example, cross-border informal trade networks can sometimes serve as conduits for economic integration and cultural exchange, even in contexts where formal trade relationships are limited. Understanding these dynamics requires a nuanced approach that goes beyond traditional economic models and policy frameworks.

15 Most trade policies rest on assumptions of formal economic activity, yet informal sectors represent a significant share of economic life in many countries (Elgin 2020). This mismatch creates challenges for effective policy formulation, as we explore through several country examples below.

16 The case of Turkey provides an illustrative example of how informality can create trade disconnects. Elgin (2020) provides an examination of the relationship between informal economies and trade openness across countries. He finds that countries with larger informal sectors tend to have lower levels of trade openness, suggesting that informality may act as a barrier to international trade integration. In the case of Turkey, despite efforts to liberalize trade, the persistence of a significant informal sector has limited the country's ability to fully benefit from trade opportunities. This disconnect between trade policy objectives and the realities of the informal economy highlights the challenges faced by policymakers in countries with large informal sectors.

17 Another way in which informality creates trade disconnects is through its impact on competitiveness and market dynamics. Elgin and Birinci (2016) explore the relationship between informality and economic growth, finding that the informal sector can have both positive and negative effects on overall economic performance. On one hand, informal firms may be able to operate more flexibly and avoid costly regulations, potentially enhancing their competitiveness. On the other hand, informal firms often lack access to formal credit markets and may struggle to achieve economies of scale, limiting their ability to compete in international markets. This dual nature of informality creates complexities for trade policymakers seeking to enhance national competitiveness and promote export growth.

The quantitative significance of these disconnects has been recently demonstrated by Dix-Carneiro et al. (2025), who show that in Brazil, where nearly two-thirds of firms and 50% of workers are informal, the reallocation effects from trade liberalization are more than twice as large as the mechanical price effects. Their model reveals how informal firms, facing fewer regulatory distortions but lower productivity, create a complex landscape of misallocation that trade shocks can either ameliorate or exacerbate. While their analysis focuses on the aggregate welfare implications, it underscores a critical disconnect we emphasize: traditional trade policy frameworks that assume uniform regulatory compliance fail to capture these differential distortion effects across formal and informal firms.

18 The informal sector also presents challenges for trade policy enforcement and compliance. A growing body of literature has examined the complex relationship between trade liberalization and informal employment. For instance, Basu, Chau, and Kanbur (2015) analyze how attempts to enforce labor standards through trade agreements can have unintended consequences in economies with large informal sectors, potentially pushing workers from formal to informal employment. This dynamic illustrates how well-intentioned labor provisions may, paradoxically, undermine policy goals when informality is widespread. More broadly, studies have shown that tariff reductions and exposure to foreign competition can increase informality through two primary channels: (1) by incentivizing firms to lower labor costs via subcontracting to informal enterprises, and (2) by triggering layoffs that drive displaced workers into informal work due to limited formal job alternatives (Bacchetta, Ernst, and Bustamante, 2009; Goldberg and Pavcnik, 2003). However, the effects are highly context-dependent. As noted by the OECD (2011, 2013), the trade-informality nexus is shaped by factors such as labor market rigidity, capital mobility, technological intensity, and the heterogeneity of the informal workforce. For instance, while some studies on Brazil and Colombia suggest limited or mixed evidence of trade-induced informality (Goldberg and Pavcnik, 2003; Paz, 2014), others highlight substantial long-term effects, showing that informal sectors often absorb trade-displaced workers over extended periods (Dix-Carneiro and Kovak, 2017). These findings point to the need for trade policies that are sensitive to domestic labor market institutions and that integrate complementary social protections to mitigate adverse outcomes.

The case of India illustrates these tensions vividly. Over 80% of India’s workforce is engaged in informal employment, with significant concentrations in sectors like construction, street vending, small-scale textile production, and agriculture (ILO, 2018; Chen, 2012). Many of these sectors are either directly or indirectly integrated into global value chains, yet the workers themselves remain excluded from formal labor protections and are rarely accounted for in trade policymaking. Recent initiatives such as the e-Shram portal and social security schemes like Pradhan Mantri Shram Yogi Maandhan attempt to bring informal workers under some form of institutional protection. While these are domestic initiatives, their trade relevance is evident: informal labor underpins substantial export-oriented production, yet falls outside the regulatory mechanisms addressed in trade agreements. This disconnect complicates efforts to ensure fair labor standards and undermines the enforcement of social provisions within trade frameworks.

19 In the case of Turkey, the informal economy has long coexisted with formal industrial production and international trade integration. Roughly 30% of the workforce is informally employed, particularly in construction, textile manufacturing, and retail (Elgin and Sezgin, 2017). Many small- and medium-sized enterprises (SMEs) that participate in export supply chains rely on informal labor, often subcontracted through personal networks. While Turkey has made strides in aligning with EU standards through its Customs Union, these informal labor dynamics remain largely unregulated, highlighting a disconnect between formal trade obligations and the labor conditions underpinning them. This illustrates how informality persists within trade-integrated economies, not due to an absence of regulation, but because of the embeddedness of informal practices within productive structures.

20 Furthermore, the informal sector can complicate efforts to address issues of trade fairness and reciprocity. Elgin et al. (2021) provide a comprehensive analysis of the informal economy's role in shaping economic outcomes. They note that countries with large informal sectors may face challenges in negotiating and implementing trade agreements, as their ability to offer reciprocal market access or enforce regulatory standards may be limited by the extent of informal economic activity. This can create tensions in trade relationships and potentially lead to trade disputes or retaliatory measures.

21 The disconnect between formal trade policies and informal economic realities also has implications for income distribution and social welfare. Chong and Gradstein (2007) explore the relationship between informality and income inequality, finding that the size of the informal sector is positively correlated with income inequality in many countries. This suggests that the benefits of trade liberalization may be unevenly distributed in economies with large informal sectors, potentially exacerbating existing inequalities. Such outcomes can undermine public support for trade policies and contribute to broader social and political tensions.

22 Similarly, the informal sector complicates the application of concepts such as comparative advantage. While a country may have a theoretical comparative advantage in a particular sector, the presence of a large informal economy may prevent it from fully realizing this advantage in international markets. This disconnect between theoretical trade models and the realities of economies with significant informal sectors underscores the need for more nuanced approaches to trade policy analysis and formulation.

23 The challenges posed by informality as a trade disconnect have important implications for trade governance. Traditional approaches to trade policymaking, which often rely on formal consultations with recognized stakeholders and the use of official economic data, may fail to capture the full range of economic activities and interests in countries

with large informal sectors. This can lead to policies that are misaligned with economic realities and potentially exacerbate existing inequalities.

24 To address these challenges, policymakers and scholars need to develop new approaches that can better account for the role of informality in shaping trade outcomes. This may involve developing more sophisticated economic models that incorporate informal sector dynamics, improving data collection methods to better capture informal economic activities, and exploring innovative policy instruments that can bridge the gap between formal and informal economic structures.

04. Informality as a Catalyst for New Trade Linkages

25 While the informal sector often presents challenges for traditional trade policy formulation, it can also serve as a catalyst for new and unexpected trade linkages. This section explores how informality, despite its complexities, can create opportunities for innovative policy approaches and economic integration.

26 The informal sector, with its flexibility and adaptability, can sometimes create economic linkages that formal structures struggle to establish. Cross-border informal trade networks, for instance, often thrive in regions where formal trade relationships are limited or constrained by political tensions. Elgin (2020) highlights how informal cross-border trade may foster regional economic integration, even in the absence of formal trade agreements. These informal networks not only facilitate the movement of goods but also contribute to cultural exchange and social cohesion across borders. Such dynamics suggest that informality can, in some contexts, act as a precursor to more formalized trade relationships, paving the way for future policy linkages.

27 Moreover, the informal sector's ability to operate outside of traditional regulatory frameworks can sometimes lead to innovative solutions to trade-related challenges. Meagher (2018) examines how informal cross-border traders in West Africa have developed sophisticated risk management strategies and information-sharing networks that allow them to navigate complex and often volatile market conditions. These informal practices, while not officially recognized, often embody principles of flexibility and resilience that formal trade policies might benefit from emulating. By studying these informal mechanisms, policymakers may gain insights into new approaches for managing trade risks and fostering economic resilience.

28 The potential of informality to catalyze new trade linkages is particularly evident in the digital economy. As Nguimkeu and Okou (2021) argue, digital platforms and technologies are blurring the lines between formal and informal economic activities, creating new opportunities for trade and economic integration. For example, e-commerce platforms have enabled many informal businesses to access global markets, effectively linking local informal economies with the global trading system. This digital integration of informal actors into global value chains represents a new form of trade linkage that challenges traditional distinctions between formal and informal economic activities.

The potential for trade to catalyze formalization and productivity improvements through these linkages finds support in recent quantitative evidence. Dix-Carneiro et al. (2025) demonstrate that a 33% reduction in trade costs can lead to substantial shifts from informal to formal employment, particularly in manufacturing where informal employment declines by 25%. However, they also show that the overall informal sector remains remarkably persistent, declining only modestly from 48.7% to 43.6% of employment despite a fourfold increase in the imports-to-GDP ratio. This persistence aligns with our argument that informal networks often embody resilient social and economic structures that cannot be easily displaced by trade liberalization alone, even as they may facilitate new forms of trade linkages

29 Recognizing the potential of informality to create new trade linkages, some policymakers have begun to develop innovative approaches that seek to harness the dynamism of the informal sector while addressing its challenges. Jütting and de Laiglesia (2009) document various policy experiments aimed at fostering productive linkages between formal and informal economies. These include initiatives to provide informal businesses with access to formal financial services, efforts to simplify business registration procedures, and programs to enhance the skills and productivity of informal workers. While the success of these initiatives has been mixed, they represent important steps towards developing more inclusive trade policies that can bridge the formal-informal divide.

30 The potential of informality to catalyze new trade linkages also has important implications for regional economic integration efforts. Elgin (2020) examines how informal cross-border trade networks in Africa have responded to and shaped regional integration initiatives such as the African Continental Free Trade Area. He argues that while these informal networks are often viewed as obstacles to formal integration, they can also serve as important conduits for economic exchange and information flows between countries. By recognizing and engaging with these informal networks, regional integration efforts may be able to tap into existing economic linkages and create more effective and inclusive trade policies.

31 The role of informality in creating new trade linkages extends beyond economic considerations to encompass social and cultural dimensions as well. Carr and Chen (2002) highlight how informal economic activities often embody important social values and cultural practices that are not easily captured by formal economic models or policy frameworks. Informal trading networks may be rooted in kinship ties, ethnic solidarities, or communal norms, and often operate across borders through trust-based mechanisms that defy bureaucratic categorization. These embedded social dynamics can generate resilient, adaptive, and even transnational trade linkages that remain invisible to formal trade governance. Yet most trade agreements conceptualize the “social” dimension in highly technocratic and standardized terms, primarily through the lens of labor rights enforcement, typically aligned with ILO core standards. While crucial, this framework tends to privilege a formalized vision of work, rights, and compliance, often overlooking the social embeddedness of informal economic practices. One could thus argue that the prevailing approach to the social clause in trade agreements is too reductive. It fails to account for alternative normative orders and informal institutions that underpin real-world trade relationships, particularly in the Global South. A more expansive conception of the social would consider not only worker protection and labor standards but also the ways in which informal trade sustains livelihoods, strengthens social cohesion, and maintains economic circulation in marginalized or conflict-affected regions. Recognizing and engaging with these

dimensions could allow trade policy to better reflect the plural logics of economic life and to foster more inclusive forms of integration.

32 From a theoretical perspective, the potential of informality to catalyze new trade linkages challenges conventional economic models that tend to treat the informal sector as a residual or transitional phenomenon. Instead, as Chen (2012) argues, one needs to develop deeper and more detailed theoretical frameworks that recognize the informal economy as a dynamic and integral part of the overall economic system. Such frameworks would allow us to better understand how informal economic activities interact with formal structures and how these interactions can give rise to new forms of economic integration and trade linkages.

33 The recognition of informality as a potential catalyst for new trade linkages also has implications for how to conceptualize economic development and trade policy objectives. Traditional approaches often view formalization as a key goal of development policy, assuming that economic progress necessarily involves a transition from informal to formal economic structures. However, as Nguimkeu and Okou (2021) suggest, the digital transformation of economies is creating new hybrid forms of economic activity that challenge this linear conception of development. In this context, trade policies may need to evolve to support a more diverse and fluid economic landscape, one in which formal and informal activities coexist and interact in complex ways.

34 Despite the potential of informality to create new trade linkages, it is important to recognize that significant challenges remain in harnessing this potential while addressing the negative aspects of informality. Issues such as labor exploitation, tax evasion, and regulatory non-compliance in the informal sector cannot be ignored. The challenge for policymakers is to develop approaches that can leverage the dynamism and flexibility of informal economic activities while simultaneously addressing these concerns and promoting broader development objectives. In conclusion, while the informal sector is often viewed primarily as a source of trade disconnects, it also has the potential to catalyze new and unexpected trade linkages. By recognizing and engaging with the informal economy, policymakers may be able to tap into existing economic networks, foster innovation, and develop more inclusive and effective trade policies. However, realizing this potential will require a shift in the conceptualization of the relationship between formal and informal economic activities, as well as the development of new theoretical frameworks and policy approaches that can navigate the complexities of contemporary global economic landscapes.

05. Governance Implications: Towards Inclusive Trade Policies

35 The complex interplay between trade linkages, disconnects, and informality presents significant challenges for trade governance. The informal sector can both complicate traditional approaches to trade policy and create opportunities for new forms of economic integration. This section explores the governance implications of these dynamics, focusing on the challenges of developing inclusive trade policies that can effectively navigate the realities of economies with large informal sectors. It will also

examine potential strategies for more inclusive policymaking and consider theoretical models for balancing formal and informal economic interests in trade governance.

36 One of the primary challenges in governing trade in the context of large informal sectors is the limited reach of formal institutions and regulatory frameworks. As Chen and Carré (2020) argue in their comprehensive work on the informal economy, many traditional trade governance mechanisms are designed with formal economic structures in mind, often failing to account for the realities of informal economic activities. This mismatch can lead to policies that are ineffective or even counterproductive when applied to contexts with significant informal sectors. For instance, trade agreements that focus solely on formal sector regulations may inadvertently push economic activities further into informality, exacerbating rather than addressing governance challenges.

37 The governance challenge is further complicated by the heterogeneity of the informal sector itself. As Ulyssea (2020) demonstrates in his analysis of informality in developing countries, the informal economy encompasses a wide range of activities, from subsistence-level self-employment to relatively large, unregistered businesses. This diversity makes it difficult to develop one-size-fits-all governance approaches[1]. Policies that might be effective for addressing informality in one segment of the economy may be inappropriate or ineffective for another. Recognizing this heterogeneity is crucial for developing more nuanced and effective trade governance strategies.

38 Moreover, the informal sector often operates according to its own set of norms and governance structures that may be at odds with formal institutional frameworks. Meagher (2007) explores this dynamic in her study of informal institutions in Africa, highlighting how informal economic networks often rely on trust-based relationships and social capital rather than formal contracts and legal enforcement mechanisms. Integrating these informal governance structures into formal trade policy frameworks presents a significant challenge, requiring policymakers to bridge not just economic but also cultural and institutional divides.

39 Despite these challenges, there are emerging strategies for developing more inclusive trade policies that can better account for the realities of informal economies. One approach, advocated by Brown and Roever (2020) in their work on informal worker organizations, involves greater inclusion of informal sector representatives in trade policy formulation processes. This suggestion invites a productive confrontation with the dominant literature on formalization, which tends to assume that the route to greater equity and representation lies in bringing informal workers into the fold of formal labor relations, typically via unionization and the enforcement of ILO conventions. While such efforts remain vital, they often overlook the structural barriers to formalization and the legitimacy of collective organizations that exist outside of traditional union frameworks. Indeed, informal worker organizations, ranging from street vendor unions to cooperative networks, can act as vital agents of democratic representation, particularly in contexts where formal labor unions are weak, exclusionary, or absent altogether. Rather than viewing these organizations as a stepping stone to formalization, some scholars have argued for recognizing them as legitimate and enduring forms of worker representation in their own right (Chen, 2012; Roever and Skinner, 2016). This perspective challenges the assumption that formalization is the only path to rights, voice, and visibility, and suggests that informal institutions may offer alternative, context-appropriate mechanisms of social protection

and political participation. It is also important to acknowledge that trade governance mechanisms, particularly in the EU, have begun to create spaces for broader stakeholder engagement. The EU's stakeholder consultations, as part of its sustainability impact assessments and Domestic Advisory Groups (DAGs), do allow for the participation of a wide range of civil society actors, broadly defined. However, whether and how informal sector representatives are included in practice remains uneven and often dependent on capacity, translation, and recognition challenges. The promise of inclusion exists, but it requires more deliberate outreach and institutional innovation to ensure that the voices of informal workers are not only present but also impactful in shaping trade-labor linkages.

Several countries have taken steps to address informality through domestic policy innovations that have trade-relevant implications. In India, the government launched the e-Shram platform to register informal workers and connect them to social protection schemes, potentially enhancing the visibility and traceability of labor contributions within export-linked sectors. Brazil's Simples Nacional program offers another example: by simplifying the tax and registration process for micro- and small enterprises, it aims to reduce the compliance burden that often deters formalization. While the success of these efforts has been mixed, they demonstrate how domestic policy instruments can serve as bridges between formal trade structures and informal economic realities.

40 Another promising strategy involves the use of innovative policy instruments that can bridge the gap between formal and informal economic structures. For instance, Elgin (2020) discusses the potential of hybrid approaches that combine elements of formal and informal governance mechanisms. These might include simplified registration and taxation systems for small businesses, or the recognition of informal sector associations as legitimate stakeholders in trade negotiations. Such approaches can help to gradually integrate informal economic activities into formal governance frameworks without imposing overly burdensome regulations that might drive businesses further into informality.

41

A gendered perspective further deepens the analysis of informality. Women constitute a disproportionate share of the informal workforce globally, up to 92% in South Asia and 89% in Sub-Saharan Africa, according to ILO data. Sectors such as domestic work, informal retail, textile piecework, and cross-border vending are heavily feminized and often excluded from both trade union representation and formal trade frameworks (Carr and Chen, 2002; Chen, 2012). This exclusion perpetuates economic vulnerabilities and gender inequality. Integrating gender-aware policy approaches into trade governance, especially through inclusive consultation mechanisms and targeted protections, is essential for equitable and effective trade policy.

42 The rise of digital technologies also offers new possibilities for more inclusive trade governance. As Senyo et al. (2023) argue in their examination of digital innovations in informal economies, technologies such as mobile payment systems and digital marketplaces can help to formalize certain aspects of informal economic activities while preserving their flexibility and dynamism. By leveraging these technologies, policymakers may be able to develop more effective mechanisms for monitoring and

regulating informal sector trade without stifling its potential for innovation and growth.

43 From a theoretical perspective, developing more inclusive trade governance models requires a fundamental rethinking of how we conceptualize the relationship between formal and informal economic activities. Traditional economic models often treat informality as a symptom of underdevelopment or regulatory failure, assuming that economic progress necessarily involves a linear transition from informal to formal structures. However, as La Porta and Shleifer (2014) argue, the reality is often more complex, with formal and informal sectors coexisting, interacting, and even mutually reinforcing one another across different stages of economic development.

44 Empirical cases illustrate this complexity well. In Mexico, for example, Santiago Levy (2008) shows how well-intentioned social protection policies, designed without adequate attention to the structure of the informal labor market, created perverse incentives that sustained informal employment rather than reducing it. In Brazil, research has highlighted how informal enterprises and formal firms often operate in overlapping value chains, with subcontracting and informal labor practices embedded within ostensibly formal sectors (Ulyssea, 2020). Similarly, in Turkey, Elgin (2021) documents how informal and formal firms coexist within the same sectors, competing and cooperating in ways that challenge the notion of a dualistic labor market. These examples underscore that informality is not simply a residual or transitional category, it is an integral part of embedded socio-economic systems, shaped by institutional arrangements, labor market dynamics, and cultural norms. A more nuanced theoretical approach, such as that proposed by Levy (2008), would thus recognize informality not as a deviation from economic modernity but as a constitutive element of how economic life is organized in many societies. This perspective opens the door to governance models that seek to engage with informality as a structural feature, harnessing its dynamism while addressing its vulnerabilities, rather than pursuing its wholesale elimination. In doing so, trade policy can begin to reflect the embedded, pluralistic realities of global capitalism, particularly in the Global South.

45 Such an approach might involve, for instance, the development of differentiated regulatory frameworks that apply varying levels of oversight and support to different segments of the informal economy. As Ulyssea (2020) suggests, policies could be tailored to distinguish between subsistence-level informal activities and more productive informal enterprises, with the aim of supporting the growth and formalization of the latter while providing social protection for the former.

46 Another important theoretical consideration in developing inclusive trade governance models is the need to balance economic efficiency with social equity concerns. As Kanbur (2017) argues in his analysis of informality and development policy, the informal sector often plays a crucial role in providing livelihoods for marginalized populations. Governance approaches that prioritize rapid formalization without adequate consideration of these social dimensions risk exacerbating inequality and social exclusion. Instead, policymakers need to develop frameworks that can promote economic growth and integration while also protecting vulnerable workers and communities.

47 The challenge of balancing formal and informal economic interests in trade governance also has important implications for international economic relations. As discussed by Meagher (2018) the prevalence of large informal sectors in many developing countries

can create tensions in trade negotiations with more formalized economies. Developing countries may struggle to offer the same level of market access or regulatory compliance as their more formalized counterparts, potentially limiting their ability to benefit from trade agreements. Addressing these imbalances requires the development of more flexible and context-sensitive approaches to international trade governance.

48 One potential model for more inclusive international trade governance is the concept of "variable geometry" in trade agreements, as explored by Hoekman and Mavroidis (2015) in their analysis of world trade cooperation. This approach allows for different levels of commitment and integration among trading partners, potentially providing more space for countries with large informal sectors to participate in the global trading system while gradually building their capacity for fuller integration.

49 Ultimately, moving towards more inclusive trade policies that can effectively navigate the complexities of informality requires a multifaceted approach. This includes not only developing new policy instruments and governance models but also building the institutional capacity to implement and enforce these policies effectively. As Andrews, Pritchett, and Woolcock (2017) argue, this often involves a process of iterative adaptation, with policymakers learning from experience and adjusting their approaches over time.

50 In conclusion, while the informal sector is often viewed primarily as a source of trade disconnects, it also has the potential to catalyze new and unexpected trade linkages. By recognizing and engaging with the informal economy, policymakers may be able to tap into existing economic networks, foster innovation, and develop more inclusive and effective trade policies. However, realizing this potential will require a fundamental shift in how we conceptualize the relationship between formal and informal economic activities. More specifically, it requires rethinking the very notion of "linkages" itself, which is too often constrained by legal-formal understandings of integration, codified agreements, institutional harmonization, and regulatory compliance. Such a view risks obscuring the informal linkages that already structure economic life across borders: socially embedded, trust-based, culturally specific, and often outside the purview of state regulation. These informal linkages are not simply residual or marginal; they constitute robust systems of exchange that can offer resilience and adaptability in ways formal mechanisms cannot. Incorporating this broader, more pluralistic understanding of linkage-making into trade theory and policy would allow for a more realistic, grounded, and inclusive vision of economic integration.

06 Conclusion: Rethinking Trade Policy in an Era of Informality

51 The complex relationship between trade linkages, disconnects, and informality presents both challenges and opportunities for trade policy in the 21st century. This paper has explored how the informal sector can act as a source of trade disconnects, complicating traditional approaches to trade governance. Simultaneously, the paper has also examined the potential of informality to catalyze new and unexpected trade linkages, opening up possibilities for innovative policy approaches.

52 The governance implications of these dynamics are profound, requiring a fundamental rethinking of how to approach trade policy formulation and implementation. Moving

towards more inclusive trade policies that can effectively navigate the realities of economies with large informal sectors is not just a technical challenge, but a conceptual one. It requires to reconsider the understanding of economic development, the relationship between formal and informal economic activities, and the very nature of trade itself.

53 Several key areas emerge as priorities for further research and policy development. First, there is a need for more nuanced theoretical frameworks that can better capture the complexities of informal economic activities and their interactions with formal trade structures. Second, policymakers must continue to explore innovative governance models that can balance the dynamism of informal economies with the need for regulatory oversight and social protection. Finally, there is a pressing need for more inclusive approaches to trade policymaking that can effectively incorporate the voices and interests of informal sector actors.

54 By addressing these challenges, one can work towards a more comprehensive and equitable approach to trade governance – one that recognizes the integral role of informality in many economies and seeks to harness its potential while mitigating its negative aspects. While the path forward is complex, the potential rewards - in terms of economic growth, social inclusion, and global economic integration - make this an essential endeavor for policymakers and scholars alike. Moreover, future research on trade policy design would benefit from closer engagement with insights from development economics, especially concerning labor market segmentation, informality, and social protection frameworks already explored in other policy domains.

55 A limitation of the present study is that informality has been treated in relatively aggregate terms. As suggested by recent literature, notably Dix-Carneiro et al. (2025), greater analytical payoff may come from “opening the black box” of informality, distinguishing between its diverse registers and examining how each interacts with trade liberalization and domestic distortions. Future research can build on this agenda, combining conceptual analyses of trade linkages and disconnects with disaggregated, empirically grounded models of informality. Future research would benefit from disaggregating the informal sector into its constituent registers; distinguishing, for instance, between survival-oriented informal activities and growth-oriented informal enterprises; to better understand how different segments of informality interact with trade governance frameworks.

56

In conclusion, the role of informality in shaping trade linkages and disconnects cannot be overlooked. By developing a more nuanced understanding of these dynamics, one can work towards trade policies that are not only more effective but also more inclusive and sustainable in the long term.

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NOTES

1. The importance of this heterogeneity is underscored by recent structural models that differentiate between informal firms based on their productivity levels and size. As Dix-Carneiro et al. (2025) show, the informal sector encompasses both subsistence-level enterprises that would exit under stricter enforcement and more productive informal firms that might formalize under the right incentives. This internal differentiation within informality, what the referee to this paper aptly calls opening the 'black box' of the informal sector, remains an important avenue for future research, particularly in understanding how different segments of informality respond to trade shocks and policy interventions

ABSTRACTS

This paper examines the relationship between trade linkages, disconnects, and informality in shaping economic policy integration. As global trade undergoes significant transformations due to systemic shocks and structural changes, the informal economy emerges as a crucial yet often overlooked factor in trade policy formulation and analysis. The paper argues that the informal sector plays a critical role in both creating trade disconnects and catalyzing new trade linkages, challenging traditional approaches to trade governance while opening possibilities for innovative policy solutions. The study begins by establishing a conceptual framework that brings together notions of trade linkages, disconnects, and informality. It then explores how informality acts as a source of trade disconnects complicating data analysis, policy enforcement, and market dynamics. Simultaneously, the paper investigates the potential of informal economies to forge unexpected economic connections, particularly in cross-border trade and the digital economy. Examples from African informal trade networks and e-commerce platforms demonstrate this potential. The research then explores the governance implications of these dynamics, emphasizing the need for more inclusive trade policies that can effectively navigate the realities of economies with large informal sectors. It discusses emerging strategies for policy development, such as greater inclusion of informal sector representatives in trade policy formulation and the use of innovative policy instruments that bridge formal and informal economic structures. By bringing together concepts of trade linkages, disconnects, and informality, this research contributes to a more nuanced understanding of the challenges and opportunities facing trade policymakers in the 21st century. It calls for a rethinking of how to approach trade policy formulation and implementation, advocating for new theoretical frameworks and governance models that can balance the dynamism of informal economies with the need for effective regulation and social protection.

Cet article examine la relation entre les liens commerciaux, les déconnexions et l'informalité dans la structuration de l'intégration des politiques économiques. Alors que le commerce mondial subit des transformations majeures dues à des chocs systémiques et à des changements structurels, l'économie informelle émerge comme un facteur crucial mais souvent négligé dans la formulation et l'analyse des politiques commerciales. L'article soutient que le secteur informel joue un rôle essentiel à la fois en créant des déconnexions commerciales et en catalysant de nouveaux liens commerciaux, remettant en question les approches traditionnelles de la gouvernance commerciale tout en ouvrant des possibilités pour des solutions politiques innovantes. L'étude commence par établir un cadre conceptuel qui rassemble les notions de liens commerciaux, de déconnexions et d'informalité. Elle explore ensuite comment l'informalité agit comme une source de déconnexions commerciales, compliquant l'analyse des données, l'application des politiques et les dynamiques de marché. Parallèlement, l'article examine le potentiel des économies informelles à créer des connexions économiques inattendues, notamment dans le commerce transfrontalier et l'économie numérique. Des exemples issus des réseaux commerciaux informels africains et des plateformes de commerce électronique illustrent ce potentiel. La recherche analyse ensuite les implications en matière de gouvernance de ces dynamiques, en mettant l'accent sur la nécessité de politiques commerciales plus inclusives qui tiennent compte des réalités des économies à forte composante informelle. Elle discute des stratégies émergentes pour l'élaboration des politiques, telles que l'inclusion accrue des représentants du secteur informel dans la formulation des politiques commerciales et l'utilisation d'instruments politiques innovants qui relient les structures économiques formelles et informelles. En réunissant les concepts de liens commerciaux, de déconnexions et d'informalité, cette recherche contribue à une compréhension plus nuancée des défis et des opportunités auxquels sont confrontés les décideurs en matière de commerce au XXIe siècle. Elle plaide pour une refonte de l'approche de la formulation et de la mise en œuvre des politiques commerciales, en préconisant de nouveaux cadres théoriques et modèles de gouvernance qui équilibrent le dynamisme des économies informelles avec le besoin de réglementation efficace et de protection sociale.

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Mots-clés: économie informelle, liens commerciaux, intégration des politiques économiques, déconnexions commerciales, gouvernance commerciale inclusive
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Gendered Trade Governance during Covid-19

Gouvernance commerciale genrée pendant la Covid-19

Adrienne Roberts and Silke Trommer

> "Il est évident aussi que le problème soulevé par les tarifs de douanes n'est pas seulement économique; il est aussi *social*, et au premier chef. En effet, les mesures d'ensembles prises par un gouvernement à l'égard de la production industrielle et du mouvement commercial d'un pays, ont une influence capitale sur l'évolution nationale. Elles peuvent exercer sur l'avenir de la race une influence énorme, en bien ou en mal selon le cas. Il ne suffit donc pas de s'en tenir à l'une des faces de la situation, à tel ou tel des résultats partiels que l'on peut prévoir; il ne suffit pas de considérer par exemple le seul fait du développement ou de la restriction des échanges, et de leur influence sur le mouvement de la richesse. Il faut discerner en outre l'action qui peut en résulter sur la formation intime de la population, sur les évolutions que le libre-échange ou la protection peuvent amener dans la condition des individus, à la constitution des familles, dans la situation des pouvoirs publics, en un mot dans la vie privée et publique de la nation"

1 Léon Poinsard (1893), *Libre Échange et Protection*, Paris: Firmin Didot et Cie, p.3, italics in original.

01. Introduction

2 In his 1893 treatise investigating how trade policies of nations affect their societal progress and welfare, the French political economist Léon Poinsard takes a conceptual position, common in the 19th century, that trade is, first and foremost, a social problem. In his view, assessing the impacts of trade on society requires not only examining flows of trade and wealth, but equally how trade affects wider societal actors, processes and institutions. In a nod to the links between trade and gender relations, he references the individual, the family, the state apparatus and "the private and public life of the nation" as relevant in this respect (Poinsard 1893, p.3).[1] The 19th century idea that trade is in the first instance a social problem runs counter to contemporary understandings of trade. Despite policy trends towards recognizing the social and environmental

dimensions of trade, trade experts today take the idea for granted that trade policy should promote economic growth and address the problems of unemployment and inflation, while societal and environmental concerns are second-order issues for trade policy at best.

3 The literature on trade 'linkages' has critiqued this understanding for disconnecting economy from society/nature (Velut, Siles-Brügge and Dalingwater, 2022). Political tensions persist in global trade politics, in part because global trade patterns and regulations do interact with other spheres (Aggarwal, 2013; Jinnah and Morin, 2020; Toenshoff, 2024). Examples include links between trade rules and issues such as corruption and bribery, health care, human rights, labor rights, environmental protection, cultural policies, or the fight against terrorism (Alvarez, 2022). As feminists have long argued, it also includes gender equality (van Staveren et al., 2007), although trade policy-makers have traditionally insisted that trade is gender neutral (Hannah, Roberts and Trommer, 2021). What lies 'inside' and 'outside' of trade governance is thus not naturally given, but is politically contested, and entangled with how power operates in and through global trade politics, in the interests of whom, and to what economic, political and social effects.

4 To explore the politics of trade linkages and disconnects, our article asks, from a feminist political economy perspective, how global trade governance institutions articulated and acted upon the trade and gender linkage during the Covid-19 crisis, 2020-2022. We are particularly interested in the quality of this linkage, that is to say the qualitative difference between 'trade and' and 'trade for' linkages, as set out by editors in the Introduction to this Special Issue. As the editors argue, trade linkages may be more or less deep in the sense that they may reflect the coming together of different policy objectives ('trade for'), or the reproduction of separate policy logics ('trade and').The Covid-19 pandemic presents an apt focus for assessing the quality of the trade and gender linkage, because the pandemic was declared shortly after global trade governance institutions had abandoned their traditional view that gender relations are outside of the purview of trade policy (Hannah, Roberts and Trommer 2021, 2022). The WTO's 2018 *Declaration on Trade and Women's Economic Empowerment* marked a shift towards gender mainstreaming in global trade governance and towards the making of a new trade and gender linkage. The Covid-19 crisis was also a time when there was heightened discussion about women's insecure positions in the economy. Global policy-makers were committed to addressing social inequalities in Covid-19 policy responses, a desire then expressed under the slogan 'build back better'. The Covid-19 crisis therefore presented an opportunity for deepening the quality of the trade and gender linkage in global trade governance – that is to say moving towards a trade for gender equality linkage.

5 We argue in what follows that global trade governance institutions did recognize gendered imbalances as relevant for the trade-specific Covid-19 recovery agenda, thus consolidating the emerging trade and gender linkage in global trade governance. At the same time, the Covid-19 recovery agenda also perpetuated certain gender-based inequalities in trade – notably by relying on a false distinction between production and social reproduction, by privileging the former above the latter, and by failing to challenge existing trade rules and orthodoxies - thus reproducing certain dimensions of the traditional trade and gender disconnect. We caution that in attempts to (re-)embed trade policy and integrate social aims, the social relations that underpin the

economy *and* the hierarchical power relations that constitute society can remain intact. Long-standing disembeddedness and exclusions can therefore be reproduced in new trade linkages, unless the power relations that give rise to them are actively identified and undermined.

6 Our article makes theoretical and empirical contributions to the literature on trade linkages and this Special Issue. First, we bring feminist political economy into conversation with the trade linkages literature. From a feminist political economy perspective, the interventions of trade linkages scholars are welcome because their approach assumes that no dimension of the social world is *per se* separate from trade (e.g. Velut, Siles-Brügge and Dalingwater, 2022; Velut, 2023). Instead, these scholars critically explore what is assumed "in" and what is assumed "out" of trade politics, and focus on "persistent disconnects or enduring "disembeddedness"" in trade policy (Velut 2023, p. 249). These are also central concerns of feminist political economy, which shares the view with trade linkages scholars that insofar as 'the economy' and 'society' are politically organized as separate spheres, in ontological terms, human activities and interactions take place in one social realm.

7 As we detail in the next section, feminist political economy has much to add to the trade linkages debate, assuming, as it does, that all macroeconomic policies are both *inherently social* and *inherently gendered* (Elson and Çağatay, 2000). Feminist political economy sheds light on how *gendered* power relations operate and help to structure global trade in multifaceted ways. Asking how gendered power relations affect and are affected by the remaking of the boundaries of trade policy – as feminists do – differs analytically from exploring how previously separated policy objectives do or do not come together – which is the objective of this Special Issue.

8 Nonetheless, we believe that conversations among feminist political economy and trade linkages scholars are useful. The distinction made in the introduction to this Special Issue between 'trade for' versus 'trade and' linkages helps us in assessing some of the specific trade and gender linkages that different policy actors have made in different contexts. Furthermore, feminist analysis sheds light on trade disconnects, that is to say the persistent "exclusion[s] that explicitly or implicitly marginalize certain political actors and policy issues through a combination of discursive, institutional, inter-scalar, and countermobilizing processes" (Velut 2023, p. 251). As set out in the Introduction, different logics drive these inclusions and exclusions, namely marketized versus social logics, or what the editors refer to, drawing on Polanyi, as disembedded versus embedded logics. As we explain below, feminists begin their analysis with the structural mechanisms of discrimination that lie at the origin of disembeddedness, or what we call ontologies of exclusion. Of particular interest are the ways in which the false dichotomy of economy/society - which overlaps with false dichotomies of production/social reproduction, public/private, human/nature, etc. – works as an expression and a tool of gendered exploitation and exclusion in the global political economy (Peterson, 2005; Bakker, 2007).

9 Focusing on one dimension of structural inequality, here gender relations, has obvious limits in that it may de-prioritize other dimensions of inequality. Nonetheless, assessing the discursive, institutional and political processes in relation to gender relations has two advantages: it advances our understanding of ontologies of exclusion, or trade disconnects, by offering accounts of how certain issues that were considered "non-trade" became addressed over time, but in ways that reproduced certain aspects

of disembeddedness. It also posits a normative preference for an alternative vision, which can help link feminist trade politics to broader trade justice agendas, including around debates such as global social inequality, intersectional inequality, labor, human rights, and the environment.

10 Second, we make an empirical contribution to trade linkages debates by critically evaluating the recent interest that global trade governance institutions, including the World Trade Organization (WTO), the International Trade Centre (ITC), the United Nations Conference on Trade And Development (UNCTAD) and the Organization for Economic Cooperation and Development (OECD), have paid to the gendered effects of trade. We rely on data collection that was carried out as part of a larger research project (Hannah, Roberts and Trommer, 2021, 2022a; Roberts and Trommer, 2026).[2] For this article, we drew out all Covid-19-related policy reports and documents from our larger database of gender and trade policy documents published by leading regional and global trade governance institutions, including the WTO, ITC, UNCTAD, OECD, the United Nations Economic Commissions for Latin America (ECLAC), and for Africa (UNECA), and the Asia Pacific Economic Cooperation (APEC), between 2017-2022. We complemented the institutional reports with additional documents published on Covid-19 and trade that were not explicitly focused on gender, notably by the WTO, World Health Organization and World Bank. To analyse the documents, we investigated whether global trade policy-makers recognized gender inequalities in trade as relevant to the Covid-19 trade response, what kinds of gendered exclusions they did or did not recognize as important, and how they addressed them.

11 In the next section, we present a feminist political economy analysis of how trade is integrally connected to gender and to social reproduction, which entails going beyond the economy/society dualism that characterizes much trade theory. It also goes further than the 'business case' for gender equality that underlies most trade and gender linkages in the global governance realm. We then present our analysis of trade and gender linkages during Covid-19. We conclude that insofar as gender concerns were brought into trade policy, this did not disturb the ontological prioritization of the 'productive' economy or the marginalization and devaluation of social reproduction that gives rise to gendered, racialized and intersectional forms of inequality.

02. Gender, Trade and Social Reproduction

12 Our theoretical lens brings feminist insights regarding the gendered power relations that constitute the economy into the domain of trade policy analysis. Below we highlight in particular the distinction between production and social reproduction as relevant for our analysis. We also discuss how the new trade and gender linkage that emerged several years before the Covid-19 pandemic was predominantly marketized in nature.

2.1 Feminist Political Economy and the Traditional Trade and Gender Disconnect

13 Feminist political economy has long argued that treating 'the economy' as a separate sphere from 'society' that operates according to its own laws of motion obscures the ways in which economic systems are fundamentally intertwined with social structures,

power dynamics, and gender relations. Building on insights from Marx, feminist political economists have stressed that the rise of capitalism brought about a *fictitious* separation between the labor that goes into producing commodities and that which is involved in the reproduction of labor power and of life (Laslett and Brenner 1989; Bakker, 2003; Federici 2004; Bhattacharya 2017; Luxton 2018). Yet, the economy cannot exist without the wide variety of reproductive labor that goes into making and sustaining life, as well as capitalism itself, or what feminists refer to as social reproduction (Elias and Roberts, 2016; Luxton, 2018; Mezzadri, 2022).

14 While there are different ways of conceptualizing social reproduction, most definitions focus on activities related to the biological reproduction of the species (including social constructions of motherhood), the reproduction of the labor force (including subsistence, education, and training), and the reproduction and provisioning of caring needs (Bakker, 2007, p. 541). In Meg Luxton's influential formulation, a social reproduction lens centers "the activities involved in the production of life" (Luxton, 2018, p. 37). Social reproduction takes place in the household and communities, through public services and social provisioning (i.e. welfare services), and via commodified relations (i.e. paid domestic labor). Social reproduction is integrally connected to questions of health, as it aims to achieve or maintain human health (Elson, 2012). It may also be carried out under conditions that undermine health (Doyal, 1995; see also Harman, 2024), leading to what feminists call 'depletion through social reproduction' (Rai et al., 2014, see also Elson, 2012).

15 The false dichotomies of economy/society, production/social reproduction, public/private, human/nature, etc. fuel gender divisions and hierarchies around work and labor (Fraser, 2014; Bakker, 2007; Peterson, 2005). Central to this process is the way in which these dichotomies lead to the invisibilization and devolution of 'non-economic' or 'non-productive' activities and rationalities, which are traditionally associated with femininity and feminized others (Nelson, 1993; Mies 1998 [1986]; Benería, 1999; Ferber and Nelson, 2003). These include activities of provisioning, care-giving and nurturing for others or for nature; domains where women work; processes of social reproduction; rationalities and values that go beyond or reject individualist, utility-maximizing economic paradigms; and political actors that embody or promote such feminized activities, rationalities and values (see also Hannah, Roberts and Trommer, 2021; Roberts and Trommer 2026). When it is done in the home, reproductive work is generally considered valueless from an economic point of view, and often not considered to be work at all (Federici, 2004). When it is done outside of the home, for instance in public or privatized care settings, it tends to be lower paid and more precarious than other, more masculinized, forms of work (Folbre, 2018). The process also fuels hierarchies of class and race, as particular racialized groups have historically taken on these roles. Their labor has been misrepresented as being non-productive to capital regardless of the role it plays in sustaining capitalist life (Mies, 1998 [1986]; Bhattacharyya, 2018; Mezzadri, 2022). Gendered and intersectional forms of exploitation and exclusion also fuel environmental injustice, as masculinist, consumption- and growth-oriented perspectives dominate the greening of economic governance, despite the fact that negative externalities are disproportionately felt along international and intersectional lines of inequality (Gonzalez, 2000).[3]

16 In trade theory and trade governance, reproductive labor and feminized activities, rationalities and values have been categorically undervalued since the times classical

political economy (Roberts and Trommer, 2026). Although classical political economists did not pay attention to gender *per se*, they understood trade to be firmly rooted within broader social relations, or in Polanyian language, to be 'socially embedded'. Nonetheless, they came to define work in terms of the productivity of labor outside of the home, while the work associated with social reproduction, including domestic labor, was seen as external to capitalism (Picchio, 1992). Through this historical process, reproductive labor is ontologically excluded in economic, including trade, theory and policymaking. In the 20th century, with the rise of neoclassical economics, the market comes to be seen as a separate, disembedded, sphere governed by its own laws of motion.[4] The social reproduction of laborers is now narrowly dealt with as the effect of protectionism or free trade on wages (Roberts and Trommer, 2026).

17 This traditional trade and gender disconnect changed in the 1980s and 90s, as communication and financial revolutions drove global trade expansion. The scope of trade policy then expanded to include so-called "behind the border" issues. Domestic policy adjustments in a wide range of public policy areas - ranging from intellectual property rights, health and safety standards, professional qualifications, to financial regulation and beyond - increasingly accompanied the push for trade liberalization. As these new trade linkages were created, reproductive labor came into the trade realm as a tradable commodity (see Roberts and Trommer, 2026). Agreements such as the 1995 General Agreement on Trade in Services (GATS) institutionalized this process that fueled the privatization of public services such as health care and education. In this context, social reproduction became *'valorized'* in its privatized, commodified, form. However, it was still not *'valued'* because there was little appreciation of the role that social reproduction plays in underpinning all social and economic life (on this distinction see Dowling, 2021). Nor are the gendered, racialized and class-based divisions that constitute reproductive labor acknowledged. Thus, non-commodified forms of social reproduction remained ontologically excluded from the trade policy realm.

18 Combined with a belief in the gender-neutrality of trade prominent during the period, this ontological exclusion led to the development of trade policies that had highly uneven effects along gendered and intersectional lines (Roberts and Trommer, 2026). For instance, gender-blind trade policies can lead to increases in unpaid labor (van Staveren et al., 2007), and a rise in feminized, home-based informal labor that is sub-contracted into value chains all around the world (Delaney 2004). Trade policies can also negatively affect the conditions of social reproduction, for example where commodification of health care undermines access to health services and of medical products (Trommer, 2022), or by negatively affecting environmental conditions (Fletcher, 2015). Women, especially poor and marginalized women with the fewest resources at their disposal to meet reproductive needs, usually disproportionately feel the impacts. At the same time, low female wages have provided important comparative advantages for export industries that predominantly employed women (Seguino, 2000a/b). Where trade liberalization has increased women's labor force participation, gender norms and assumptions about feminized labor have meant that the gender-based wage gap persists or even grows. Where the wage gap has been closed, this is largely due to a fall in the wages of male workers.

2.2 A Marketized Trade and Gender Linkage Emerges

19 In the years prior to the Covid-19 pandemic, global trade governance institutions began recognizing such gender inequalities in trade and creating a new trade and gender linkage. The WTO, the ITC, UNCTAD, the OECD, the World Bank, and some states engaged in crafting 'gender-sensitive', 'gender-responsive' and/or 'inclusive' trade policy (Price, 2018; Hannah, Roberts and Trommer, 2021, 2022a/b; Goff, 2021; Bahri, López and Remy, 2023; Macdonald, 2024). These efforts reproduced the 'business case for gender equality' (Roberts and Trommer, 2026) prominent across global economic governance (Griffin, 2009; Elias, 2013; Prügl, 2017; Calkin, 2018; Coburn, 2019). Within this paradigm, gender equality and women's empowerment are not simply desired outcomes in their own right, but make "simple economic sense" (Chant and Sweetman, 2012, p. 519) as they contribute to economic growth, competitiveness, and development outcomes.

20 The business case for gender equality focuses on the economic dimensions of equality and empowerment, which are presumed to derive from equal opportunities for women to compete with men in the sphere of the market. Other dimensions of gender inequality may be recognized, for instance, unequal responsibility for domestic labor, differences in political participation, discriminatory cultural norms, etc. These tend to be viewed as 'social' problems that are not generated by economic processes, but prevent women from accessing economic opportunities. The WTO offered one illustrative example for the business case for gender equality when it argued in its Action Plan on Trade and Gender that "empowering women means economic efficiency" and that eliminating discrimination against women could raise per capita productivity globally by 40% (WTO, 2017, p. 3). According to the ITC, "achieving the economic empowerment of women has become a compelling business case. The global economy suffers when women – who account for half of the world's working-age population – are not included and are blocked from contributing to growth and development (2020, p. 1)."

21 From this narrow perspective on women's empowerment, linking trade and gender equality policy objectives is 'win-win', but the overriding policy objective remains focused on market-based criteria. Insofar as 'gender equality' and 'women's empowerment' are included as policy objectives, these are viewed through an economic lens. This is problematic from a feminist perspective. As Elson and Çağatay (2000) have argued, it is not enough to *add* 'social issues' such as labor standards, poverty reduction, environmental regeneration or gender equality onto macroeconomic policies designed to meet market-based criteria. It is insufficient to use social policies to achieve socially desirable outcomes while leaving macroeconomic orthodoxy intact.

22 From a feminist perspective, an alternative approach involves starting from the premise "that all macroeconomic policies are enacted within a certain set of distributive relations and institutional structures; and that all macroeconomic policies entail a variety of social outcomes which need to be made explicit" (Elson and Çağatay, 2000, p. 1348). The desired social outcomes (such as gender equality or more equitable and sustainable forms of social reproduction) should be the ultimate goals of policymaking. With few exceptions - which include the approach to trade and gender taken by the Economic Commission for Latin America and the Caribbean (ECLAC) and

by Chile in some of its gender chapters in FTAs - this has rarely been the case within emerging trade and gender linkages in global trade governance.[5]

23 The following section presents a deeper exploration of the nature of the linkages between trade, gender and social reproduction during a period when *trade and social reproduction* fell into crisis: the Covid-19 pandemic.

03. Reproducing Trade and Gender Disconnects through Trade and Gender Linkages during Covid-19

24 The Covid-19 pandemic led to the loss of millions of lives, the overburdening of healthcare systems, widespread economic and trade disruptions, and the exacerbation of socio-economic inequalities within and between countries. It also drew attention to the fundamental interconnections between social reproduction and other economic processes. As a public health crisis rapidly spiraled into a generalized economic crisis, it became clear that people are at the center of all economic activity. Special provisions were made to enable health workers, social care staff, teachers, nursery workers, migrant domestic workers, among others, to do the essential work of reproducing people and communities. As Tithi Bhattacharya explains, the Covid-19 pandemic "has clarified what social reproduction feminists have been saying for a while, which is that care work and life-making work are the essential work of society" (Jaffe, 2020; see also Mezzadri, 2020; Stevano, et al., 2021; Farris and Bergfeld, 2022; Roberts, 2025). With this in mind, one might assume that the Covid-19 crisis would give rise to a broader acknowledgement and greater valuation of social reproduction as life's work in policy-making circles.

25 Given that the pandemic erupted at a moment in time when trade governance institutions had begun gender mainstreaming, one might also expect that they would include gender considerations in the Covid-19 trade policy response. In other words, one might expect the *quality* of the trade and gender linkage to deepen during a period of social and economic upheaval, when both social reproduction and trade were in crisis. Yet, while the trade and gender linkage was indeed consolidated during the Covid-19 crisis, so was its marketized orientation. It therefore remained shallow, in the sense that production/social reproduction were seen as being overlapping but separate concerns. Existing trade commitments that reproduce gender-based inequalities and crises in social reproduction were also reinforced during the pandemic (see also Roberts and Trommer, 2026).

3.1 Consolidating Trade and Gender Linkages during Covid-19

26 In the wake of the Covid-19 outbreak, global trade governance institutions demonstrated an awareness of its gendered effects. This points to the relative strength of the trade and gender linkage, as gender considerations often fall into the background during periods of crisis. However, the gendered impacts of Covid-19 were not discussed in great depth, but were rather tackled in short notes or belatedly inserted into reports that were already under preparation. The latter occurred, for instance, in the jointly authored World Bank and WTO flagship report on gender and trade (2020), which explains that the research for the report was conducted prior to the

global pandemic, but that the outbreak had made its findings “more relevant than ever” (2020: ix).

27 For the most part, global trade governance institutions focused on how Covid-related trade disruptions disproportionately impacted women workers, who they saw as already reaping fewer trade benefits than men. They noted that women workers were overrepresented in sectors most negatively affected by the pandemic, including travel, tourism, personal, retail, and food services, and heavily affected manufacturing sectors, such as textiles, apparel and footwear (see e.g. OECD 2021a: 7-8; World Bank and WTO 2020: 2; WTO 2020). Women were also over-represented in health services, making them more vulnerable to Covid-19 (OECD 2021a: 7).

28 They also pointed to increased risks faced by women-owned micro, small and medium-sized enterprises (MSMEs), which had lower levels of financial resources and less access to public funds (WTO, 2020, p. 1; OECD, 2021a, p. 58). Women were more likely to work informally, in jobs that lack unemployment and health coverage, and where keeping physical distances, widely recommended at the time to avoid infection, was more difficult to practice (OECD, 2021a, p. 8; UNECA, 2021). Women were less able to work remotely, both because of types of jobs, and because of “lower information technology literacy” and “higher burden of childcare, because of school closure” (World Bank and WTO, 2020, p. 2). In sum, in the Covid-19 crisis, global trade governance institutions acknowledged that “women are often more economically vulnerable than men and thus are less likely to be resilient in the face of the crisis” (World Bank and WTO, 2020, p. 3).

29 Furthermore, global trade governance institutions pointed to issues that are typically ontologically excluded from trade policy, including the rise of violence against women (OECD, 2021a) and the increase in unpaid domestic labor. The former point was made, for example, when the WTO (2020) explained that disproportionate child-care burdens fell on “working mothers” and that “[s]tay-at-home orders have also increased incidences of domestic violence against women and children”. The latter point was made, for example, when the OECD pointed out that “[w]ith the closure of schools and childcare facilities and stay-at-home measures in place, the amount of domestic unpaid work has risen sharply, falling largely to women” who “typically spend 33% to 66% more time caring for children than men” (2021a, p. 8). They go on to note that this has particularly negative impacts on single parents, who are disproportionately women (2021a, p. 8).

30 The recognition of these previously excluded gendered issues marked a significant departure from standard approaches to trade theory and governance. However, even as global trade governance institutions disturbed these ontological exclusions, domestic labor tended to be viewed through a marketized (or disembedded) logic. They saw domestic labor primarily as *an obstacle to women’s ability to access economic opportunities*. The ITC, for example, described such work as a ‘constraint’ that disadvantages women in “responding to the economic activities and opportunities brought about by GVC integration” (ITC, 2020, p. 18, emphasis added). It pointed to research indicating that “online shopping can decrease the total time spent on unpaid household tasks, *freeing up time for women to spend on other activities such as paid work or entrepreneurship*” (ITC, 2020, p. 35, emphasis added). The OECD described the ‘barriers’ faced by women as including “difficulty in accessing credit and finance, *the lack of time to devote to their businesses due to their disproportionate amount of unpaid work*, shallower professional networks and less experience in entrepreneurship and management” (OECD, 2021a, p.

4, emphasis added). According to the World Bank and WTO, "in most societies gender differences are partly due to an uneven distribution of household work and childcare, which *restricts* women's available time for paid work" (2020, p. 105, emphasis added).

31 Insofar as global trade governance institutions built on feminist insights regarding the importance of unpaid labor, they stopped short of seeing this labor as essential or as something that should be valued discursively or materially (i.e. paid or supported via public services). Instead, they reproduced the false distinction between production and social reproduction, and a marketized (or disembedded) logic that prioritizes the former above the latter, seeing unpaid labor as a constraint that prevents women from doing assumed more important forms of paid, 'productive', labor. Within the trade and gender linkage, therefore, there remained a disconnect between trade and social reproduction, as understood in the feminist sense outlined above.

3.2 The Shallowness of the Trade and Gender Linkage

32 The shallowness of the trade and gender linkage that global trade governance institutions consolidated during the Covid-19 crisis is further problematic from our feminist perspective because institutions reproduced trade and gender inequalities in the Covid-19 trade policy response. Seeing unpaid labor as an obstacle to trade, they did not, for the most part, acknowledge the role that trade patterns and rules have on shaping social reproduction processes. Yet, trade can have important impacts on intra-household dynamics, unpaid labor, and the care economy (Van Staveren, 2003; Fontana, 2016; UNCTAD, 2017). Trade rules and agreements affect women and others along intersectional lines and in multiple ways. These impacts are not only limited to employment opportunities and market access. As a result of how trade agreements have increasingly shaped national policies, these impacts extend to labor standards, the environment, health, public safety, data protection, and more. At the same time, trade cannot exist without the work of social reproduction that operates as its 'background condition' (Fraser, 2014), ensuring the reproduction of the labor force and life more broadly.

33 Instead of considering the linkage between trade and social reproduction, global trade governance institutions considered gendered power relations not to be trade issues *per se*. For example, the World Bank and WTO (2020) discuss women's responsibility for unpaid work in a section of their report titled: "Social and cultural norms constrain the flexibility, skills, mobility, and networks of women producers". They assume, as does other World Bank research (Roberts and Soederberg, 2012), that the gender-based division of labor is a social and/or cultural norm while the market is not constituted by gendered power relations. The OECD (2021b, p.58) shared the view that cultural norms cause barriers to women's participation in trade, because "[w]omen take on more unpaid work in households than men and spend more time taking care of children". At the same time, it saw policies that might remedy gender gaps in unpaid domestic labor to "generally fall outside of trade policies" (2021a: 54).

34 Global trade governance institutions thus suggested that gender equality could be achieved without disturbing the existing approach to trade governance (see also Roberts and Trommer, 2026). Linking trade and gender policy objectives through these logics made the linkage amenable to working within the status quo in trade governance. They saw 'recovery' as entailing a quick return to trade openness and the

further entrenchment of the status quo in global trade governance. Their trade and gender policy prescriptions mainly advocated greater trade integration/liberalization, the inclusion of more women into trade as workers and entrepreneurs, the expansion of ‘new’ trade areas (i.e. MSMEs, e-commerce and digital trade), and of investment protection and intellectual property rights. As the global economy recovered from the pandemic, women should take advantage of “the rise in services, the spread of global value chains, and the expansion of the digital economy”, where “women have the opportunity to increase their share of the labor force, increase their own skills and wages, and find ways to achieve better work–life balance” (World Bank and WTO, 2020).

35 From a Polanyian perspective, these responses promoted the disembedding of unpaid and care labor by subjecting it to market imperatives. The OECD, for example, argued that deepening trade liberalization and commodification would address the ‘problem’ of domestic labor, when it noted that: “[a]ccording to some studies, trade liberalisation measures can reduce the burden of unpaid domestic work *if these tasks are transformed into services, including by non-nationals, which are sold in the formal market*.” It concluded: “This can then liberate time for women to enter into formal employment” and further applauded trade-induced “lower costs for labour-saving household appliances” (OECD, 2021a, p. 20).

36 Where institutions recognized the need for childcare policies, the purpose was mainly to enable women to work and to support the creation of human capital. The WTO, for instance, noted that: “[m]aintaining open markets during the recovery period is key to building faster and more inclusive growth [...] Open markets need to be accompanied by appropriate labour and education policies as well as legal and social reforms to support women workers, consumers and traders” (WTO, 2020, p. 9). Such calls, however, did not support policy space for governments to implement these policies, did not consider the capacities of poor (often indebted) countries to mitigate the impacts of Covid-19 on care, nor acknowledge how trade rules and agreements affect governments’ ability to collect revenue or fund public services.

37 In the Covid-19 trade policy response, global governance institutions thus perpetuated what feminists have called the ‘transnationalization of social reproduction’ (Arat-Koç, 2006, 2018). In these processes, the reproductive labor of well-off women (primarily but not exclusively in rich countries) is downloaded onto poorer, often racialized and migrant women, who do this labor for low wages, sometimes without formal labor rights or legal protections. This fuels the exploitation of these women, while also leading to a ‘care drain’ in their places of origin (Hochschild 2000; Parreñas, 2001).

3.3 Reproducing Trade and Gender Disconnects

38 The pandemic also drew the attention of trade policy-makers to trade and health linkages. Health is typically considered to be a second order issue in trade policy (for a critique see van Schalwyk et al., 2021), although trade and health are deeply connected. For instance, trade may foster the transfer of health-related knowledge and technology (Feachem, 2001), or act as a vector for disease transmission and create social and economic inequalities that undermine health (Lee, 2000; Woodward et al., 2002). Trade liberalization creates winners and losers in health. For example, trade-related shifts in income distribution and economic inequality impact mortality rates and the conditions in which people live, learn, work, and play. This can have positive but also detrimental

effects on health, including mental health (Labonté et al., 2007; Corrigall et al., 2008; Blouin, Chopra and van der Hoeven, 2009; McNamara, 2017). Legal rules in trade agreements can also interfere with access to medical products, nutrition and food safety, health care services, and a clean environment, which are all essential for health (Barlow et al., 2021). The outcomes often affect the quality, accessibility and cost of health products and services, which is critical to gender equality (Grown 2005, Williams 2007). Because health is integrally related to social reproduction, these are central concerns for 'embedded' policy approaches that would promote 'trade for gender equality', rather than 'trade and gender equality' linkages. Yet, such approaches were not taken during the pandemic (Trommer, 2022).

39 The TRIPS Waiver debate that emerged during the Covid-19 crisis in the WTO is instructive of how global trade governance institutions reproduced gendered and health inequalities, at the same time as they were recognizing these linkages. In October 2020, India and South Africa proposed to suspend patents and other IP rights on all products required to fight the Covid-19 pandemic for its duration. While over 100 countries backed the proposal, including the US, which supported a waiver for the Covid-19 vaccine, countries including the UK and the EU opposed it. Opponents argued that the TRIPS regime played a "positive role" in research, development and innovation of medical products[6] and that a voluntary licensing scheme would be sufficient. A compromise deal in 2022 allowed developing countries some access to patented materials for the manufacture of Covid-19 vaccines, with compensation afforded to rights holders.[7] Supporters and critics of the TRIPS regime agree that the process set a 'bad precedent' for resolving the debate on TRIPS and equitable access to medicines (Mercurio, 2021; Médecins Sans Frontières, 2022).

40 From a feminist social reproduction perspective, it is striking that the TRIPS regime, which is based on gendered modes of knowledge creation (Barwa and Rai, 2003) and prioritizes the rights of corporations above those of people and broader public health objectives, was reaffirmed in the Covid-19 trade response. Indeed, within their (non-gender focused) Covid-19 reports, some of the institutions recognized health inequalities, but understood greater trade in medical goods and services to be the solution (OECD, 2020;WTO, WHO and WIPO 2021, p. 7; WTO, 2021; World Bank and WTO, 2022). Policy-makers promoting women's empowerment through trade and IP rights focused on expanding the number of women-led patent applications (e.g. ODI, 2023). Yet, they remained entirely silent on the ways in which gendered power relations interact with health inequalities across the world. As the Gender and Trade Coalition (GTC, 2020), a gender and trade civil society network, explained in the context of Covid-19: "If medical diagnostics, treatment, and care are expensive, women and gender non-conforming people often give up use, voluntarily or involuntarily, in order to save household resources and ensure supply for the male members". Overlooking these connections, global trade governance institutions tended to prioritize the promotion of economic growth, which they believed will then drive 'trade-related' policy goals such as health (Trommer, 2022).

41 From our feminist perspective, these mechanisms constitute trade-induced crises of social reproduction, which stem, in part, from the ontologies of exclusion noted above. Even in the context of a global pandemic that revealed glaring inequalities in access to lifesaving technologies and resources, trade policy remained ultimately committed to the aim of promoting economic growth and profit-making, fueling crises of social

reproduction for parts of the world's population. Instead of acknowledging the multi-dimensional interactions between trade policies, public health and gender relations, global trade governance institutions produced shallow linkages of both during the Covid-19 pandemic, thus continuing disembedded forms of trade policy making. They reproduced traditional trade disconnects in the very making of new trade linkages.

04. Conclusion: Contesting Trade Linkages and Disconnects

42 This article has critically interrogated how the linkages and disconnects between trade and gender, and trade and social reproduction, manifested during the Covid-19 pandemic. We have drawn inspiration from the trade linkages literature, and share its concern with understanding which issues get included or excluded from trade and why. At the same time, building on the insights of feminist political economy, we have argued for the need to disturb the dichotomies of economy/society, public/private, production/social reproduction, seeing all macroeconomic policies as inherently social, and inherently gendered.

43 We argued that insofar as gender concerns have come into trade governance, they have failed to disturb the ontological prioritization of the 'productive' economy, and the marginalization and devaluation of social reproduction that give rise to gendered, racialized, and intersectional forms of inequality. This partly reflects the fact that many of the gender and trade initiatives discussed here have been developed without meaningful debate and democratic participation of civil society actors beyond women's business groups. As the above discussion could only allude, many civil society actors have alternative proposals for making 'trade for gender' linkages, but remain generally excluded from trade governance. [8]

44 We further showed how the currently taken-for-granted aims of trade policy, notably economic growth and trade expansion, may not be commensurate with gender objectives. An alternative approach would involve shifting the aim of macroeconomic policies so that social goals are the ultimate determinant of their success. This entails a transformation of the trade orthodoxy which is not evident in trade governance, though there are some examples of where this is the case (Hannah Roberts and Trommer, 2022a). ECLAC makes the case clearly: "In addition to exacerbating the structural challenges of gender inequality, the coronavirus disease (COVID-19) pandemic has highlighted the unfair organization of care within society and the need for a paradigm shift in the development model that puts care and sustainability of life at the centre" (ECLAC, 2022: 17). Alternatives are also abundant within civil society networks which advocate for a more radical restructuring of the global political economy, including a prioritization of gender justice and the respect for life and ecosystems above the economic aims of trade and investment agreements (GTC, 2021).

45 Our analysis shows how trade linkages are not necessarily coherent, but may rather be partial, contradictory, and inconsistent. They are also shaped by social struggle. This is all the more important to recognize at a time when nationalistic governments express hostility for global trade governance, which often comes with open anti-gender rhetoric and politics. The Second Trump administration's attack on trade multilateralism, on equality, diversity and inclusion agendas, and on trans- and gender-

non-confirming people is only the most striking example of this development. Going back to Polanyi, it is precisely disembedded trade policy and governance that has helped strengthening such social forces. This is also why feminist praxis has a crucial role to play in both analyzing trade linkages, and in developing alternative visions for what a more transformative trade politics entails.

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NOTES

1. Poinsard does not systematically analyze the role of women in society or of gender relations in his study. Instead, he views the links between trade and social progress through the prism of the question of labor, as is also common in 19th century political economy. His values and normative commitments were masculinist and racist, however the point to recognize here is that, like many of his contemporaries, he understood economic activity to be social in nature.
2. This research was funded by the UK's Economic and Social Research Council and the Social Science and Humanities Research Council of Canada.
3. The gender relations of trade are thus an inherent, if under-theorised and under-appreciated dimension of the so-called 'trade and.. debates', such as trade and (informal) labor, trade and (public) services, trade and environment, trade and health, trade and human rights, and more.
4. For an account of how economic theory of trade has changed from the classical political economy of the 18th and 19th century until the dominance of neoclassical trade economics since the 1960s and 1970s see Trommer 2014.
5. Specifically, ECLAC argues for the need to reorient the aims of economic policymaking, including trade policy, to supporting the care society, i.e. by supporting those sectors that "can provide a major boost to economic, social and environmental sustainability, create quality jobs, incorporate innovation and technological advances, and diversify exports" (2022: 137). This includes industries such as the health manufacturing industry (including pharmaceuticals) which works to promote people's living conditions and health and creates quality jobs for women and men (2022: 137). The gender chapter in the Argentina-Chile FTA includes references to the need to consider gender equality from 'a rights perspective', notes the need to reconcile the tension between women's work and caring responsibilities, and takes a relatively broad view of how trade can impact everyday life (for detailed discussion, see Hannah Roberts and Trommer, 2022a).
6. Speech delivered by Simon Manley to the WTO General Council, 24 November 2021. Available at https://www.gov.uk/government/speeches/world-trade-organization-general-council-november-2021-uk-statements?utm_source=HOC+Library+-+Current+awareness+bulletins&utm_campaign=d40063d6ac-Current_Awareness_IADS_25_11_2021&utm_medium=email&utm_term=0_f325cdbfdc-d40063d6ac-103780026&mc_cid=d40063d6ac&mc_eid=ec2ad28b66
7. This was narrower than the original proposal, excluding some countries and some medical tools, including diagnostics and therapeutics. It also failed to consider wider bilateral and regional trade rules agreements, beyond TRIPS, that protect the rights of corporations and investors while fueling considerable inequalities in access to medicines and healthcare between countries as well as within them (Trommer, 2022, p. 402).
8. For instance, in a letter written to the WTO in 2022, the Gender and Trade Coalition expressed their dismay that the Gender Research Hub established by the WTO, UNCTAD and other multilateral institutions to foster an international network on trade and gender research does not include any women's rights organizations (WROs) or civil society organizations (CSOs) despite their "technical knowledge, expertise, as well as empirical experiences from the ground". They go on to say that this reflects "the lack of inclusion of WROs and CSOs, especially those from developing countries and working at grassroot levels, in the whole process" (GTC 2021). For a

longer perspective on feminist civil society engagements with trade policy and their marginalization therein, see for instance Liebowitz (2008).

ABSTRACTS

The scholarship on trade linkages investigates how trade policy interacts with other policy spheres, such as security, environment, labor or human rights. Recently, this literature has turned towards examining the politics of what is considered to lie “inside” and “outside” of the trade governance arena. Our article offers an engagement with such questions of “trade linkages vs. trade disconnects” from a feminist political economy perspective. We critically analyze the linkages and disconnects between trade and gender, and trade and social reproduction, which is integrally related to the former, in the global trade policy response to the Covid-19 pandemic. We find that global trade policy-makers acknowledged the link between trade and gender during the Covid-19 pandemic and recognized how Covid-19 revealed the insecurities associated with women’s position in productive and reproductive labor. At the same time, our analysis reveals that the Covid-19 trade response also reproduced gender based-inequalities in global trade governance, including the false distinction between production and social reproduction, the privileging of the former above the latter, and the lack of challenges to existing trade rules or orthodoxies, which themselves fuel gender-based inequalities and crises in social reproduction. Overall, we conclude that long-standing disembeddedness and exclusions can be reproduced in the making of new trade linkages, unless the power relations that underpin global trade and global trade governance are actively identified and disturbed.

La littérature sur les liens du commerce étudie l'interaction entre la politique commerciale et d'autres domaines politiques, tels que la sécurité, l'environnement, le travail ou les droits humains. Récemment, ces travaux se sont intéressés aux enjeux politiques liés à ce qui est considéré comme relevant « de l'intérieur » et « de l'extérieur » de la gouvernance commerciale. Notre article propose une analyse de ces questions de « liens » versus « déconnexions » du commerce, dans une perspective d'économie politique féministe. Nous analysons de manière critique les liens et les déconnexions entre commerce et genre, ainsi qu'entre commerce et reproduction sociale (intimement liée au premier), dans le cadre des réponses de la politique commerciale mondiale à la pandémie de Covid-19. Nos résultats montrent que les décideurs politiques en matière de commerce international ont reconnu le lien entre commerce et genre durant la pandémie de Covid-19, et ont reconnu également comment la pandémie a mis en relief la précarité de la place des femmes dans le travail productif et reproductif. Dans le même temps, notre analyse révèle que les mesures commerciales prises face à la Covid-19 ont également reproduit les inégalités de genre dans la gouvernance du commerce mondial. Parmi celles-ci figurent la distinction fallacieuse entre production et reproduction sociale, la priorité accordée à la première au détriment de la seconde, et l'absence de remise en question des règles et des pratiques commerciales établies, qui alimentent précisément ces inégalités et les crises de la reproduction sociale. En conclusion, nous estimons que les formes d'exclusion et de marginalisation profondément ancrées dans la société peuvent se reproduire lors de la création de nouveaux liens de commerce, à moins que les rapports de pouvoir qui sous-tendent le commerce mondial et sa gouvernance ne soient activement identifiés et bouleversés.

INDEX

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The Green Virtues of Chinese Protectionism: A Comparative Analysis of EU and US Responses to the China Garbage Shock

Les vertus écologiques du protectionnisme chinois : analyse comparée des réactions de l'UE et des États-Unis au « choc des déchets » de la Chine

Rachel L. Wellhausen and Jean-Baptiste Velut

01. Introduction

1 We are all accidental exporters. Or more accurately, every citizen that is connected to a waste management value chain is potentially a direct supplier of commodities that may be traded internationally. And yet, the international dimension of our consumption habits gets lost to most citizens, who (if they were to think about it) probably expect that their waste is recycled domestically or sent to domestic landfills and/or incinerators. In the Global North, waste management policies and recycling or upcycling reforms are seen as a reflection of our community leaders' commitment (or lack thereof) to a green future. Waste management is therefore understood to be as local as the trashcan we take out at night and the garbage truck that picks it up in the morning, roaming from the Joneses' white picket fence to ours.

2 Individuals in the Global North are largely unaware that, far from an insignificant local residue from end users, waste and scrap are in fact a global, billion-dollar economy that spans continents and sectors ranging from plastic, chemical, metal, electronic, textile, paper, animal, and vegetable products sourced from industry and individual consumers. Inside the metaphoric black garbage bag of waste disposal and management that we would rather not touch, see, or smell, lies a complex political economy of local, national, and international stakeholders who play an invisible yet crucial role in determining the fate of our discarded materials.

3 This hidden international contest to acquire or get rid of these peculiar goods is called the waste trade. Waste products are not inferior in themselves and, when processed, can generate inputs useful to myriad industries including manufacturing, construction, heavy industry, and so on. Global waste product markets, like any other, respond to supply and demand. States around the world but especially in the Global North have long relied on international demand for waste products as a means of dealing with their domestic supply of waste. Both the European Union and United States have designed waste management policies around export, relying on foreign demand for waste products to achieve "not in my backyard" (NIMBY) goals. China became the dominant importer of a variety of EU and US post-industrial and post-consumer products. The waste trade has been instrumental in China's development and industrialization (Goldstein 2020).

4 China's unexpected and unprecedented 2017 "Operation National Sword" policy upended the status quo: China banned the importation of a subset of internationally traded waste products, including several ash, residue, and slag products containing mixed metals; several yarn and textile waste products made of cotton, wool and animal hair, or artificial fibers; sorted and unsorted rags; unsorted paper; and all post-consumer plastics products. Thus, after 2017 EU and US waste exporters had to adjust, by keeping more waste products at home and/or finding new buyers in alternative foreign markets.

5 A large literature considers the political-economic consequences in the Global North of China's entry to global markets, particularly since China's accession to the WTO in 2001. This literature has summarized China's export boom and its resulting market penetration in the North as the "China shock" (Autor et al 2016). We use the 2017 "China garbage shock" to explore both economic and political consequences when China exits markets in which it was an *importer*. Conceivably, the collapse in global demand for certain waste products could build trade linkages between Chinese protectionism and EU and US waste management policies. Has this happened?

6 In this article, we demonstrate that while the China garbage shock opened opportunities for trade-environment linkages, it reinforced rather than challenged the preexisting environmental policy cleavage between the EU and US. As evidence, we examine trends in novel quantitative data and review discursive and policy responses in the EU as compared to the US. Quantitatively, while exports of banned products dropped sharply for the EU and US, trade diversion outcomes in the EU manifested in ways that were more visible to EU audiences than in the US, for which exports continued to flow to geographically and socio-economically far away destinations. Qualitatively, policymakers in the EU both discursively and in the policymaking process acknowledged the role of Chinese bans and used them as a springboard to deeper trade-environment linkages. In the US, despite initial bipartisan interest, policymakers remained discursively vague about the problem and federal-level efforts fizzled, leaving localities to bear the burden of adjustment. In short, the preexisting political economic context suggested more fertile ground for trade-environment linkages in the EU than the US, and our findings are that the
China garbage shock grew those linkages in the EU most-likely case but stalled in the US least-likely case.

7 In what follows, we review limited social science work on this topic, introduce novel data on trade in waste, quantitatively compare trends between the EU and US, and

qualitatively compare discourse and policy in the EU and US. We end by reinforcing the importance of this study, despite its unsurprising finding of more environmental progress in the EU as compared to the US, and the myriad opportunities it opens for future garbage research.

02. What is the Global Waste Trade?

8 Companies buy waste and scrap because they can process it to recover raw materials, which then can be repurposed or sold onward as inputs into new production processes. A waste product contains raw materials that can be repurposed into inputs, and when a waste product is voluntarily bought and sold on international markets, we can use the fact that importers are paying (positive) money for the product as an indicator that there is value to be had from processing it.

9 To demonstrate what the global waste trade is all about, we leverage a new data collection effort (Wellhausen 2023) to provide insight into waste products. That data collection gathered unique waste products that have been classified by the World Customs Organization (WCO) and given official codes under the Harmonized System (HS), which allows observers to follow their import and export around the world. HS codes are hierarchical and move from categories (2- and 4-digit) to a specific product with a 6-digit HS code; codes beyond 6-digits are not globally harmonized. The primary sample is of 179 unique HS 6-digit waste products, over the period 1995-2020.[1]

10 To be clear, there are many ways waste move around the world outside of legal international trade. The multiple oceanic Garbage Patches illustrate that plastic waste has been notoriously poorly accounted for (Lebreton et al 2018). Electronic waste (e-waste) has been largely unmeasured (Lepawsky 2018). The WCO itself acknowledges the e-waste measurement problem, calling e-waste an “example of a product class which presents significant policy concerns as well as a high value of trade.”[2] Moreover, standard international trade statistics cannot see trade in services, in which we can conceptualize that waste is exported at a negative price and the service of foreign waste disposal is imported. Illegal waste dumping – trade in services at a too-low price – is also a severe global problem but outside the scope here (e.g. Boidier and Bensebaa 2011, Favarin and Aziani 2020).

11 In short, the sample of legally defined waste products we examine is a best-available solution to the bigger problem of the poorly measured movement of waste around the world. We see it as crucial to advance research on the political economy of the international waste trade now, accepting data limitations. In fact, in explaining its 2017 policy, China itself acknowledged data issues around tracking the international movement of waste products. In a response to WTO complaints over its actions, China answered, “Currently, there is not any globally recognized standard for scrap materials and recyclable materials. China therefore adopts the universally applicable HS code.”[3]

12 To provide insight into specific waste products, Table 1 lists the sub-sample of 26 waste products China banned in its 2017 “Operation National Sword” policy. The first column of Table 1 lists the type of waste product, which per industry standards are categorized according to origin. While China banned products of animal, metal, paper, plastic, and textile origin, there are also traded waste products of chemical, mineral, and vegetable origin. The reader might be interested in additional examples of each. Animal waste

products include hair-based products, such as those that China banned, as well as substances like feathers that can be processed into inputs like stuffing for furniture or animal byproducts such as raw fats that can be processed into inputs for a variety of production processes. Metal waste and scrap products are the backbone of many production processes in the world, including in the Global North; aluminum waste, for example, is very cost-effective and competitive as an alternative source of inputs compared to virgin aluminum produced from bauxite. Paper and plastic waste products are key sources of inputs into downstream production of a huge variety of consumer and industrial goods. Textile waste includes everything from broken thread and rags to the thriving international trade in bales of worn clothing. Chemical origin products include things like clinical waste and municipal waste (solid or ash). While these might be eyebrow-raising to outsiders, still there is demand for them on international markets. Mineral-origin wastes, like glass and different forms of broken rock, have a variety of industrial applications. Vegetable-origin waste includes things like residues from grain processing and seaweed ash that can be processed to generate feedstocks for animals.

Table 1. China Banned Imports of these 26 Waste Products (HS 6-digit) in its 2017 "Operation National Sword."

Waste type (origin)	**Short description**	**HS codes**
Animal	Wool and fine animal hair waste	510310; 510320
Animal	Coarse animal hair waste	510330
Animal	Fine and coarse animal hair waste (garnetted stock)	510400
Metal	Slag and waste from iron and steel manufacturing	261900
Metal	Ash and residue containing mainly zinc	262011; 262019
Metal	Leaded gasoline sludges	262021
Metal	Lead residue (other than leaded gasoline sludges)	262029
Metal	Ash and residue containing mainly copper	262030
Metal	Ash and residue containing mainly aluminum	262040
Metal	Mixed residues and ash, non-ferrous including toxic	262060
Metal	Mixed residues and ash, non-ferrous and non-toxic	262091; 262099
Paper	Unsorted paper waste and scrap	470790
Plastic	Ethylene polymer waste, pairings, and scrap	391510
Plastic	Styrene polymer waste, pairings, and scrap	391520
Plastic	Vinyl chloride waste, pairings, and scrap	391530

Plastic	Plastic waste and scrap "not elsewhere specified"	391590
Textile	Cotton waste (yarn and thread)	520210
Textile	Cotton waste (garnetted stock)	520291
Textile	Cotton waste, "other than..."	520299
Textile	Synthetic fiber waste (unspecified)	550510; 550520
Textile	Rags, sorted	631010
Textile	Rags, unsorted	631090

Source: Chinese notification to the WTO, 18 July 2017 (G/TBT/N/CHN/1211).

13 What all the waste products in Table 1 as well as the additional dozens of traded waste products have in common is that the importer is knowingly, intentionally buying what is called end-of-life (EOL) content mixed in with the raw materials of value. Consider international trade in sewage sludge (HS 382520). An importer buys sewage, which may be better treated or have more consistent qualities than domestic sewage. The importer processes that sewage into fertilizer, then uses or sells the fertilizer onward. Importers of waste products are thus providing a service: processing out the junk and generating the desired input. (Alternatively, the importer could simply buy fertilizer, which is a primary good.) We can expect the exporter and importer to bargain over the price of the waste product, taking this service provision into account. And yet, because of that service provision, EOL content – foreign-origin sewage residue of no further use – is left in the importer's geography. Clearly, there are political, economic, social, and environmental consequences of waste product transactions that cannot be assumed to be fully internalized in the price. Put differently, there are many "not in my backyard" (NIMBY) benefits of getting the EOL content out of the exporter's jurisdiction, and "yes in my backyard" (YIMBY) costs of accepting foreign-origin trash into the importer's jurisdiction.

03. What We (Do Not) Know About the Politics of the Global Waste Trade

14 What do social scientists have to say about waste trade? Given its inherent interdisciplinary nature, various bodies of literature have shed light on different aspects. One strand of research, drawing from environmental and trade economics, has sought to measure the waste trade and its economic ramifications in an international "circular economy" (Kellenberg 2015; Yamaguchi 2021). Another literature, which might be described as post-colonial, has shed light on the power struggle inherent to waste generation and trade, showing, in Liboiron's terms (2021), that "*pollution is colonialism*" (see also Okafor-Yarwood and Adewumi 2020, Cotta 2020). Within international relations, scholars of environment have made great inroads on climate (e.g. Bernauer 2013), though waste management has received less attention (but see O'Neill 2000, 2019).

15 Within the field of environmental governance, scholars have approached the regulation of waste through the lens of multilateral environmental agreements (MEAs) (Roberts et al 2004, Morin et al 2018, Brandi et al 2019, Morin et al 2024). Multilateral treaty-making has indeed played an important role in the waste trade. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is the most successful global governance effort to date and has near universal membership – with the United States as the major exception. Trade-in-services scandals in the 1980s between Global North exporters and Tonga, Western Samoa, Nigeria, and Guinea-Bissau helped motivate the Basel Convention, though there remains no outright ban on hazardous waste shipments intended for final disposal in Global South states (Yang 2020; O'Neill 2019; McKee 1996). A set of African nations formed the 1998 Bamako Convention that prohibits hazardous waste imports into member-states; however, there are serious concerns over compliance (Okafor-Yarwood and Adewumi 2020). Starting in 2022, the United Nations began negotiations for a Global Plastics Treaty, intended to be a legally binding instrument to reduce plastic pollution, although plans to complete negotiations in 2024 failed and the process has continued into 2026.

16 Finally, the enforcement of MEAs has received significant attention amidst trade-environment debates, with scholars mapping out the scope of environmental provisions in trade agreements, their enforceability, or the processes of policy diffusion through trade agreements (Bastiaens and Postnikov 2017; Jinnah and Morin 2020; Brandi, Blumer & Morin 2019; Brandi & Morin 2023; Velut et al 2022; George & Yamaguchi 2018). However, compared to other environmental issues like air pollution or climate, or specific MEAs like the Convention on International Trade of Endangered Species of Wild Flora and Faunae (CITES), waste management has received much less attention in the trade policy sphere.

17 This is because MEAs and Free Trade Agreements (FTAs) specifically provide little scope for waste trade. Admittedly, several EU trade and association agreements address hazardous waste trade by referencing the Basel Convention. On the US side, hazardous waste was mentioned in the unratified Trans-Pacific Partnership but otherwise has been absent from its FTAs. The subsequent CPTPP (of which the US is not a party) includes explicit reference to the Basel Convention (of which the US is not a party). Beyond these, most EU and US FTAs since the 2010s include domestic waste management provisions, typically in clauses referring to cooperation to protect countries "against the pollution of fresh and marine waters, air and soil" (EC-Central America FTA 2012; see also USMCA 2018). Scholar-activists have discussed waste trade-related treaty clauses that could shift more environmental burdens to Global North signatories, though there has not (yet) been uptake of these ideas (Torrente-Velásquez et al 2020). As is often the case with environmental provisions in FTAs, what waste management provisions exist remain primarily aspirational: to date, neither the EU nor the US has ever used dispute settlement mechanisms to enforce environmental provisions, let alone clauses pertaining to domestic waste management or waste trade (Velut et al 2022).

18 Another pitfall of the trade-environment literature pertains to its primary focus on FTA provisions. Yet, as the editors of this special issue note, the confluence of internal factors and external shocks to the international trading system has fractured the trade-liberalizing consensus. Trade policy tools have diversified far beyond formal FTAs, and

they are being deployed in pursuit of a great variety of objectives (Velut, Dalingwater, Siles-Brügge and Ouellet, this issue; see also DeVille, Happersberger and Kalimo 2023). Following the editors' call, we examine the realization of trade-environment linkages outside the scope of treaty design, to explore the extent to which protective measures can impact – or not – environmental reforms. At the same time, we shed light on a severely understudied topic area in international environmental politics: global trade in waste and scrap. China's 2017 "Operation National Sword" policy gives us a notable opportunity to understand how unilateral non-tariff measures enacted by a key Global South trading partner affect outcomes in the Global North. Because the topic area is waste, we specifically expect the fallout of China's trade policy to manifest in environmental policy in the EU and US. This is another, albeit secondary, contribution of this article: decentering the narrative of trade-environment linkages away from the Global North, and more specifically the US and the EU.

04. How Did the China Garbage Shock Affect EU and US Waste Trade Flows?

19 China's rise and its near-insatiable demand for raw materials over the last decades have been central in the deepening of global markets for waste and scrap (Minter 2015, Goldstein 2020). So, on 18 July 2017, the Chinese government truly shocked the waste trade when it notified to the WTO that it would be banning the import of 26 specific waste products (see again Table 1). The precise timing of the China garbage shock was a product of issue linkage, serving as one of China's opening salvos in the US-China trade war. For its part, the global waste management industry had thought that China's eﬀorts to revamp regulatory enforcement of waste imports four years earlier in its "Operation Green Fence" was successful enough to preclude the need for further action anytime soon, and certainly not at such a scale.

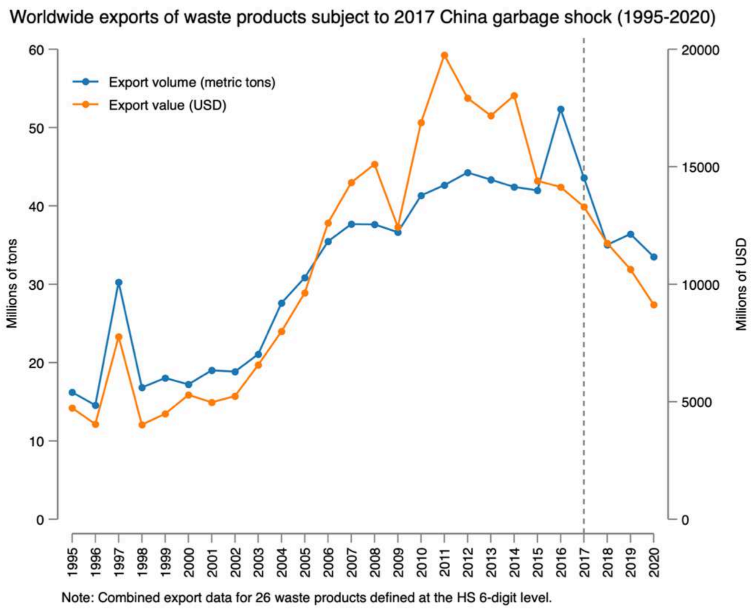
20 Post-"China garbage shock" material disruptions to status quo trade flows could occur through two main channels. First, exports could decline – waste products that were previously shipped to China could be kept at home and no longer sold abroad as waste products. Second, exports could divert – waste products that were previously shipped to China could be sold to importers in other countries. A set of important studies of the China garbage shock have traced trade declines and diversions globally, for plastic waste (Brooks et al 2018, Pacini et al 2021), for paper waste (Ma et al 2021), and for combinations of products (Tran et al 2021). Our empirical contribution to the literature lies in the use of a novel dataset to conduct a comparative analysis of the EU and US cases. By capturing the cumulative effects of China's import bans, across all banned products, we aim to show that greater magnitude disruptions with characteristics more visible to societies encountering disruption are more likely to generate policy responses. This allows us to highlight outcomes specific to particular exporting countries and identify factors conducive to stronger trade-environment linkages.

21 Of course, foregone trade and trade diversion are likely deeply endogenous to regulatory and government responses as they unfold over time. Our strategy is to focus on aggregate data in the immediate aftermath of the China garbage shock, from 2018-2020, and compare it to relevant pre-periods. We are not interested in causality directly; rather, we want to capture the trends experienced by market and political actors in the EU and US.

4.1 General Declines in Exports of China Ban Waste Products

22 In Figure 1, we plot worldwide trends in exports of the 26 products subject to the 2017 China ban, from 1995-2020.[4] Exports of these waste products grew precipitously over the 1990s. In terms of market value, in US dollars these products fetched the highest prices in the early 2010s, and the aggregate value of this trade was already declining prior to 2017. In terms of volume, however, trade in these products was high and increasing in advance of 2017, with the absolute volume (in millions of metric tons) exported in 2016 having reached a new height. After 2017, exports of these China ban products plummeted, in terms of volume and in terms of price. In 2020, the world market for these products was much closer to what it had been in the mid-2000s.

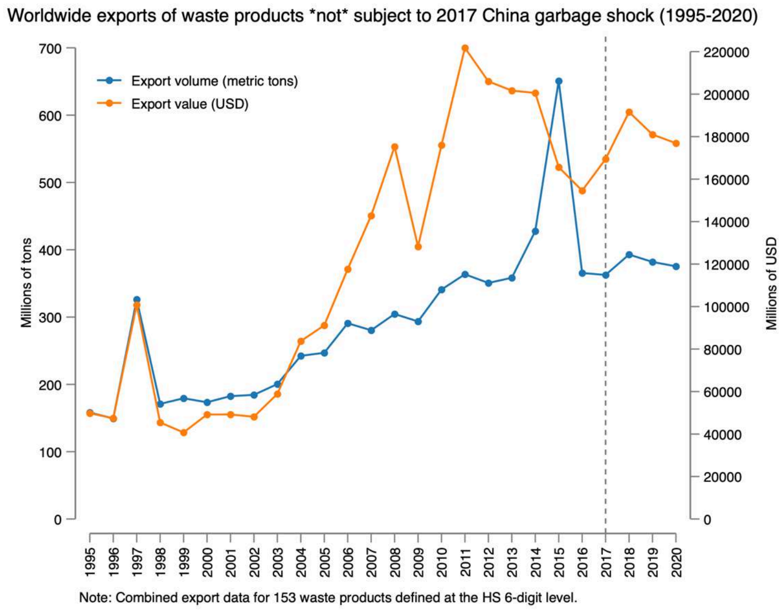
FIGURE 1



23 Figure 1 implies that China's closure of its markets for these specific waste products had global consequences. For added confirmation that it was the China garbage shock and not something else changing trends, Figure 2 plots trends using the dataset on the full spectrum of 179 waste products legally traded on international markets in the period (Wellhausen 2023).[5] If trends in exports of the 153 other waste products look like those 26 aggregated in Figure 1, we would have less confidence that the 2017 China garbage shock itself had an effect on the global waste trade. However, in Figure 2 we can see clearly that the trends in the remainder of the waste trade are different. First, by comparing the y-axes in Figures 1 and 2, we can see that the amount of waste products affected by the China ban, in volume or value, is only a fraction of the global waste trade. Second, in Figure 2 we see that the trend after 2017 for the rest of the waste trade was fundamentally different. Export values had been declining in previous years, but they jumped back to values last seen in the early 2010s and the decline flattened out. Moreover, in the aftermath of the China garbage shock export volumes of

other waste products continued longer-term secular increases and remained at some of their historically highest levels.[6]

FIGURE 2



24 Taken together, Figures 1 and 2 demonstrate that the China garbage shock did not decimate the global waste trade per se, but it did fundamentally decrease aggregate exports of the waste products it targeted. For the remainder of this article, we will focus in on only the 26 waste products whose import was banned by China, and the consequences for exporters from the EU-27 and the US.

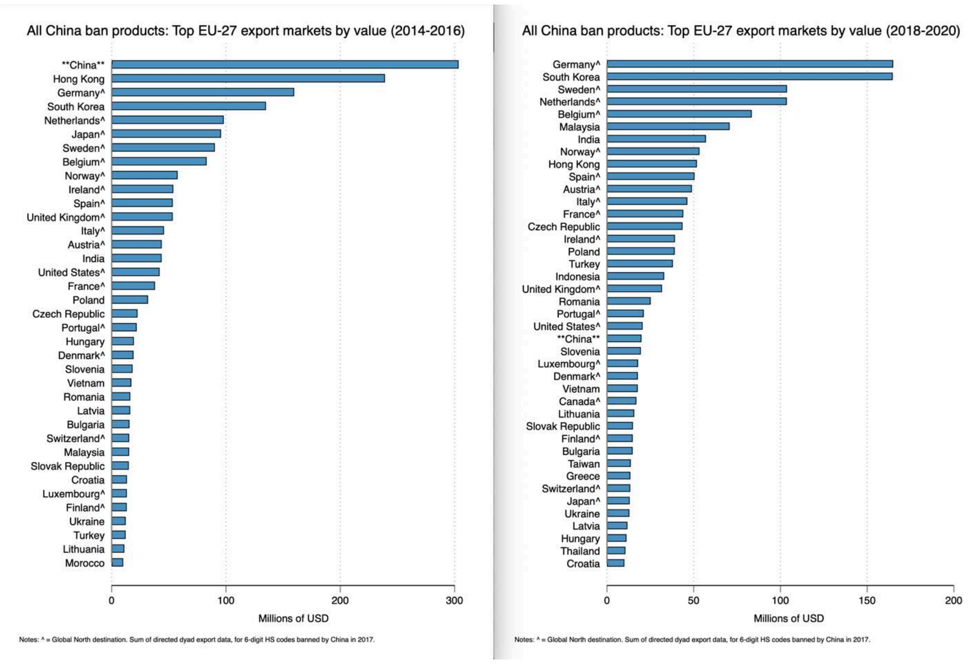
4.2 Variation in Trade Diversion by EU and US Exporters

25 The general decline in exports of banned waste products shows up in global data, driven in no small part by the US and the countries of the EU. Via this channel, the China garbage shock had similar effects. Now we turn to the trade diversion channel, by looking at the top destinations of exports before and after the shock, for EU and US exporters. In sum, this channel reveals important divergence in the fallout of the China garbage shock. Exporters in both the EU and the US diverted to new markets. However, the EU's new markets were closer to home compared to the US's new markets which remained far removed. Environment is already more salient in the EU than the US, and these trade diversion trends reinforce that divergence.

26 To understand the trade diversion channel, we look at the top destinations of exports. We first focus on EU-27 exports in terms of value (USD millions), in the years immediately preceding the China ban (Figure 3, left panel) and the years immediately after (Figure 3, right panel).[7] Focusing on the pre-ban period (left), we see that China dominated as the primary destination. Notably, Hong Kong was second. Industry insiders acknowledge Hong Kong as a destination in itself but also as a waypoint for re-export to China or elsewhere in Southeast Asia. South Korea is also a major destination market. Many of the other top destinations of exports of China ban waste products,

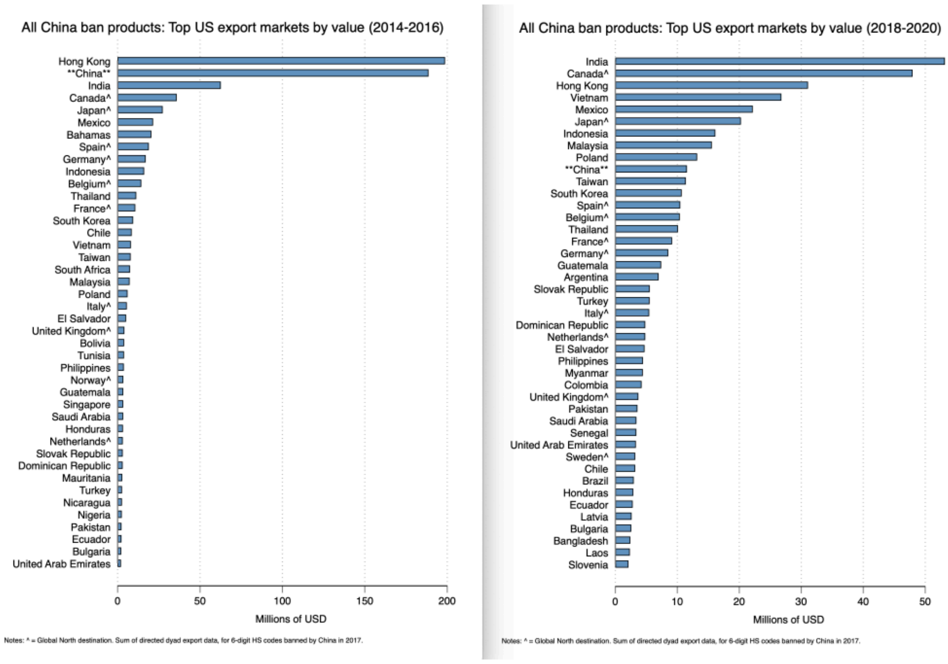
albeit in significantly lower values, are in fact in the Global North (marked with a ^ in Figure 3).[8] Again, as waste products are bought and sold as substances from which to recover raw materials, it makes sense that there is demand in the Global North, too. Even when China was open as a market destination, exports of EU waste products to Global North states was not negligible.

FIGURE 3



27 The right panel of Figure 3 shows how the top EU-27 export destinations for China ban waste products changed in the immediate aftermath of the China garbage shock. China as a destination dropped precipitously, with export sales in the 2018-2020 period falling to a fraction of what they were in the pre-period. That export sales to China did not fall to zero shows that there were limits on the enforcement of the bans. While China directed its regulators to fully implement import bans on unsorted waste paper and post-consumer plastics in the five months before the end of 2017, the implementation timeline for other bans was delegated to regulators, although the goal of speed was implied. Still, we can infer from the non-zero exports to China in the immediate post-period that it is politically difficult to eliminate a competitive domestic industry, perhaps especially one that is serving domestic demand for raw materials. In the post-period, exports to Hong Kong also dropped to less than a quarter of what they once were. We can infer from the right panel of Figure 3 that EU-27 exporters that needed to diversify away from China found buyers in many previously less important export destinations. From the data, it appears South Korea, Malaysia, India, Turkey, and non-Global North EU member states became important destinations that absorbed diverted exports. Still, Global North states in and out of the EU grew in importance as export destinations. That the China garbage shock led to more waste products flowing into such a variety of Global North states is notable, and notably different than the fallout in the US which we turn to next.

FIGURE 4



28 Figure 4 reproduces the pre- and post-China ban data for the value of exports of banned products, but for the US rather than the EU-27. The dominance of China in the pre-period, and its fall although not to zero in the post-period, parallels the EU data. Again, similar to the EU data, US exports to Hong Kong were disrupted. However, US exports to other Global North states did not play as large a role in either the pre- or post-period as they did for the EU – perhaps in no small part due to its geographic location. Canada is the major exception, although it is not obvious Canada did much to absorb new exports as the pre- and post-period values are about on par (close to USD 50 million). A variety of Global South destinations became more important in the post-period, especially India, Vietnam, Mexico, Indonesia, and Malaysia.

29 Comparing across Figures 3 and 4, we see as a key axis of differentiation the prevalence of Global South rather than Global North buyers in the US post-period, in comparison to the EU. For the EU-27, buyers absorbing diverted waste products were not so far afield, whether conceptualized geographically, socio-economically, or politically. That the fallout was not so far removed from EU audiences likely provided a public awareness complement to the EU's long and deep interests in environmental regulation. This raises the possibility that ideational factors may have played a role in fostering trade and waste management interlinkages in the form of coordinated policy responses ("trade for" linkages). For the US, China waste ban products continued to be sold to buyers in less politically powerful, developing destination markets, including markets geographically far away. The data support the reality that public awareness of these issues in the general US population is low, which combined with a US legacy of more punctuated and limited interest in environmental regulation sets the stage for variation on the policy side.

4.3 Case Study: Fallout for Plastic Waste Exports

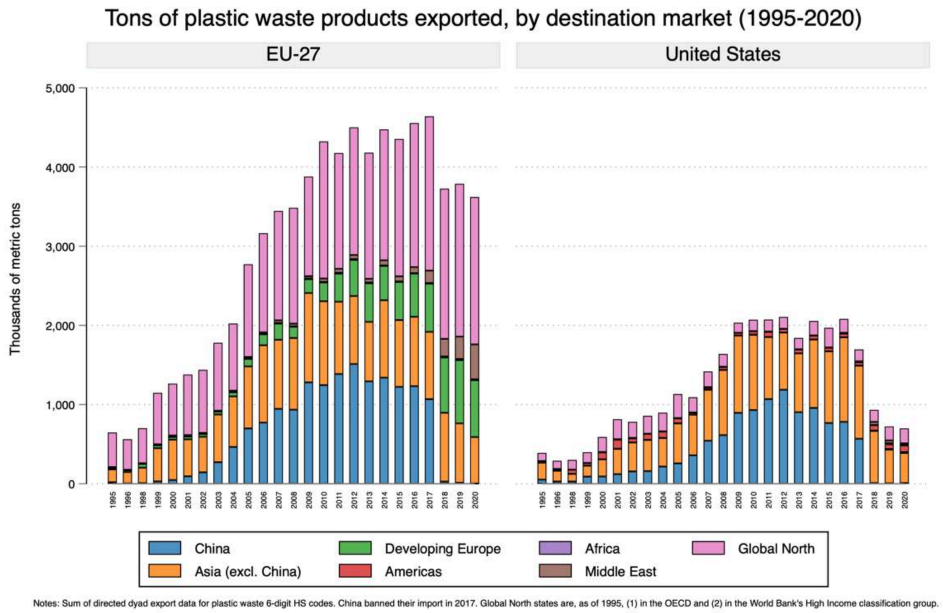
30 One difficulty in drawing conclusions from the previous figures is that they combine markets for 26 different waste products banned by China, with very different physical characteristics, prices on world markets, downstream uses, and environmental consequences. While the China garbage shock applies to all 26 waste products, in terms of public policy post-consumer waste products suggest different regulatory tools and approaches compared to waste products resulting from industrial production. Of special importance are post-consumer plastic waste products, which China banned in full.

31 In zooming in on waste plastics, we pivot from examining financial data on the value of trade, to data on trade volume, or the literal weight of plastic waste products exported. Why focus on volume? First, the physicality of waste matters for the environmental, political, social, economic, and even moral consequences of its movement around the world. Whatever the dollar value attached to the trade, the export of a waste product from one jurisdiction to another also moves physical, polluting, even smelly substances. Examining the physical footprint of plastic waste gets us more direct insight into the externalities that imports might generate.

32 Second, if global markets for a given product decline, then usually what would happen is that would-be exporters would just reduce production of the product. Plastic waste – like waste products in general – is unusual, in that its production is highly inelastic. Whatever happens with downstream markets for plastic recyclables, you and I are still consuming plastics and, in turn, producing plastic waste. We might be trying to adjust our consumption habits, and regulatory policies can push us to do so. But certainly, in the years immediately after the China garbage shock, the consumption of primary plastic goods in the EU or the US did not stop, so the production of physical plastic waste did not stop. What happened is that commercial markets in China were no longer a geographic destination for millions of tons of that physical plastic waste.

33 Figure 5 uses data on the physical volume of plastic waste exports to show us what happened. The data underlying Figure 5 are export volumes for the four post-consumer plastic products banned by China in 2017 (see again Table 1). The left panel shows data for exports out of EU-27, and the right panel for exports out of the US. Each bar captures the total volume of exports in millions of metric tons of plastic waste products in the noted year. Bars are subdivided to show where the importers were located. To be clear, some portion of these millions of tons of plastic waste is repurposed into new inputs for downstream uses; these are raw materials of value, and importing these materials should not be interpreted as polluting per se. However, because these are traded waste products, by definition some portion of the volume recorded in Figure 5 becomes EOL waste with no further value. We assume a positive and large-in-magnitude relationship between the quantity of waste product imported and the quantity of EOL waste left over after processing, destined to be stored forever in the importers' jurisdiction or transformed into air and effluent pollution that seeps beyond the importers' geographic boundaries (Kaza et al 2018).

FIGURE 5



34 In Figure 5, plastic waste exported to China is represented in blue (lowest bar). We can see the role of China paralleled for both the EU-27 (left panel) and the United States (right panel). China entered the scene as a destination market for plastic waste in the early 2000s, around the time of its entry to the WTO. By the 2010s China was the dominant destination market for plastic waste. The amount of foreign-origin plastic waste bought by importers in China alone dwarfed amounts bought by importers in entire world regions. After 2017, the volume of plastic waste imported into China drops to effectively zero in 2018 and stays that way for the next years. A major takeaway from Figure 5 is that after 2017 there is a "missing bar" for each of the EU-27 and US – a quantity of metric tons of plastic waste that is not exported, but that pre-ban trends suggest would be exported. Given that the production of plastic waste is highly inelastic, it is not that this plastic waste suddenly did not exist in 2018, 2019, and 2020. It just was no longer being shipped abroad, so it does not show up in trade statistics. But by looking at trade statistics, we can infer the situation – suddenly, hundreds of thousands of metric tons of plastic waste had to be dealt with at home in EU member states and at home in the US.

35 Nonetheless, the patterns and sizes of the bars indicating exports to other destination regions reinforce trends discussed above – EU-27 exports involved neighbors in the Global North to a huge extent, not only after but even before the China garbage shock.[9] In stark contrast, US plastic waste has consistently traveled to the Global South, which for well-explored reasons in myriad academic literatures are remote to US domestic politics.

05. Linking Trade Protection and Policy Responses

36 It is of course well understood that, compared to the US, the EU has a set of interests and institutions much more interested in environmental protection. The observable implication is that domestic politics in the EU is more conducive to deepening trade-

environment linkages than in the US. Based on the data above, we expect that the quantitative fallout of the China garbage shock reinforced, rather than challenged, longstanding in regulatory and governance approaches between the EU and US. In what follows, we substantiate this claim by tracing discursive and policy responses in the EU and US in the years following the China garbage shock.

5.1 European Union Discourse and Policy

37 Waste management policies in the EU are influenced by multiple political forces at local and national levels, although action the supranational EU-level has been longstanding and wide-ranging. Textbox 1 summarizes key legislative and policy reforms at the EU level. Even before the China garbage shock, the EU already had supranational policies on packaging waste, waste management, plastic bags, and circular economy goals. At the same time, the number of waste management-relevant policies accelerated and proliferated after 2017. Of course, this does not mean that the European Commission and Parliament rushed to mobilize a regulatory arsenal in response to the China garbage shock. It would be naïve to overlook the research, coalition-building, bargaining, and time needed to bring these types of policies into effect. Still, the timeline does underpin that reform to waste management became the more pressing in the shock's aftermath.

Key Policy Platforms and Legislation in EU Waste Management

1994 Directive on Packaging and Packaging Waste (PPWD)

2006 Waste Shipments Regulation

2008 Waste Directive: Established framework for waste management in the EU.

2015 Plastic Bags Directive

2015 Circular Economy Action Plan

2018 Amendments to PPWD: Established new recycling targets for glass, plastic, paper and cardboard, metal, aluminum, and wood.

2018 European Strategy for Plastics in a Circular Economy

2018 Waste Directive Amendments: Addressed importance of critical raw materials, new recycling targets, separate collection requirements, and extended producer responsibility (EPR) schemes, among other topics.

2018 Landfill Directive: Prompted EU countries to implement national strategies to progressively reduce biodegradable municipal waste sent to landfills + reduce landfill waste to a maximum of 10% in 2035.

2019 Single Use Plastics Directive: Required members to ban a series of substitutable plastics.

2023 Waste Directive: Amendments

2024 Waste Shipments Regulation: Amendments

2025 Single Use Plastics Directive: Amendments

Sources: FAOLEX, EU Commission

38 Discursively, EU policymakers have not hesitated to point to China's actions as an impetus for policy responses. As an important example, the 2018 European Strategy for Plastics in a Circular Economy innovated on previous proposals by homing in on waste plastics – whose import was fully banned by China – as a priority for sustainability objectives. Though the report refers at times abstractly to the issue of "recent developments in international trade," it is also explicit: "in particular China's recent announcements of its decision to ban import of certain types of plastic waste" (European Commission 2018, p. 8, fn 29). Policies discussed do not reject the principle of waste trade, but rather frame China's new import restrictions as an opportunity for EU recyclers to develop other markets for recycled plastics, including within the EU common market (ibid pp. 4, 9). Such discourse leans into EU trade policy reforms as in furtherance of environmental goals, not in opposition to them. Moreover, criticism of Chinese import bans is missing: EU discourse is about adapting, rather than fighting the closing of foreign markets to EU waste products.

39 In terms of policy output, waste plastic is at the center of 2018 amendments to the EU's Packaging and Packaging Waste Directive (PPWD), which set new recycling and material recovery targets. One of the EU's most consequential actions has been the Single Use Plastics Directive (2019), which requires members to ban a series of substitutable plastics and has fundamentally changed consumers' experiences in the member states of the EU. Moreover, the acceleration of waste management reforms has not been confined to the plastics sector. In recent years, the EU has targeted new oversight and regulation of a broad range of waste categories including glass, paper and cardboard, metal, aluminum, wood, biodegradable municipal waste, and waste as a source of critical raw materials. Broader policies addressing a variety of waste streams – including products and categories not banned by China – signal that policy action on trade-environment linkages emerged beyond the confines of the initial shock.

40 The EU's regulatory offensive has been paired with new investments in research and development related to waste management. First, Horizon research grants (Horizon 2020 programs and their successor Horizon Europe) have supported several international research projects on waste, most notably marine plastic waste. Second, European Structural and Investment Funds in general, and the specific EU Cohesion Fund aimed at reducing socio-economic and territorial inequalities across the European Union, allocated over EUR 5.3 billion for improving waste management from 2014 to 2020. A stated goal is to increase waste recycling capacity in targeted countries (European Commission 2025).[10] Third, the EU launched a Circular Economy Finance Support Platform designed to raise awareness among investors and facilitate access to finance for circular eco-projects (EC 2018; Xu, Zhang and Han, 2024).

41 While auditing the impact of these policies is outside our scope, there is evidence of positive trends. With regard to plastics, the industry association Plastics Europe has reported positive trends in plastic recycling rates: while in 2018 7.2% of the content of new products was recycled plastic (4 million tons), this number had risen to 12.6% (6.8 million tons) in 2022.[11] They also report upward trends in waste collection, recycling,

and energy recovery from EU post-consumer plastics (Plastics Europe 2024). Admittedly, these positive trends must be contextualized with the persistent rise of EU post-consumer plastic waste in absolute terms, as well as household recycling rates that have stagnated or declined since the mid 2010s (Eurostat 2025). Still, the flurry of regulatory activism and enacted waste management reforms, as well as the absence of criticism of China's environmentally justified protectionist policies, illustrate multiple avenues through which motivated actors can capitalize on trade-environment linkages in domestic politics.

42 Further, the EU's regulatory innovations have not been confined to Europe. Specifically, the shock to plastic waste exports coincided with a renewal of diplomatic activism to regulate plastics internationally. First, in 2019, 187 countries agreed to amend the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal to add contaminated and unrecyclable plastic waste, along with several other types of plastics, to the list of controlled substances. Throughout the drawn-out negotiation process, the EU was particularly active in both regional and multilateral forums, promoting key principles such as the precautionary principle and extended producer responsibility (Xu, Zhang and Han 2024). Enacted amendments are in line with the original Basel Convention, such that exporters are required to follow the Prior Informed Consent (PIC) procedure to obtain approval from importing countries before transporting these products. The EU played an important role in the negotiations by demanding that only the cleanest categories of plastic waste be exempt from the PIC procedure. According to an environmental group that closely followed the negotiations, "The EU is not only leading by example but taking its Plastics Strategy to the international level" (Environmental Investigation Agency 2019).

43 Second, a clear sign of the EU's leading role in reforming international trade in waste is the fact that the EU's own rules governing waste management now have a stricter framework than the Basel Convention. In 2024, the EU reformed its 2006 Waste Shipment Regulation (WSR), the framework regulating the transborder shipment and trade of waste within the EU and beyond its borders.[12] Key revisions include that plastic waste exports to non-OECD countries are banned starting November 2024, for at least 2.5 years. Thereafter, plastic waste shipments might be allowed again under stricter rules on the EU side and improved environmental management on the side of the importing country (EC DG Environment 2024). Additionally, the EU has committed to improving tracking efforts in order to crack down on illegal waste shipments. For DG Environment policy officer Yorg Aerts, while these efforts were associated with environmental policymakers, interagency dialogue brought in trade policymakers as well to factor the implications of the WSR for international trade.[13]

44 Third, the EU has also played an important role in the negotiations of an international, legally binding Plastics Treaty since March 2022. While the treaty was supposed to be finalized in Busan in December 2024, parties agreed to extend negotiations into 2025 and 2026 given persistent disagreements over the financing of environmental measures, the classification of chemicals in plastics, and the adoption of upstream measures to reduce plastic production (European Union News 2024). For its part, the EU has advocated on the part of stricter provisions. It joined a group of 68 countries from all continents called the "High Ambition Coalition to End Plastic Pollution," which is committed to legally binding measures to end plastic pollution by 2040 (EC DG Environment 2022). The EU has also acted as a broker in negotiations, building on

overlapping interests in international action over climate, ocean protection, and waste management. In particular, the EU has sought to forge a compromise between advocates of a top-down approach with strict monitoring rules and defenders of a bottom-up solution based on voluntary reporting mechanisms (Xu, Zhang, and Han 2024).

45 Arguably, the EU's embrace of circular economy principles has been the world's most comprehensive (Barrowclough and Deere Birkbeck 2020). Discourse, policy proposals, and enacted policies both within the EU and in the EU's efforts at the international level suggest that China's protectionism reinforced the EU's green ambitions.

5.2 The US Response

46 Comparing the US and EU responses to the China garbage shock requires coming to grips with a paradox: in some policy spheres, the US federal system has a more decentralized regulatory regime than the European Union and its members. Environmental policy is one of these areas, in which the US Environmental Protection Agency (EPA) sits under the President's authority in the executive branch and has historically had a limited purview compared to environmental policymakers in the EU and elsewhere. In the realm of waste regulation, Congress has endowed the EPA with powers over specific sub-policy areas including waste-to-energy efforts, landfill oversight, and hazardous waste definitions. The 1976 Resource Conservation and Recovery Act (RCRA) and its amendments (1984, 1992, 1996) focuses the EPA's efforts on assisting states and localities with funding of their autonomous policies (EPA 2025).

47 The China garbage shock did precede new federal efforts to formalize and harmonize waste policy. In 2019, during the first Trump administration, the EPA released its National Framework for Advancing the US Recycling System. Notably, the framework emerged not from Congressional direction but rather from a Republican administration known for its anti-environment positions. Discursively, the EPA framework addressed "reduced export markets for recycled materials," explaining that "Historically, some of the recycled materials generated in the United States have been exported internationally. However, changing international policies have limited the export of materials" (EPA 2019). Unlike the EU, which specified China's role in these changes directly, China was never mentioned by name. Further, the EPA offered that "domestic markets for recycled materials need to be strengthened in the United States" (ibid p. 10). It did not address concerns about the quality of (internally or externally) traded goods as did EU discourse. Still, the EPA promoted education and outreach on recycling, improving measurement, and enhancing materials management infrastructure, though without contradicting the leadership of state and local jurisdictions on such issues.

48 In a surprising sign of bipartisanship, the Biden administration's 2021 National Recycling Strategy built upon the Trump administration's agenda, calling for similar goals of expanding markets, improving materials collection and management infrastructure, and standardizing measurement (EPA 2021). The 2021 strategy further addressed reducing contamination and enhancing circularity, reminiscent of EU goals. Yet again, "changes to global trade" that are "further amplifying the need for new markets" was the oblique reference to the China garbage shock and its consequences. Here again, China was not mentioned by name.

49 The Biden administration innovated further, creating in 2023 an Interagency Policy Committee (IPC) on Plastic Pollution and a Circular Economy to coordinate efforts to combat plastic pollution among US federal agencies. Notably, the US Trade Representative and the Department of Commerce's International Trade Administration were involved, suggesting a gradual institutionalization of trade-environment linkages (White House 2024). Still, the only clear federal policy enacted in the Biden administration is the Inflation Reduction Act's provision supporting food waste for energy recovery through anaerobic digestion systems (Levin 2022). Further moves toward policy coordination and reform have died out in the second Trump administration, which in its first months rolled back Biden-era environmental protections and has sought to undo rather than coexist with preexisting greener state and local efforts.

50 In Congress, reform efforts have been stymied. The Break Free From Plastic Pollution Act (BFFPPA) was an ambitious bill repeatedly introduced during the Biden administration in 2020, 2021, and 2023 – under either full Democratic or split control – but it did not advance even to committee review. The bill echoed EU efforts aimed at reducing plastic production, prohibiting additional toxic substances, and innovating on recycling and materials recovery. The BFFPPA faced fierce opposition from the petrochemical industry, including the American Chemistry Council, the Plastic Industry Association and the American Fuel and Petrochemical Manufacturers (AFPM 2021, Rachal 2023). After Trump's reelection, the plastics industry introduced what critics called a "wish list for a second Trump administration," endorsed by the same groups (Song 2024). Although there are influential waste and recycling industry associations in both the EU and US, the breadth and power of the lobbying coalition in the US illustrates how countermobilization can perpetuate trade policy disconnects (Velut 2023).

51 Internationally, no US administration has seriously considered joining the 1989 Basel Convention, though its otherwise near-universal membership means that Basel provisions influence EPA policy. The EPA noted that 2019 adoption of plastics amendments to the Basel Convention, "while limiting US export markets for recyclable material, offer new incentives to develop domestic market opportunities." That increased internal trade might address new limits on international trade has become a theme of US responses to heightened global regulation. Regarding the Global Plastics Treaty, the Biden administration delegations had been weakly supportive but also noncommittal, in stark contrast to the EU's enthusiasm. The role of petrochemical regulatory capture is on display when, for example, the US and other oil producers like Saudi Arabia repeat parallel objections during intergovernmental negotiation committee meetings. Despite eschewing a variety of international environmental fora, the second Trump administration did send a delegation to informal talks in summer 2025. However, the US official position is now fully against any plastic production limits, and negotiators are uncertain as to the US's intentions – "they could be willing to do something, or let others do their thing and not ratify… But if they want to hinder others, it will be very challenging" (cited in Civillini 2025).

52 In short, the China garbage shock was followed by attention to changes in international markets, under both Republican and Democratic administrations. Yet, the shock has not proven strong enough to catalyze direct discourse or policy follow-through on the part of the US, whether domestically or internationally.

06. Conclusion

53 The China garbage shock of 2017 upended global markets for important waste products, translating into trade declines and diversion that disrupted the NIMBY waste export status quo for both the European Union and the United States. Empirically, we demonstrate that subsequent trade diversion meant replacement markets were closer to home in the EU, geographically and socio-economically. In contrast, the US replacement export markets remained at great distances and lower socio-economic status. This variation in visibility reinforced what are already well-known differences between EU green ambitions and US reluctance. While in the US both Republican and Democratic administrations have acknowledged the disruption, albeit obliquely, regulatory proposals and enacted reforms are nowhere near the longstanding EU efforts to regulate and link waste management and trade policies.

54 The fact that the China garbage shock reinforced the EU-US divergence on both domestic and international fronts may not seem surprising. What, then, is there to learn from this deep dive into the potential green virtues of Chinese protectionism and the impact of external shocks on trade linkages? First, it is important to establish the regular workings of classic political economy forces in an underexplored substantive domain. The data and narratives above suggest many theoretical mechanisms at work – political visibility, federalism, regulatory capture, path dependency, collective action problems, and more. Thus, a robust body of theory is consistent with our findings that, yes, the EU provides proof of concept that Global South protectionism – and not just trade liberalization in the form of FTA provisions – can push forward trade-environment linkages in the Global North, as probably a most-likely case.

55 Second, this Global South action was nowhere near enough to upend policy outcomes in the US, which from political economy first principles is probably a least likely case. Still, US exporters have had to adjust and trade patterns are demonstrably different. As such, new sets of "winners" and "losers" are emerging in local constituencies, which suggests local experimentation with new policies even if the federal level remains stuck. Indeed, in 2021 the US National League of Cities issued a comprehensive policy framework, "Beyond Recycling: Policy to Achieve Circular Waste Management," which discusses China's National Sword Policy by name and spells out best practices to adjust in its wake (NLC 2021, Rosengren et al 2019). From the point of view of the US, a major competitor's supra-national policy and its subnational units' municipal policies are pushing in the same direction. Might this be enough to break through ossified national politics? Multiscalar synergies are increasingly recognized in studies of climate politics; adding waste management to the mix will allow us to better assess how externally valid climate coalitions are to other issue areas (e.g. Gulzar et al 2024, Rudra et al 2018, Stern 2004). Future research could, therefore, zoom in on the role that local actors play in reinforcing or obstructing trade-waste management linkages, building upon the emerging literature on subnational trade politics (e.g. Broschek & Goff 2020, Lequesne & Paquin 2017, Schiavon, 2020).

56 Third, a comparative study of contemporary adjustment in the EU and US only scratches the surface of the domestic and international politics of the global waste trade in the Global North, and it has little to say about its development and consequences in the Global South. Waste production is extremely inelastic. The

rhetoric and policy in states reliant on export of never-ending waste products sheds light on the options available to Global South importing states, which both benefit economically and suffer environmentally from the waste trade (Wellhausen 2025). Indeed, even as China made the radical decision of banning imports of 26 specific waste products, it did not ban the import of all waste products. Concerns are rising over its material and normative consequences, and still the waste trade continues. What economic policies offer linkage opportunities for green virtues, in not just most- but also least-likely places? These questions can no longer stay hidden in the black trash bag.

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APPENDIXES

A1. Full waste product list

050100 050210 050290 050300 050510 050590 050690 050710 050790 050800 150200 180200 230210 230220 230230 230240 230250 230310 230320 230330 230400 230500 230610 230620 230630 230640 230641 230649 230650 230660 230670 230690 230800 230810 230890 240130 251720 252530 261900 262011 262019 262020 262021 262029 262030 262040 262050 262060 262090 262091 262099 262100 262110 262190 271390 284440 284450 300680 300692 380400 382510 382520 382530 382541 382549 382550 382561 382569 382590 391510 391520 391530 391590 400400 401220 401700 410110 410120 410121 410122 410129 410130 410140 410150 410210 410221 410229 410310 410330 410390 411000 411520 440130 440131 440139 440140 450190 470710 470720 470730 470790 500300 500310 500390 510310 510320 510330 510400 520210 520291 520299 530130 530290 530390 530490 530500 530519 530529 530590 530599 550510 550520 630900 631010 631090 700100 711210 711220 711230 711290 711291 711292 711299 720410 720421 720429 720430 720441 720449 740400 750300 760200 780200 790200 800200 810110 810191 810197 810210 810291 810297 810310 810330 810420 810510 810530 810600 810710 810730 810810 810830 810910 810930 811000 811020 811100 811211 811213 811220 811222 811230 811240 811252 811259 811291 811292 811300 854810 890800

Notes: This is a list of 179 6-digit HS codes for waste and scrap products per HS code revisions 1992, 1995, 2002, 2007, 2012, and/or 2017. In general: a waste product is a traded product that contains waste, meaning it has a component with no further reuse value, with the implication that the leftover component is not re-exported and remains in the territory where the importing firm is located. To be classified as a waste product, the definition includes the term waste or scrap;[14] it is a residual or byproduct from primary production processes;[15] and/or the product is a one-time primary good intended to be processed into inputs for further use.[16] Consistent with industry practice, waste products are categorized into types, based on their origin: animal, chemical, metal, mineral, paper, plastic, textile, or vegetable. For more on type categorizations, full definitions, and relevant HS revisions, please contact the authors.[17]

NOTES

1. See the appendix for the full list of HS codes.

2. HS Nomenclature 2022 edition, Section XVI, New Note 6, (A)(ii). The WCO's 2022 revision introduced the first e-waste product codes, which should help alleviate the problem.

3. Staub, Colin. 19 June 2018. ``China: Waste restrictions will spur US job growth.'' Resource Recycling.

4. All trade data are from BACI: CEPII/COMPUSTAT, version 202201 (Gaulier and Zignago 2010). On the importance of and considerations around analyzing product-level data, see Kim et al (2020).

5. See again the Appendix for the full list of HS codes.

6. In the industry, the spike in export volume in 2014/2015 is understood as resulting from the decommissioning of an unusually large number of ships; decommissioned ships trade as HS 890800 for ship salvage.

7. We exclude consideration of the year 2017 itself, as the ban occurred in July. For simplicity, all statistics are always calculated with the EU-27 (members as of the time of writing) as the states included in the EU, even if and when this is historically anachronistic. We are happy to share disaggregated data with the interested reader.

8. Global North states are defined as (1) OECD members and (2) high income by the World Bank, as of the beginning of our trade data (1995). All other states are Global South. This means some EU-27 members are Global North and others are not.

9. There is evidence of diversion to different destination markets within world regions for both the EU and US, which is masked in Figure 5 for clarity's sake.

10. 15 European countries are eligible for EU Cohesion funds: Bulgaria, Croatia, Cyprus, Czechia, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.

11. Plastics Europe represents 90% of Europe's polymers producers.

12. The WSR was first introduced in 1993 after the OECD adopted its own decision on the control of transboundary movement of waste. It was amended in 2006 as a result of adjustments to the Basel Convention, before being revised before its major reform in 2024. For more details, see Karamfilova (2021).

13. Videoconference with the authors, 16 June 2023.

14. For example, HS 470730: Paper or paperboard: waste and scrap, of paper or paperboard made mainly of mechanical pulp (eg newspapers, journals and similar printed matter).

15. For example, HS 382530: Residual products of the chemical or allied industries, not elsewhere specified or included: clinical waste.

16. For example, HS 401220: Rubber: used pneumatic tires. In contrast, used goods that are directly intended for resale – such as used vehicles in working order – are not waste products.

17. The count of codes by HS revision is as follows: 1992 HS revision - 129 waste products; 1996 - 131; 2002 - maximum of 144; 2007 - 134; 2012 - 134; 2017 - 135.

ABSTRACTS

Can economic protectionism in the Global South induce environmental reforms in the Global North? In 2017, China enacted "Operation National Sword," which banned the import of a subset of internationally traded waste and scrap products. This unexpected and unprecedented collapse in Chinese demand – justified in China on environmental grounds and also an initial move in the brewing US-China trade war – shook global markets. Both the European Union and United States have long relied on exports to achieve "not in my backyard" (NIMBY) waste management goals, and China had become the dominant importer of a variety of their post-industrial and post-consumer products such as waste plastics. Thus, after 2017 EU and US waste exporters had to adjust, by reducing exports and/or diverting to new foreign markets. Conceivably, the collapse in global demand for certain waste products could ripple back to EU and US waste management policy, providing a sufficient shock to advance reform. At the same time, it is well established that the EU has environmental bona fides far exceeding those of the US. We use novel quantitative data to trace the nature of the shock to exports, providing evidence that disruptions to exports manifested in ways more visible to EU audiences than those in the US. Qualitatively, we show that EU-level policy has made meaningful strides, both within the EU and internationally, whereas initially bipartisan US interest frayed, leaving the problem of adjustment to US municipalities. Our analysis departs from conventional policy debates on the links between free trade and the environment to show that protective measures – not just trade agreements – can foster new policy linkages under certain circumstances. As what we term the "China garbage shock" reinforced rather than challenge the preexisting environmental policy cleavage between the EU and US, Chinese protectionism bolstered trade-environment linkages in a most-likely case but did not overcome trade disconnects in a least-likely case.

Le protectionnisme économique dans les pays du Sud peut-il induire des réformes environnementales dans les pays du Nord ? En 2017, la Chine a mis en place l'opération « *National Sword* », qui interdit l'importation d'une partie des déchets commercialisés à l'échelle internationale. Cet effondrement inattendu et sans précédent de la demande chinoise, justifié par des raisons environnementales, et qui constituait par ailleurs une première étape dans la guerre commerciale entre les États-Unis et la Chine, a secoué les marchés mondiaux. L'Union Européenne et les États-Unis comptent depuis longtemps sur les exportations pour atteindre leurs objectifs de gestion des déchets selon le principe « pas dans mon jardin » (NIMBY), et la Chine était devenue le principal importateur d'une grande variété de leurs produits post-industriels et post-consommation, tels que les déchets plastiques. Ainsi, après 2017, les exportateurs de déchets de l'UE et des États-Unis ont dû s'adapter en réduisant leurs exportations et/ou en se tournant vers de nouveaux marchés étrangers. En théorie, l'effondrement de la demande mondiale pour certains déchets pourrait avoir des répercussions sur la politique de gestion des déchets de l'UE et des États-Unis, provoquant un choc suffisant pour réformer le traitement des déchets. Dans le même temps, il est bien établi que l'UE a une crédibilité environnementale bien supérieure à celle des États-Unis. Dans cet article, nous utilisons des données quantitatives novatrices pour retracer la nature du choc subi par les exportations, fournissant ainsi la preuve que les perturbations des exportations se sont manifestées de manière plus visible pour le public européen que pour le public américain. Sur le plan qualitatif, nous montrons que la politique menée au niveau de l'UE a permis de réaliser des progrès significatifs, tant au sein de l'UE qu'à l'échelle internationale, alors que l'intérêt initialement bipartisan des États-Unis s'est dissipé, reléguant le problème de l'ajustement aux municipalités américaines. Notre analyse se distingue des débats politiques conventionnels sur les liens entre le libre-échange et l'environnement pour montrer que les mesures de protection – et pas seulement les accords commerciaux – peuvent favoriser de nouvelles connexions entre différentes sphères politiques dans certaines circonstances. Alors que ce que nous appelons le « choc des déchets chinois » a renforcé plutôt que remis en cause le clivage préexistant entre l'UE et les États-Unis en matière de politique environnementale, le protectionnisme chinois a renforcé les liens entre commerce et environnement dans le scénario le plus probable, mais n'a pas permis de surmonter les divergences commerciales dans le scénario le moins probable.

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Inclusion or Exclusion of External Voices in Decision-Making on the EU Regulation on Deforestation-Free Products (EUDR): Heard, but Not Listened To

Inclusion ou exclusion de voix externes dans les décisions relatives au règlement de l'UE sur la déforestation: Entendues, mais pas écoutées

Gerry Alons and Pieter Zwaan

01. Introduction

1 In 2021, the European Union (EU) adopted a self-proclaimed leadership role in addressing ecological and social concerns linked to trade-driven (imported) deforestation (European Commission, 2021a). Based on detailed mandatory due diligence, monitoring and enforcement requirements - proposed in the Regulation on Deforestation-free Products (EUDR) which was passed in 2023 - the Commission sought to regulate the trade of seven agricultural forest-risk commodities (FRCs) (cattle, cocoa, coffee, soy, palm oil, rubber and wood) in the EU. The central rules and instruments of the EUDR – import prohibition and mandatory due diligence – constitute demand-side measures similar to those included in the EU Timber Regulation (EUTR) of 2013. Repealing the EUTR, the EUDR expands the scope of EU regulation in this domain and enhances existing due diligence requirements. It also strengthens the EU's demand-side focus relative to supply-side measures that focus on legality in producer country forest management and in supply chains, such as through the EU FLEGT regulation, including Voluntary Partnership Agreements (VPA) with partner countries (Berning and Sotirov, 2024). Over time, it had become increasingly clear that existing policy measures were

not sufficiently effective and that most deforestation originated from commodities other than timber, for which regulation was lacking.

2 While officially an environmental policy, rather than a trade-policy in a narrow or legal sense (Marín Durán, 2025: 5)[1], the EUDR seeks to constrain trade in FRCs. It is not only likely but also intended to affect trade through its due diligence standards that apply to the targeted commodities placed on the EU market, irrespective of their origin. In as far as its requirements apply to products from outside the EU, the EUDR is, therefore, also perceived as an autonomous (or unilateral) trade measure with new production standards that also apply to commodities imported from outside the EU (see also DeVille *et al.*, 2023; Hoekman and Sabel, 2025). It thus causes an externalization of EU policies through a market mechanism.

3 While the EUDR as a *de jure environmental policy constituting de facto (unilateral) trade policy*, does not neatly fit any of the types of trade policies that are defined in the introduction article to this special issue, it is best perceived as an embedded “trade for” policy. When we focus on the use of mandatory due diligence requirements it is via *de facto* trade policies that other policy objectives are addressed, in this case environmental sustainability objectives. The use of mandatory due diligence (trade) requirements to address ecological and social concerns and the broader debate about this policy, moreover, can be considered an example of an *embedded* “trade for” policy, as it is driven by wider socio-economic values and policy objectives rather than by an underlying (liberal) market logic (which would have indicated disembeddedness, see Introduction to the special issue).

4 Using the EUDR as a case study, this article contributes to the debate on trade linkages, in particular embedded “trade for” policies, both conceptually and empirically. Conceptually, the article shows how exclusion instead of inclusion can contribute to environment-trade linkage. The existing literature on the embedded “trade for” policies – the type of policies connected to more developed environment-trade linkage (see Introduction to special issue) – often focuses on connecting trade issues with concerns such as labour rights and environmental protection, and has demonstrated how the inclusion of a broader range of stakeholders in the policymaking process contributes to such connections. As discussed in the introductory article to this special issue, “environmental issues have gradually shifted from afterthoughts in trade policy to a more robust trade-environment nexus seeking to balance out economic and environmental objectives (Jinnah and Morin, 2020; Laurens, Brand and Morin, 2022)” (Introduction to special issue). The connection between inclusion and linkage is straightforward. Under the assumption that trade policy making was for a long time dominated by a “technocratic circle of policymakers traditionally associated with trade policy”, the inclusion of a broader range of actors, among which environmental interests, affects the “weight given to different arguments and actors in policymaking” (Velut *et al.*, 2022, p. 2), contributing to environment-trade linkage where environmental concerns have become more integrated in trade policies.

5 Without negating this connection between inclusion and environment-trade linkage, this article complements the argument conceptually by showing how exclusion can also contribute to such linkage. Key here, is the exceptional character of the EUDR as a *de jure environmental policy constituting de facto (unilateral) trade policy*, which places environmentally-oriented policy actors rather than trade policy actors in the lead in the decision-making process. Under these conditions, exclusion can actually contribute

to more developed trade-linkage, assuming exclusion concerns stakeholders connected to economic trade interests rather than environmental interests. More inclusive policymaking, with access for a wider range of actors and receptiveness to a broader range of arguments and concerns beyond environmental objectives, would be more likely to hamper environment-trade linkage in this case.

6 Empirically, the dynamics of environmental-trade linkage through "trade for" policies have mainly been analysed in case studies of Preferential Trade Agreements. These analyses show successful linkage through the inclusion of sustainability provisions in the trade and sustainable development (TSD) chapters. However, while the TSD chapters are binding, they tend to be "soft", "cooperative" and "incentive-based", and, therefore, are hard to enforce (Orbie, 2021). We show how a more assertive and autonomous approach by the EU, driven by various developments (see also DeVille *et al.*, 2023), can result in stronger linkage between trade and other objectives, yet simultaneously engenders contestation. The case of the EUDR shows that the attempt to connect or link issues of environmental sustainability and trade - and especially the strategy to do this by means of due diligence requirements - has been contested, resulting in compromises and ambiguities in the legal text, which, in turn, caused difficulties and continued contestation during the implementation stage. This eventually led to a weakening of the regulation and delay of its entry into force.

7 The aim of this paper is to shed light on the process that contributed to the EUDR policy outcome as an example of contested environment-trade linkage. To this end, we draw on various theories of the policy process, focussing on the concepts of interest group mobilization and political opportunity structure, connecting these with processes of exclusion and inclusion. We theorize the political opportunity structure as mediating the impact of interest group mobilization, its institutional dimension constraining the *access* of different actors to policy making and its discursive dimension affecting the *receptiveness* of policymakers to different arguments. This directly connects to the conceptualisation of inclusion and exclusion as entailing variation in 'weight given to different *arguments* and *actors* in policymaking' (Velut et al 2002, p. 2, emphasis added). In the EUDR case we show how some EU policy venues provide broader access than others and are receptive to different arguments, and how this changed over time, which helps to explain the outcome of contested environment-trade linkage.

8 Apart from its contribution to the literature on trade linkages, the empirical case analysis also contributes to the specific literature on the EUDR. As an autonomous or unilateral trade measure, the EUDR has attracted attention by legal scholars who analyse it in relation to WTO rules (e.g. Marín Durán, 2025) and scholars of EU studies analysing the regulation as part of a more assertive trade approach of the EU (e.g. De Ville et al, 2024). Others have focused on the EUDR's agenda-setting and development, either from a policy process approach (e.g. Berning and Sotirov, 2024; Berning et al, 2025) or from a more critical perspective such as a decolonial environmental justice perspective, emphasizing the power asymmetries between the EU and third countries from the Global South (e.g. Verhaege and Ramcilovic-Suominen, 2024; Guha, 2025).

9 Our analysis complements recent analyses applying a policy process approach (Berning and Sotirov, 2024; Berning et al., 2025), by focusing more in depth on the position and inclusion and exclusion of third country interests and by taking into account the more recent policy developments that have taken place since the adoption of the EUDR,

resulting in a delay to its implementation. Similar to some of the existing analyses, we pay particular attention to the role of different stakeholders, their arguments during the policy making process and the opportunity structure for different groups to influence the policy debate. However, by applying the concept of policy venues, we show more systematically how (differences in) policy ideas and beliefs dominant in different policy venues influenced the receptiveness of EU policy makers towards specific critical remarks and concerns about the EUDR. Whereas Berning *et al.* (2025) focus on the importance and role of different resources to influence the policy making process, we complement their analysis by focussing both on the access to and the receptiveness of EU venues to particular actors and arguments. By adopting a longer time-frame we also show how changes in these venues, due to changes in the "political stream", affect this.

10 The remainder of this article is structured as follows. We first present our theoretical framework based on different theories of the policy process. Next, we will give an account of the research method used and the data analysed for the empirical research. This is followed by a presentation of the results. We end the paper with a conclusion and discussion on the role of different drivers and conditions that contributed to a successful (yet contested) environment-trade linkage and reflect on its theoretical implications.

02. Theoretical Framework

2.1 Environment-Trade Linkage and Politics of Inclusion and Exclusion

11 A central assumption of this special issue is that questions of trade linkages are inherently connected to politics of inclusion and exclusion in *trade policymaking*, both in terms of representation and access of actors, and in terms of the weight of different arguments and considerations in deliberation. Our case of the EUDR, as an example of an embedded "trade for" policy, would be considered the type of policy that affords the greatest amount of room for participation by actors beyond the narrower technocratic circle of policymakers traditionally associated with trade policy (Introduction to special issue; Velut, 2023). An expanding body of work shows how EU trade policy processes are indeed becoming more embedded, showing the importance of civil society organizations and public opinion in the making of EU trade policy (De Bièvre and Poletti, 2020). These relatively high levels of inclusion are considered an important condition explaining environment-trade linkages. Contrarily, exclusion is considered to contribute to 'trade disconnects' – failed attempts to link trade and other policy spheres (Velut, 2023).

12 In the case of the EUDR, as a de jure environmental policy constituting de facto (unilateral) trade policy, a different expectation could be formulated, however. As an output of *environmental policymaking*, environmentally-oriented policy actors rather than trade policy actors were in the lead of the policymaking process. Here, the exclusion of actors outside of the direct policy network – who are likely to be more critical based on considerations other than environmental ones – could actually be expected to contribute to stronger environment-trade linkage.

2.2 Policy Process: The Role of the Political Opportunity Structure

13 Irrespective of whether inclusion or exclusion contributes to stronger environment-trade linkage, the key to understanding and explaining these dynamics lies in the study of the policy process. In this article we draw on different theories of the policy process that focus on the role of interest groups mobilization in support or opposition of environment-trade linkage, with a specific focus on the political opportunity structure. Theories of the policy process have described this opportunity structure in terms of a policy venue: a specific context, setting, or institutional arena in which public policies are formulated, discussed, and implemented (Resodihardjo, 2021; Baumgartner and Jones, 1993). The main policy venues in the EU are the European Commission, European Parliament (EP), the Council of Ministers (Council) and the European Council (Pakull *et al.*, 2020). Individually and together, these institutions shape and adopt EU policies.

14 These venues provide different opportunities (and obstructions) for interest groups to influence the policy making process in two ways. First of all, at an institutional level, venues structure which interest groups get (inside) access to the policy making process, including some and excluding other actors. Secondly, at an ideational or discursive level, venues structure what (type of) arguments can be (legitimately) used and which frames are successful in policy debates. Policy venues may be more or less receptive to certain (type of) arguments and frames, depending on the interests and policy ideas of the policy makers within a venue. To influence the policy making process, interest groups must often frame their argument in such a way that it fits with the broader discourse of a policy venue (Pralle, 2006; Princen, 2010) or turn to venues that are more receptive to their argument, i.e. venue-shopping. In relation to trade, Siles-Brügge (2019: 423-4) has argued, for instance, that trade discussions are reduced to “matters of economic gains and ‘objective’ legal pronouncements to avoid more complex discussions around the values embodied in trade policy-making.” Obviously, this affects “the differential weight given to different (type of) arguments and actors in policymaking.” (Velut *et al.,* 2022: 548). The institutional (access) and discursive/ideational (receptiveness) structuring effects of venues thus constitute dynamics of inclusion and exclusion.

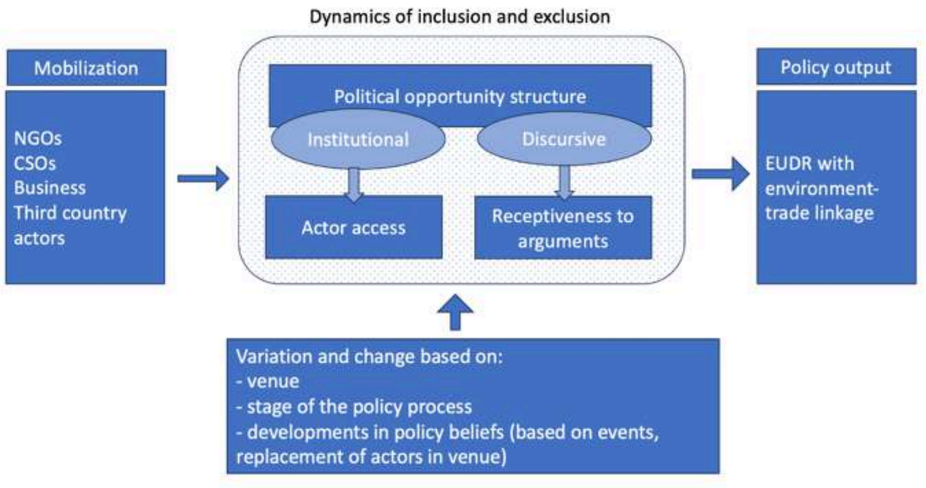
15 In the EU context, Gornitzka and Sverdrup (2015) have used the concepts of inclusion and exclusion in relation to the expert groups of the European Commission, showing a general sensitivity of the Commission to principles of inclusiveness and a balanced representation of expertise and interests in the policy process. It is, in fact, argued that the EU system is open to a variety of arguments and exhibits a high capacity to fuse competing interests and ideas (e.g. Mahoney, 2007). Nevertheless, in the policy process, EU policy makers will inevitably be more receptive to certain interests and arguments, attaching more weight to them as a result of existing ideas. While recognizing a broad range of concerns, not all issues may be considered at the same time. As Baumgartner and Mahoney (2008) point out, it is likely that a policy debate at any given point tends to focus on certain types of issues. In this vein, we expect that the weight of different issues and concerns will vary in different moments or during different stages of the policy process. Concerns for feasibility and administrative burdens tend to figure relatively prominently when preparing the implementation stage, for example, but are likely to be less important during the decision-making stage. Moving certain issues to a later stage can also be a strategic choice. Cobb and Ross (1997) describe this as a

deliberate tactic of postponement: the concerns of actors are considered valid, but are not addressed immediately.

16 Moreover, the rules and ideas within a policy venue are not static. They can change as a result of different developments. In relation to policy ideas, "events" can play an important role in changing these (Kingdon, 2014: 94). Such events can consist of immediate crises or policy failures that would discredit existing policy ideas (so-called focusing events). Yet, other developments may also change the ideas within a venue. Over time and more slowly, policy feedback, for example, could lead to policy learning and changes in policy ideas, leading to policy change (Kingdon, 2014: 100; Zwaan *et al.*, 2023). Authoritative policy reports or studies can also play a role here. These events or new knowledge are usually considered necessary but not sufficient for a change in ideas. To have an impact, they often need to be seized by certain actors and used to discredit existing policies (Kingdon, 2014: 114). Interest groups may do so by mobilizing public opinion or media. Such outside lobby strategies can help making policy makers become more receptive to the failure of existing policy (and policy ideas). Doing so can provide a window of opportunity to place alternative policy ideas on the agenda of a policy venue. Actors that seek to defend the status quo, on the other hand, may, in turn, try to close this window by discrediting these efforts, e.g. by discounting critical information or discrediting those that mobilize this information (Baumgartner, 2012: 15).

17 The ideas within a policy venue may further change due to a change in policy makers' beliefs. Baumgartner (2012: 16), for example, notes that generational overturn in the bureaucracy could bring in new policy ideas. More immediate changes can also take place, however, when (elected) policy makers are replaced, e.g. after popular elections. Clearly, such changes in what Kingdon (2014) labels the "political stream" can lead to changes in the interests and policy ideas of the policy makers within a venue. This can provide a new opportunity for interest groups to gain access to the venue and find it receptive to its arguments.

Figure 1: Conceptual Framework



Source: Authors' own compilation.

18 The conceptual framework applied in this paper is summarized in figure 1, providing insights in how the interaction between different variables is expected to constrain the inclusion and exclusion of different stakeholders and their arguments in the policymaking process and their impact on the policy outcome.

03. Methodology

19 A case study is used in this article to allow us to understand the role of several factors and the different causal connections between them (Ragin, 1987: 50-1; Yin, 1994: 13). The 'within case study' strategy of process tracing is applied to provide a reconstruction of the policymaking process of the EUDR. This method allows for an analysis of the policy-making processes with specific focus on the preferences, expectations, motivations, beliefs as well as learning of actors (Bennett and George, 1997).

20 The analysis of the process is based on an interpretation of qualitative data. The innovative and contested nature of the EUDR has attracted considerable (media) attention. Most of the data we refer to consists of policy documents, including official publications on the EUDR (e.g. legislative proposals and impact assessments by the European Commission and positions adopted by the Council of Ministers and European Parliament, as well as different position papers by interest groups and input of stakeholders in official consultations) and secondary sources (e.g. media coverage, think tank reports, research papers and academic articles). Part of the documents (since 2024) have been collected by the authors during the unfolding of the policy making process, others were purposefully selected by the authors based on their relevance and triangulated with other sources.

21 Based on this data we analysed the extent to which stakeholders had the opportunity to express their ideas and had access to policy actors ("actor access"). In addition, we analysed the narratives and arguments used by different stakeholders that mobilized, related to several specific (salient and contested) topics, as well as the arguments by policymakers in response to these ("receptiveness to arguments"). Here we also analysed the alignment between these arguments. We analysed this for different venues (Commission, EP and Council/Member States). Changes in the access and alignment of ideas over time were also mapped and linked to changes in (the beliefs of) policy makers. Based on the combined analysis of actor access and policy makers' receptiveness to the arguments of different stakeholders, we empirically uncovered dynamics of inclusion and exclusion in the policy process on the EUDR and how these affected environment-trade linkage.

22 In selecting and interpreting the data, we also relied on three background interviews with involved stakeholders and information revealed during three seminars on the EUDR that were attended by one of the authors in 2024, including a high-level conference organised by the Belgium Council Presidency in 2024, which involved different DGs, CSOs and industry representatives. We used the findings of recent empirical studies on the EUDR that rely on interview data by Berning and Sotirov (2024) and Berning *et al.* (2025) to compare our findings.

04. The Road to an EU Regulation on Deforestation-Free Products

23 This section describes the policy process that led to the adoption of the EUDR in 2023, with a particular focus on the development in the positions and ideas of the three EU policymaking institutions, the Commission, the EP, and the Council. Section 4.2 will subsequently analyse the mobilization of stakeholders, the degree to which they had access to the EU policymaking process, and to what extent different policy venues were receptive of their positions and arguments.

24 In 2010, the EU adopted the Timber Regulation (EUTR). The EUTR prohibits the placement of illegal timber products on the EU market and requires economic operators to exercise so-called *due diligence* by collecting information, assessing, and mitigating risks of illegally logged timber entering the EU via their supply chains. The EUTR complements the FLEGT Action Plan of the EU that dates from 2005, a supply-side approach which aimed to deal with illegal logging and trade (Council, 2005). A key component of the FLEGT Action Plan are voluntary (bilateral trade) partnership agreements (VPAs) between the EU and timber- exporting countries. Once signed, the VPAs contain legally binding commitments for the EU and the exporting country.

25 Following a joint review of all legislation related to forests in the exporting country, a definition of timber legality is first created under the VPA. Based on that a timber legality assurance system (TLAS) is established. Competent authorities in the exporting country use this to verify that timber (designated for trade) is legally harvested. Based on this (FLEGT) licences are provided by the competent authorities in the timber-exporting country to products exported to the EU.[2] Under the EUTR, these FLEGT licensed timber products would be granted a so-called ‘green lane’, meaning that operators putting FLEGT-licensed timber on the EU market (importers) are exempted from exercising due diligence (Berning *et al.*, 2022).

26 Shortly after the adoption of the EUTR in 2010, DG ENVI commissioned a study on the impact of EU consumption on deforestation (Cuypers *et al.*, 2013). The study recognised the large contribution of several agricultural commodities traded with the EU to deforestation outside of the EU. Over the period 1990-2008, the EU27 imported almost 36% of all so-called ‘embodied deforestation’. The largest shares of this resulted from the international trade in crop products. Nevertheless, it took until 2017 for EU institutions to prioritise new policies regulating the impact of EU-trade in these commodities, aiming to curtail imported deforestation. The EP was the first European institution to call for stronger action against deforestation. Initially, its efforts particularly targeted deforestation due to European imports of palm oil (used in biofuels as well as food products), calling for compulsory instead of the existing voluntary certification schemes (Agence Europe, 2017). By the end of 2018, however, the EP endorsed an own-initiative report prepared by Heidi Hautala (Greens, Finland) calling upon the Commission to develop an action plan with regulatory measures to ensure that no supply chain or financial transaction connected with the EU would contribute to deforestation (European Parliament, 2018). This call was supported by the Danish Environment Minister Jakob Ellemann-Jensen on behalf of Denmark, France, Germany, the Netherlands, Norway, the United Kingdom and Italy; the member states

who formed an alliance 2015 in the Amsterdam Declaration for the elimination of deforestation in agricultural supply chains (Agence Europe, 2018).

27 In response, the Commission presented a roadmap in December 2018, announcing that a communication with a comprehensive approach would be proposed in 2019 after a public consultation early 2019 (European Commission, 2018). The Commission did not foresee new regulations at this point, despite the demands of EP and some member states. However, when the Commission presented its communication on 23 July 2019, it did not exclude the option of new trade regulations anymore. At that time, it further emphasized multilateralism, partnership and cooperation with all countries concerned and announced a multi-stakeholder platform on deforestation, forest degradation and forest generation in which it wanted to consult a wide array of stakeholders (European Commission, 2019b).

28 The Environment Committee (ENVI) in the EP welcomed the Commission's focus on trade policy, yet called for more binding agreements and regulations and announced their intention to prepare an own-initiative report, while the Trade Committee (INTA) also emphasized the importance of cooperation with trading partners (Agence Europe, 2019a; 2019b). The Council of Ministers (Agriculture) was largely supportive of the Commission's plans, asking also for more (unilateral) demand-side measures. As the latter would also apply to deforestation in the EU, some Member States, however, were cautious, with Poland preferring voluntary measures and Sweden emphasizing Member State's rights with regard to forest management (Agence Europe, 2019c).

29 The Commission decided to move in the direction of adopting a stronger and more unilateral demand-side approach. In 2020, it announced a new regulation for 2021 in which due diligence requirements would be considered. Especially DG Environment (ENVI), favoured unilateral action, being impatient to reduce the EU's carbon footprint (Hoekman and Sabel, 2025). This approach was in line with the EP's own-initiative report prepared by Delara Burkhardt (S&E, Germany) and passed in a resolution by the EP plenary in October 2020, which called for a binding legal framework based on mandatory due diligence (European Parliament, 2020; Euractiv, 2020).

30 After public consultations for an impact assessment on regulation of deforestation (see below) and an evaluation of the existing FLEGT/EUTR regulation, the Commission presented a legislative proposal in November 2021 as well as an impact assessment (European Commission, 2021a; 2021b). The impact assessment concluded that an approach that would expand or build on the existing FLEGT/VPAs approach was unfeasible (Berning and Sotirov, 2023).

31 The choice for a stronger due diligence approach with a broader scope in this regard resonated with findings from the comprehensive ex-post evaluation (also known as 'Fitness Check') of the FLEGT/EUTR regulation and was explicitly based on the ineffectiveness of such existing initiatives to halt deforestation and forest degradation. In the Impact Assessment of the Regulation, the Commission stressed that this evaluation "in particular (...) was instrumental to assess the strengths and weaknesses of mandatory due diligence and that of bilateral trade agreements [VPAs – authors] with producing countries" (European Commission, 2021b: 19-20). The Fitness Check revealed significant shortcomings of the FLEGT Action Plan and pointed out that only one of the 15 countries the EU cooperated with had an operational licensing system (i.e. Indonesia) creating a green lane for timber exports. The complex and lengthy negotiations of VPAs made them an expensive and ineffective trade tool. "Given their

limited coverage (only 3% of EU timber imports) and high costs", the Fitness Check argued, "further investment in VPAs is not justified." The Fitness Check, in fact, concluded that repealing the FLEGT Regulation "would free considerable resources [which] could be used in [a] *new approach* that addresses the issue more effectively and more efficiently." The due-diligence requirements introduced by the EUTR, on the other hand, were described positively in terms of both effectiveness and efficiency. The Fitness Check pointed out that important EU trade partners (such as Brazil or Russia) had taken various steps to strengthen their forest governance systems and reduce illegal logging to meet the due diligence requirements of the EUTR.

32 Analyses by Berning and Sotirov (2023) as well as Hoekman and Sabel (2025) suggest that this led to strategical learning by the EU institutions: based on the implementation experiences of existing legislation, put forward authoritatively in the Fitness Check, new policy ideas developed and sticked, which prioritised regulation based on due diligence requirements over more voluntary approaches (see also Berning and Sotirov, 2024). It is telling in this regard that the Commission, during an initial screening of policy options in the Impact Assessment, ruled out the option of building on the existing policy regime. It clearly stressed "the shortcomings detected in the implementation of FLEGT VPAs would persist and become more pronounced under the new initiative" (European Commission, 2021a: 48).

33 The focus on due diligence measures in the EUDR, moreover, also aligned with a more assertive trade approach of the EU as put forward by the Commission (European Commission, 2021b: 19). As part of the European Green Deal, the Commission proposed a series of autonomous (unilateral) measures designed to establish or enhance minimum sustainability standards for goods and services placed on the EU market. In its 2021 Trade Policy Review, DG TRADE notes that the European Green Deal requires "a new trade policy strategy – one that will support achieving its domestic and external policy objectives and promote greater sustainability…" (European Commission, 2021c: 1). The use of due diligence requirements fits with this strategy.

34 While there was rather strong support among the different EU institutions for adopting a demand-side (due diligence) approach, policy makers disagreed on the scope of this approach, including the ecosystems that should be considered. Besides forests, the EP also wanted to include other ecosystems like woodlands. Another issue was the scope of products and the use of different country risk categories (including a "minimal risk" category) for which the due diligence requirements would apply differently. Table 1 summarizes these issues, the positions of the different EU institutions, as well as the outcome of the trilogues through which a negotiated position was found on these issues.

Table 1: Positions of the EU-Institutions on Aspects of the EUDR Regulation

Issue	Commission proposal	Position of the EP	Position of the Council	Outcome trilogues
Scope – products	6 products and their by-products	Add products: maize, rubber, livestock and their by-products and derivatives	6 products + dérivatives	6 products + rubber + number of by-products and derivatives
Scope – ecosystem	Only Forest ecosystem	Include woodland 'revision clause' to assess adding other ecosystems 1 year after entry into force of the regulation	'revision clause' to assess adding other products and ecosystems 2 years after entry into force of the regulation	'revision clause' to assess adding other products and ecosystems 2 years after entry into force of the regulation 'revision clause' to assess adding 'other woodland' 1 year after entry into force of the regulation
Base-line date*	31.12.2020	31.12.2019	31.12.2021	31.12.2020
Control – level of specific obligations based on categories of risk	Benchmarking system based on levels of risk.	3 levels of risk categories. Low-risk category also has to have controls	Call for simplification due to administrative burden and WTO compatibility	3 levels of risk categories, with enhanced surveillance for high-risk and simplified due diligence for low-risk countries
Protection of the rights of indigenous people	Compliance with legislation of the country of production	Compliance with international standards		Compliance with legislation of the country of production

*Only products produced on land that has not suffered deforestation or forest degradation after the base-line date are allowed on the EU market. An earlier base-line date thus implies a stricter rule.

Source: authors' own compilation.

35 In its initial reaction, the EP indicated its support for the approach and its willingness to quickly continue the legislative process. Despite variation in the positions of the different EP factions, they agreed on the wish for the Commission to be more ambitious with respect to the scope of the regulation and that simplification in control through a benchmarking system was required (Agence Europe, 2021; 2022a; 2022b; 2022c). The Member States also adopted a positive stance in the Council, but some voiced concerns about administrative burdens and high costs, particularly for SMEs, and potential disruptions in the supply of soya and animal feed (Agence Europe, 2022d; 2022e, Euractiv, 2022). Berning *et al.* (2025) point out that Member States had a difficult time to fully understand the proposal by the Commission given the fast pace of the legislative process.

36 The result of the trilogues changed the scope in terms of products covered, but not the ecosystems, while a three-level risk categorization with simplified due diligence for the low-risk category was agreed upon. The final outcome was endorsed by the EP in April 2023, adopted by the Council in May 2023 and the regulation came into force on 29 June 2023.

05. The Inclusion and Exclusion of Stakeholders in Decision Making on the EUDR

5.1 Stakeholder Mobilization and Access

37 During the policymaking process described above, stakeholders mobilized both through institutionalized channels of public consultations and informal channels, seeking access to EP rapporteurs directly, sending letters to policymakers and sharing position papers.

38 At different moments during the legislative process interest groups and other stakeholders have been involved by the Commission. The Commission organized two public consultations: one with respect to its 2018 Roadmap in preparation for a communication with a comprehensive approach in 2019, and one with respect to the impact assessment accompanying the regulation to be proposed in 2021. Each consisted of a feedback period and a consultation period. Based on an analysis of the category of respondents, the country of origin of the respondents and a targeted analysis of part of the opinions provided in the consultations, a few conclusions can be drawn (see Annex 1 for an overview of the consultation procedures and links to their outcomes). First of all, EU citizens account for the largest share of the replies (56-69%) with the exception of the feedback period on the inception impact assessment early 2020, which was dominated by NGOs (30%), and business actors (29%), followed by EU citizens (21%).[3] Secondly, looking at the diversity in country origin, the largest share of the replies comes from European actors, and the percentage of responses from outside Europe is higher for the feedback period than for the consultation period in the case of both consultation processes. Stakeholders from third countries with strong production interests such as Malaysia, Brazil and Columbia were involved in all feedback and consultation periods, as were stakeholders from the US and Canada. The absence of Brazil is surprising, but can be explained, according to Hoekman and Sabel (2025: 8), by a largely indifferent stance on the EUDR "born of confidence in the ability to meet EU requirements", as well as irritation about the EU's moral superiority self-perception "as a steward of the Earth".

39 Delving more deeply into the consultations, the Commission's summary report indicates that both business and "sustainability cause" groups who participated - besides the large group of mobilized citizens – largely supported the analysis of the Commission that there is an urgent problem that needs an EU response (European Commission, 2019a). A mix of NGOs and business actors called upon the Commission to be ambitious, with NGOs focusing on sustainability and human rights, while business actors also applied level-playing-field arguments. In the 2018-2019 feedback on the Road Map, NGOs from inside and outside the EU (e.g. Forest Trends, 2019; Conservation International, 2019) called upon the Commission to prepare new regulations, while the Commission Roadmap was a purely non-legislative initiative. In the feedback on the Commission's inception impact assessment in 2020, NGOs intensified their call for regulatory measures, including mandatory due diligence requirements, arguing that voluntary initiatives including certification and labelling were insufficiently effective (Mighty Earth, 2020). They expected due diligence requirements to contribute to a level playing field and to have an effect beyond 'simply the market share entering the EU' (National Wildlife Federation, 2020).

40 The participation of governmental and business actors from third countries affected by the EUDR was relatively limited overall (7 out of 202 in the 2018 and 5 out of 99 in the 2020 feedback period respectively), but government authorities and producer-related organizations from countries such as Indonesia, Malaysia, Colombia, Ivory Coast and Nigeria did submit their views. With respect to the Commission's Road Map in 2018, government authorities from Columbia, Indonesia and Ivory Coast warned against applying a punitive approach, particularly a one-size-fits-all approach that generalizes causes of and solutions for deforestation without taking account of unique country and local contexts. Instead, they called for a more holistic perspective on sustainability beyond its environmental dimension, focusing on social and economic stability (e.g. livelihood of smallholders) as well, and for strengthening cooperation and dialogue with producer countries – recognizing the sustainability procedures they already have in place – and providing technical and financial support (Government of Colombia, 2019; Government of Indonesia, 2019; Government of Ivory Coast, 2019).

41 While the government responses to the Road Map were quite diplomatic, palm oil producer and trade interests from Malaysia and Nigeria openly criticized the EU of developing discriminatory measures particularly aimed at developing and underdeveloped tropical countries as an 'instrument for controlling the developing world' and as a protectionist instrument favouring EU industry. In the 2020 feedback period, only five public authorities and business-related actors from outside Europe responded, three of which were from producer countries. They were critical of the EU approach and repeated the arguments that the EU plans were unilaterally imposed environmental standards constituting discriminatory trade restrictions – now with reference to WTO rules on technical barriers to trade (Colombian Ministry of Agriculture, 2020; Malaysian Palm Oil Council, 2020a). Like in the first consultation, they once more focused on the need for developing non-discriminatory legislation more cooperatively, taking account of local challenges and demands of partner countries, respecting policies they already have in place (Malaysian Palm Oil Council 2020b; National Federation of Oil Palm Growers Colombia, 2020).

42 Our findings align with Berning and Sotirov's (2024) results with respect to the opposition and arguments of governmental authorities as well as business and industry associations in tropical producer countries against the EUDR. The analysis of the consultation input shows that inclusive access for third country actors was provided, yet mobilization of these actors through this formal institutional procedure was limited relative to European actors.

43 Third country stakeholders also used informal channels to mobilize, by means of letters and other forms of communication with the European institutions. An analysis of meetings with the rapporteur of the Environment Committee of the European Parliament, Christophe Hanssen (European People's Party), between March and November 2022 shows that out of 16 meetings reported on the EUDR, three meetings were held with business actors from third countries: Brazil, Indonesia and Malaysia. The other meetings were with a broader range of stakeholders, indicating inclusiveness in terms of actor access to the EP rapporteur (see Annex 2 for an overview of these meetings). In July 2022, a number of producer countries, including Indonesia, Malaysia and Brazil, sent a letter to senior officials of the EU, including the President of the European Commission and the President of the European Parliament, expressing similar concerns as those surfaced in the consultations (Third World Network, 2022). At

the World Trade Organization's Committee on Agriculture meeting in November 2022, Indonesia, on behalf of 14 countries, accused the EU of adopting 'inherently punitive' protectionist measures against developing countries through the EUDR (Third World Network, 2022). Malaysia even threatened to stop exporting palm oil to the EU in response to the proposed Regulation (Euractiv, 2023).

5.2 Receptiveness and Influence

44 Berning and Sotirov (2024) argue that governmental authorities, NGOs, industries, and local communities from third countries affected by the EUDR lacked political voice in the EUDR's decision-making process. Rather than lacking a voice, we would argue that they had access through formal consultations and informal communications, yet the EU institutions' receptiveness and response to their arguments was limited.

45 The Commission's analysis of the consultation procedures does not explicitly mention third-country concerns (European Commission, 2019a) and the Commission Impact Assessment and EUDR proposal, while discussing third-country concerns, eventually prioritize the type of policies that third countries and their producer industries objected to. The idea or conviction that a stronger demand-based approach was appropriate, in combination with a more self-asserted role in promoting sustainability through autonomous trade measures, likely made the Commission less receptive to the third-country concerns. This idea that stronger demand-based regulation was required to combat deforestation, had been fiercely promoted by the EP since 2017, and had been considered a realistic option by the Commission since 2019/2020. This conviction was strengthened by the Fitness Check of existing regulations – an 'event' providing authoritative policy feedback – cementing the Commission's policy ideas. This relative lack of receptiveness of EU institutions toward third-country preferences and arguments when it comes to the EU's choice of policy instruments is thus in line with the overall preferences and ideas within both the European Commission and the EP.

46 Nevertheless, in terms of considerations that were deemed important in the policy discourse within the European institutions and the procedures designed to address such concerns, there was responsiveness to third-country feedback. As indicated in the analysis in Section 4.1, the Commission Communication of 2019 attached importance to multilateralism and planned to consult with a wide array of stakeholders (including third-country stakeholders) through a multi-stakeholder platform. Likewise, EP's Trade Committee INTA emphasized cooperation with trading partners. In case of the latter, dominant ideas have likely played a role in the receptiveness of this Committee to third-country arguments, INTA focusing on stable and amicable trade relations, while the ENVI Committee prioritized environmental impact through binding regulations. The latter's dominance in the EP debate and position taking on the EUDR confirms our assumption that the EUDR case, as one of de jure environmental policy, favours more environmentally-oriented actors in the policy process, contributing to the relative exclusion of critical feedback emphasizing for example the economic and social concerns that third-country stakeholders expressed. In a similar fashion, an amendment proposed in the EP to one of the recitals in the preamble of the EUDR – to "try to prevent barriers to [third countries'] access to the Union market and to international trade" – was not adopted in the final text (though it would not have been legally binding even if it had been adopted) (European Parliament, 2022).

47 When it comes to procedures addressing third-country stakeholder concerns, many issues they brought up were postponed to later (implementation) stages of the policy process, without very concrete details and commitments at the time that the EUDR was adopted.[4] In this vein, Article 30 of the EUDR includes several provisions to support partner countries in transitioning to sustainable value chains, emphasizing the importance of providing technical and financial assistance to help least developed countries comply with the regulation's standards to make sure that they can continue to trade with the EU. Article 30 foresees strong international cooperation and engagement based on a "dedicated Strategic Framework" without indicating what shape such a framework will take (European Commission, 2024).

48 Based on the earlier description of the decision-making process of the EUDR in Section 4.1, we find that Member States in the Council raised a number of concerns that apparently mirrored third-country stakeholder feedback, such as concerns with respect to administrative burden and costs. However, these concerns were particularly expressed by Member States with an important forestry industry (such as Poland and Sweden) and appeared to be related to domestic (economic) interests rather than concerns for the position of third countries. Member States in the Council thus showed themselves receptive to third-country feedback to the extent that this input dovetailed with their national (economic) interests.

49 In relation to complaints based on WTO rules, the Commission (and EP) adopted the position that this autonomous measure is consistent with WTO rules: states can impose health and environmental requirements on the *production* of exported products. While the Commission realised that these measures can be challenged under the WTO dispute settlement system, it likely anticipated that this would not result in the elimination of these measures (Vidigal, 2023).[5] Concerns over the potentially discriminatory nature of the legislation were thus reduced to a legal issue, limiting the scope of discussion.

50 Overall, our analysis shows that, despite having formal and informal access, third-country actors who were critical of the EUDR plans were unable to mobilize opposition on the same scale as the strong and broad international coalition of parties who supported a strengthened demand-based approach. Inclusiveness, at least in terms of formal actor access, did not translate in influence, because of the very limited receptiveness of EU institutions (venues) to their arguments. Their arguments clashed with the EP and the Commission's policy conviction – strengthened by authoritative policy research – that trade prohibitive measures and mandatory due diligence would be more effective than voluntary supply-side measures in combating deforestation.

06. Delaying the Implementation of the EUDR

51 Third countries were not reassured by the promises of cooperation and assistance and continued to express their concerns after the EUDR was adopted and further steps were prepared for its implementation. In this section, we describe how third countries mobilized during this stage and succeeded in gaining better access to different policy venues, gradually receiving more supportive responses to their arguments.

6.1 From Third-Country Stakeholder Mobilization to EU-Internal Mobilization

52 In a joint mission to Brussels at the end of May 2023, only weeks after the Council approved the EUDR, the government officials of Indonesia and Malaysia expressed their concerns and objections about the unilateral approach adopted by the EU during a high-level joint meeting with EU officials. In their statement on the meeting, they noted “not [to] expect any tangible immediate outcomes”. At the same time, they expressed their hopes that their exchange would “pave [...] the way for future collaborations and partnership.” (CPOPC, 2023). Commissioner Frans Timmermans and Josep Borrell, High Representative of the EU, emphasized the importance of strengthening engagement with partner countries (Agence Europe, 2023). The meeting was followed by a visit of the Commission to Indonesia and Malaysia in June 2023, where the parties agreed “to seek common interests between producing and consuming countries’” Parties also agreed establishing an Ad Hoc Joint Task Force (JTF) “to serve as a consultative mechanism to support coordination and promotion of mutual understanding” (EEAS, 2023).

53 Soon after the first meeting of the JTF, however, Malaysia and Indonesia, together with a group of 15 other countries, sent a joined letter to Commission President Ursula von der Leyen stating that the EUDR “establishes a unilateral benchmarking system that is inherently discriminatory and punitive, which is potentially inconsistent with WTO obligations”, and called upon the EU to “engage in a more meaningful and open dialogue with producing countries” (Joint Letter, 2023). The Commission issued a (late) response to the letter in January 2024, pledging to step up technical assistance to partner governments. This would include setting up dedicated facilities to support on-demand supply chain analysis (SustainableViews, 2024).

54 While the mobilization by third countries did not seem to have significant effect beyond general political statements by the European Commission in 2023 and early 2024, the situation started to shift when concerns about the implementation and ultimate implications of the EUDR for European stakeholders also started to emerge within the EU itself. At the end of 2024, the EUDR would be fully implemented but many implementing decisions were not yet taken by the Commission or communicated with the field. This included, for example, the indicators for the benchmarking system on the basis of which country risk-levels – and thus the applicable benchmarks for the controls – would be established. Implementation concerns caused EU stakeholders to mobilise against the EUDR as well, next to the existing mobilisation of third country stakeholders. The backlash against other (agricultural) policies that followed from the Green Deal and motivated farmers across Europe to demonstrate, also spilled over to the EUDR and mobilized European producers to target their capitals with demands to delay the implementation of the EUDR and even revise its requirements (Politico, 2024). The Agricultural Commissioner indicated to follow up on this request, but this did not convince the Commission College to delay implementation. This subsequently invigorated mobilization from stakeholders inside and outside the EU, targeting both the Commission and Member States. South American countries again criticized EU unilateralism that does not take account of local conditions (CAS, 2024) and the US called for a delay in implementation, while European organizations such as EuroCommerce supported delay and the EU farm lobby COPA-Cogeca even wanted to

reopen the debate on the content of the regulation in order to limit administrative burdens (Agence Europe, 2024a; 2024b).

6.2 EU Institutions' Positions and Interactions

55 Up to the elections in June 2024, the EP as a venue was less present in the EUDR debate. After the elections, however, individual factions and MEPs voiced their positions: EPP representatives, with reference to third country complaints, including the US Biden administration,[6] called for postponement and reduction in bureaucracy, while representatives of the Greens/EFA group wanted the Commission to stick to the implementation path (Agence Europe, 2024c; 2024d).

56 In the Council, Germany, which had been a strong supporter of the EUDR, joined the group of member states that pushed for a delay. Interestingly, the German Chancellor Olaf Scholz called for the delay one day after Brazil requested to "reassess" its approach to deforestation. According to Politico, Brazil stressed that doing so would be needed to avoid any negative impact on its trade relations, hinting at possible measures for the import of European electric vehicles in a trade agreement between the EU and Mercosur (Guillot, 2024; Gijs, 2024).

57 Confronted with pressure from inside and outside the EU, the Commission on 2 October adopted a proposal to postpone the implementation of the regulation with one year 'given the innovative nature, the rapid timetable and the diversity of the international stakeholders involved' (Agence Europe, 2024e). To delay the implementation, the Commission's proposal had to be approved by the EP and Council. It is important to note that during these final months of 2024, NGOs and (larger) companies that had already invested in the administrative preparations required to comply with the regulation lobbied against delay in the implementation and vehemently opposed changing the substance of the regulation. They argued that postponing the implementation would create legal uncertainty and could cause instability throughout the supply chain (Cocoa-Coalition, 2024). During the required approval process both the Council and the EP could amend the EUDR further, reopening the legislative agreement. The risk that this would happen was considered real after the changes in the European Parliament resulting from the 2024 elections. And indeed, while the Council came with a quick and positive response to the Commission's proposal, and thus only approved delay without reopening the agreement (Council 2024), it was the EP – originally one of the most fervent proponents of a regulation aimed at reducing imported deforestation since 2017 – that caused a great deal of uncertainty in the Fall of 2024.

58 Due to amendments by Christine Schneider (EPP, Germany), rapporteur on behalf of the EP, the Council and EP position did not align and trilogues were called for (Agence Europe, 2024l). Here Schneider defended the position of including a 'no risk' category in the benchmarking (in which a number of member states with forestry industries could then be placed, allowing lenient controls) and further simplification of implementation. The Council was unwilling to allow such changes and would only approve a statement on a commitment for simplified implementation, without further details about what that entailed. The EP plenary and Council both endorsed this outcome and the EUDR implementation was delayed by one year, without adaptations to the substance of the regulation (Council, 2024).

6.3 Access and Responsiveness

59 Reflecting on the access of various stakeholders to different policy venues and policymakers' receptiveness to different arguments, we can conclude that different EU venues became more receptive to some of the critical arguments that third-country stakeholders – particularly from the Global South – had presented from the start, such as feasibility of implementation and bureaucratic burden. It should be noted though, that these considerations only became more important once European economic and political interests appeared to be directly at stake. Economic interests of EU business actors and producers were considered in jeopardy now, and not heeding the concomitant pressure of these actors, such as the agri-food lobby, was politically costly for decision-makers. The new composition of the EP and Commission combined with the changes in political context, made both institutions (as separate venues) more receptive to the critique of the EUDR by EU business actors. Towards the end of the policy process, once implementation was drawing near, inclusion by means of receptiveness to the type of arguments originally made by third-country stakeholders increased, indicating the potential relevance of different phases of the policy process.

60 The reason that eventually the result was only delayed implementation and no substantive changes to the regulation may be related to the lobby in favour of the agreement, as well as to the fact that prolonged trilogues required to achieve inter-institutional agreement on substantive changes were considered unfeasible before the 31st of December 2024. Since no agreement would have meant that the original timeline for implementation of the EUDR would have commenced, that was an outcome that critics of the EUDR wanted to avoid.

6.4 Postscript: A Second Delay in Implementation?

61 After the decision taken in December 2024 to postpone implementation for a year, the regulation remained a topic of debate. Mobilization by third country stakeholders as well as some Member States in favour of simplifying the due diligence process continued. In April 2025, the Commission published a new guidance document and proposed a delegated act aimed at reducing administrative burden and facilitating implementation of the EUDR, explicitly indicating that it "is also replying to the feedback from its international partners" (European Commission, 2025a). A group of 18 Member States, however, insisted on a further delay of implementation as well as changes to the regulation, particularly that the rules should not apply to countries in the low-risk category (Joint Statement, 2025). In a draft proposal amending the regulation, the Commission responded with further 'targeted measures' to ease compliance and delaying implementation with a year for 'micro and small producers', while allowing a grace period for enforcement with respect to large and medium companies (European Commission, 2025b).

62 Council and EP reached an agreement on the new Commission proposal in December 2025 to delay the implementation of the EUDR by one year. They also agreed on a review to be carried out by April 2026, focusing on further simplification, possibly leading to legislative changes (Euractiv, 2025).

63 These latests developments around the EUDR in 2025 show some commonalities with the first delay of implementation decided on in 2024. We see more receptiveness to

arguments – originally coined by third-country stakeholders and now taken on not only by European stakeholders, but also by policymakers – with respect to the administrative burden and economic and social effects of the due diligence requirements. However, further dilution of the regulation only commenced once EU Member States voiced similar concerns with increasing urgency, which was arguably due to concerns for domestic producers and traders rather than third-country stakeholders' interests.

07. Conclusion

64 The aim of this study was to explain how dynamics of inclusion and exclusion contributed to the EUDR policy outcome as an example of successful (yet contested) environment-trade linkage. We paid attention to the role of different stakeholders and their arguments during the policymaking process and the opportunity structure for different groups to influence the policy debate, with a specific focus on third country stakeholders. We argued that the success of particular groups to influence the policy debate depends on the (institutional) access to particular policy venues and the (discursive) receptiveness of the policy actors in these venues to particular ideas and arguments. Our analysis shows that these institutional and discursive factors (and changes in them) do indeed condition the dynamics of inclusion and exclusion.

65 In line with our expectations about embedded "trade for" policies (and EU policymaking in general) this study shows that these venues, in particular the Commission and the European Parliament, were relatively open to different stakeholders. When we focus on actor access, we find that the policy making process has offered an opportunity for third-country stakeholders to be included via different routes – consultation procedures and exchanges – particularly connected to the venues of the Commission and the European Parliament. Yet, while gaining access to policymakers, they were not in a position to shape the debate around the concerns of third countries. Our case shows that other actors were in a better position to do so, especially in light of exogenous events as the publication of the Fitness Check, which limited the discursive space for policymakers to discuss and critique the legislative proposal.

66 The Fitness Check's reporting on the failure of bilateral agreements (VPAs) was further in line with the more assertive trade position of the EU. While the EU would still prefer a multilateral or bilateral approach to trade, it also believed that it should turn to a more unilateral approach if there is no other option to address issues of sustainability. The Fitness Check made a convincing case that such an approach was needed with respect to combating deforestation and appears to have contributed to a clear preference for a strengthened demand-based approach with a broader scope in the minds of policy makers in different venues – the Commission and Council in particular – while the European Parliament had already started to embrace this approach in the preceding years.

67 The farmer protests and increasing objections by third countries indicate that exogenous events can have an important impact on the policy ideas in different venues and how this changes the receptiveness to particular arguments. Both events cast doubt on the feasibility of the adopted approach to deal with deforestation, particularly among the Member States in the Council. Also in the EP, however, changes in policy

ideas took place as a result of the EP elections. This moved the EP in a more conservative direction. As a result, both venues became more receptive to concerns about administrative burdens of the EUDR and the need to grant business more time to prepare for this. Trade linkage thus remained contested by different stakeholders, even after the formal adoption of the legislation, and stakeholders shifted venues to those EU institutions they believed to be most conducive to promoting their interests, capitalizing on external political events such as the EP elections and farmer protests.

68 Turning more explicitly to the relationship between inclusion, exclusion and trade linkage, in this case between environmental sustainability and trade, our findings show the importance of considering who is controlling the policymaking process. Inclusion and exclusion are relational concepts making it problematic to argue in general that inclusion is considered conducive to successful linkage, whereas exclusion is expected to negatively affect linkage. While this holds true for those situations in which trade interests dominate the debate, which has been the case with respect to bilateral trade negotiations for example, this can be different when linkages are forged from a different direction, such as through *de jure* environmental policy constituting *de facto* (unilateral) trade policy. It is because of this that in the case of the EUDR, exclusion of particular actors (third country stakeholders critical of the proposed policies) – if not necessarily in terms of access, then at least in terms of receptiveness to their arguments – actually contributed to passing an ambitious EU regulation achieving successful environment-trade linkage.

69 While our study demonstrated the added value of moving beyond measurements based on institutional and procedural grounds only (access to decision making), to include policymakers' actual receptiveness to different arguments, it also shows that it remains difficult to qualify differences in levels of inclusion very precisely. Future research could make further contributions by developing and applying more fine-grained analyses in this respect.

70 Our study further shows the importance of stretching the analysis beyond policy adoption into the implementation phase for two reasons. First of all, dynamics of inclusion and exclusion can shift during different stages of the process, particularly when it comes to the receptiveness of political actors to specific arguments. Secondly, experiences of not being included in the policymaking process is likely to continue to cause difficulties in the implementation phase – particularly when it concerns relatively technical regulations where the devil is in the detail (of the implementation). Even though policymakers can demonstrate inclusiveness based on institutional and procedural grounds, awareness of and responsiveness to the experiences of others remains important, both from a normative and a pragmatic perspective. Otherwise, linkage established by adopted policies may be broken during the implementation stage. In this respect, at the time of writing, it remains an empirical question to what extent the environment-trade linkage established by the EUDR will survive the implementation process unscathed.

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APPENDIXES

Overview of Consultation Procedures and statistics on the replies

Date	Type	Link	Replies
Commission consultation on stepping up EU Action | 18 December 2018			
18.12.2018-15.1.2019	Feedback Period	https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2027-Deforestation-and-forest-degradation-stepping-up-EU-action_en	202 unique
14.1.2019-25.2.2019	Consultation Period	https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2027-Stepping-up-EU-Action-against-Deforestation-and-Forest-Degradation/public-consultation_en	952 unique
Commission consultation on reducing the impact of products placed on the EU market, based on inception impact assessment | 5 February 2020			
5.2.2020-4.3.2020	Feedback Period	https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12137-Deforestation-and-forest-degradation-reducing-the-impact-of-products-placed-on-the-EU-market_en	99 unique
3.9.2020-10.12.2020	Consultation Period	https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12137-Minimising-the-risk-of-deforestation-and-forest-degradation-associated-with-products-placed-on-the-EU-market/public-consultation_en	1.194.757 1145 unique 1.193.612 campaigns

Category of respondents (%)

Category	FP 2018-2019	CP 2019	FP 2020	CP 2020*
EU Citizen	56,44	66,28	21,21	68,90
NGO	14,85	10,4	32,32	0,01 (79)
Non-EU citizen	9.41	2,73	1,01	31,08
Business Association	5,94	3,47	17,17	0,00 (49)
Environmental organization	3,96	2,31	1,01	0,00 (11)
Other	3,96	2,84	3,03	0,00 (31)
Company/business	2,48	6,93	12,12	0,01 (67)
Academic/research institution	1,98	2,21	6,06	0,00 (36)

Public Authority	0,99	2,52	5,05	0,00 (11)
Trade Union	-	0,21	-	0,00 (4)
Consumer Organisation	-	0,11	-	-

*numbers in parentheses indicate the absolute/nominal number of replies. Since nearly all replies were part of a coordinated campaign in which individual citizens responded with the same or very similar reply, the percentage provides a very inflated view for the number of replies from non-citizen actors.

Source: authors' own compilation, based on the information available through the webpages provided in the first table in this annex

Percentage per country

Country	FP 2018-2019	CP 2019	FP 2020	CP 2020
Europe	Top 5: FR: 33,17 BE: 14,85 SW: 9,9 NL: 6,44 UK: 5,45 4/5 ADG*	Top 5: DE: 14,18 FR: 12,18 PL: 10,4 BE: 8,09 IT: 7,25 4/5 ADG*	Top 5: BE: 30,3 NL: 12,12 FR: 12,12 PL: 7,07 UK: 4,04 4/5 ADG*	Top 5: DE: 15,23 NL: 11,28 FR: 10,03 UK: 7,4 BE: 7,33 5/5 ADG*
Canada	7,92	0,21		0,05
US	4,46	1,89	5,05	2,32
Côte D'Ivoire	2,48	0,11		
Malaysia	1,49	0,32	1,01 (=1)	0,23
Nigeria	0,5 (=1)	0,32		
Mexico	0,5	0,11		0,05
India	0,5	0,11		0,23
Colombia	0,5	0,42	3,03	0,07
Brazil	0,5	0,53	1,01	6,43
Honduras		0,84		0,02
Ghana		0,42		0,08
Cameroon		0,32		0,54
Thailand		0,21		0,14

Peru		0,21		0,52
Indonesia		0,21		1,06
French Guiana		0,21		
Australia		0,21		0,33
South Africa		0,11 (=1)		0,05
US Minor Outlying islands		0,11		
Singapore		0,11	1,01	0,14
Russia		0,11		0,28
French Polynesia		0,11		0,02
Nepal		0,11		
Mali		0,11		
Cambodia		0,11		0,12
Jordan		0,11		
Israel		0,11		0,05
Congo		0,11		0,07
Belarus		0,11		0,01
Trinidad&Tobago			1,01	
New Zealand			1,01	0,05
Argentina				0,72
Equador				0,41
Zimbabwe				0,17
Ukraine				0,15
Paraguay				0,13
Pakistan				0,13
Myanmar/Birma				0,12
Kenya				0,1
Japan				0,1

Isle of Man				0,09
Costa Rica				0,07
China				0,07
Bermuda				0,07
Bangladesh				0,07
Taiwan				0,05
Chile				0,05
Turkey				0,04
Uruguay				0,04
Morocco				0,04
Venezuela				0,03
Kazakhstan				0,03
South Korea				0,03
Bolivia				0,03
New Caledonia				0,03
Guatemala				0,03
Puerto Rico				0,03
Philippines				0,03
Reunion				0,02
Algeria				0,02
Vietnam				0,02
Sri Lanka				0,02
Tunisia				0,02
Guadeloupe				0,02
Dominican Republic				0,02
Martinique				0,02
Panama				0,02

Senegal				0,02
El Salvador				0,01
United Arab Emirates				0,01
Ethiopia				0,01
Mauritius				0,01
Namibia				0,01**

* The fraction indicates the number of countries out of the 5 top replying countries which are party to the Amsterdam Declaration on Deforestation of 2015 (BE, DK, FR, DE, IT, LU, NL, NO, SP, UK)
** Still 147 replies.

Source: authors' own compilation, based on the information available through the webpages provided in the first table in this annex

Meetings between interest groups and EP rapporteur Hansen

EuroCommerce	Representing the retail and wholesale sector, with national associations in 28 countries as members. [Category: business]
ClientEarth AISBL	Environmental Charity Position: favouring demand-side measures such as in EUDR (e,g, https://www.clientearth.org/latest/documents/the-new-eu-deforestation-free-products-regulation-key-obligations-for-eu-member-states/) [Category: environmental NGO]
Fair Trade Advocacy Office	NGO representing voices of marginalised producers and workers, focusing on fair trade. Position: generally favorable, but concerns about interests of smallholders [Category: NGO]
Suzano	Brazilian paper producer [Category: business]
FBF	Federation Bancaire Française [Category: services sector]
Planet	(US-based) Company providing Satellite Imagery and Earth Data Analytics. [Category: business]
ClientEarth AISBL	see above
	Environmental NGO

Australian Wilderness Society	Position: supports EUDR with demand-side approach [Category: environmental NGO]
Kaoem Telapak	Environmental NGO based in Indonesia Position: favours EUDR (https://kaoemtelapak.org/hands-off-the-eu-deforestation-regulation/) [Category: environmental NGO]
Earthsight	UK-based NGO Position: favours EUDR (https://www.earthsight.org.uk/news/NGO-letter-EU-member-states-urged-properly-implement-EUDR) [Category: NGO]
Malaysian Timber Council	Timber Business [Category: business]
FERRERO International	Food industry Position: states that it supports EUDR [Category: business]
European Tyre Industry	Rubber-using industry [Category: business]
FEDIOL	Federation representing European Vegetable Oil and Proteinmeal Industry in Europe Position: Agreement in principle with due diligence based on UN principles and OECD/FAO guidelines, but presenting major issues. [Category: business]
Bundesverband Lebensmittelhandel	Trade association [Category: business]
European Forest Owners	Umbrella association of national forest owner organisations in Europe. Position: Favourable towards objectives of the regulation, but concerns about practicality and implementability.

Source: based on information on own reporting as presented on EP website https://www.europarl.europa.eu/meps/en/193419/CHRISTOPHE_HANSEN/history/9#detailedcardmep

NOTES

1. The regulation is based on EU regulatory competence in environmental matters (Article 192(1) TFEU) rather than its competence in commercial policy. From a legal perspective, Marín Durán (2025: 5) describes the regulation as an '"environmental" instrument that effectively tries to manage – and indeed, constrain – international trade in FRCs to promote environmental conservation'.

2. In addition to promoting legal trade, these partnerships also sought to address the causes of illegal logging and trade, by providing assistance to improve forest governance in the exporting country (Berning *et al*., 2022; see also Overdevest and Zeitling, 2018)

3. It is important to note that this consultation drew nearly 1.2 million replies. All except 1145 replies were part of a campaign, however, with mainly citizens submitting identical or nearly identical responses in a coordinated matter, in response to invitations from NGOs to do so.

4. Berning *et al.* (2025) remark that EUDR's negotiations were "fast-paced due to pressure to have an agreement at the United Nations (UN) Conference of the Parties (COP15) to the UN Convention on Biological Diversity in Montreal, Canada[1] to send a political message."

5. While during the policy process resulting in the EUDR, third countries such as Brazil, Paraguay, Argentina, Ecuador and Indonesia contested the compatibility of the regulation with WTO-rules, references to such considerations among EU stakeholders were limited, and particularly involved concerns about the benchmark with the risk-categories, with contradictory views among representatives of different EU institutions. EU concerns thus related to the implementation, rather than to the overarching question whether unilateral trade regulation with extra-territorial effects are permitted under WTO rules. A recent WTO-panel report on a case Malaysia started against the EU on measures concerning palm oil appears to indicate such unilateral trade regulations are permissible under certain conditions (Marín Durán, 2025), but whether these conditions are met in the EUDR policy remains an unsettled question.

6. The Biden Administration wanted to delay implementation due to the 'critical challenges' it posed to US producers, who feared supply chain disruptions (*Financial Times*, 2024). This letter followed complaints from US paper and pulp producers and a letter from Senators to United States Trade Representative Katherine Tai (United State Senate, 2024).

ABSTRACTS

Over the last years the EU has taken a more unilateral approach in linking sustainable development to trade by adopting legislation that affects the sustainable production and trade of products within and beyond its internal market. One of these laws is the EU Deforestation Regulation (EUDR). By many, the adoption of the EUDR has been hailed as a successful linkage between sustainability and trade, and an important step in countering deforestation. Others, however, have criticized the policy making process and the limited possibilities it offered to engage with certain stakeholders and their concerns. Drawing on various theories of the policy process, this article sheds light on processes of exclusion and inclusion during the policymaking process of the EUDR. We show that political opportunity structures mediate the impact of stakeholder mobilization, with their institutional dimensions affecting access to policymakers and their discursive dimensions influencing policymakers' receptiveness to different arguments. We show how exclusion instead of inclusion contributed to stronger or more developed environment-trade linkage in the case of the EUDR.

Au cours des dernières années, l'UE a adopté une approche plus unilatérale pour lier le développement durable au commerce en adoptant une législation qui affecte la production et le commerce durables des produits au sein et au-delà de son marché intérieur. L'une de ces lois est le règlement de l'UE sur la déforestation (EUDR). L'adoption de l'EUDR a été saluée par beaucoup comme un lien réussi entre la durabilité et le commerce, et comme une étape importante dans la lutte contre la déforestation. D'autres, cependant, ont critiqué le processus d'élaboration des politiques et les possibilités limitées qu'il offrait de dialoguer avec certaines parties prenantes et de répondre à leurs préoccupations. S'appuyant sur diverses théories du processus politique, cet article met en lumière les processus d'exclusion et d'inclusion au cours du processus d'élaboration de l'EUDR. Nous montrons que les structures d'opportunité politique modèrent l'impact de la mobilisation des parties prenantes, leurs dimensions institutionnelles affectant l'accès aux décideurs politiques et leurs dimensions discursives influençant la réceptivité des décideurs politiques à différents arguments. Nous montrons comment l'exclusion, plutôt que l'inclusion, a contribué à renforcer ou à développer les liens entre l'environnement et le commerce dans le cas de l'EUDR.

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Mots-clés: EUDR, déforestation, lien entre environnement et commerce, dynamique d'inclusion et d'exclusion, implementation

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Environmental Protection in Trade Agreements: A Critical and Constructive View of RCEP

La protection de l'environnement dans les accords commerciaux : regard critique et constructif sur le RCEP

LY Van Anh

01. Introduction

1 The integration of environmental objectives into trade agreements has undergone a significant transformation over the past two decades. Initially, non-trade values, including environment, were treated as exceptions to traditional trade agreements, arising from the early economic negotiations that paved the way for the establishment of the General Agreement on Tariffs and Trade (GATT) and subsequent World Trade Organisation (WTO) agreements. This trend carried forward into various regional trade agreements (RTAs) from that era.

2 However, a notable shift has occurred in the past decade, as there has been a growing emphasis on integrating environmental commitments into so-called “new-generation” RTAs. Unlike earlier agreements, these instruments treat environmental protection as shared obligations among participating nations, reflecting a recognition that trade agreements can actively contribute to advancing sustainability.

3 Despite this progressive trend, the Regional Comprehensive Economic Partnership (RCEP), a landmark agreement in contemporary trade, falls short in addressing environmental concerns, in stark contrast to other RTAs from the same era. This is particularly striking given that its members, located in one of the world's most dynamic regions, have already incorporated such provisions in their individual trade agreements with other partners.

4 Building on this observation, the paper examines the evolution of trade-environment linkages in both multilateral and regional frameworks – particularly those involving RCEP members – to highlight and address the gaps in RCEP. It then proposes reforms to better align RCEP's framework with the prevailing global momentum toward sustainable trade. Situated within the broader field of linkage politics, the study operates at the intersection of two analytical logics: *trade and environment*, which involves the inclusion of environmental provisions within trade agreements to mitigate negative ecological impacts; and *trade for environment*, wherein trade relations are strategically employed to advance environmental norms and objectives. The recommendations for RCEP reflect a shift from the former – more passive integration, to the latter – more ambitious environmental strategy.

02. The Evolution of Trade-Environment Linkages in Global and Regional Contexts

5 Trade-Environment linkages have become a defining feature of contemporary governance. While traditional agreements often struggled to balance economic and ecological goals, growing attention to trade-environment linkages has led to the progressive inclusion of environmental objectives in both global and regional frameworks.

2.1 Trade and Environment within the GATT/WTO Framework

6 The inclusion of non-commercial considerations, including those regarding environmental protection, in trade agreements is not a new phenomenon. Multilateral trade negotiations in the early 20th century already recognised the right of participating states to claim exemptions to national regulations relating to the protection of human, animal, and plant health, as well as public safety and policy.[1] The strongly advocated "right of prohibition" by the delegations led to the inclusion of the GATT Articles XX and XXI, which pertain respectively to general and security exceptions, allowing for a "coexistence" of trade and non-trade values, including the environment. However, these exceptions were strictly applied under the GATT regime,[2] which clearly prioritized its "trade" mission.[3]

7 The establishment of the WTO mark a new step in trade-environment linkages, coinciding with the rise of international environmental law and sustainable development principles.[4] When this Organization was established in 1995, its members agreed to create a Committee on the Environment, serving as a "standing forum dedicated to dialogue amongst the entire WTO membership on the impact of trade policies on the environment and of environment policies on trade."[5] Moreover, the objective of environmental protection is explicitly stated in the preamble of the Agreement Establishing the WTO and is reflected across various WTO agreements.[6] This heightened awareness has prompted the WTO's dispute settlement bodies to adopt approaches that are increasingly sensitive to environmental considerations.[7]

8 Moreover, the attempt to weave environmental objectives into the binding obligations of WTO members has sparked intense and ongoing negotiations on key trade-environment issues, such as fisheries subsidies, plastic pollution, and carbon emissions.

[8] The entry into force, on 15 September 2025, of the Agreement on Fisheries Subsidies marks not only the culmination of twenty-five years of arduous negotiations, but also a turning point in the Organization's history, as its first legally binding multilateral instrument explicitly dedicated to environmental protection and the sustainability of the world's oceans. Ongoing negotiations continue with the aim of further strengthen the disciplines established by the Agreement and to ensure that trade rules contribute more effectively to the preservation and sustainable management of global marine resources.[9] Beyond multilateral efforts to negotiate an agreement on environmental goods and services, smaller groups of countries pursue more progressive initiatives. The *Agreement on Climate Change, Trade and Sustainable Development* (ACCTS), signed in November 2024 by Costa Rica, Iceland, New Zealand, and Switzerland, offers an innovative response to the longstanding challenge of aligning trade and environmental policies within the WTO, by providing a framework for liberalizing a wide range of environmental goods and services, controlling fossil fuel subsidies, and promoting eco-labelling.[10]

2.2 Environmental Protection in RTAs

9 For a long time, RTAs largely followed the GATT model, prioritizing trade while treating non-commercial considerations as exceptions. However, environmental issues – alongside pandemics, cybersecurity, and migration flows – have emerged as common global challenges that transcend national borders and often require coordinated action to address effectively. The trend toward integrating environmental obligations into trade agreements reflects a broader paradigm shift: trade is no longer their sole or overriding objective. Rather, they are increasingly seen as instruments through which states can pursue and realize broader policy goals, including environmental protection. This evolution affirms that trade can, and should, serve as a vehicle for advancing global environmental objectives. A 2020 empirical study of 568 preferential trade agreements containing 286 different types of environmental provisions – 505 involving at least one developing country –, found that such provisions can help promote green exports without causing negative impacts on overall trade.[11]

10 A range of approaches has been observed and tested. In this regard, a 2022 report led by Prof Jean-Baptiste Velut for the European Commission's DG Trade dissected eight distinct approaches to Trade-Sustainable development linkages in agreements involving the EU, Australia, Canada, Chile, Japan, New Zealand, Switzerland and the US. [12] A close reading reveals two contrasting approaches to the treatment of trade and non-trade relations. On the one side, the *cooperative* approach, characterized by dialogue, partnership, and non-punitive mechanisms, is embodied by the European Union, Australia, Chile, New Zealand, and Switzerland. On the other side, the *competitive* approach centres on enforceability and accountability mechanisms, including the potential use of sanctions, prominently represented by the United States. These two approaches were analyzed in detail by Jean-Frédéric Morin and Myriam Rochette in their 2017 study of 310 types of environmental provisions across 660 trade agreements. [13] RCEP members have all accumulated experience with both approaches through their prior trade agreements with these partners, as will be examined in detail in Section 3.1.

03. Limited Trade-Environment Linkages within the RCEP

11 In his 2021 study on new RTAs, Prof Christian Deblock identifies three major competing models for what he calls “third-generation trade agreements”: in addition to the established EU’s community and U.S. contractual models, the third, distinct one is the ASEAN’s partnership model.[14] Undoubtedly, the RCEP falls within this latter category, with relatively loose commitments that focus on promoting trade and economic development while avoiding sensitive issues that could affect competitiveness. Yet, this approach may undermine RCEP’s capacity to respond to growing environmental challenges, especially considering that many of its members have already included such provisions in their trade agreements with other partners – and the agreement still has the potential to correct this gap.

3.1 RCEP Overview

12 The RCEP stands out as one of the most important RTAs in the world. Initiated in 2012, negotiations brought together the ten member countries of the ASEAN – Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam – along with their six Free-Trade Agreement (FTA) partners, which include China, Japan, South Korea, Australia, New Zealand, and India. The negotiation process aimed to create an expansive regional trade bloc, fostering economic integration among the Asia-Pacific nations. RCEP was finally signed on November 15, 2020, by 15 countries, following India’s withdrawal. It came into effect on January 1, 2022.[15]

13 RCEP’s overarching goal is to enhance economic cooperation, stimulate growth, and create a more seamless environment for cross-border trade and investments.[16] Considered as the most ambitious free trade agreement ever negotiated by developing countries,[17] RCEP is designed to expand and deepen the existing FTAs between ASEAN countries and their partners, creating an economic zone that represents nearly half of the world’s population, and accounts for 30% of global GDP and over 25% of global trade.[18]

14 As RCEP primarily focuses on economic integration, its approach to environmental protection is a critical aspect. The subsequent section addresses this issue in greater detail.

3.2 Environmental Gaps in RCEP

15 Although it is part of the recent regional mega-trade agreements,[19] the RCEP distinguishes itself by its limited trade-environment linkages. While new RTAs have embraced the *WTO-Plus* obligations – that is, incorporating higher standards than those of the WTO and covering sectors not included in the multilateral system – the RCEP remains faithful to the simple *WTO-Compatible* formula. Like early WTO agreements, the RCEP acknowledges the parties’ right to pursue their environmental objectives through exception clauses included in the chapters on trade in goods and services[20], as well as the chapters on SPS and TBT.[21]

16 The Agreement contains no chapter specifically devoted to the environment. The issue itself is only implicitly referred in the preamble, stating: “RECOGNISING that the three pillars of sustainable development are interdependent and mutually reinforcing, and that economic partnership can play an important role in promoting sustainable development”.

17 The sole innovation lies in Article 17.10: “Each party affirms their rights and responsibilities under the Convention on Biodiversity concluded in Rio de Janeiro on June 5, 1992”. This brief mention of the *Convention on Biological Diversity* (CBD) is quite modest and raises the question of why the RCEP refers exclusively to the CBD, rather than to other MEAs – especially those on climate change, to which all RCEP members are Parties, such as the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement.

18 The protection of new plant varieties is addressed in Chapter 11 on Intellectual Property,[22] however, while this provision seems well-intentioned, caution is needed. Patents, by granting the holder the exclusive right to use and profit from the invention, may limit access to new plant varieties and restrict their use to those who can afford them.

19 In the absence of a meaningful environmental chapter, the liberalization logic that underpins the RCEP risks turning economic openness into ecological vulnerability. Actually, a 2022 empirical study found that foreign trade has a causal effect on both per capita emissions and per capita GDP in RCEP member countries and trade is driving a rise in carbon-intensive production across the region.[23] By privileging trade flows over ecological balance, the RCEP risks transforming a vision of regional prosperity into one of irreversible depletion – leaving both nature and communities to bear the cost of its omissions.

20 The convergence of RCEP members around low-ambition environmental provisions is often observed, yet seldom explained. The prevailing literature tends to focus on normative critique, highlighting what RCEP lacks when compared with “new generation” trade agreements, rather than interrogating why RCEP members made such choices in the first place. Moreover, little evidence is found in the existing literature or available negotiating records to suggest that environmental protection was ever framed as a central issue during the RCEP negotiations.

21 The author of this paper contends that these choices can be understood by situating RCEP’s environmental modesty within the broader developmental priorities and institutional logic of its member states.

22 First, RCEP is fundamentally an agreement of developing economies. For its members, economic growth remains the overriding policy imperative, one that conditions both negotiating priorities and acceptable regulatory burdens. Environmental protection – particularly when translated into binding and enforceable trade obligations – has often been perceived not as a catalyst for development, but as a potential impediment to industrialization, investment attraction, and participation in global value chains. The limited level of environmental ambition reflects a long-standing preference for regulatory flexibility in the pursuit of economic growth. This flexibility is exactly what the region needs and allows RCEP to reaffirm its role as a consensus-building mechanism in Asia.

23 Second, and crucially, RCEP must be understood as an institutional extension of the ASEAN+1 model. Far from being a radical departure, RCEP remains faithful to ASEAN's traditional approach to free trade agreements – an approach characterized by pragmatism, incrementalism, and a strong emphasis on economic cooperation over regulatory ambition. ASEAN-centred FTAs have historically avoided prescriptive social or environmental disciplines, favoring instead soft cooperation, capacity building, and respect for national policy space. RCEP's low-ambition environmental provisions are therefore a natural continuation of this ASEAN-centric FTA philosophy.

24 China's strategic interests, as the most influential member, further reinforce this orientation. RCEP dovetails with China's Belt and Road Initiative,[24] which prioritizes infrastructure development, investment expansion, and regional connectivity. Within this framework, China has little incentive to adopt stringent environmental commitments, as such constraints could slow down the implementation and reduce the effectiveness of its large-scale economic and infrastructure projects.

25 The purpose of this paper, however, is not to provide a definitive answer to the question of *why* RCEP lacks ambitious environmental provisions. Instead, the author advances a forward-looking argument: that RCEP's members possesse both the normative potential and the institutional capacity to undertake more advanced commitments to environmental protection.

04. Enhancing Environmental Protection in RCEP: Why and How?

26 While the RCEP may not explicitly mention other environmental conventions, it does not necessarily mean that they are disregarded. It is important to note that, since the beginning of the negotiations, the primary objective of RCEP members has been to promote economic cooperation and reduce trade barriers among participating countries. In this context, the inclusion of specific environmental considerations, such as references to the CBD, represents a positive step toward integrating environmental concerns within the scope of the agreement. The RCEP is not a static FTA. Rather, it sets a starting point for further negotiations within the extended RCEP framework and other fora, particularly for newly developed and developing countries in East Asia.[25] The agreement therefore still has the potential to address its environmental gaps.

27 Additionally, nearly all RCEP parties have ratified or committed to other regional trade agreements that address various environmental issues, featuring differing levels of enforceability and enforcement mechanisms, whether binding or not. This experience provides a strong foundation for the potential inclusion of more robust environmental provisions within the RCEP framework.

28 Notably, ASEAN[26], the driving force behind RCEP, has historically demonstrated early and proactive engagement with environmental issues. In the face of pressing challenges – such as nuclear pollution (linked to security concerns), water resource management, and transboundary haze pollution – it has succeeded in adopting binding agreements, even within its traditionally consensus-driven framework. This established capacity is particularly significant given ASEAN's influence within RCEP, where the principle of ASEAN centrality serves as a foundational guiding principle.[27]

4.1 Favourable Conditions for Closing Environmental Gaps in RCEP

29 RCEP members' existing policies and approaches provide a solid foundation for gradually addressing these environmental gaps, whether from ASEAN traditions or each member's own experience.

4.1.1 ASEAN's Traditional Environmental Approach

30 At the core of the RCEP, ASEAN's position is crucial in shaping the approach to reform the agreement. Within the Association, cooperation on environmental protection is marked by increasing efforts among member states to establish a legal and institutional governance framework. According to the United Nations Environment Programme (UNEP), this can serve as a positive example for other regional organisations.[28]

31 Cooperation among ASEAN states primarily aims at effective natural resource management and combating pollution. This collaboration is established through both treaties and non-binding instruments such as declarations or action plans, operating at regional, sub-regional, or inter-regional levels. The evolution of the ASEAN environmental framework has unfolded in three stages. In the 1970s, initial awareness led to limited inter-state cooperation on conservation. The mid-1980s saw a shift towards sustainable development with the adoption of the Jakarta Resolution on Sustainable Development (1987). From the 2000s onward, ambitious environmental goals were institutionalized through plans like ASEAN Vision 2020 and the ASEAN Charter, reflecting a commitment to a sustainable and integrated ASEAN community,[29] with the conclusion of binding agreements on the environment.

32 Key sub-regional agreements include the *Mekong Cooperation Agreement* (Mekong Agreement) and the *ASEAN Transboundary Haze Pollution Agreement* (Haze Agreement). The *first*, signed in 1995 by Cambodia, Laos, Thailand, and Vietnam, addresses water pollution issues in the Mekong River, vital for over 60 million people for resources such as transportation, hydroelectricity, and irrigation. It emphasizes sustainable use, management, and conservation of the Mekong Basin's waters and resources. Notably, it establishes a framework for preventing and remedying environmental damage, involving the immediate cessation of activities causing substantial harm upon notification. The *latter*, signed in 2002 and effective since 2003, aims to address the annual issue of haze caused by Indonesian fires, affecting neighbouring countries, including Indonesia, Malaysia, Singapore, Brunei, the Philippines, and Thailand. The agreement requires parties to prevent pollution and establishes the ASEAN Coordination Centre and an ASEAN Haze Fund. Despite criticism regarding its weaknesses,[30] it's the world's first binding regional agreement specifically targeting haze pollution, with a focus on prevention, cooperation, and monitoring. With the ratification by all ASEAN Member States by 2015,[31] it became a fully regional, rather than merely subregional, environmental agreement in Southeast Asia.

33 At the regional level, two notable ASEAN agreements illustrate the organization's commitment to environmental and security issues: the 1985 *ASEAN Agreement on the Conservation of Nature and Natural Resources*,[32] and the 1995 *ASEAN Treaty on the Southeast Asia Nuclear-Weapon-Free Zone*.[33] Finally, at the global level, Southeast Asian States actively participate in numerous key MEAs.[34]

34 However, it is worth noting that environmental considerations remain largely absent from ASEAN's trade agreements. Whether in the ASEAN Free Trade Area (AFTA) or in the instruments adopted for the ASEAN Economic Community, the approach remains traditional, with minimal trade-environment linkages and environmental references largely based on GATT's General Exceptions (Article XX).[35] This explains, in part, the approach adopted in the RCEP.

4.1.2 Preparation by RCEP Members via Existing FTAs

35 Nevertheless, RCEP members are not unfamiliar with incorporating environmental commitments into trade agreements. Their involvement in FTAs featuring diverse approaches to environment provide them with valuable experience in combining strategies to address environmental issues.

36 Nearly half of all RCEP Members[36] are bound by environmental obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)[37]. Among the eight members not currently part of this mega-RTA, five have expressed their interest in joining at a later stage: the Philippines, China, and the Republic of Korea have initiated the accession process, while Thailand and Indonesia have conveyed their interest[38].

Table 1 – CPTPP Membership of RCEP Countries

CPTPP Membership of RCEP countries	Signature	In force
Australia, Japan, New-Zealand, Singapore	3 Mar. 2018	30 Dec. 2018
Vietnam	3 Mar. 2018	14 Jan. 2019
Malaysia	3 Mar. 2018	29 Nov. 2022
Brunei	3 Mar. 2018	12 Jul. 2023
Philippines, China, Korea	Accession process initiated	
Thailand, Indonesia	Interest expressed	

Source: Authors' Own Compilation

37 Moreover, three RCEP Members have concluded FTAs with the U.S., which include an environmental chapter with a more or less restrictive nature.

Table 2 – US's FTA with RCEP Members

	Signature	In force
U.S.-Singapore FTA (SGFTA)	6 May 2003	1st Jan 2004
U.S.-Australia FTA (AUFTA)	18 May 2004	1st Jan 2005

U.S.-Korea FTA (KORUS)	30 June 2007	15 March 2012

Source: Authors' Own Compilation

38 Both CPTPP and agreements with the U.S. favor strong national enforcement and compliance mechanisms, including sanctions and procedural disciplines as shown in the following table.

Table 3 – Environmental Chapter in Some FTAs Involving RCEP Members

	SGFTA	AUFTA	KORUS	CPTPP
Protection levels	art. 18.1	art.19.1	art.20.1	art. 20.3
Standards and multilateral agreements on the environment	art. 18.8	art.19.8	art.20.2 art. 20.10	art. 20.4
Enforcement of environmental laws	art. 18.2	art.19.2	art.20.3	art. 20.3
Transparency/public information	/	art.19.3 §4	/	art. 20.7 §1
Scientific and technical information	/	/	/	/
Public participation	art.18.5	art.19.5 §3	art.20.7	art.20.8 art.20.9
Procedural matters	art.18.3	art.19.3 §1-3	art.20.4	art. 20.7
Voluntary mechanisms to enhance environmental performance	/	art.19.4	art.20.5	art.20.11
Environmental Impact Assessment	/	/	/	/
Corporate Social Responsibility	art.18.9	/	/	art.20.10
Trade promoting environmental protection	/	/	/	/
Environmental cooperation	/	/	/	art. 20.5, 20.13, 20.15- 20.16
Institution	art.18.6	art. 19.6	art.20.8	art. 20.12
Protection levels	art.18.4	art. 19.3 § 1-2	art.20.6	art.20.19

Source: Authors' Own Compilation

39 Additionally, five RCEP members have either concluded FTAs with the EU or are currently negotiating them.

Table 4 – EU's FTA with RCEP Members

	Signature	In force
EU-South Korea FTA (EKFTA)	6 Oct. 2010	1st Jul. 2011
EU and Japan's Economic Partnership Agreement (EJEPA)	17 Jul. 2018	1st Feb. 2019
EU-Singapore FTA (ESFTA)	19 Oct. 2018	21 Nov. 2019
UE-Vietnam FTA (EVFTA)	30 June 2019	1st Aug. 2020
EU-New-Zealand FTA (ENZFTA)	9 Jul. 2023	1st May 2024
EU-Australia FTA	Negotiation launched on 18 June 2018	
EU-Malaysia FTA	The EU-Malaysia Partnership and Cooperation Agreement was signed in December 2022, FTA in negotiation.	

Source: Authors' Own Compilation

40 Agreements with the EU incorporate environmental commitments through the Trade and Sustainable Development (TSD) chapter, that emphasizes cooperation and preventive mechanisms to promote compliance, such as communication, impacts assessment, scientific information exchange and good governance, as well as corporate social responsibility (CSR) and Trade promoting environmental protection.

Table 5 – Environmental Clauses in the EU's FTAs with RCEP Members

	EJEPA	EKFTA	ESFTA	EVFTA	ENZFTA
Protection levels	art.16.2	art.13.3 art.13.7	art.12.2 art.12.12	art.13.2 art.13.3	art.19.2
Standards and multilateral agreements on the environment	art.16.4	art.13.5	art.12.6	art.13.5	art.19.5
Enforcement of environmental laws	/	/	/	/	/
Transparency/public information	art.16.10	art.13.9	art.12.13	art.13.12	art. 19.14
Scientific and technical information	art.16.9	art.13.8	art.12.9	art.13.11	art. 19.13
Public participation	art.16.16	art. 13.13	/	/	/

Procedural matters	/	/	/	/	/
Voluntary mechanisms to enhance environmental performance	/	/	/	/	/
Environmental Impact Assessment	art.16.11	art. 13.10	art.12.14	art.13.13	/
Corporate Social Responsibility	art.16.5 §e	/	art.12.11 §4	art.13.10 §2e	art. 19.12
Trade promoting environmental protection	art.16.5	art.13.6	art.12.11	art.13.10	art. 19.11
Environmental cooperation	art.16.12	art. 13.11	art.12.10	art.13.14	/
Institution	art. 16.13-16.15	art. 13.12	art.12.15	art.13.15	art. 19.15 art. 19.16

Source: Authors' Own Compilation

41 In practice, both approaches have evolved through mutual learning. A telling example concerns the settlement of environmental disputes. While agreements adopting a cooperative approach have often been criticized for their "soft" means of compliance, significant progress has recently been made in the EU–New Zealand FTA concluded on July 9, 2023. The "Trade and Sustainable Development" chapter is now brought under the general dispute settlement procedures set out in Chapter 26, which govern the agreement as a whole. This means that disputes can be referred to special panels, and non-compliance may lead to compensation or retaliation measures – similar to the mechanisms established under the CPTPP. *Vice versa*, competitive approaches also integrate cooperative mechanisms, such as the establishment of contact points in member countries to facilitate information exchange and cooperation, as well as institutions like the Environment Committee to promote dialogue, to review implementation, and to encourage the early resolution of disputes.[39]

42 RCEP members have also taken part in advanced approaches to trade-environment integration. The *Singapore-Australia Green Economy Agreement* (SAGEA), signed on 18 October 2022[40] offers a promising model for embedding environmental commitments in the modernization of traditional FTAs. The SAGEA outlines concrete deliverables to accelerate the transition to a low-carbon economy. Its framework is structured around 17 key initiatives across seven areas of cooperation, including trade and investment, standards and conformance, and green and transition finance. By directly linking trade, investment, and regional collaboration to tangible climate actions, the agreement provides a pathway for countries to advance their climate goals while fully leveraging the opportunities of economic integration.

43 This comparison further aims to identify whether – and how – certain environmental provisions may have influenced, inspired, or diverged from the cooperative and consensus-based approach that characterizes the RCEP.

4.2 Gradual Integration of Environmental Provisions in RCEP

44 We fully agree with the suggestion of Malingrey and Duval (2024) that "the CPTPP constitutes a possible baseline as most RCEP members are committed to joining it".[41] Thus, it is conceivable to incorporate an environmental chapter into the RCEP framework, but not as rigid as in the CPTPP. This could be gradually achieved by adopting baseline provisions from either the CPTPP or the EU FTAs, or even by combining elements from both models, thereby creating a comprehensive framework that includes "provisions on promoting trade of environmental goods and services" and "provisions in environmentally related areas of importance to the region".[42] Those areas must encompass the protection of air, as well as maritime and river environments, crucial for the subsistence and prosperity of the region.

45 While binding obligations subject to dispute settlement panels may give RCEP members pause, a cooperative approach featuring flexible, softer mechanisms could be a better starting point for gradually integrating environmental commitment. It is worth noting that five of the fifteen RCEP members have already concluded FTAs following this approach.

46 The EVFTA provides an interesting example of this soft approach to environmental commitments with Chapter 13 on Trade and Sustainable Development. Cooperation is emphasized as the primary means to achieve environmental goals in specific areas, including Climate Change, Biological Diversity, Sustainable Forest Management and Trade in Forest Products, Trade and Sustainable Management of Living Marine Resources and Aquaculture Products. Provisions on information sharing, public awareness, and cooperation are set out in Articles 13.11 to 13.14. Rather than relying on judicial procedures to resolve environmental disputes, the agreement encourages dialogue through the establishment of the Committee on trade and sustainable development, as well as contact points to facilitate implementation of the chapter (Art. 13.15).

47 This approach is better suited to the agreement's diverse membership, favouring cooperation, dialogue, and prevention over sanctions and dispute settlement, making it more acceptable to China and ASEAN countries. Stricter rules could be envisioned in the future. This strategic direction not only enhances RCEP's significance but also underscores its capacity for reform and adaptability.

05. Conclusion

48 In the context of the irreversible evolution of trade–environment linkages, the RCEP's approach represents a clear limitation. This is paradoxical as this agreement comprises countries committed to the CPTPP and progressive FTAs with strong environmental provisions. The agreement's modest environmental approach mirrors the broader economic priorities and institutional dynamics of its member states. However, given the preparation and experience that RCEP members have gained through other

cooperative frameworks, the agreement is fully capable of evolving into a mechanism that meaningfully contributes to environmental protection. The progressive incorporation of commitments and mechanisms under an environmental chapter within the RCEP framework, drawing from the baseline provisions of some EU–RCEP members' FTAs and the CPTPP, could transform RCEP from a trade-and-environment agreement into a trade-for-environment framework, positioning it as a frontrunner in sustainable trade practices, particularly for developing countries.

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NOTES

1. Examples of this include the 1922 Economic and Financial Conference in Genoa, which is considered as the first multilateral reflection on the general exceptions provision, and the 1927 Conference for the Abolition of Import and Export Prohibitions and Restrictions, where exceptions to trade commitments were discussed and designed to recognize the states' "right of prohibition". See Hatton, Anne-Catherine & Richard Ouellet (2010). Du rôle de la genèse dans l'exégèse: pour une interprétation historiquement éclairée de l'exception de moralité publique du GATT, *Revue belge de droit international*, Vol. 43, No. 2, pp. 601-629.

2. The environmental exception is not explicitly provided for in the General Agreement, but is inferred from the general exceptions under GATT Article XX. A contracting party could not simply invoke the environment as a reason to deviate from its commitments to trade liberalization, even though it is recognized that the protection of human, animal, and plant life or health, as well as the conservation of natural resources, are linked to environmental objectives.

Furthermore, the pursuit of non-commercial objectives is subject to the conditions of application that emphasize the interest of trade, as outlined in the chapeau of Article XX. However, the vague terms of these conditions have often led to the invalidation of most restrictive measures aimed at environmental protection, as they fail to demonstrate that they were not applied in a manner that "constitutes a means of arbitrary or unjustifiable discrimination [...] or a disguised restriction on international trade."

3. For example, in *United States – Restrictions on Imports of Tuna*, Panel Report, DS21/R, September 3, 1991 (GATT – not adopted), the Panel emphasized the fundamental interest of the GATT, which is trade. It stated that if a broad interpretation of Article XX(b) were accepted, the GATT would no longer serve as a multilateral framework governing trade between all contracting parties (para. 5.27).

4. The establishment of the WTO in 1994 occurred within the context of the remarkable development of international environmental law. Furthermore, environmental protection is recognized as one of the three pillars of sustainable development, a concept that was first elaborated in detail in the Brundtland Report "Our Common Future" in 1987, online: https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf (last visited on 12 Jan 2024).

5. WTO, *Committee on Trade and Environment*, online: https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e.htm (last visited on 15 Oct 2025).

6. For example, Article 2.2 of the Technical Barriers to Trade Agreement; Articles 2, 3, and 5 of the Sanitary and Phytosanitary Agreement; para. 12 of Annex 2 of the Agreement on Agriculture; Article XIV of the General Agreement on Trade in Services; and Articles 8 and 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

7. See *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, AB Report, WT/DS58/AB/R, 12 October 1998.

8. WTO, *Trade and environment*, online: https://www.wto.org/english/tratop_e/envir_e/envir_e.htm (last visited on 23 Oct 2025)

9. WTO, *Agreement on Fisheries Subsidies*, online: https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm (last visited on 19 Oct 2025).

10. At its core, the ACCTS aims to liberalize trade in environmental goods and services (Chapters 2 and 3), thereby strengthening value chains for green industries. It is also the first international agreement to define and prohibit harmful fossil fuel subsidies (Article 4.3 and Annex VIII), including those supporting coal, oil, and gas production (Article 4.5 and Annex IX). Moreover, it prevents parties from introducing new fossil fuel subsidies or expanding existing ones – an important step toward curbing high-carbon technologies and fostering a transition to sustainable energy systems. See Ly, Van Anh (2025). The Agreement on Climate Change, Trade, and Sustainability – A New Step in Establishing a WTO Legal Framework for Environmental Trade? *Vietnamese Journal of Legal Sciences*, Vol 13, No 01, pp 54–66.

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14. Deblock, Christian (2021). Les nouveaux accords commerciaux régionaux. *Revue québécoise de droit international*. Hors série, pp. 323-338, at 338.
15. RCEP entered into force on 1 January 2022 for ten original parties: Australia, Brunei Darussalam, Cambodia, China, Japan, Laos, New Zealand, Singapore, Thailand and Vietnam. It then came into force for the Republic of Korea on 1st February 2022, for Malaysia on 18 March 2022, for Indonesia on 2 January 2023 and for the Philippines on 2 June 2023.
16. RCEP, Preamble.
17. Petri, Peter A. & Michael G. Plummer (2018). *ASEAN Centrality and the ASEAN-US Economic Relationship*, Honolulu: Policy Studies, 94 pages.
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20. Chapter 17 "General Provisions and Exceptions", specifically Articles 17.12 and 17.13, which incorporate the content of GATT Articles XX and XXI.
21. RCEP, art. 5.2(a) & 6.7(6), 6.8(1) & 6.11(4).
22. Article 11.48: "Each Party shall provide for the protection of new varieties of plants through an effective sui generis plant variety protection system".
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26. The Association of Southeast Asian Nations (ASEAN) was established in 1967 by five states - Indonesia, Malaysia, Singapore, the Philippines, and Thailand. The initial goal of this regional organization was to maintain political stability and security and support the development of each member country through regional cooperation (The preamble of the Bangkok Declaration of August 8, 1967). On 26 October 2025, Timor-Leste officially became the 11th member of the Association. See ASEAN, *Forging a New Era: Timor-Leste Admitted into ASEAN*, 26 Oct 2025, online: https://asean.org/forging-a-new-era-timor-leste-admitted-into-asean/ (last visited on 28 Oct 2025).
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28. UNEP. Subregional Mechanisms of Cooperation, cited in Keyuan, Zou (2004). Transnational Cooperation for managing the control of environmental disputes in East Asia. *Journal of Environmental Law.* Vol. 16, No. 3, pp. 341-360, at 352.
29. Elliott, Lorraine (2012). ASEAN and Environmental Governance: Strategies of Regionalism in Southeast Asia. *Global Environmental Politics.* Vol. 12, No. 3, pp. 38-57, at 44-48.
30. These include the absence of an effective dispute resolution mechanism, the lack of concrete obligations with defined timelines, and limited financial resources due to the voluntary nature of

contributions. Nurhidayah, L., Lipman, Z., & Alam, S. (2014). Regional Environmental Governance: An Evaluation of the ASEAN Legal Framework for Addressing Transboundary Haze Pollution. *Australian Journal of Asian Law*, 15, 87–104.

31. Indonesia was the last to ratify the Agreement, on January 20, 2015, although its forest fires were the very origin of the agreement. ASEAN, Haze Portal, https://hazeportal.asean.org/action/asean-agreement-on-transboundary-haze-pollution/.

32. Despite the fact that the Agreement has not yet entered into force, it is widely regarded as a pioneering and advanced instrument in biodiversity protection. It adopts a comprehensive approach to conservation, covering species, ecosystems, ecological processes, and environmental planning, while promoting sustainable use of renewable resources. Remarkably, the agreement introduced concepts such as sustainable development, the "polluter pays" principle, and the notion of common but differentiated responsibilities, anticipating ideas later formalized in global environmental governance. Kiss, Alexandre & Jean Pierre Beurier (2004). *Droit international de l'environnement.* Paris: Pedone, 502 pages, para 641-642; Koh, Kheng-Lian (2003). ASEAN Agreement on the Conservation of Nature and Natural Resources, 1985: a study in environmental governance. *Proceedings of the IUCN World Parks Congress, Durban, South Africa*.

33. Also known as the Bangkok Treaty. While its primary aim is to establish Southeast Asia as a nuclear-weapon-free zone and promote regional security, the treaty also addresses environmental concerns. Notably, Article 1 emphasizes the protection of the region from environmental pollution and the hazards posed by radioactive waste and other radioactive materials.

34. These include the *Ramsar Convention on Wetlands* (1971), the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES, 1973), the *United Nations Convention on the Law of the Sea* (Montego Bay, 1982), the *Vienna Convention for the Protection of the Ozone Layer* (1985), the *Montreal Protocol on Substances that Deplete the Ozone Layer* (1987), the *United Nations Framework Convention on Climate Change* (New York, 1992), the *United Nations Convention on Biological Diversity* (Rio, 1992), the *International Tropical Timber Agreement* (Geneva, 1994), the *United Nations Convention to Combat Desertification* (Paris, 1994), and the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (1997).

35. ASEAN Trade in Goods Agreement (ATIGA), Art. 8; ASEAN Comprehensive Investment Agreement (ACIA), Art. 17; ASEAN Agreements on the Movement of Natural Persons (AAMNP), Art. 9.

36. Australia, Brunei, Japan, Korea, Malaysia, New-Zealand, Singapore, and Vietnam.

37. An ambitious trade agreement that brings together eleven nations from the Asia-Pacific region, including seven RCEP members. Negotiations for this Trans-Pacific Partnership began in 2008, following the United States (U.S.) initiative to negotiate a comprehensive agreement with the four members of the Strategic Trans-Pacific Economic Partnership Agreement (Chile, Singapore, New Zealand, and Brunei). Subsequently, Australia, Vietnam, and Peru joined the negotiations in 2008, followed by Malaysia in 2010, Canada and Mexico in 2012, and Japan in 2013. Following the withdrawal of the United States, the TPP was replaced by the CPTPP, concluded on February 4, 2016. The agreement is now in force in Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Despite the withdrawal of the United States, their influence on the social and environmental clauses of the TPP, which remain the core of the new agreement.

38. Malingrey, Louise & Yann Duval (2022). *Mainstreaming sustainable development in regional trade agreements: Comparative analysis and way forward for RCEP.* ARTNeT Working Paper Series (No. 213), Bangkok, 61 pages, at 20.

39. For example, CPTPP, Arts. 19.19 and 20.19.

40. *Singapore-Australia Green Economy Agreement*, 18 Oct 2022, online: https://www.dfat.gov.au/sites/default/files/singapore-australia-gea-official-text-signed.pdf

41. Malingrey, L. & Y. Duval (2022), *supra* note 37, at 25.
42. Ibid.

ABSTRACTS

Trade-Environment linkages have become a prominent phenomenon in contemporary global relations. From being treated as exceptions within the GATT/WTO framework and in earlier regional trade agreements (RTAs), environmental protection has been firmly integrated in multilateral progressive agenda as well as new-generation RTAs as shared obligations rather than as mere acknowledgments of states' "right to protect". This evolution demonstrates how trade agreements increasingly contribute to environmental goals. Yet, the recent Regional Comprehensive Economic Partnership agreement (RCEP) fails to appropriately address environmental provisions within its framework. This contrasts with the traditional environmental policies of the Association of Southeast Asian Nations, at the central of RCEP, as well as with the more progressive approaches adopted by nearly all RCEP members. By tracing the evolution of trade-environment linkages, highlighting selected RTAs concluded by RCEP members, this paper evaluates RCEP's environmental aspect and offers forward-looking recommendations for more effectively embedding environmental objectives, in line with contemporary trends in sustainable trade governance.

La relation entre commerce et environnement est devenue un phénomène central dans les relations internationales contemporaines. Longtemps considérée comme une exception dans le cadre du GATT/OMC et dans les accords commerciaux régionaux (ACR) antérieurs, la protection de l'environnement est désormais pleinement intégrée dans l'agenda multilatéral progressiste ainsi que dans les ACR de nouvelle génération, en tant qu'obligations partagées plutôt que comme de simples reconnaissances du « droit à protéger » des États. Cette évolution illustre comment les accords commerciaux contribuent de plus en plus aux objectifs environnementaux. Cependant, le récent Accord de Partenariat Économique Global Régional (RCEP) ne traite pas de manière adéquate les questions environnementales. Cela contraste avec les politiques environnementales traditionnelles de l'Association des nations de l'Asie du Sud-Est (ASEAN), au cœur du RCEP, ainsi qu'avec les approches plus progressistes adoptées par presque tous les membres du RCEP. En retraçant l'évolution de la connexion commerce-environnement en général et dans certains ACR conclus par les membres du RCEP en particulier, cet article évalue l'aspect environnemental du RCEP et formule des recommandations prospectives pour intégrer plus efficacement les objectifs environnementaux, en accord avec les tendances contemporaines de la gouvernance commerciale durable.

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Plurilateralism within the WTO as a Catalyst for New Trade Linkages: An Analysis of the JSI on E-Commerce

Le plurilatéralisme à l'OMC comme vecteur d'intégration des nouveaux liens commerciaux : *UNE ANALISE DE L'INITIATIVE CONJOINTE SUR LE COMMERCE ÉLECTRONIQUE*

Antoine Comont

01. Introduction :

1 E-commerce as a trade issue emerged in the 1990s with the rise of the Internet.[1] In many ways, this phenomenon has transformed the way we do business. The Uruguay Round and the creation of the World Trade Organization (WTO) in 1995 were a missed opportunity to establish consensual disciplines to govern e-commerce. At its second Ministerial Conference, held in Geneva, the brand-new organization adopted a declaration on e-commerce to finally address the legal issues that e-commerce poses for international trade.[2] This declaration led to the establishment of a moratorium on customs duties on electronic transmissions and a Work Programme on e-commerce under the aegis of the General Council.[3]

2 Despite this developments at the WTO concerning the moratorium on electronic transmissions and the progress of the Work Programme on Electronic Commerce, their contribution remains particularly limited. The main reason for this is that the Work Programme was initiated solely to study the impact of e-commerce, and not to develop reform proposals or to serve as a framework for multilateral negotiations on e-commerce. Despite the Work Programme's interest in highlighting all the legal issues that can arise when dealing with e-commerce, the current context requires the WTO to provide answers to these challenges. The growth in electronic flows, the conclusion of Regional Trade Agreements that include dedicated chapters on e-commerce, and the race to dematerialize trade brought by the COVID-19 pandemic make it all the more urgent to develop a multilateral framework for e-commerce.[4]

3 However, current negotiations on e-commerce at the WTO are not truly multilateral. Historically, the WTO has operated on the principle of multilateralism, where all Members participate equally in decision-making and consensus-building.[5] Frustrated by the lack of progress, Members began exploring alternative frameworks to enable the most proactive Members to make commitments at the WTO to meet the new challenges of international trade, such as e-commerce, without being restrained by the more reluctant Members. Since 2017, a new dynamic has emerged, Members shift away from multilateral negotiations towards plurilateral negotiations.[6]. It is important to emphasize that there is no harmonious definition of the concept of plurilateralism.[7] As I see it, plurilateralism is a mode of law-making and variable-geometry governance within a multilateral organization. Within the WTO, plurilateral agreements are negotiated by a subgroup of Members and are intended to be integrated into the WTO legal order. I thus make a clear distinction between regional agreements, plurilateral agreements, and multilateral agreements. Thus, I exclude from the scope of plurilateralism sectoral preferential agreements concluded outside the WTO (IPEF, Digital Partnership Agreement, etc.).[8]

4 It may be interesting to see how the shift towards plurilateralism could better address the new challenges of economic globalization. As a primary sign that plurilateralism could be a catalyst for new trade linkages into the WTO, there are 3 specific initiatives on “trade and…”[9] sustainability or the environment (fossil fuel subsidies, plastic pollution, and sustainable trade) as well as 3 specific initiatives on “trade for…”[10] inclusiveness (MSMEs, gender, and investment facilitation for development).[11] Given the paralysis of multilateral negotiations and the polycrisis shaking the WTO, plurilateral initiatives may appear to be the second-best option to address the new challenges of economic globalization by delivering significant advantages, including flexibility and adaptability, allowing Members to address specific issues.[12] They would thus be preferable to RTAs, which are inherently discriminatory and exclusive.[13] Some even see these initiatives as an optimal strategy for addressing broader issues such as regulatory cooperation.[14] However, critics argue that plurilateral agreements risk marginalizing developing countries, which cannot often participate in complex negotiations.[15] Additionally, these agreements can create a two-tiered system within the WTO, undermining its foundational principles of non-discrimination and inclusivity.[16] The exclusivity of some plurilateral agreements has also sparked debates about their long-term implications for global trade governance. In some ways, it is also possible that that trade disconnects or the establishment of trade linkages on a superficial way may have an impact on the acceptability and ultimately on the feasibility of concluding some of these plurilateral initiatives.[17]

5 This balance is particularly critical in the context of digital trade, where the benefits of regulatory harmonization must be weighed against the need to address broader developmental and social goals. The JSI on e-commerce has also facilitated discussions on complex topics such as cross-border data flows and digital trade standards, issues that have proven difficult to resolve in a multilateral context, but it also raises concerns about inclusivity and legitimacy.[18] Based on the draft agreement on electronic commerce, I propose to assess if its negotiation was an opportunity to build new trade linkages, or whether it was still a trade disconnect.[19] Even if regional trade agreements undoubtedly make it possible to go further in establishing new trade linkages, and to address more easily the issues raised by the regulation and facilitation of e-commerce,

the purpose of this paper is not to assess where there is a hierarchy of linkages ranging from sometimes ambitious and comprehensive RTAs to necessarily shallower plurilateral agreements. There are two reasons for this choice. Firstly, regional agreements are only a partial response to the legal challenges posed by the growth of e-commerce and the normative corpus that attempts to regulate it. Indeed, the multiplication of regional agreements, as comprehensive and ambitious as they are, inevitably leads to a tangle of RTAs which, ultimately, fragments international economic law and erects barriers to trade.[20] The second reason is that we need to change our perspective on the relationship between regionalism and multilateralism. These levels of governance do not have the same purpose, and should therefore not be seen as competing with each other, but rather as complementing each other.[21] On the one hand, regionalism enables the establishment of preferential relations, characterized by a desire for political and economic alignment among countries participating in such agreements. This should serve deeper regulatory cooperation objectives and offer opportunities to build new trade linkages.[22] On the other hand, multilateralism and plurilateralism – presented as a temporary alternative – serve to consolidate a set of rules common to the entire international trade community, or which have a direct vocation to become so. In other words, even if they are not the most successful form of economic integration, they can contribute in their own way to the widest possible dissemination of the new trade linkages.

6 It will therefore be necessary to analyze if the draft plurilateral agreement on electronic commerce meets the demand for new trade linkages. This article is divided into three parts, following the path of the lawmaking process at the WTO, from the negotiation phase to the incorporation of the agreement into the WTO legal order, including the conclusion of the agreement itself. If the inclusion of trade linkages in the agreement on electronic commerce appears to have been disappointing (II), this is partly due to the biases observed from the negotiation phase itself (I). Furthermore, as it appears that the effective establishment of new trade linkages is not only a valuable objective, but is also a genuine prerequisite for the incorporation of plurilateral agreements into the WTO legal order, the acceptability and therefore the viability of the draft agreement on electronic commerce seems highly uncertain at this stage (III).

02. Negotiating a Plurilateral Legal Framework for E-Commerce : Opportunities and Challenges

7 Following the conclusion of technical discussions on 25 April 2024, the Members participating in the initiative published a draft agreement on electronic commerce on 8 July 2024. This allows to look back at the openness of the negotiation process (A) before providing an overview of the draft agreement (B).

2.1 Exclusive by Design? The Negotiation of the Joint Initiative on E-Commerce

8 The genesis of this initiative began at the Eleventh Ministerial Conference in December 2017, when a group of 68 members agreed to jointly engage in “exploratory work with a view to future WTO negotiations on trade-related aspects of e-commerce”.[23] It was only a year later, in January 2019, that 76 Members officially launched these negotiations.[24]

By June 2024, 91 Members, representing over 90% of world trade, were taking part in these negotiations, although they were officially open to all WTO members in the same way as all other joint initiatives. These plurilateral negotiations, as well as every joint initiatives, are open to all Members, and those who wish to do so can be able to join on an voluntary basis, rather than on a mandatory basis, as may be the case with multilateral agreements. However, despite the growing interest in this initiative, it suffers from major problems of representativeness. Firstly, there is an absence of key players in these negotiations, such as the countries of the African group, South Africa, and India, who have already expressed their opposition in principle to all these plurilateral initiatives.[25] Secondly, only four LDCs (Benin, Burkina Faso, Gambia, and Myanmar)[26] are taking part in the current e-commerce negotiations. This lack of representativeness during the negotiation phase of the e-commerce agreement inevitably has an impact on Members' commitment to addressing one of the oldest trade linkages, namely trade and economic development. This is all the more problematic given that in 2001, the WTO opened the Doha Development Round, a negotiating round essentially focused on the issues related to economic development.

9 A persistent and significant concern linked to the growing use of plurilateralism within the WTO is the limited involvement of developing countries—particularly least developed countries (LDCs)—in such negotiations. It cannot be assumed that these Members are in a position to participate meaningfully. Many already struggle with considerable human and financial resource limitations when engaging in formal multilateral processes.[27] The addition of informal plurilateral talks only compounds these difficulties, especially as these processes often lack the institutional safeguards and support mechanisms present in official negotiations. Consequently, critical decisions risk being made without their input, raising concerns about the inclusiveness of outcomes and their alignment with the diverse development priorities of the broader WTO Membership. It is legitimate to question the relevance of such a draft agreement in contributing to the economic development of developing countries/LDCs, given that they were largely absent from the negotiations that led to its drafting.

10 In terms of working methods, the co-conveners[28] shared a 'consolidated text' made up of all the communications submitted by participants in the initiative. Small informal working groups of delegates from different countries, led by facilitators, discussed specific articles in depth based on this consolidated text. The consolidated text was then regularly updated based on new communications and the results of the various working groups. Then plenary sessions that may be held with senior officials from the various participating Members also helped to foster convergence and speeded up the achievement of results on stumbling blocks. It has to be noted that most discussions took place on the margins of WTO meetings and in an informal setting. However, it was not uncommon for there to be agenda conflicts between regular WTO meetings and informal meetings on the e-commerce initiative.[29] While this may seem a minor inconvenience, it does nothing to facilitate the participation of developing and least-developed countries. In this situation, it is possible to doubt the ability of countries with small delegations to take full advantage of plurilateral negotiations, *a fortiori* when it becomes imperative to select the meetings to which it is most judicious or not to attend. [30]Even though all communications and positions are notified to the Secretariat — which records them and circulates them to all Members, this effort to enhence the

transparency in the negociating process remains relative insofar as this documentation is not accessible to mere observers of the civil society.

11 Ultimately, the negotiations on the e-commerce agreement were not the most representative or inclusive of WTO members. This necessarily has an impact on the substance of the agreement, and on its acceptability. Technical discussions on this joint initiative were concluded on April 25, 2024.[31] Until June 24, 2024, negotiators turned their attention on how can their commitments be incorporating into the WTO legal framework, and must also obtain the approval of their respective governments for the final text. On that point, moreover, it should be noted that 9 of the 91 participants have not supported the publication of the draft agreement on electronic commerce as it stands.[32]

2.2 An Overview of the Proposed Agreement on Electronic Commerce

12 The multilateral discussions that began at the General Council in May 2025 to incorporate the plurilateral agreement on e-commerce into Annex 4 of the Marrakesh Agreement may possibly lead to minor changes to the draft agreement. But here's where it stands. The draft Agreement that was circulated on July 26 is composed of 8 Sections (A to H). At the beginning of the negotiations, 64 issues were put on the table. Some were deleted due to a lack of consensus or major divergences, while others were grouped to arrive at this version containing 38 articles.

2.2.1 Scope and General Provisions

13 This Section includes articles clarifying the scope of the Agreement, providing some key definitions, and establishing the relationship of the proposed agreement with other WTO Agreements. The thing important to note is that the Agreement has to be applied to all measures affecting trade by electronic means. This understanding relies on the definition of « Electronic Commerce » proposed by the General Council for the Work Program on E-Commerce. It covers “the production, distribution, marketing, sale or delivery of goods and services by electronic means”. The concept of « Electronic Commerce » is thus more encompassing than the terms of ‘digital commerce’ or ‘online commerce’ which are both components of it.

2.2.2 Enabling Electronic Commerce

14 This section, which provides the first substantive provisions – mainly designed by Australia, New Zealand and Singapore –, includes articles concerning electronic transactions (Article 4), electronic authentication and signatures (Article 5), electronic contracts (Article 6) or electronic invoicing (Article 7). The objective of those articles is to provide legal certainty on electronic commerce. It could imply that the Parties modify their national contracts law to ensure the legal recognition of digital transactions, signatures, or invoices.

15 The article on Electronic Payments (Article 10) is still under discussion as it has to be applied by the parties that have undertaken a commitment concerning electronic payment services in its Schedule in respect of Mode 3 (Commercial Presence). The

question is whether or not all parties will be required to modify their Schedule of commitments and will have to open their market.

16 The COVID-19 pandemic has also raised an important issue concerning international transactions. During the last 5 years, an intensification of the trend towards the digitization of international trade and, in particular, of customs procedures could be observed. Articles of paperless trading (Article 8) and single windows data exchange (Article 9) encourage parties to eliminate paper forms and centralized customs procedures to facilitate the flow of goods and services.

2.2.3 Openness and Electronic Commerce

17 This section is composed of 3 articles concerning custom duties (Article 11), the openness of government data (Article 12), and the access to the internet (Article 13). Even the issue of customs duties will be discussed in Part II, it has to be noted that parties agreed to a permanent moratorium (exemption of customs duties) on electronic transmissions, but it is still subject to a review mechanism that will take place after 5 years of implementation of the Agreement on Electronic Commerce and then on a periodical basis.

18 The articles on open government data and access to the Internet are not compulsory but encourage Parties to provide access for businesses to non-confidential data collected by public bodies and to provide access to the Internet for end-users free from discriminatory or unfair commercial practices.

2.2.4 Trust and Electronic Commerce

19 This section is composed of 4 articles that take the form of best practices commitments aiming to provide some guarantees for end-users (consumers or businesses) engaged in e-commerce transactions. It concerns online consumer protection (Article 14), the regulation of unsolicited commercial electronic messages (Article 15), the establishment of a legal framework for personal data protection (Article 16), and strengthening the capabilities and cooperation to address cybersecurity issues.

2.2.5 Transparency, Cooperation, and Development

20 Section E covers cross-cutting issues that will be discussed in the next part, especially cooperation (Article 19) or development (Article 20). The provisions relating to cooperation were largely influenced by countries of Latina America as well as Japan and South Korea. The provisions on transparency (Article 18) are also very important regarding the exponential increase of regulatory measures on e-commerce. The obligation to publish or to make publicly available all the measures will favor cooperation and consultation which could eventually lead to the beginnings of voluntary regulatory harmonization.

2.2.6 Telecommunications

21 The section on telecommunications (Article 21) – shaped by the UE, UK, Norway and Uruguay – aims to ensure fair competition for telecommunications service providers. As this is a market that is highly regulated by public authorities, and where barriers to entry are high, it is important to anticipate any structural difficulties that foreign

service providers may face when confronted with monopolistic companies (major suppliers). The draft agreement includes a set of provisions for authorities to promote transparency, eliminate discriminatory practices, and foster telecommunications market liberalization.

2.2.7 Exceptions

22 The following section sets out the various exceptions to the draft agreement. There are 5 categories of exceptions: the general exceptions (Article 22) based on Articles XX of the GATT and XIV of the GATS; the national security exception (Article 23) based on Articles XXI of the GATT and XIV bis of the GATS proposed by Canada and Japan; the exception concerning prudential measures (Article 24) adapted from the Protocol on Financial Services and supported by Japan; and two other exceptions discussed in Part 2: the exception concerning the protection of personal data (Article 25) which is the result of a lack of consensus and the exception concerning indigenous peoples (Article 26) desired by New Zealand. It is worth noting that this is the first WTO text to include a specific exception for indigenous peoples.

2.2.8 Institutional Arrangement and Final Provisions

23 The last section covers the final provisions (Articles 29 to 38) and the institutional provisions. In this regard, it should be emphasized that the e-commerce agreement will be covered by the WTO's Dispute Settlement Mechanism. Furthermore, to ensure its implementation and administration, a Committee on Trade-Related Aspects of Electronic Commerce will be established.

03. Trade Linkages under Strain: Assessing the Normative Ambitions of the Draft Agreement on E-Commerce

24 This section assesses the degree to which the draft plurilateral agreement on electronic commerce reflects a genuine effort to integrate key trade linkages into the digital trade agenda. Moving beyond a descriptive account of the provisions, the analysis focuses on five interrelated linkages that were the subject of intense debate throughout the negotiations: trade for economic development (A), trade for inclusivity (B), trade and data protection (C), as well as trade and environment (D). These linkages encompass both “trade for” approaches—where trade instruments are mobilized to pursue development or social objectives—and “trade and” linkages—where the expansion of trade disciplines creates tensions with pre-existing regulatory frameworks.

25 Each subsection will first identify the nature of the linkage in conceptual terms, drawing from the typology outlined in the introduction to this special issue. It will then unpack the political and institutional stakes that shaped the negotiation of the relevant provisions, before evaluating the extent to which the final text accommodates or marginalizes the linkage in question. The analysis will show that most of these linkages were ultimately diluted, sidestepped, or ignored altogether, reflecting a preference for a distinct digital trade agenda shaped primarily by and for major economic powers.

3.1 Uneven Promises: Economic Development as a Rhetorical Linkage

26 Among the various linkages explored in the context of the multilateral trading system, the relationship between trade and economic development constitutes one of the most longstanding and structurally important. Indeed, the idea that international trade should serve as a motor for economic development is among the earliest and most foundational trade linkages, explicitly enshrined in the preamble of both the 1947 GATT and the 1994 Marrakesh Agreement establishing the WTO. This "trade for" linkage reflects the ambition to mobilize international trade—not as an end in itself—but as a tool for economic development. Yet, the enduring challenge lies in ensuring that developing and least-developed countries (LDCs) are able to benefit meaningfully from the opportunities created by trade liberalization.

27 In theory, E-commerce could offer tremendous opportunities to lower transaction costs, increase economic efficiency, and intensify competition, which in turn "contributes to lower prices and higher global demand".[33] For consumers, "e-commerce should broaden the range of products on offer, lower their price, improve their quality and speed up delivery".[34] In addition to reaping the same benefits as consumers when producers are also importers of electronic goods, e-commerce can enable them to improve their export opportunities. The main benefit is to eliminate or even reduce "their [i.e. producers from developing and least developed countries] traditional handicaps in the commercial field, such as their remoteness from markets and lack of information on outlets and supply".[35] This would materialize in the possibility of exporting goods and services without the need for intermediation, commercial presence, or the presence of natural persons while gaining visibility through worldwide advertising campaigns.[36] In short, e-commerce could help overcome the structural handicaps that have long hindered the international competitiveness of producers in the Global South.

28 However, this optimistic narrative largely reflects a market-oriented view promoted by the WTO and certain developed Members, and remains subject to serious criticism.[37] Developing countries and LDCs face numerous obstacles to seizing these opportunities, notably in terms of the availability and accessibility of the infrastructure needed to engage in e-commerce, and the development of the human skills required for e-commerce.[38] Numerous civil society organizations and some Global South governments have questioned whether these benefits are equally accessible to producers in LDCs.[39] The global digital economy remains heavily concentrated, with major platforms, data infrastructure, and payment systems dominated by U.S. and Chinese actors. In such an asymmetric environment, LDC producers often face high entry barriers, limited visibility, and infrastructural deficits that prevent them from fully participating in cross-border e-commerce. While consumers in these countries may indeed benefit from cheaper and more diverse imports, the "reciprocal" benefits for domestic producers are far less evident in practice.

29 Then, realizing the potential of e-commerce for economic development requires more than trade facilitation and liberalization objectives: it demands the targeted integration of development concerns into the governance of e-commerce. This implies examining the effects of any liberalization obligations, providing for ambitious special and differential treatment, and developing functional technical assistance or capacity-

building mechanisms. These are the minimum guarantees required to ensure the attractiveness of a plurilateral agreement on e-commerce and to promote its effective implementation.

3.1.1 The Openness of E-Commerce : The Unexpected Cost of the Moratorium

30 A first dimension of the development debate within the JSI concerns the moratorium on customs duties on electronic transmissions. Several voices have been raised against making the moratorium permanent, notably because of its impact on developing countries and LDCs.[40] The main impact of the moratorium remains the renunciation of tax revenues by importers. It's also interesting to note that most developing countries and LDCs are net importers of electronic transmissions and that the usual trading powers (China, the United States, and the European Union, which account for 80% of electronic transmissions) are net exporters.[41] So According to UNCTAD estimates, the cumulative revenue losses amount to roughly $10 billion for developing countries and $1.5 billion for LDCs, while high-income countries face only marginal impacts (around 289 million $) given their 0,2% average tariffs on concerned goods.[42] From the perspective of many Global South countries, maintaining the moratorium without compensatory measures reinforces digital dependency and undermines the fiscal autonomy needed to support domestic digital infrastructure and capacity-building initiatives. This explains why India, South Africa, and Indonesia have repeatedly called for its termination, notably since the Twelfth Ministerial Conference (MC12).[43]

31 In the plurilateral negotiations on e-commerce, three proposals were discussed. The first, supported by all developed countries involved in the negotiations, sought to permanently prohibit customs duties on electronic transmissions. The second, suggested by Argentina and Indonesia, was to follow developments in the WTO Work Programme and the decisions of the Ministerial Conference on the moratorium issue, while affirming the possibility of adopting customs duties for public policy objectives. The third, advocated by China, Turkey, and Kazakhstan, also aimed to follow the decisions of the Ministerial Conference but reaffirmed the right to impose internal taxes, fees, and other charges on electronic transmissions. In response, the draft agreement proposes a compromise solution: the moratorium would be made permanent but subject to a review mechanism five years after entry into force. While this clause introduces a minimal safeguard, it fails to address the deeper asymmetries identified by its critics. No redistributive mechanism or fiscal compensation is envisioned, nor are any development-oriented exceptions provided.

3.1.2 Back to the Past : A Regressive Approach of Special and Differential Treatment

32 The WTO's traditional provisions for promoting economic development are of two kinds: special and differential treatment (which allows arrangements for developing or least-developed countries) and technical assistance (which provides support in implementing the various trade agreements). In recent WTO negotiations, these traditional provisions have undergone some notable changes. Technical assistance programs are now intrinsically linked to capacity-building programs. As for the provisions on special and differential treatment, in particular, the flexibilities granted for the implementation of agreements have been relatively extended. This is notably

the case for the Trade Facilitation Agreement and the proposed Investment Facilitation for Development Agreement. In those two agreements, developing and least-developed countries could determine the provisions for which they need a transitional period after entry into force of the agreement to ensure implementation. They could also designate provisions for which they could not ensure implementation unless they acquired the technical capacity to do so by benefiting from a technical assistance or capacity-building mechanism.

33 This approach was initially promoted within the e-commerce negotiations by Côte d'Ivoire, which proposed a mechanism whereby countries could identify provisions requiring extended transition periods or whose implementation would depend on capacity-building support.[44] However, this model was ultimately rejected in favor of a more limited and traditional conception of SDT wanted by the EU, Canada and South American countries like Paraguay and Guatemala. As a result, developing and least-developed countries can only designate provisions for which they wish to benefit from a transition period of up to 5 years to implement them. By justifying the reasons and specific needs to ensure the implementation of certain provisions, the transition period may be extended by two years.[45] Not only does the approach adopted fail to take into account the particular difficulties of the least developed countries, which are often granted additional flexibilities compared with developing countries, but it also simply fails to take into account the major structural difficulties faced by all developing and least developed countries in terms of e-commerce. As such, the SDT provisions remain largely declaratory, offering only a weak institutional response to the development challenges of e-commerce.

3.1.3 Missing Tools, Missed Opportunities: The Hollow Core of Capacity Building

34 The other major challenge for developing countries and LDCs is to strengthen their capacity building as they still face numerous barriers to market entry. These include technical barriers: developing countries may suffer from a lack of technological infrastructures such as network or telecommunications infrastructures, and economic operators still have uncertain and unequal access to these infrastructures. These barriers are also regulatory, as developing countries face major challenges of regulatory compatibility with developed countries in areas such as consumer protection, personal data protection, competition, and cybersecurity. The aim here is to develop network and telecommunications infrastructures on their territory and to enable their economic operators to benefit from the economic opportunities offered by e-commerce.

35 This capacity building and traditional technical assistance programs can only be financed through voluntary contributions from developed and developing countries in a position to do so. The draft agreement encourages parties to conduct needs assessments and provide support bilaterally or through relevant international organizations. In previous versions of the document, a proposal from Côte d'Ivoire aimed to establish the E-Commerce Facilitation Funding Facility.[46] It would have been a subsidiary body of the Committee on the Trade-Related Aspects of E-Commerce and would have monitored the grant program and other technical assistance and capacity-building programs. This proposal was relevant in administering the various capacity-building mechanisms under the auspices of the WTO and no longer by bilateral or essentially regional means. The current proposal allows developed countries or

developing countries in a position to provide support to have an insight into the identity of beneficiaries since applicants for funds or technical capabilities will have to apply through bilateral or regional mechanisms. This could lead to discrimination or inequitable access to capacity-building resources and programs, as not all developing or least developed countries have the same facilities or preferential relationships to obtain such advantages.

36 In sum, the e-commerce initiative claims to support development, but its institutional design and substantive outcomes suggest otherwise. Not only has the agreement failed to provide a meaningful framework for capacity-building, it also reflects a deliberate reluctance to address concerns raised by developing Members with respect to the moratorium on electronic transmissions. Worse still, rather than building on the more flexible and adaptive SDT mechanisms introduced in recent WTO agreements, the initiative represents a regressive turn, reverting to a minimalist and outdated conception of differential treatment. Overall, the concerns and priorities expressed by developing and least-developed countries have been largely marginalized, reinforcing the perception that the plurilateral initiative primarily reflects the agendas of digitally advanced economies. This calls into question the capacity of the WTO's plurilateral processes to produce inclusive outcomes and casts doubt on the legitimacy of digital rulemaking that fails to meaningfully incorporate development imperatives.

3.2 Symbolism over Substance: From Inclusiveness to Market Realism

37 In recent years, the WTO has progressively acknowledged the need to foster greater inclusiveness in the multilateral trading system. This "trade for" linkage, which seeks to make trade a lever for reducing structural inequalities and empowering marginalized actors, has gained visibility through initiatives such as the Joint Statement Initiative on Micro, Small and Medium-Sized Enterprises (MSMEs) and the Informal Working Group on Trade and Gender, launched at the 11th WTO Ministerial Conference in Buenos Aires. These initiatives reflect a growing consensus that trade rules should contribute to improving the participation of under-represented groups—including women, youth, Indigenous peoples, and small-scale economic actors—in global trade without offering opportunities exclusively to multinational companies. Inclusiveness is therefore understood not merely as a cross-cutting value but as a policy objective that trade instruments should actively promot

38 This vision was initially reflected in the negotiations on electronic commerce. In the early versions of the draft agreement, the objective of inclusiveness featured prominently as a cross-cutting principle. The preamble reaffirmed "the importance of global electronic commerce and the opportunities it creates for inclusive trade and development,"[47] embracing a multifaceted conception of inclusiveness that extended beyond MSMEs or developing countries. It explicitly referenced the importance of expanding "economic opportunities and access to information and communications technologies [...] as well as disadvantaged and under-represented groups, such as women, Indigenous persons, youth, and persons with disabilities".[48]

39 During the negotiations, South Korea made a proposal for the establishment of a cooperation mechanism designed to facilitate access to e-commerce for these groups. This mechanism aimed to aims to encourage the Parties to "work together to [facilitate

the use of electronic commerce by micro, small and medium-sized enterprises] [promote access to E-commerce and] [assist [micro,] small and medium-sized enterprises [, Indigenous peoples, rural populations, low socio-economic groups, women, and persons with disabilities,] to overcome obstacles to its use]".[49] The design of this mechanism emphasized the role of broad-based stakeholder coordination, insofar as "cooperation activities relating to digital inclusion may be carried out through the coordination, as appropriate, of the Parties'/Members' respective Indigenous peoples, agencies, companies, labor unions, civil society, academic institutions, and non-governmental organizations, among others".[50]

40 However, the final draft agreement reflects a significant retreat from these initial ambitions. References to inclusiveness have been largely removed or diluted. While the final text retains a vague mention of under-represented groups, it no longer sets out clear obligations or institutional frameworks to support their inclusion. [51]The specific language emphasizing coordinated cooperation and outreach to marginalized communities has been dropped, along with any reference to the roles of civil society and other domestic actors. This suggests a shift from a proactive inclusion agenda to a minimalist and symbolic approach. That said, MSMEs continue to receive some attention, consistent with their recognized importance in the global economy despite their marginal role in international trade. The draft agreement includes provisions that may indirectly benefit small businesses, such as those promoting access to government data, interoperability of digital systems, and international cooperation on digital capacity-building.[52] Yet even these provisions remain non-binding and aspirational, failing to establish concrete mechanisms or obligations that would ensure effective outcomes for MSMEs.

41 In short, the draft agreement fails to institutionalize the "trade for inclusiveness" linkage in any meaningful way. It neither operationalizes a coherent strategy to include marginalized actors in global digital trade, nor does it empower them through robust cooperation or governance mechanisms. What began as a progressive and ambitious agenda for digital inclusion has been reduced to symbolic affirmations with limited normative content, raising doubts about the inclusivity and representativeness of digital trade governance under the plurilateral model. Even the one aspect of inclusiveness that has received sustained attention—namely, the participation of MSMEs—largely reflects the economic priorities of developed Members, for whom supporting small businesses in accessing global digital markets is both politically salient and commercially strategic. As a result, the provisions that address inclusiveness directly or indirectly remain firmly rooted in a market-driven logic, aligned with the interests of advanced economies rather than with a redistributive or empowerment-based approach to global trade.

3.3 Regulatory Divergence and Strategic Ambiguity: Navigating the Free Flow of Data Dilemma

42 The relationship between trade and data governance constitutes a contemporary "trade and" linkage, whereby the expansion of digital trade disciplines interacts—often contentiously—with existing or evolving regulatory frameworks in other policy areas. Data flows, privacy protection, cybersecurity, and digital sovereignty are no longer peripheral concerns: they are now central to the construction of legitimate and

sustainable digital economies. However, rather than being framed as a coordinated policy agenda, data-related measures are frequently seen as constraints to liberalization, creating tensions at the intersection of trade, development, and public policy.

43 Within the Joint Statement Initiative (JSI), several proposals addressed the regulation of cross-border data flows, the localization of data processing or storage, and the protection of personal data. These topics have been at the forefront of the negotiations, reflecting the divergent regulatory approaches of key players such as the United States, the European Union, and China. The European Union insisted on recognizing the protection of personal data as a fundamental right, which finally was not the case. While some countries favor unrestricted data flows to support global e-commerce, others stress the need to retain regulatory control over data for purposes of privacy, national security, or industrial development. As noted in UNCTAD's Digital Economy Report (2019), many countries are reluctant to cede control over domestic data resources without appropriate safeguards.[53] Access to data confers a competitive edge, leading to concerns about income distribution, market dominance, and the lack of a fair playing field for countries to engage in and reap benefits from the data-driven economy. The "free flow of data", under conditions of digital power concentration, can quickly become a "one-way flow", reinforcing existing asymmetries and undermining data sovereignty. On the one hand, given the rising importance of data as a valuable asset in the digital economy, there are concerns regarding the prudence of allowing foreign entities unrestricted access to data. On the other hand, the temptation to prohibit restrictions on cross-border data flows is particularly attractive to Members such as China and the United States as "with the global concentration of platforms, this 'free flow of data' effectively means a 'one-way flow".[54] Leading digital companies, whether American or Chinese, benefit from their ability to collect and process data from all markets. If the free flow of data were to be slowed down, if not stopped, this would have a significant effect on their activities.

44 A proposal supported by several developed countries (Australia, Canada, Japan, the US, Korea, Singapore, and the UK) aimed to allow restrictions on cross-border data flows and requirements for the localization of IT equipment on their territory for public policy purposes, provided that these measures were necessary and did not constitute a means of arbitrary or unjustifiable discrimination. China, while supporting this limitation, argues that the protection of personal data should be excluded from the scope of public policy objectives, revealing its emphasis on State control over data flows rather than privacy *per se*.[55] The European Union, for its part, did not focus on other legitimate public policy objectives, but concentrated its proposal on the protection of personal data, which, when applied through internal measures, can hinder cross-border data flows. The United Kingdom, by contrast, sought to craft a more balanced or consensual approach by proposing a four-part test that would allow countries to restrict data transfers for the purpose of personal data protection—provided that:

a. the main purpose of the measure, or the relevant elements of the measure, is to ensure the protection of personal information;

b. the [Party's/Member's] measure provides exhaustively for the manner in which personal information may lawfully flow across borders

c. the [Party/Member] measure provides for an instrument or set of instruments enabling the cross-border transfer of information, formulated in clear and objective terms; and

d. such an instrument, or set of instruments as a whole, is not applied in a manner that is arbitrary or discriminatory, or that nullifies or impairs the benefits accruing to a [Party/Member] under any of subparagraphs (a) to (d) of paragraph 2.[56]

45 This proposal reflected an effort to reconcile market access with regulatory autonomy, bridging the gap between data-intensive economies and those advocating stronger privacy frameworks.

46 A last proposition from Nigeria that hasn't been preserved, called for recognition of a general exception in favor of developing or least-developed countries.[57] This would have recognized the developmental dimension of data governance. For many developing economies, the imposition of strict data liberalization disciplines—particularly prohibitions of measures on data localization—could undermine efforts to build local digital infrastructure and capacity. So without the ability to process and store data locally, and without the digital skills and technologies needed to extract value from those data, many countries risk remaining peripheral actors in the global digital economy. [58]Access to and control over data is seen by these countries as a precondition to enhance their technological capacities and to promote digital value creation and retention.

47 All the provisions on cross-border data flows and on the location of computing facilities have disappeared from the current version of the draft agreement. There is however an exception on the protection of personal data which allows a Party to adopt or maintain "measures on the protection of personal data and privacy, including with respect to cross-border data transfers, provided that the law of that Party provides for instruments enabling transfers under conditions of general application for the protection of the data transferred". This means that parties can establish a regime for the protection of personal data (and are encouraged to do so), which may result in the prohibition of cross-border data flows to countries or by data operators who have not provided sufficient guarantees. It is a compromise between the EU and UK proposals because this exception only covers data protection and does not de facto cover measures pursuing other legitimate public policy objectives such as economic development, which Nigeria was seeking to promote.

48 More broadly, while there is a widely acknowledged need to establish a coherent trade linkage between digital trade liberalization and data protection, the positions of WTO Members diverge significantly regarding the justifications for restricting cross-border data transfers. For some, such as the United States, data restrictions raise national security concerns; for others, like China, they may serve broader public policy objectives; Canada, the United Kingdom and the EU prioritizes personal data protection, while countries such as Nigeria emphasize developmental and capacity-building needs. The diversity of perspectives and experiences among countries underscores the importance of conducting in-depth analysis and careful deliberation on different approaches, including the flexibility necessary to achieve legitimate public policy objectives. These fundamentally different approaches means that Members' expectations regarding the establishment of this specific trade linkage are sometimes at odds with each other. This makes it all the more complex to find a level of integration that is truly effective and not just superficial. In this context, the approach adopted in the draft agreement—a relatively broad exception for the protection of

personal data—can be seen as a pragmatic solution. It leaves Members with a high degree of discretion in regulating data flows in accordance with their domestic priorities. Yet this flexibility comes at a cost: it limits legal certainty, constrains predictability, and falls short of the harmonization goals that were initially meant to guide the e-commerce negotiations.

3.4 The Forgotten Linkage: Environmental Blind Spots in the Digital Trade Agenda

49 The environmental challenges posed by e-commerce are becoming increasingly significant, particularly due to the growing carbon emissions associated with digital infrastructure and the broader impacts of online business. Alongside the particularly rapid growth of the digital technologies sector,[59] it already consumes between 6% and 10% of the world's electricity,[60] without mentioning the exponential demand for critical minerals essential to the manufacture of IT equipment.[61] Beyond the digital realm, the rise of online shopping has fueled overconsumption and unsustainable practices in industries such as fast fashion, which generates vast amounts of waste and pollution.[62] Additionally, the global shipping industry, driven by the demand for rapid delivery, has seen increased maritime and air transport emissions, further exacerbating greenhouse gas emissions.[63]

50 Although clean energy innovation offers some avenues for greening the digital economy, its diffusion remains uneven, and the transfer of green technologies to developing countries faces persistent structural obstacles. These barriers delay the global transition toward more sustainable digital practices and deepen existing inequalities in access to cleaner infrastructure and production systems. In this context, there is an urgent need to embed environmental sustainability into digital trade governance—not only through rhetorical commitments but via binding mechanisms, concrete incentives, or at least regulatory frameworks that would encourage greener practices.

51 Yet, the draft WTO agreement on e-commerce makes no reference to environmental protection. Sustainable development is mentioned only once, in the preamble, and no provision addresses the environmental impact of digital trade. The absence of even minimal references to environmental cooperation or green innovation represents a clear trade disconnect: a misalignment between the rules of digital commerce and broader global goals related to climate change, circular economy, and intergenerational equity. This silence is all the more striking given the growing prominence of environmental issues in WTO discussions—whether in the context of the Trade and Environmental Sustainability Structured Discussions (TESSD), the Fossil Fuel Subsidy Reform initiative, or ongoing debates about green subsidies. The outcome reflects a lack of perseverance by Members in integrating sustainable development into the digital trade agenda. Mechanisms intended to promote the inclusion of developing countries remain insufficient, and the absence of environmental considerations reflects not just a political oversight, but a systemic failure to operationalize sustainability in plurilateral negotiations. If incorporated into the WTO legal order without substantial revisions, this agreement may well exacerbate the environmental externalities of digital trade rather than help mitigate them.

52 Before turning to the political and institutional implications of integrating the agreement into the WTO legal order, it is important to reflect on the broader consequences of the disconnects and diluted linkages identified above. These shortcomings do not only affect the internal coherence of the agreement—they also shape its external acceptability, and thus its legal fate within the WTO framework.

04. Paving the Way for incorporating the E-Commerce Initiative into the WTO Legal System

53 One question remains: What will members do with this draft agreement? Several options have already been discussed (A), but the preferred option is to incorporate the agreement into Annex 4 of the Marrakesh Agreement, which remains uncertain in the absence of consensus (B).

4.1 Seeking a Future for the Draft Agreement on Electronic Commerce

54 Some options envisage concluding the agreement outside the WTO legal framework.[64] However, it is explicitly stated that the benefits provided by the agreement are not intended to be extended on a most-favored-nation basis to WTO Members that are not parties to it. Thus, as it is not intended to cover a substantial part of trade in services or the essential part of trade in goods, the agreement cannot derogate from the most-favored-nation principle. And yet, the only way for a trade agreement to be preferential is if it meets the requirements of the regional exception provided for in Articles XXIV of the GATT and V of the GATS. Furthermore, it seems preferable in several respects to conclude this agreement within the legal framework of the WTO. On the one hand, this ensures the unity of the legal order (jurisdictional unity and normative unity).[65] By integrating this draft agreement into the WTO legal order, dispute could be settled by the DSB, and conflicts of jurisdiction could be avoided. This also avoids conflicts between internal norms and norms external to the WTO.[66] On the other hand, incorporating this agreement into the WTO legal framework would provide institutional support to ensure the agreement's implementation and more efficient monitoring of capacity-building and technical assistance mechanisms. Finally, it is also possible to consider that if the agreement on electronic commerce were concluded within the WTO, it would be more inclusive, and the potential accession of those who are not party to it would undoubtedly generate greater interest. In other words, a preferential agreement concluded outside the WTO would be more detrimental to the foundations of the multilateral trading system than a plurilateral agreement.[67]

55 Among the options discussed for incorporating the draft agreement on electronic commerce into the WTO legal framework, only a few are satisfactory. The rule formally laid down in paragraph 9 of Article X of the Marrakesh Agreement establishing the WTO specifies that negotiated plurilateral agreements must be added by amendment to Annex 4 of the Marrakesh Agreement. The main obstacle to this possibility is that it requires a consensus of WTO Members, including those who do not wish to be bound by the newly negotiated plurilateral agreement. However, it is precisely to avoid possible deadlock in the consensus that plurilateral initiatives have been developed. Members

have also been able to make plurilateral commitments without having to amend Annex 4, thereby circumventing the consensus obstacle. Some Members were able to make joint unilateral commitments and/or grant unilateral concessions. This was the case with the Information Technology Agreement, where 81 Members modified their schedule of tariff concessions through Article XXVIII of the GATT, or with the recent joint initiative on domestic regulation of services, whereby Members incorporated additional disciplines through Article XXI of the GATS into their schedules of commitments.[68] However, to circumvent the consensus, the agreement on electronic commerce would at least have to be applied according to the most-favored-nation principle and would have to produce rights even for those WTO members who are not parties to it which the negotiators have ruled out.[69] In addition, the agreement's content, particularly its institutional provisions (dispute settlement, implementation of a new committee), would have consequences for the WTO's resources and would, therefore, likely deprive the parties of the possibility of circumventing the rule of Article X paragraph 9. The nature of its provisions means that they cannot be transposed into schedules of commitments and concessions. Another possibility is to adopt this agreement through a ministerial declaration. However, ministerial declarations are more akin to soft law and are therefore not binding. Members would not be satisfied with a non-binding agreement that could not be invoked before the DSB in the event of disputes and whose compliance would depend exclusively on voluntary or spontaneous implementation. This leaves only one last option: amending Annex 4 of the Marrakesh Agreement. Given that the procedure requires consensus, this option, which has been chosen by the Members supporting this text, is not without significant difficulties.

4.2 Amendment to Annex 4: Members Waiting for a Miracle

56 WTO Members have previously employed the Annex 4 amendment procedure, but without success to date. Two amendments were proposed to incorporate the Investment Facilitation for Development Agreement and the Electronic Commerce Agreement. The IFD Agreement was formally proposed for incorporation into the WTO legal order at the MC13 held in Abu Dhabi in February 2024.[70] Since then, the agreement has still not been adopted, due to a lack of consensus.[71] Notwithstanding the difficulties encountered by the parties to the IFD Agreement, the present e-commerce initiative stands out in four aspects.

57 Firstly, while India had narrow or no interest in the adoption of the IFD agreement, it is proving to be particularly aggressive on the issue of e-commerce, as evidenced by its battle against the moratorium on electronic transmissions, which it has been waging in relative isolation in the multilateral trading system since 2013. This increases its reluctance to allow incorporation of the e-commerce agreement.[72] That said, India is not alone in opposing the incorporation of the e-commerce agreement because of the moratorium issue. Bangladesh, Turkey, Indonesia, and Pakistan have also raised similar concerns.

58 Secondly, opponents of the IFD Agreement may have questioned its link with international trade, or its connection with other WTO agreements.[73] In other words, they challenged the fact that this agreement falls within the WTO's mandate. Here, the commercial dimension of the e-commerce initiative cannot be discussed. This is one

less difficulty for the e-commerce initiative (if indeed it was a real one for the IFD Agreement). Although it cannot be disputed that the draft agreement on electronic commerce falls within the WTO's mandate, India has nevertheless questioned its legality on the grounds that the proposed amendment would circumvent the 1998 Work Programme on electronic commerce — which is regularly reaffirmed by Members — and therefore the mandate of the General Council.[74] It should be noted, however, that the main weakness of the work program and the reason for launching the JSI in 2017 is that the latter was never intended to host multilateral negotiations on e-commerce.

59 Thirdly, the negotiators intend to make the agreement on e-commerce a purely plurilateral agreement, in that it would create neither rights nor obligations for WTO members who are not party to it. On the contrary, it was intended that the benefits of the IFD Agreement should be shared between all WTO members, based on most-favored-nation treatment rather than reciprocity.[75] While the approach adopted for the IFD Agreement may facilitate the consensus-building required under Article X para 9 of the Marrakech Agreement, it also opens the door to free riders who would benefit from the IFD Agreement without having to apply it. Such a prospect was unthinkable because of certain provisions of the draft agreement on e-commerce, in particular those on the opening up of e-commerce (Section C) or on telecommunications (Section F).

60 Fourthly, as the preceding sections have shown, the results on development issues (capacity-building and special and differential treatment) seem particularly disappointing given the ambitions expressed during the negotiations. The fact remains that this initiative suffers from a lack of representativeness, particularly on the African continent and especially among the least developed countries. Despite the fears of India and South Africa, it is difficult to see how the IFD Agreement — which was negotiated by and for developing countries, contains ambitious implementation provisions and aims to establish an internal capacity-building mechanism — does not serve the economic interests of developing countries. The e-commerce initiative, on the other hand, appears far less inclusive and favorable to the participation of developing countries, not to mention the fact that the flexibilities available to them are slim. Several delegations expressed concerns about incorporating the agreement on electronic commerce until additional efforts were made to ensure that developing countries and least developed countries benefited from the growth in electronic commerce[76]. They are therefore calling for further discussions on digital inclusion, technology transfer, and capacity building, in addition to the issue of the moratorium[77]. They fear that insufficient consideration of their concerns would lead to imbalances and risk confining developing countries/LDCs to the roles of net importers and consumers in the digital economy[78].

61 As the amendment of annex 4 requires a consensus of the entire membership, it should also be remembered that plurilateral initiatives are facing incessant opposition from certain members such as India, South Africa, and even Turkey. Their main arguments are that plurilateral initiatives run counter to the fundamental principles of the multilateral trading system (consensus, single undertaking, multilateralism, etc.).[79] They also consider that these initiatives enable developed Members to disengage from the multilateral Doha development agenda, and thus bypass complex negotiations, particularly on agricultural issues.[80]At the same time, this reduces the negotiating power of developing countries, which no longer have all the levers they need to demand concessions from developed countries. Finally, these plurilateral initiatives are

perceived to be a means of bringing non-trade-related issues into the WTO, as in the case of Turkey, which justifies its opposition to the investment facilitation for development agreement.[81] In short, one thing is certain: the incorporation of this draft agreement into the WTO legal system promises to be particularly laborious, uncertain and could thus revive debates on the compatibility of plurilateral initiatives with economic development issues.

05. Conclusion

62 The analysis of the draft plurilateral agreement on e-commerce through the lens of trade linkages reveals a telling contradiction. On the one hand, plurilateral negotiations can deliver faster progress on issues such as digital trade, where consensus among all WTO Members seems unattainable. On the other hand, their flexible nature has produced uneven attention to public goods such as environmental sustainability and development equity. Despite the pressing demand for new trade linkages in areas ranging from economic development and inclusiveness to capacity-building, environmental protection, and data governance, the draft agreement reflects only a selective engagement with these objectives. Crucial linkages were sidelined or diluted, preventing the emergence of a more balanced and equitable digital trade regime.

63 This imbalance also reflects a structural flaw in the negotiation process itself. From the outset, the initiative was marked by a lack of representativeness of developing and least-developed countries. Unsurprisingly, this has translated into insufficient attention to their interests and priorities. The number of proposals submitted by developing countries and LDCs remained extremely limited, and when they did table proposals—such as Nigeria's call for a development-oriented exception on data transfers—these were systematically rejected. The resulting frustration appears entirely legitimate. Countries that already face structural barriers to effective participation in plurilateral talks may ultimately feel discouraged from engaging at all. This dynamic risks undermining the attractiveness of plurilateral initiatives more broadly and could reinforce the obstructionist stance of Members such as India, which has consistently opposed the integration of plurilateral agreements into the WTO legal order.

64 Against this backdrop, plurilateral initiatives should not be dismissed out of hand. In the current crisis of multilateralism, they arguably constitute the most pragmatic alternative, offering flexibility and adaptability that can help the WTO remain relevant in addressing new trade challenges. Their institutional design makes them a potentially useful instrument for building new trade linkages in areas such as digital trade, sustainability, and inclusiveness. Yet it is equally clear that they are not an ideal approach as they may weaken the multilateral trading system if their outcomes are not perceived legitimate or inclusive enough. Their acceptability and legitimacy will therefore depend on their ability to respond effectively to a core set of concerns, first and foremost those expressed by developing and least-developed countries. More representative negotiations, meaningful flexibilities, and institutional mechanisms that go beyond soft cooperation are not optional add-ons, but preconditions for their success. Put differently, plurilateralism can only strengthen the multilateral trading

system if it embodies inclusiveness and development-oriented commitments rather than sidestepping them.

65 As the WTO Members consider whether and how to integrate this plurilateral agreement into its legal order, the absence of a strong and coherent development dimension may become a political roadblock. Without broader buy-in, digital trade governance risks reinforcing existing inequalities rather than overcoming them. In this light, the e-commerce initiative should serve as a cautionary case study—one that underscores the importance of aligning plurilateral trade innovation with the normative expectations of inclusiveness, equity, and sustainability that should now define the global trade agenda.

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NOTES

1. For the purposes of this article, the definition proposed by the General Council in the Work Programme is used to define the term ‘electronic commerce’, which ‘means the production, distribution, marketing, sale or delivery of goods and services by electronic means’. This definition is thus more encompassing than the terms ‘digital commerce’ or ‘online commerce’, which are components of it. Nevertheless, this distinction may be of some interest, see Alschner, Wolfgang (2024). E-Commerce or Digital Trade? Why the Difference Should Matter to Trade Lawyers. *In* David Collins, Michael Geist (editors). *Research Handbook on Digital Trade*, London : Edward Elgar, pp 54-72.

2. WTO (1998), *Declaration on Global Electronic Commerce*, No. WT/MIN(98)/DEC/2 [1998 Declaration].

3. *Ibid.*

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7. Some authors focus on the number of parties (more than 2 but fewer than 100) in a purely arbitrary manner, thereby including regional agreements within the scope of plurilateralism (see Collins, David (2025). Plurilateralism and the New Geoeconomics of International Law. *Journal of World Investment & Trade*. Vol. 26, No. 1, p. 54); others consider that the difference lies in the openness of the agreements (see Sabel, Charles and Bernard M Hoekman (2019). Open Plurilateral Agreements, International Regulatory Cooperation and the WTO. *Global Policy*. Vol. 10, No. 3, p. 297); or that regional agreements are global while plurilateral agreements are sector-based (see Pagani, Fabrizio (2006). Are Plurilateral Trade Agreements Possible Outside of the World Trade Organization. *Journal of World Trade*. Vol. 40, No. 5, p. 797).

8. Some authors also exclude these agreements from their definition of plurilateralism, but only insofar as the agreements I have cited are cooperation agreements or contain soft law (Dimitropoulos, Georgios, Richard C. Chen and Julien Chaisse (2025). Plurilateralism: A New Form of International Economic Ordering ?. *Journal of World Investment & Trade.* Vol. 26, No. 1.). However, soft law plays an important role in international law, including WTO law (See for instance, Matsushita, Mitsuo (2014). A View on Future Roles of the WTO: Should There Be More Soft Law in the WTO?. *Journal of International Economic Law*. Vol. 17, No. 3, p. 701). It therefore does not seem relevant to me to attach particular importance to the value of the rules contained in an agreement in order to characterize it as multilateral, plurilateral, regional, or bilateral, which etymologically depends on the number of parties (see also, Kolsky Lewis, Meredith (2025). Plurilateralism and Free Trade Agreements. *Journal of World Investment & Trade.* Vol. 26, No. 1.).

9. See Introduction: Understanding Trade Linkages and Trade Disconnects.

10. *Ibid.*

11. See WTO, *Joint Initiatives*, Retrieved from https://www.wto.org/english/tratop_e/jsi_e/jsi_e.htm [accessed 20 January 2025].

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19. See, Special Issue Introduction

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28. The three co-convenors were Australia, Japan and Singapore.

29. For a recent instance, May 8th, 2025 at 10:00 was held the meeting of experts for the Initiative on E-commerce and in the same time the meeting of the Committee on Import Licensing.

30. For example, Benin, which is taking part in the initiative, has no permanent representation in Geneva; its embassy in Paris is accredited to 26 international organizations headquartered in Europe (https://www.demo.benin-ambassade.fr/page/cooperation-multilaterale).

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33. WTO (1998), Committee on Trade and Development, *Development Implications of Electronic Commerce*, No. WT/COMTD/W/51 at para 8.

34. *Ibid*, para 11.

35. *Ibid*, para 10.

36. *Ibid*, para 14.

37. See on this perspective the discussion concerning dis/embedded trade linkages in this Special Issue Introduction. It refers whether trade policies are rooted in broader social and policy objectives (embedded) or instead guided primarily by market logics and economic exchange (disembedded) as it was the case for development issues.

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ABSTRACTS

This article analyzes the potential of the WTO's Joint Initiative on Electronic Commerce (JSI) as a catalyst for fostering e-commerce while meeting sustainable development issues. It explores the challenges of the transition from multilateralism to plurilateralism and traces the genesis of the Joint Initiative on Electronic Commerce. After providing an overview of the provisions of the draft agreement, the article aims to analyze the extent to which development issues have been taken into account by exploring the tensions arising from the negotiations. Inevitably, it identifies the major shortcomings that remain, particularly in terms of environmental sustainability and the inclusion of developing countries. Finally, looking to the future, the article examines the options for integrating this agreement into the WTO legal order.

Cet article analyse le potentiel de l'Initiative conjointe sur le commerce électronique (JSI) de l'OMC comme levier pour promouvoir le commerce électronique tout en répondant aux enjeux de développement durable. Il explore les enjeux du passage du multilatéralisme au plurilatéralisme et raconte la genèse de l'initiative conjointe sur le commerce électronique. Après avoir dressé un panorama des dispositions du projet d'accord, l'article vise à analyser le niveau de prise en compte des enjeux de développement en explorant les tensions issues des négociations. Inévitablement, il dresse le constat des lacunes majeures persistantes, notamment en matière de durabilité environnementale et d'inclusivité des pays en développement. Enfin, de façon plus prospective, l'article interroge les options d'intégration de cet accord dans l'ordre juridique de l'OMC.

INDEX

Mots-clés: commerce électronique, développement durable, inclusivité, plurilatéralisme, renforcement des capacités
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Furthering Trade and Investment in India’s Healthcare Sector. What Cost to the Public Health Care System?

Promouvoir le commerce et les investissements dans le secteur de santé en Inde. Quel coût pour le système de santé publique ?

Louise Dalingwater

01. Introduction

1 India has taken over the UK to become the fifth largest economy in the world and likely to soon be in the top three economies. While it remained a closed economy until 1991, its expansion since then has been impressive. Joining the WTO in 1995 was also an important factor to explain India’s rise as an economic power[1]. The GATS agreement also served to expand India’s service sector. India’s healthcare sector plays a very important role in contributing to such growth. It is one of the fastest growing sectors with accelerated growth especially in the last decade rising to 370 billion in 2022 and expected to reach over 610 billion dollars in 2026[2]. It is currently experiencing a growth rate of 20% yearly[3]. The rapid expansion of the Indian population, and particularly the elderly who represent over 100 million, has led to an increase in demand for healthcare services and products. In addition, increased revenues have led to rising incomes and sigificant increases in the demand for health insurance providers. In parallel, there has been an increase in chronic diseases and other health complications which require health systems to respond. For example, India now has over 70 million diabetics, with numbers expected to rise to over 135 million by 2045 which has increased the need for long-term health solutions for the population[4].

2 The major products and service industries related to healthcare include hospitals, medical devices, clinical trials, telemedicine, medical tourism, health insurance and medical and diagnostic equipment. In addition, the biotech and biopharma industries are two of the fastest growing subsectors of the healthcare industry. The Indian biotech

industry has 800 companies and a market size of £80 billion, which represents 3% of the global biotech industry, and is set to grow further. India has significant FDI in clinical trials, contract research and manufacturing in the biotech sector, with the US being the largest investor in the field. Investment in the sector has been very strong recently. In the first quarter of 2025, private equity and venture capital deals were valued at 2.6 billion dollars. The pharmaceutical sector is also an important subsector with exports worth 30.38 billion[5].

3 Medical tourism is fast-growing and was valued at US$ 7.69 billion in 2024. It is expected to double over the next five years with approximately 634,561 foreign tourists seeking medical treatment in 2023 in India[6]. In addition, the health sector boasts highly qualified medical professionals and cost competitive surgeries charging a tenth of costs in the US and Western Europe, which has attracted significant investment[7]. The healthcare sector employs 7.5 million people which means that it is the largest sector in terms of employment. It is expected that the integration of Artificial Intelligence (AI) within the sector can ensure the supply of a further 3 million new jobs[8].

4 Despite the weight of the sector in the Indian economy and its importance in terms of tax revenue, there are significant challenges to providing high quality patient care to the population and very diverse public health care settings in states across the country. While healthcare access and quality have improved in recent years, ranking 67.3/100 in 2020, in comparison to 44.8/100 in 2015 on the Global Burden of Disease Study, India still only performs 145th out of 195 countries in the aforementioned study in terms of health care delivery[9]. Public spending on the healthcare system is much lower than other advanced countries, currently only 2% of GDP, although this is expected to rise to 2.5% this year (mainly because of individual state contributions). A significant amount of catching up is necessary in terms of expenditure. India spends far less per capita than comparable BRIC economies. For example, India spends 40 dollars per capita on health care compared to China's 108 dollars per capita and Brazil's 606 dollars per capita. Moreover, healthcare provision is uneven between urban and rural areas[10].

5 There is also concern that a lot of the investment is in the area of digital health to the detriment of ensuring the provision of quality healthcare delivery. Digital healthcare and telemedicine have grown rapidly since the Covid-19 pandemic. While health services in India such as Apollo, AIIMS and Narayama Hrudayalaya have adopted both telemedicine technology and artificial intelligence, its integration especially in rural areas is problematic. Indians living in rural areas often have to travel 60 miles to reach affordable healthcare facilities and remote services cannot currently solve the issue because of insufficient and/or unaffordable IT infrastructure in these localities[11]. However, the government has continued to make investments in Big Data and digital IDs, even though these do not necessarily serve to improve population health delivery at present[12].

6 India's public health system is considered to be lacking in terms of quality and performance: low in human resources, suffering from high levels of corruption, lacking essential medicines and services, with limited interventions at primary care levels in some states. This has pushed even the poorest to seek health care from private providers: from corporate hospitals in urban centres to small outpatient clinics in urban and rural areas, which include both semi-qualified and unqualified practitioners. The central government is responsible for overseeing health delivery, planning and coordinating state health authorities and financing national health programmes. Yet

India is considered to have one of the most privatised health care systems in the world. The private sector provides for 70% of all outpatient care in India and 90% of all medicines delivered to the population. Since opportunities are more numerous in the private sector, a significant amount of effort has been placed into developing large health corporations and private speciality hospitals. There are also a high number of private health colleges, with 88% of auxiliary nursing and midwifery schools provided by the private sector. 95% of nursing colleges are also private. According to some observers, this has resulted in poorly trained professionals which have received middle to poor quality assessments from the National Assessment and Accreditation Council. There is also a lack of regulatory control on nursing colleges more generally. The need to train nurses has meant that regulations have been relaxed and it is easier to qualify according to the Indian Nursing Council. Moreover, India has over 1.25 million doctors, but only 100 000 work in the public health care sector so the public sector suffers from staff shortages. Other challenges in the health sector include barriers related to weak intellectual property protection, non-tariff barriers such as price controls and an overriding production of low to mid-tech products[13].

7 Given these tensions between an expanding international health care sector in India, but an unsatisfactory level of public health care provision in some of the poorest Indian states especially, this paper seeks to understand in what ways the tensions between economic efficiency and the health of the population might be reconciled. This implies engaging in issues beyond the pure economic agenda of countries wishing to further trade and investment. It thus takes a social constructivist approach to analyse the impact of the recent increase in trade and investment in the health sector in India. In particular, it draws on Ruggie's concept of embedded liberalism and his conceptual human rights framework to explore the potential effects of enhancing international trade and investment in this sector and the impact of a variety of international cooperation agreements on the provison of public health care. It addresses two main questions: how does trade and investment impact on health care delivery and can domestic governance and/or international regulatory regimes counter any negative effects of furthering trade and investment which might impact on health care delivery. As a contribution to the special issue on Trade Linkages, it questions whether in fact increasing the supply of private health care services through international trade and investment results in a detrimental effect on public health care. That is, whether this essential societal concern is completely excluded or disembedded and/or whether international cooperative agreements can truly serve to reembed societal interests such as health care to protect citizens from any of the disbenefits of trade which are outlined in the next section.

02. Trade Impacts on Health Care Systems

8 In the general literature both trade and FDI in health services have been reported to have both positive and negative externalities on host and home countries. Positive impacts have been recognised in the form of increased economic returns and enhanced productivity[14]. As early as the 1960s, Hymer[15] underlined how positive impacts result from the bundling of resources including capital, technology and managerial know how. MNEs can transmit knowledge and know how, which is quite often weaker in domestic firms, especially in developing countries[16]. According to endogenous growth

theory, significant trade and investment can lead to economic growth thanks to increased competition, personnel mobility, enterprise spin offs, etc.[17] Improved productivity in a host country has been linked to international participation in combination with local firms. A few studies have also found evidence of increased labour productivity from FDI.[18] More specifically Shenkar et al. examined externalities from trade and FDI in healthcare and summarised their findings in the table below. In essence, they noted that FDI inflows can lead to crowding in or crowding out of domestic firms but this will depend on market condition, firm capacities and linkages.[19]

Figure 1

	Positive	**Negative**
Home Country	**1.** + Pressure alleviation on domestic system: shorter treatment wait times; lower medical costs + Reduced government expenditure + Treatment for the underinsured	**2.** - Money leaving the country - Underutilization of capacity - Providers' underemployment - Loss of scale raises cost and reduces efficiencies & expertise - Eroding faith in health system - Disincentive to develop capacity - Follow-up procedures' expense
Host Country	**3.** + Creating centers of excellence + A model for domestic providers + Scale economies + Retention of medical providers + Creating positive country-of-origin effects	**4.** - Overstay/migration of patients - Birth tourism - Crowding out of local patients - Resentment re foreign patients' (perceived) priority - Diverted public investment

Source: Shenkar et al. (2022)

9 For the **home country,** a number of negative spillovers were identified. If a patient leaves the country to obtain care in foreign countries, it results in capital leaving the country and being invested abroad. This is seen as more problematic for poorer nations. Then it might result in the underutilisation of existing capacity, failure to upkeep services as a result, so decline in quality and a rise in costs. Procedures become less frequent, they are less efficient to carry out in small numbers and therefore it is no longer viable to buy equipment to carry out procedures because of underusage. Incentives to upgrade are also lower and it can even lead to closure of health care facilities, especially since they are often already under financial strain. This can then lead to a lack of health services available to populations. It may also result in lay offs as a consequence of a reduced number of procedures. The vicious cycle leads to poorer service quality followed by lower public support for the system. Service users may well then seek treatment elsewhere, often turning to the private sector.

10 Moreover, investment in healthcare facilities abroad (through FDI) can also have several other negative externalities resulting in fewer resources for investment at

home, but also a reduction in the number of international patients, which then leads to a loss of revenue for both domestic health care services and ancillary services.

11 Positive spillovers identified for the **host country** include medical tourism revenue to further improve medical facilities and ancillary services –hotels, restaurants, travel agents. Flows of revenue can offer the possibility to upgrade skills and facilities, especially in developing countries. The latter are required to meet higher expectations from international patients and development of international accreditation. Globalisation of health care can also result in improved patient access and shared skills among professionals.

12 Negative spillovers for the host country include pressure on local facilities because of medical tourists and crowding out of local patients by international ones. In the public sector, it can lead to longer wait times for local populations and poorer quality of services as expertise and resources are diverted away from public provision to service the international economy. Qualified staff may also switch to providing international services in higher paying private facilities[20].

13 Missoni et al. posit that while trade and investment in health services offers opportunities to increase health information and care, the absence of sufficient global governance mechanisms tends to impact negatively on health systems through its interference with the interconnectedness and complexity of health systems.[21] While increased trade, trade liberalisation and accelerated FDI is inevitable with globalisation impacting on health systems, it still remains complex to assess the impact on domestic health systems. Thus, trade and investment agreements tend to limit policy space for intervention by states to protect public health even with clauses intended to reduce the impact.

14 Rahman et al's (2025) study on the impact of globalisation on health outcomes in BRIC countries, between 2000 and 2023, is also insightful[22]. They investigate the moderating influence of globalisation on health costs and access to good health. They find that globalisation has a negative effect on the correlation between health expenditures and positive health outcomes. The reason is that globalisation introduces economic volatility and inequality which has a negative impact on the efficacy of health spending. They thus advocate healthcare changes that tackle the impact on health expenditure and the wider structural changes that globalisation brings about. While increasing international exchanges and investment can promote the dissemination of medical innovations and best practices, to the benefit of public health, it may increase economic vulnerabilities that can cause barriers to healthcare access especially in low income nations[23]. Globalisation has been found to promote technical progress but at the same time intensify healthcare disparities[24]. Increasing trade and investment more generally can increase environmental pollution, Non Communicable Diseases (NCDs) with the increase in unhealthy food products (processed foods, etc.) and substances, which can have a sigificant burden on health care provision[25]. Engelgau et al. (2012) found that, particularly in urban areas, Indians were having to devote signficiant expenditure on the new rise in NCDs, often forfeiting treatment because of lack of affordability of medicines[26]. Out-of-pocket expenditure is more generally a significant issue with Indians having severe financial issues to pay for healthcare, which can have a further detrimental effect on health outcomes. Rahman et al.'s study confirms that there is a direct positive effect of increasing health care expenditure in the improvement of public health in BRIC countries, but that globalisation can cause

structural changes which require not only increased investment but changes to how health care is supplied and regulated[27].

15 Given the identified general positive and negative externalities of increasing trade and investment in healthcare services, it is now important to turn to the specific case of trade and investment in India.

03. Unpacking the Impact of Health Services and Product Exchange in India

16 To understand the impact of increasing health services trade in India, we focus on three key areas in which India has a competitive advantage and in which health care delivery is both highly privatised and internationalised : medical tourism, pharmaceuticals and international mobility. The key question is to what extent is the priority focus on the economic logics of exchange detrimental to improving public health care in India. To what extent does this conform to the analysis defined in the introduction to the special issue as an example of disembedded trade disconnect between health and trade policy concerns. Are there any societal protections achieved through cooperation agreements which may seek to protect public health from the adverse effects of furthering trade ?

3.1 Medical Tourism: Opportunities and Challenges

17 A sizeable portion of healthcare services' profit depends on India's ability to provide health care services to the global market through medical tourism.[28] Medical tourism was valued at US$ 7.69 billion in 2024 and is expected to double over the next five years. Approximately 634,561 foreign tourists were reported seeking medical treatment in 2023 in India. India was ranked as the tenth top destination for Medical Tourism according to the Medical Tourism Index (MTI) in 2024.[29] Gabor and Oltean define medical tourism as travel to obtain medical, dental or surgical care[30]. It can refer to both out-of-pocket travel abroad for healthcare services or government-financed or insurance paid tourism.[31]

18 Medical tourism is recognised under GATS as the second mode of trade in health services. It is since GATS therefore that such trade has expanded. Recently, there has been a rapid increase in this form of tourism thanks to increased communication and facilitation of health services online, cheaper flights, marketing and improved means of transport, longevity and also cost considerations and quality of healthcare in the country of residency of the health tourist. The creation of health brokers has also added to the spectacular rise in this form of tourism.[32] Deb underlines the importance of intermediaries. Medimins for example is a medical tourism facitilator which provides information to international medical travellers on suitable surgeons, hospital referrals, travel, accommodation and visa support along with other services such as doctor on call, nursing and pharmacy services.[33]

19 Medical tourism has also been fuelled by government support. Indeed, from 2002, the national government in India started to actively encourage medical tourism. The 2002 National Health Policy report underlined the objective of encouraging the supply of services to paying patients of foreign origin in order to increase exports of health

services. It also guaranteed fiscal incentives to do so.[34] In 2025, the Government announced the development of a comprehensive portal online for Medical Value Travel to integrate all key stakeholders of medical tourism[35]. The active promotion of Indian states as medical tourist destinations has therefore been a key component of healthcare policy. Corporations of India (IDCI), Industrial Development Bank of India (IDBI), the Medical Council of India (MCI), the Indian healthcare federation and different industry chambers also actively encourage medical tourism[36].

20 In a survey on medical tourism in India, it was found that 70% of investments come from private and voluntary organisations in the health sector. A list of the most well-known hospitals in India which accommodate foreign medical tourists include:

Table 1

• Apollo Hospital, Chennai, Delhi & Kolkata.
• All India Institute of Medical Sciences, Delhi.
• AMRI, Kolkata.
• Christian Medical College, Vellore.
• Fortis (& formerly Wockhardt group) Hospital,
Delhi, Bangalore & Kolkata.
• B M Birla Heart Research Centre, Kolkata.
• Manipal Heart Foundation, Bangalore.
• Escorts Heart Institute & Research Centre, Delhi.
• Beach Candy Hospital, Mumbai.
• Escorts Hospital, Jaipur.
• Asian Heart Institute, Mumbai.
• Tata Memorial Cancer Hospital, Mumbai.

Source: Deb, 2011

21 India has a significant range of services in almost every medical sector ranging from cardiology and cardiothoracic surgery, joint replacement, orthopaedic surgery, gastroenterology, ophthalmology, transplants, urology and neurology. There is also differentiation of specialities across states: Tamil Nadu is seen as a specialist in eye care, oncology, orthopaedics, dialysis and kidney transplants; Kerala is seen as best qualified in allopathy and dental care[37]. India has also created the necessary infrastructure on a par with other significant high-quality destinations. In addition to the traditional treatments they often provide more specialised ancient therapy practices and health retreats. Moreover, they have the necessary manpower, expertise and ability to converse in English, the international language of business. Training and

experience tend to be highly recognised. Health professionals have often trained and or practiced in the West and then may return to provide health care in their home country. This is particulary the case of facilities in Delhi, Mumbai and Bangalore. Treatment is of course considerably cheaper (estimated to be around 1/10th of the cost of developed countries).[38] Even if airfare may add to the cost of procedures, surgery performed in India is significantly cheaper.

22 The majority of patients travel to India for organs transplants, orthopaedics, cardiac and oncological treatment. The biggest inward clientele comes from Africa, the CIS, the Gulf and South Asia. Regulatory barriers for foreign investment in the Indian hospital industry are low. This is increasingly attracting investment from the United States, the United Kingdom, Australia and Singapore[39].

23 However, a number of reports have underlined concerns regarding medical tourism, notably related to quality and accreditation of all the services, main healthcare services and annex services.[40] The administrative procedures can also be fairly complicated with medical visas, and screening necessary. There is also concern about infrastructure with a lack of beds. But even if there are sufficient facilities, beds etc., there may be difficulties reaching these destinations because of wider infrastructural problems such as poor roads, connectivity, sanitation and accommodation (guest houses, etc. and other public utilities). There is also no quality certification international accreditation. Most Indian hospitals lack accreditation although the situation has improved in recent years. There are also insurance issues if there is medical malpractice. Basic medical insurance cannot cover the medical procedure and most of the hospitabls are not registered with international health insurance companies although specific agreements with private companies have taken place such as the one between a Calcutta hospital and BUPA, a British insurance company.[41] Moreover, legal issues can arise since medical tourism is not supported by international legal regulation so all these medical procedures have a degree of risk. The absence for example of malpractice laws in India in case of surgical errors is cause for concern[42]. The other issue is quality of care and especially the poor image of hygiene in this country.[43]

24 In summary, further development of medical tourism could well increase revenue which could then be used to finance universal health care in India, which is a positive. However, given the corruption and heavy weight given to the private sector, this seems to be unlikely. The risk to diversion in India of doctors and health care staff towards serving international clientele with a rise in medical tourism seems to be a significant risk and could reinforce further already existing inequalities in the healthcare system in India as noted in the literature. The clear focus of the Indian government to increase medical tourism underlines the market-driven priorities in relation to healthcare.

25 Beyond the potential diversion from public health care provision, there is a risk to the patients receiving such type of care because of the overriding economic ambitions of this kind of healthcare provision. Nge Cynthia effectively underlines the complex ethical challenges related to medical tourism (informed consent, patient vulnerability, legal accountability across jurisdictions, healthcare resource allocation inequalitities and post-treatment care issues). She highlights the lack of embeddedness in terms of patient care and calls for policymakers and health professionals to address these issues through stronger international regulations, enhanced legal protections and improved post-operative care provided via collaboration between home and destination countries[44]. Thus, medical tourism has not been accompanied by international

coordination and cooperation to effectively protect patients, or specifically to address the potential diversion of resources to private health care provision.

3.2 Pharmaceuticals

26 India has a very competitive and global pharmaceutical sector.[45] The pharmaceutical company is the fifth largest manufacturing sector in India with a trade surplus. India is the world's largest provider of generic medicines and provides 20% of the world supply[46]. India's pharmaceutical exports are expected to grow ten to fifteen times their current value by 2047. India is the 11th leading pharmaceutical nation by value. The United States currently receives the most exports of antibiotics, followed by the UK, Germany, France, Belgium and Malta. India emerged as a major global exporter of antibiotics after independence. Government support allowed the industry to develop in the 1970s with the Indian Patents Act. After this law, Indian companies were able to legally produce generic versions of drugs. Research laboratories were developed along with a strong technological research base.[47] From the 1990s, public support was reduced as India moved to a market-based economy in order to continue to compete in global markets. While China became a formidable competitor and the implementation of the TRIPS created challenges to India's generics industry, which meant the reintroduction of patent law, India continued to remain competitive in the antibiotic sector for several reasons. First, many antibiotics were discovered before TRIPS in the 1960s so the patents had already expired and second, India reoriented its industry as an outsourcing destination for foreign companies. India thus produced medicines at a low cost for other patented companies. It then became commonplace for MNCs to outsource in order to provide generics, cutting costs and allowing for continued development of the industry.[48] India's pharmaceutical industry as a whole was thus able to continue to grow steadily even after TRIPS and despite competition from Chinese market entrants. [49] However, these changes, especially TRIPS, have led to a reorientation of the Indian market focusing on responding to the needs of high income countries at the expense of other low and middle income countries. In order to remain profitable manufacturers thus need to provide generic medicines for more profitable markets, namely the US and the UK.[50]

27 The concern about the increase in supply to international markets is related to the impact it can have on the supply of medicines in India. Thus far, using the TRIPs flexibilities, including the compulsory licence, has enabled India to ensure generic versions of medicine and uphold the right to health care through lower drug prices. However, pressure in trade agreements to open up market access to government procurement can limit policy space for medicine management systems and have serious implications for public health.[51] While TRIPS ensures flexibilities to supply cheaper generic versions of medicines, beyond TRIPS, the negotiation of Free Trade Agreements (FTAs) which India is engaging in is cause for concern.

28 This is namely because some FTAs have included TRIPS-plus clauses. TRIPs plus clauses which are quite significant in bilateral agreements with the US (such as in the Jordan-US FTA or the Australia-US FTA), reinforce further the 20-year patent period on medicines in order for pharmaceutical companies to recuperate costs. In ongoing negotiations with India and other countries, it is important to consider that there may be an element of path dependency if TRIPS-plus is included in other agreements

between India and third parties. Fortunately, a TRIPs plus clause was not included in the India-EFTA free trade agreement signed in March 2024 thanks to significant health association pressure.[52] The EFTA includes Iceland, Liechtenstein, Norway and Switzerland. While Iceland and Liechtenstein did not wish to include TRIPS-plus clauses, including data exclusivity, Switzerland was pushing for such clauses. This would have required India then to change its patient and drug regulatory laws. According to a number of health associations Doctors Without Borders, the Public Eye and Delhi Network of Positive People, this would have had a harmful impact on access to drugs namely treatment for tuberculosis, diabetes or Hepatitis C. The FTA recently signed between India and the UK also excludes a TRIPS-plus clause. However, the US is looking to sign a bilateral agreement with India and is making demands to reinforce patent protection with its partner. It accuses India of not enforcing sufficiently IP rules[53]. Given the path dependency of the US to include TRIPs-plus clauses in their bilateral trade agreements, this could potentially be cause for concern for India.

3.3 Mobility of Indian Health Workers: Brain Circulation or Brain Drain?

29 Added to the dimension of globalisation of health services, we might point to global migration to provide health services. Taking a Global Political Economy (GPE) approach, Walton Roberts argues that the globalisation of health care in India has meant furthering the problem of the core and the periphery for the benefit of advancement in healthcare in developed countries in the North.[54] Training in healthcare is one of the key factors in reshaping the health sector and contributing to this phenomenon which is directed towards a market orientated form of health care delivery. Walton Roberts underlines the issue of a brain drain whereby medical professionals from the Global South move to the Global North in order to service medical tourism. The negative impacts that this started to have on Global South health care systems and their ability to reach the Millennium Development Goals began to be reported from the 1990s onwards.[55] Those who prefer to give a positive take on the situation tend to talk rather about “brain circulation” whereby health care professionals make the most of the global health care arena to build significant international skills through international education and training. These professionals are then seen as a means of enhancing international expertise and training in their home country.[56] Post-colonial scholars have examined how medical training has been influenced by colonial practices by giving the example of Christian missionaries, international agencies and the Rockefeller Foundation. Raghuram examines for example how the NHS has benefited from the arrival of foreign migrant health professionals from former colonies. Back in India, especially in Kerala, it was reported that nurses were trained within Anglo-speaking colonial settlements which has thus led to significant migration from this region of India.[57] The literature on Health and Human Rights (HHR) aligned with GPE research shows the importance of states and markets in the training and subsequent location of health professionals. According to Walton Roberts, the Indian government does not actively encourage but promotes out migration. The latter is also fuelled by the poor status of nursing in this country (low pay, difficult working conditions, low staff to patient ratios, physical and verbal abuse).[58] Stillwel et al. posit that while migration of skilled medical practitioners and nurses from developing countries only makes up a small portion of total professional

migration, it still represents a loss of human resources in the healthcare sector and a loss of capacity for health systems and delivery of care.[59]. But the data on the extent of the impact on health services in developing countries is both “patchy” and “anecdotal”. This is because data exists on the number of workers having migrated but it is difficult to follow every trajectory path to ascertain whether they stay in the country or return home after a number of years.[60]

30 To evaluate the impact of this professional migration on health systems, it is important to establish how long the migrant stays overseas. Classifications of temporary migration are misleading because they can refer to anything from 9 months to 10 years. [61] Individual countries set specific conditions for entry and length of stay. But countries may change their status in order to attract skilled labour and to compensate for shortages in domestic labour markets. Temporary migration is covered by mode 4 of the General Agreement of Trade and Services (GATS), but there is no satisfactory definition of what temporary means and little international consistency. The outward flow of high-skilled medical professionals may result in skill shortages and fiscal costs because of educational subsidies. It is difficult to understand the extent of the loss because migrant figures do not tend to distinguish health workers from other professional categories.[62] But negative effects on home systems can also impact those who stay behind because of extra workloads and stress because of lack of staff. Those who remain lack motivation because of poor pay, poor equipment, supervision and career opportunities. It can often lead to the most talented turning to the private sector and high turnovers.[63]

31 GATS has indeed led to the furthering of outmigration of international professional health workers to the detriment of source countries. But might international cooperation seek to manage such processes to reduce the detrimental effects to public health care systems ? In fact, there are several organisations which are responsible for managing labour migration : The World Trade Organization, UNHRC, International Labour Office and International Organization for Migration and these are managed through various instruments : Bilateral Migration Agreements, GATS mode IV under multilateral negotiations and PTAs. The various organizations have their own rules in relation to migration. There is not one single international institution responsible for managing international migration flows of workers among countries, which implies that governance is not necessarily coherent, with each of these organisations pursuing different aims[64]. Hollifield describes this as the ‘missing regime’ for international labour migration. He contrasts such lack of regulation to the significantly coherent regulatory regimes which govern the flow of goods and the more consistent management via the WTO and PTAs[65]. Nevertheless, in an attempt to provide better management of Indian nationals working overseas, the Indian government has recently proposed to introduce the Overseas Mobility (Facilitation and Welfare) Bill in 2025 in order to provide « regulatory mechanisms by developing a regime for safe and orderly migration overseas ».[66] While this bill is to protect nationals from harmful working conditions abroad, it does also provide for the « safe and orderly return, and reintegration or returnees ». Yet this would only happen provided that the correct working conditions in the public health sector in India are met to encourage their return[67].

32 India has also signed a number of agreements on labour mobility with European countries, including the UK, but these have failed to really address the negative impacts

of health personnel mobility. In 2011, India also signed the Commonwealth Code of Practice for the international recruitment of health workers to avoid international recruitment from those countries already suffering from shortages back home. The country also signed the WHO Code of Practice which agrees to adhere to blocking international recruitment from red list countries: those countries who would be seen as compromising health systems at home if they were to allow recruitment abroad. However, India is not on the red list of countries because they train sufficient health professionals, thus such Codes fail to protect India from brain drain. In addition, the Codes do not apply to the private sector and so there are no particular restrictions on health professionals moving to the UK from the private sector.

33 However, if we consider numbers and increases of out migration, the brain drain issue would seem to be significant for India. India is the largest source of migrant doctors to OECD countries and the second largest source of migrant nurses. In 2020-21, there were 98,857 Indian-born doctors and 122,40 Indian-born nurses, an increase of 76% and 435% respectively since 2001[68]. Diversion away from the public health sector is therefore cause for concern. Mehta et al. (2024) in their scoping review of human resources shortages in India's health sector, found that the country suffered a persistent shortage of human resources and inequitable distribution of supply of health care workers, especially in rural areas, which report the most significant shortages[69].

34 Thus, the expansion of health services on an international level would not seem to have benefited public health care provision to the Indian population. The gains from this industry seem to be invested elsewhere than the public health system. In addition, significant new threats arise from the expansion of trade and investment such as diversion of healthcare staff and possible impacts on the supply of essential medicines. In the same way as the migration provisions in GATS, PTAs can serve to increase the outward supply of migrants from India to the destination county by reducing the non-monetary cost of migration or harmonising labour markets in signatory countries (harmonisation of qualifications for example) (although other factors such as business environment, conditions of work and other living and cultural conditions will also be of greater impact on the decision to migrate). For example, the India-UK Comprehensive Economic and Trade Agreement signed in July 2025 exempts Indian workers who are posted in the UK from paying social security contributions in the UK for three years, which means significant savings and advantages for outward migration. The MATES program signed with Australia offers 3000 visas free of charge for qualified Indian graduates in key areas which require specific expertise such as in the health care sector. Such agreements can thus exacerbate the problem of the brain drain with the previous MoUs not succeeding in stemming the outflow[70].

04. Incorporating Ruggie's Approach to Uphold a State's Duty to Protect Public Health

35 In order to cope with the costs to health care of globalisation, governments may provide compensation, which was part of a wider regime of « embedded liberalism »[71]. Trade adjustment mechanisms are called for in order to rectify imbalances and social costs. However, trade policymakers and corporate entities have increasingly supported economic interests through free trade and open markets which undermines the principles of embeddedness. As Ruggie underlined « an enormous governance gap has

been created between the scope and impact of economic forces and actors, and the capacity of societies to manage the adverse consequences »[72]. He thus recognised that more effective governance is necessary since the increase in income inequality between and within countries is socially unsustainable. Establishing rules to govern trade in the post-war period to date was intended to protect state-based regulatory space in order to pursue non-protectionist social objectives, such as health care (Ruggie, 1982, Kolben and Rioux, 2023)[73]. This is supported by WTO agreements which tend to give priority to free trade principles over the rights for states to regulate in the public interest. As far as health care is concerned, even though public health care is excluded under WTO terms, the GATS has strengthened economic exchange in private health care as we explain above.

36 Ruggie thus went on to develop the Guiding Principles, which then became part of a UN framework. Such Guiding Principles are around three central pillars, Protect, Respect and Remedy : (1) states have *duties to protect* human rights; (2) corporations have *responsibilities to respect* human rights; and (3) victims of human rights violations have the right to an effective remedy. The Guiding Principles, are not legally binding but they do provide operational guidance[74]. Moreover, the state duty to protect against third party abuse does form part of international human rights law. Governments also owe due diligence to their citizens. Due diligence relates to a regular review and impact assessment of major risks and stakeholder engagement related to the supply chain environment. Ruggie also went on to underline that markets must have adequate institutional underpinnings and be embedded in the broader value of social community. Given the importance of rights to adequate public healthcare, the extent to which such guiding principles are given priority by the Indian state is important. This section will consider how the Indian government could uphold citizens' rights to public healthcare in the face of healthcare liberalisation ; that is recognise the trade linkages or possible disbenefits which occur through prioritising economic liberalism above societal concerns.

4.1 Access to Essential Medicines to Protect Basic Human Rights to Health

37 Our first concern was related to the provision of essential medicines to the population given the rise of bilateral and/or free trade agreements (FTAs), which may extend patent protection beyond what is determined by TRIPS or change the status of government procurement. Despite growth in the sector, there are a number of ways the Government of India regulates medicines to ensure quality control and reduction in the price of drugs for consumers. For example, in May 2023, the Indian government introduced the National Medical Device Policy to ensure universal access to quality medical devices, support for domestic manufacturing capacity, enhanced product quality and improved clinical outcomes by ensuring early diagnosis and accurate treatment. In 2021, the National Pharmaceutical Pricing Authority also issued price controls on oxygen concentrators, blood glucose monitors, blood pressure monitors, pulse oximeters, nebulizes and digital thermometers to ensure that the price to patients is maintained at a stable and affordable price. This follows the Trade Margin Rationalisation approach which was introduced in 2018 to ensure patient access and affordability of drugs and healthcare. Moreover, currently trade margins are being

streamlined to ensure that a large number of essential drugs, including patented ones, are affordable and can be guaranteed to patients including essential anti-infectives, oncology medication and chronic kidney disorder medicine[75]. As we mentioned previously, India must thus remain committed to protecting patient access to drugs in their negotiations of FTAs and other bilateral investment treaties with third party countries.

38 India is a powerhouse for the supply of drugs to developed nations, yet much needs to be done to ensure that availability is ensured back home. Despite the aforementioned legislation, the rate of availability is very low and depends on the state, which varies between 17 and 51 percent across major states[76]. This is essentially as a result of governance issues, which are a result of differential procurement mechanisms across states which represent barriers to ensuring availability of essential medicines. Distribution and purchasing systems are also considered to be inefficient. Supply chain management is poor and conflicting guidelines hinder smooth delivery of supplies. While the National Health System Resource Centre provides guidelines to ensure the provision of essential drugs, the dysfunctional inventory management system fails to live up to these guidelines. Improvements to overall governance of medicine supplies is thus essential at state level[77].

39 In addition, the Government and individual states should work on providing greater access to quality healthcare for the population with access being a major issue. It has been reported that many Indians pay out of pocket because they are not included in insurance schemes (30% only are covered by government or private insurance schemes). While healthcare is provided through public hospitals whether it be primary, secondary or tertiary care, the private sector has grown significantly in recent years. This is because the issues with shortages of healthcare infrastructure are especially problematic in India’s public sector. India has a shortage of 1.75 million hospital beds, and this is where the private sector is likely to take the lion’s share of investment[78].

4.2 Investing in Human Resources Within the Public Health Care System

40 The sections on medical tourism and global migration movements underlined concerns about a diversion of qualified health workers to service the private and international economy. As regards the brain drain of workers from India, which has been enhanced by agreements to further trade and investment such as the GATS and/or PTAs, Chanda suggests that a combination of bilateral, regional and multilateral cooperation could well prevent brain drain in relation to the cross-border flows of health care professionals (i.e. through special visa schemes and recruitment programmes, temporary flows rather than permanent flows), which would need to go significantly further than those signed between partner countries thus far. Bilateral cooperation could also lead to the host country providing technical and financial assistance to the source country[79].

41 Chanda, however, believes that the responsability lies squarely with the source country. To curb brain drain, India could include negative incentives to migrants, such as migration taxes. These would mean that outward migrants have to refund government for training costs. Alternatively positive incentives might include tax exemptions, improvements in working conditions, facilities and professional

opportunities within the public health care system in India. Return of talent programmes could be set up through contracts and "brain gain" networks created. It is also important to shore up links between public and private health services in sharing information and expertise and cross-subsidisation[80]. Nevertheless, out migration has often been a result of a lack of qualified jobs in the home country, so it remains questionable to what extent these policies might work. Further, to stop this diversion of qualified health professionals and uneven supply of staff in the public sector, the Indian government needs to invest specifically in salaries and facilities to support public health care staff in acute, primary and secondary care settings. Mehta et al.[81] also recommend creating a comprehensive national database for human resource recruitment to track the supply of qualified health personnel in both public and private sectors. They note that there seems to be a dominant supply of doctors but fewer nurses and so retaining nurses is vital. Public sector human resource shortfalls in supply could be improved by creating a more flexible recruitment systems. However, what is really needed is a more comprehensive strategy to cover all aspects of human resources in the health sector, ranging from finance to infrastructure and working conditions. Such a strategy should also put in place policies to combat gender and social inequities. All such initiatives are thus supportive of the need to reembed societal issues within the overall trade and investment in health services agenda (whether it be movement of products, services or people).

05. Conclusions

42 India's health care sector has experienced significant growth in recent years. International trade and investment have contributed to boosting overall growth, with India set to be the third biggest economy in the world. However, despite progress in terms of revenue and jobs in the sector, this does not seem to have benefited the public health sector. Whereas innovation in products and services in the health sector should benefit improved facilities and skills applied to public health more generally, India's public health care sector is still rated low in many surveys compared to health systems across the world. Since the 1990s, lowering barriers to trade and investment has been beneficial to India's economy. GATS has enabled the expansion of health services. Future bilateral trade and investment deals should ensure that the terms of protection for public health and supply of essential medicines do not call into question the flexibilities provided by TRIPS and the WTO framework to protect the health of populations. It is clear that, despite international regulatory regulations to protect public health systems, in the case of India, neither the structure of the WTO, Cooperation Agreements, Memorandums of Understanding or International Codes of Conduct have prevented an outflow of qualified health care professionals, which would better serve the public health care services in India. Also, the revenue provided by the international exchange of healthcare services has not been reinvested in the public health care system.

43 More attention is therefore needed to ensure that India's global health strategy also serves to benefit the public health care system. The analysis in this article shows that the drive to increase and improve health care services in India is clearly driven by a disembedded free market logic to the detriment of public health care provision. The article has suggested several interventions which could lead to a reembedded approach

from the Indian government: stronger ethical oversight and international cooperation for medical tourism, the reinforcement of patient rights and the government's right to oversee public health care in all FTA or PTA agreements and exclude TRIPs-PLUS clauses or the like. Finally, the importance of reinvesting economic gains and technical know how from private health care innovation into the public health care across India is essential. Priority should be given to high quality public health care investment and improved conditions for medical staff working in the sector across acute, primary and secondary care sectors.

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ABSTRACTS

India is now the fifth largest global economy thanks to significant growth in exports and international exchange in recent years. The healthcare sector in India is one of the largest and fastest growing in terms of revenue and employment. It is however questionable to what extent increasing trade and investment in the health sector can effectively improve public health care delivery to the population, despite the importance of this critical sector. In line with the trade linkages special issue, this paper questions to what extent trade policy in health services is disembedded from the question of public health care provision. It is important to reiterate that protection of health systems implies engaging in issues beyond the pure economic agenda of countries wishing to further trade and investment. This paper thus takes a social constructivist approach to analyse the impact of the recent increase in trade and investment in the health sector in India. In particular, it draws on Ruggie’s concept of embedded liberalism to explore the potential effects of enhancing international trade and investment in this sector whilst still ensuring that sufficient welfare provisions are in place. It addresses two main questions: can domestic and international regulatory regimes ensure public health systems are protected and what are the trade offs to health care delivery of enhancing trade and investment with international private health care providers.

L'Inde est aujourd'hui la cinquième économie mondiale grâce à la croissance significative de ses exportations et de ses échanges internationaux ces dernières années. Le secteur de santé en Inde est l'un des plus importants et des plus dynamiques en termes de revenus et d'emploi. On peut toutefois se demander dans quelle mesure l'augmentation du commerce et des investissements dans le secteur de la santé peut améliorer la prestation des soins de santé publics à la population, y compris les plus vulnérables, malgré l'importance de ce secteur essentiel. Dans le cadre du numéro spécial consacré aux liens commerciaux, cet article s'interroge sur la mesure dans laquelle la politique commerciale en matière de services de santé est dissociée de la question de la prestation des soins de santé publics. Il est important de rappeler que la protection des systèmes de santé implique de s'engager dans des questions qui dépassent le simple agenda économique des pays souhaitant développer le commerce et les investissements. Cet article adopte donc une approche socio-constructiviste pour analyser l'impact de l’essor des échanges commerciaux et des investissements dans le secteur de la santé en Inde. Il s'appuie en particulier sur le concept de libéralisme intégré de Ruggie pour explorer les effets potentiels du renforcement du commerce et des investissements internationaux dans ce secteur, tout en garantissant la mise en place de mesures de protection sociale suffisantes. Il aborde deux

questions principales : les régimes réglementaires nationaux et internationaux peuvent-ils garantir la protection des systèmes de santé publique et quels sont les compromis en matière de prestation de soins de santé pour renforcer le commerce et les investissements avec les prestataires de soins de santé privés internationaux ?

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From Linkages to Disconnects: The Rapid Response Mechanism (RRM) under the United States-Mexico-Canada Agreement (USMCA)

De la connexion à la déconnexion : le mécanisme de réponse rapide (MRR) de l'Acoord Canada-États-Unis-Mexique (ACEUM)

Michèle Rioux and Charles-Olivier L'Homme

01. Introduction

1 Trade agreements increasingly included non-trade provisions to balance trade issues and other issues affected by trade. Yet, they are now strategically oriented because of the economic tensions between the United States and China (Gagné and Rioux, 2022; Orbie, 2021; Velut and al 2022)[1]. As outlined in the introduction to this issue, this trend must be understood in relation to a 'dialectic' between regulation and geoeconomic rivalry special issue, trade policy is no longer being governed by international liberalism as it is increasingly shaped by security concerns, technological rivalry, and the politicization of global supply chains. The United States-Mexico-Canada Agreement (USMCA)[2] introduced new labor provisions, and more specifically a Rapid Response Mechanism (RRM). This offers a good case study for this special issue since as a tool for labor rights enforcement targeting progressive policy interests, it also is a strategic instrument to realign production away from low-cost jurisdictions.

2 Unlike the North America Free Trade Agreement (NAFTA) and its weak labor side-agreement on labor, the USMCA's RRM empowered governments, unions, and civil society actors to target workplace-level violations swiftly and with real sanctions, bypassing lengthy state-to-state dispute processes. Hence, the RRM brought significant, improvements in labor conditions in Mexico, particularly in industries long dominated by employer-controlled unions. The RRM embodies the kind of embedded linkage that

the special issue describes as the strongest form of trade integration, both substantively and procedurally. However, the trade-labor linkage reveals the fragility of those types of linkages in a volatile political and strategic context.

3 The re-election of Donald Trump will shape the future of the RRM and the broader social dimension of the USMCA. At this moment, the RRM is still an important trade policy instrument and is used by the new administration as a tool to block "social dumping" in North America. If the RRM mechanism was the result of bipartisan collaboration, Trump's America First doctrine and deregulatory economic agenda suggest a more disembedded and strategically oriented trade policy. This potential rollback echoes the concept of "trade disconnects" in which integrated social concerns are de-linked or marginalized when they conflict with nationalist, security-based, or purely commercial imperatives. The social dimension being a tool to block Mexican imports and the entry of Chinese products crossing the US-Mexico border.

4 The structure of this article is organized around four sections : 1) the trade-labor linkage in the literature; 2) the USMCA's RRM and how it improved on the NAFTA side-agreement; 3) the RRM cases and their impacts; and, 4) the future of the RRM in the new North American context. As the USMCA approaches its 2026 review process, it is crucial to assess the RRM's effectiveness and its future trajectory[3].

02. The Trade and Labor Nexus

5 Since the 1970s and 1980s, the global economy has experienced deep structural changes, leading to a widening gap between national labor institutions and increasingly transnational economic activities. This has weakened the traditional international labor regime centered on the International Labour Organization (ILO), which, although still active and very pertinent, no longer functions as the only pillar of labor governance as other institutional trajectories have emerged and developed.

6 Rioux (2014) introduced the concept of global labor governance (GLG) within the broader context of globalization and the declining coherence of national regulatory systems. The GLG identified three emerging "constellations" of global labor governance. The first is related to possible reform or redeployment of multilateral institutions, specifically the ILO (Drouin and Duplessis, 2009), the second is the trade and labor linkages in trade agreement and the third is the realm of corporate social responsibility (CSR) (Arthurs, 2008; O'Rourke, 2006). The coexistence of public, private, and hybrid initiatives reflects both innovation and incoherence.

7 The literature on international labor cooperation mostly centers on the ILO and, as a result, the trade-labor nexus in trade agreements is often portrayed as a menace to the ILO well-respected mandate and work. Historically, there were discussions on the interactions of trade and labor systems in international law since the creation of the ILO and the negotiation of the Havana Charter (Charnovitz, 1987). Yet, the ILO did not, until only recently, address directly the labor and trade nexus and the WTO decided not to go that route. As a result, labor provisions were included in bilateral trade agreements by many industrialized countries that were willing to link trade to labor norms and standards, such as the United States and Canada which first negotiated NAFTA and a its side-agreement on labor cooperation.

8 NAFTA was the first trade agreement to introduce dispositions regarding labour cooperation. NAFTA addressed this issue in a side-agreement, the NAALC (North American Agreement on Labor Cooperation). NAALC was elaborated after a debate preceding the election of President Bill Clinton who had promised to work towards a global social system and a more human globalization process[4]. This side-agreement was a subject of intense scientific and politique debates, and was generally considered weak (Middlebrook, 2024; Compa and Brooks, 2019, Polaski, 2025). Indeed, many other trade agreements improved of the NAFTA-NAALC model (Deblock and Rioux, 2009; Zini, 2013).

9 At the beginning of the first term of Donald Trump, it was decided to include “all of the incremental strengthening of labour obligations found in US trade agreements negotiated after NAFTA and notably included an annex that required detailed reforms to Mexican labor relations law (Polaski, 2025; Compa, 2018)[5]. The RRM was not yet part of the agreement. The Democrats had won control of the US House of Representatives and refused to ratify the pact without stronger enforcement labor provisions. It was agreed that a Facility-Specific mechanism (RRM) was to operate at the firm level. It was the Democrats in the US Congress who forced the negotiation of the RRM[6].

10 The pressure for labour law reforms in Mexico was first exerted by the US in the context of the negotiations of the Trans-Pacific Partnership Agreement (TPP). The Mexican government had promised to undertake labor reforms during the US-led negotiations of TPP but “(...) when the Trump administration pulled the United States out of the TPP, domestic progress on labor reform in Mexico once again stalled”. (Bown and Claussen, 2024, p. 344). Historically, despite a strong national labor law[7], Mexico’s labor regulations allowed companies to suppress wages and workers’ rights, creating a competitive advantage that attracted manufacturing jobs from the United States and Canada. In the context of the USMCA, the labor reform abolished “protection unions” (unions controlled by employers) while the RRM helped in its enforcement.

11 The United States signed a bilateral protocol with Mexico which was replicated by Canada. The RRM is a state-to-state enforcement tool that allows the United States or Canada to request an investigation of a specific facility (covered facility) in Mexico that is suspected of denying workers’ rights, particularly on the freedom of association and collective bargaining. Its goal is to provide rapid, facility-specific remedies, and it represents the most judicialized and binding form of trade-labor linkage to date.

12 It stands out within GLG schemes that rely mostly on soft law, moral persuasion, voluntary compliance, and fragmented institutional frameworks. The ILO monitors and issue recommendations but cannot sanction. CSR initiatives and trade-labor clauses are often aspirational or dependent on diplomatic pressure (Rioux and Vaillancourt, 2020; Djelic and Sahlin-Andersson, 2006). In contrast, the RRM is aiming at “hard law”: it has binding enforcement powers and targets the facilities directly. It allows for on-site verification, labor panel review, and the imposition of tariffs or trade remedies if violations are not addressed. As such, it can be considered a scheme of corporate social responsibility scheme by treaty (Claussen and Bown, 2024). It was depicted as a potential new generation of trade-labor linkages (Polaski, Nolan and Rioux, 2022) tying labor rights enforcement to market access, a breakthrough in trade-labor governance schemes (USMCA Chapter 31-A and B).

13 The trade-labor linkage is not a panacea. Much of the literature on the subject is quite critical (Compa and Brooks, 2019; Boulanger and al, 2021; Carillo Obregon, 2023). The

weakness of the trade-labor linkage is mostly related to three dimensions: the emphasis of trade and corporate interest, the complexities of its enforcement as a trade related issue and the importance of the role of civil society and trade unions that are not well endowed in resources to make a real difference in the equation. The RRM is nevertheless an innovative new instrument that had some real impacts in Mexico. The next section will concentrate on how the USMCA's RRM improved labor governance in North America.

03. How did the USMCA's RRM improve the North American Labor Governance

14 In this section, we will discuss how the RRM improved on previous trade-labour linkages in North America. Many developments have been observed since 1994 in linking trade and labor issues in a movement of trade policies "embeddedness," i.e. their linkages with other social and economic policies (Kolben and Rioux, 2023; Velut, 2023). It was not until the USMCA and its RRM, driven by decades of labor advocacy and political shifts, that a more embedded and enforceable trade-labor mechanism emerged. Other trade agreements made improvements since 1994 (Velut and al., 2022; Goff, 2021) but the RRM stands out. One of the most impressive trade-labor mechanisms is indeed the RRM under the USMCA specifically targeting companies operating in Mexico that export goods to the United States and Canada.

15 While the NAALC was limited in enforcement power, it symbolized an early attempt to address "trade and" linkages within the broad agenda of humanizing globalization (Polaski and al, 2022). The RRM is an innovation that planted the seed of a new approach to trade-labor linkages and enforcement. Designed to address specific labor rights violations within exporting enterprises, the RRM departs from traditional state-to-state dispute mechanisms and allows for faster intervention against individual workplaces suspected of infringing labor laws. The RRM is an expression of the "enforcement turn" in trade policies that have concrete effects on the ground (Boulanger, Rioux and Zini 2021). Undeniably, it has made significant progress in labor cooperation with outcomes that deserve attention.

16 The RRM targets workplace level violations of freedom of association and collective bargaining, but it sets a precedent for targeted labour enforcement in trade deals. Its key objectives are to ensure stronger labor protections in Mexico, prevent unfair wage competition that disadvantages workers in the United States and Canada, encourage independent unionization in Mexican industries and could perhaps serve as a model for future labor trade agreements[8].

17 In theory, the USMCA is reciprocal, but footnotes in the text support the argument of asymmetry of accessibility to the RRM.

> (...) the bilateral agreements between the US-Mexico and Canada-Mexico are formally reciprocal in that any of the parties can request review of denials of rights by firms in another party's territory. However footnotes to the two agreements limit requests by Mexico to challenging an 'enforced order' of the relevant labour relations administrative bodies of the other countries (USMCA Annex 31-A.2 Footnote 2; Annex 31-B.2 Footnote 1). In addition to waiting until the administrative process has been completed, court challenges must also be allowed to proceed before action can be taken. In practice, this vitiates the timeliness of the 'rapid response' mechanism with regard to denials of rights affecting workers in

> the US and Canada. This asymmetry has been widely criticized in Mexico and there is no theoretical or policy logic for this higher threshold for accessibility of the RRM. (Polaski, 2025, p. 18)

18 The mechanism has gained attention for its effectiveness as it punishes the exporting enterprises rather than the exporting country, thereby putting the pressure of adjustment on the workplace and the employers. Unlike previous labor provisions, which required state-to-state arbitration and lengthy proceedings, the RRM enables direct action against specific firms. This is achieved through a petition-based system that allows labor organizations, trade groups, or governments to submit claims of worker rights violations. If the allegations are credible, an investigation is initiated, and penalties such as tariff increases or import restrictions can be swiftly imposed on the offending company.

19 It is called “rapid” and it is rapid in comparison to other mechanisms. Traditional labor enforcement mechanisms often require years of negotiation and litigation before any corrective measures are implemented[9]. The RRM aims to resolve disputes within approximately 115 days, making it one of the fastest trade-related labor enforcement tools in the world (see tables 1 and 2 below). This speed is important for labor activists and workers, as delays in enforcement often mean prolonged exploitation, if not impunity. By ensuring swift responses, the RRM creates immediate incentives for companies to comply with labor laws, rather than engaging in prolonged legal battles.

Table 1: USMCA’s RRM versus NAFTA’s NAALC

Factor	**NAFTA-NAALC**	**USMCA-RRM**
Labor Enforcement	Weak, dependent on politics	Strong, binding
Enforcement Speed	3-5 years, legal appeal available	115 days, no appeal
Targets	Governments	Individual workplaces
Sanctions	Never	Trade penalties, import bans

Source: Authors

Table 2: USMCA’s RRM

Enforcement Process and Timeline Stage		
Stage		*Action*
Complaint Submission	Day 1	Labour unions, workers, or NGO file complaint
Initial US Review	30 days	USTR assesses credibility
Mexican Governement Investigation	10 days	Determines whether to investigate
Company Resolution Period	45 days	Violating firm must comply

US Trade Action	115 days	Import bans or penalties imposed

Source: Authors

20 The next section is concentrating on cases and impacts of the use of the RRM.

04. Cases and Impacts

21 According to U.S. Department of Labor (DOL), the RRM has been actively utilized to address labor rights violations in Mexico. Since 2020 and as of January 2025, the U.S. DOL, in collaboration with the Office of the U.S. Trade Representative (USTR), has initiated more than thirty RRM cases that primarily focus on allegations of denying workers' rights to free association and collective bargaining. Through these RRM cases, over 42,000 workers have directly benefited from interventions aimed at safeguarding their labor rights.

22 The RRM has delivered benefits to Mexican workers, including: the formation of independent labor unions, replacing employer-dominated unions, increased accountability of corporations operating in Mexico, particularly in the automotive, manufacturing, and mining industries, and encouraging Mexican employers to comply with labor laws and improve conditions for workers. Furthermore, unlike previous trade dispute mechanisms that often led to diplomatic tensions, the RRM has largely fostered cooperative enforcement. Out of all cases initiated under the RRM, few required independent panel reviews, demonstrating that most disputes can be resolved through direct negotiations. Recent cases (as of January 2025)[10] involve:

> Vidrio Decorativo Occidental (January 2025) *Allegations*: Denial of workers' rights, including failure to pay owed bonuses and wrongful termination of union-supportive employees. *Resolution*: The company agreed to pay back wages and bonuses, rehire dismissed workers, issue a neutrality statement, and allow labor rights training.
>
> Hulera Tornal (January 2025) *Allegations*: Non-compliance with a sector-wide agreement, resulting in reduced contractual benefits for workers. *Action*: The U.S. government requested Mexico to review the alleged violations under the RRM.

23 The very first case offers few insights on the effectiveness of the RRM. The RRM's very first case was important in establishing the effectiveness of the mechanism. It targeted General Motors (GM) plant in Silao (2021) in which workers' rights violations led to a full RRM investigation. The case resulted in a new independent union being elected to represent workers. The case set a precedent for how the mechanism would be applied and enforced in Mexico illustrating how labor complaints could lead to real consequences for corporations, forcing them to respect workers' rights to freedom of association and collective bargaining. It empowered Mexican workers, encouraged fair union representation, and reinforced trade-labor compliance under USMCA.

24 The violations were: interference in a union contract vote, obstruction of workers' rights to freely organize, destruction of ballots during a collective bargaining agreement vote and intimidation and retaliation against pro-union workers. The complaint was filed by the USTR, Katherine Tai, the Independent Mexican labor activists, the Mexican Ministry of Labor and the AFL-CIO (American Federation of Labor and Congress of Industrial Organizations)[11]. From the report of irregularities to the

rescheduling of a new union vote under independent monitoring, there were 4 months. In August, 5,000 workers participated in a new, monitored election overwhelmingly rejecting the existing union contract with CTM, breaking decades of employer-controlled union dominance.[12]

25 GM was forced to accept the new vote outcome. The benefit for GM was that it was assured fair labor trade compliance under the USMCA and could export to the United States and Canada. Not only did GM have to adjust labor practices to ensure compliance, but other multinational companies in Mexico took notice, ensuring more transparent labor conditions as the case strengthened confidence in the USMCA's labor provisions. Firms operating in Mexico understand they need to comply with strict labor rights provisions and that violations can lead to trade penalties, financial losses, and reputational damage. The case led to a decline in employer-controlled unions in Mexico as independent unions gained ground, giving workers real bargaining power. This is part of a larger issue regarding Mexico's labor law reforms and the USMCA innovations.

26 In July 2025, an RRM panel found for the first time that a facility in Mexico denied its workers' rights concluding that the facility fired workers based on their union preferences and helped the company's favored union gather worker support. In May 2024, a panel decision in a San Martin mine case had confirmed previous reports that Mexico prevailed in the first RRM case to reach a panel[13]. The RRM continues to be a trade-labor linkages with much potential for the future.

05. The Future of the RRM

27 Bown and Claussen (2024) analyzed the effectiveness of the RRM in enforcing labor rights assessing the RRM's design, implementation, and outcomes, providing insights into its successes and areas for improvement, discussing the broader implications for labor rights enforcement in international trade agreements. They highlight the innovative approach to enforcing labor rights and note that the RRM has been effective in addressing labor violations promptly and enhancing corporate accountability and improving labor conditions. They suggest that addressing issues related to transparency, fairness, and administrative capacity is crucial for its sustained success and potential adoption in future trade agreements of the "RRM model".

28 Polaski and al (2022) explored the motivations behind and implications of the USMCA's unprecedented labor provisions. They evaluated these changes in terms of their effectiveness, legitimacy, and impact on Mexican sovereignty, concluding with reflections on the USMCA-RRM potential as a model for future trade agreements. This perspective highlights the mechanism's role in addressing workplace-level labor rights issues within the framework of international trade agreements while recognizing that this process is structured politically by the influence exerted by social actors and trade unions as well as by the asymmetric relations between the three countries.

29 Claussen (2024) acknowledged that the RRM has positively impacted on Mexico's labor reforms, particularly in regions where implementation has been slow, while emphasizing that the RRM should complement, not replace, Mexico's institution-building efforts. Claussen recommended procedural improvements, such as increasing transparency and information sharing with companies under investigation to ensure its smooth operation and to support broader labor reform initiatives within member

countries. The RRM has been criticized for its opacity. The criteria for selecting cases, the evidence required for initiating investigations, and the decision-making process of the USTR are not fully transparent. This has led to concerns that lobbying and political pressures may influence which cases are pursued and which are ignored. Companies have also raised concerns about due process, arguing that they are not always given sufficient notice or an opportunity to appeal before import restrictions are imposed. Furthermore, the USTR has withheld complaint details from Mexican authorities.

30 The RRM is criticized for the bureaucratic burden and economic costs on Mexico. Mexican labor authorities are overwhelmed, spending resources investigating RRM cases instead of broader labor policy improvement thereby focusing on individual cases rather than systemic issues might not be the most efficient way to improve labor conditions across Mexico[14]. LeClerq and al. (2024) recently reported that the RRM was mostly efficient in the case of well-organized labor unions, and they recommend more technical assistance and social engagement in the future.

31 Polaski (2025) argued that the upcoming USMCA review scheduled in 2026 will be a strong moment that will define its future as many stakeholders are gearing up for the consultations that are opening November 2025. Mexico might exert pressure for a more symmetrical RRM. Asymmetry is a problem as the RRM is a one-sided tool against Mexico for the United States and Canada. Mexican companies can be targeted anytime, whereas U.S. and Canadian companies are only investigated if their governments agree to an inquiry[15]. This creates a power imbalance, reinforcing the perception that the RRM serves trade interests more than labor justice. This imbalance has led some Mexican officials to argue that the RRM functions as a one-sided enforcement tool, reinforcing US economic interests rather than promoting fair labor practices equally across all three countries.

32 The most important critique is indeed that US trade interests are most important. One of the main objectives is economic competitiveness, not just labor rights. The RRM indirectly benefited the United States by raising labor costs in Mexico, reducing its low-wage advantage. Although few Mexican companies have been targeted, the RRM sanctions might discourages investment, particularly in export industries. Trump's trade advisors admitted that labor reforms in Mexico were a way to shift automotive production back to the United States.

33 During the 2026 review, Mexico could push for adjustments to make the RRM more balanced and reciprocal. Polaski (2025) argued:

> (…) accumulating experience indicates that there are flaws in the design of the RRM when a case is referred to a labor panel. The scheduled 2026 review of the USMCA provides the parties an opportunity to reflect on the RRM and potentially to strengthen it in pursuit of further upward convergence of wages and working conditions in North America. The upheaval in broader US trade policy makes the outcome highly uncertain. (Polaski, 2025, p. 20)

34 The RRM under the USMCA was not a primary focus for Donald Trump, but it was indirectly significant to his broader economic and trade policies. Trump championed the USMCA as a replacement for NAFTA, claiming it was a better deal for American workers. In their respective ways, Trump and Biden made strong cases of linking market access to the respect of the labor chapter included in the USMCA. The RRM was enforced by the Biden administration and thus the question arises as to how the Trump administration will enforce the USMCA and the RRM. Trump's public statements on the

USMCA focused almost exclusively on economic nationalism, repatriating manufacturing jobs, and correcting trade imbalances created by NAFTA, which he described as “the worst trade deal ever”.

35 Let’s recall that, if the RRM was ultimately included in the final agreement, it was added under pressure from Congressional Democrats and labor unions, particularly to secure the support of Nancy Pelosi and AFL-CIO during the ratification process (Polaski and al., 2022). During his first mandate, Trump’s administration’s acceptance of the labor provisions was primarily strategic, aimed at neutralizing opposition to the deal rather than advancing a labor rights agenda. As Bown and Claussen (2023) noted, while the RRM became a central tool for labor enforcement under the Biden administration, it was essentially a congressional and union-driven mechanism, folded into the USMCA in exchange for bipartisan legislative support.

36 While Trump signed the USMCA into law, the substantive implementation and activation of the RRM only began after his term, aligning more closely with the Biden administration’s worker-centered trade policy. There were positive political and diplomatic implications; notably with improved U.S.-Mexico labor cooperation through joint investigations. The United States. invested in labor capacity-building programs for labor inspectors, the modernization of Mexico’s labor courts and, efforts to strengthen workers’ ability to unionize and bargain collectively (DOL 2023).

37 Trump did not publicly champion the RRM, but since his re-election his administration initiated six new cases [16]. The RRM aligns somewhat with his "America First" agenda aimed at securing better trade terms for the United States and reducing trade deficits by keeping manufacturing jobs in the United States instead of allowing lower-wage competition from Mexico and holding Mexico accountable for labor rights violations (Lighthizer, 2023). While the Trump administration has initiated six new cases, it is also reviewing the overall structure and political utility of labor enforcement mechanisms within trade agreements. On April 16, 2025, the USTR invoked the RRM under the USMCA to address alleged labor rights violations at Modern Metal Alloys, an aluminum auto parts manufacturer in Querétaro[17]. During his Senate confirmation hearing the new USTR Greer described the labour chapter of the USMCA as the most ambitious labor chapter in any agreement and stated he would protect it and try to improve it.

38 The RRM could be impacted if business interests push back against strong labor regulations. A significant element is the contrast with the fact that, during Donald Trump’s first mandate, DOL prioritized deregulation, pro-business policies, and limiting the influence of labor unions, while still maintaining worker protections. DOL played a key role in shaping labor, wage, and workplace safety regulations under Trump's "America First" economic policy and limiting foreign labor. Donald Trump opposed increasing the federal minimum wage, supported "right-to-work" laws, weakening unions’ ability to collect dues, and made it easier for companies to classify workers as independent contractors. Indeed, labor policies during the Trump and Biden administrations were fundamentally different. Trump’s policies prioritized business-friendly deregulation, while Biden’s policies focus on worker protections, union support, and wage increases.

39 There seems to be a disconnect between the US international and domestic labor policies since US competitiveness and strategic interests are prioritized. If the trade labor linkage is important, it as a competitive policy rather than as a social policy. On his first day back in office, President Trump issued memorandum directing a

comprehensive review of US trade and economic policies mandating federal agencies to assess the nation's trade deficits, investigate unfair trade practices by other countries, and evaluate the impact of current trade policies on national security.

40 The future of RRM enforcement under the USMCA appears uncertain. The new trade agenda, focuses mainly on economic nationalism, deregulation, and corporate flexibility, deprioritizes labor diplomacy in favor of strategic protectionism. The DOL and USTR have scaled back funding and institutional emphasis on transnational labor rights monitoring (Polaski, 2025). Mexican officials and labor advocates have raised concerns that the United States is retreating from its enforcement commitments, even as RRM-related capacity-building efforts in Mexico face stagnation due to reduced U.S. engagement. These facts undermine the embedded "trade for" linkage that the RRM represents and could mark a return to more disembedded, market-driven trade logic, as described in this *Trade Linkages and Disconnects* special issue.

41 The 2026 review could determine if the USMCA-RRM's future. As the 2026 USMCA review approaches, the potential for labor provisions to be weakened, sidelined, or reframed as mere strategic leverage—rather than rights-based commitments—is high, signaling a possible transition from trade linkages to disconnects. Undoubtedly, Mexico and Canada will have to deal with a complex discuss on the future of the USMCA . It now appears this review could be nothing short of a renegotiation, thus increasing the uncertainties. (Wayne and al, 2024)

06. Conclusion

42 The introduction of this special issue warned that geoeconomic rivalry risks reinforcing trade disconnects regarding social and environmental linkages initially embedded in progressive trade agendas. Those linkages seem increasingly marginalized by security, protectionist, or nationalist imperatives as a paradigm shift. Non-market issues are under deregulatory constraints and oriented by strategic industrial and trade policies. While the USMCA RRM is one of the most innovative labor enforcement tools in the history of trade policy improving worker conditions in Mexico, it remains politically charged and structurally biased in favor of the trade interests of the United States. In the short term, the RRM's success depends on addressing transparency, fair enforcement, and administrative burdens and it is likely to serve as a model for future trade agreements, but without reforms, its credibility and sustainability may be challenged. This article's core message—that trade-labor linkages are fragile, contingent, and often subordinated to power politics—is especially relevant in an age where trade is being weaponized for strategic competition.

43 The RRM functions as a geopolitical lever to reduce Mexico's comparative labor advantage, reshoring manufacturing to the US and reinforcing American industrial competitiveness. The dual function promoting values while securing national interests is emblematic of a geoeconomic approach where trade instruments are increasingly deployed in service of broader political and strategic objectives. Labor linkages cannot be dissociated from the emerging logic of competitive economic statecraft, where trade policy becomes a terrain for advancing national security and hegemonic influence under the guise of social progress.

44 Is the RRM a model for future trade agreements that prioritize labor rights and corporate accountability, or just a one-time experimentation specific to North America (Fortnam, 2022)?[18]. The RRM is not just an enforcement tool but a strategic instrument in shaping US labor policy, economic competitiveness, and future trade negotiations. As countries like the United States increasingly prioritize national competitiveness and strategic autonomy, trade policy becomes a tool of unilateral leverage rather than cooperative norm-setting dedicated to progressive goals. This article's core message, which is that trade-labor linkages are fragile, contingent, and often subordinated to power politics, is relevant in an age where trade is being weaponized for strategic competition.

45 In the end, we agree with Gomez and Reis that "Multiscalar governance should therefore be understood not merely as a form of international intervention but as a process that strengthens workers' capacity to exercise meaningful influence in collective bargain" (Gomez and Reis, 2024, p. 57). The trade–labor linkage can be part of the governance transformations, but it is ultimately dependent on the strength of collective action. The imbalance in who can activate the RRM, who is investigated, and how complaints are processed reflects the institutional and discursive barriers to a fully democratizing trade governance. Progressive linkages like the RRM are certainly susceptible to the forms of exclusion this special issue flags as characteristic of disconnects.

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NOTES

1. The idea that the USMCA is "strategically oriented" is supported by Gagné and Rioux (2022). The USMCA, through mechanisms like the RRM, is portrayed as part of a broader effort to rebalance globalization in favor of democratic accountability and social justice, but geopolitical and competitive interests are central. The USMCA has a strategic trade orientation reflecting a new multipolar world economy and economic rivalry.

2. In Mexico, the agreement is called Tratado entre México, Estados Unidos y Canadá (T-MEC) while in Canada it is the Canada–United States–Mexico Agreement (CUSMA) or Accord Canada–États-Unis–Mexique (ACEUM).

3. This article will concentrate on the United States as Canada has not been very active in this respect.

4. The concept of "globalization with a human face" was a hallmark of President Clinton's trade policy discourse, particularly during the 1992 U.S. presidential campaign and the early years of his administration. See Clinton, Bill. 1993. "Remarks on Signing the North American Free Trade Agreement Implementation Act." *The American Presidency Project,* December 8. https://www.presidency.ucsb.edu/documents/remarks-signing-the-north-american-free-trade-agreement-implementation-act.

5. For information of reforms planned, see: United States Mexico Canada Agreement Chapter 23 Annex 23-A. https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf

6. Bown and Claussen recall: « Reaching agreement on the RRM required a perfect storm of political–economic events in the United States. These events included the election of Donald Trump in 2016; the unique way and position through which the Trump administration was able to renegotiate the NAFTA, including its timing with respect to the election calendars in both Mexico and the United States; and the way Democrats in the US Congress renegotiated the USMCA after Trump's deal arrived at their door. » (Bown and Claussen, 2024, p. 336).
7. Although Mexico has long maintained a formal legal framework that recognizes core labor rights, including freedom of association and collective bargaining, the enforcement was a problem (Marroquín Bitar, 2024). In response to both domestic pressure and external demands, Mexico enacted significant labor reforms in 2019 (Polaski et al., 2022).
8. For a discussion of the RRM and why it targets Mexico see Polaski and al. (2022) and Compa (2018).
9. Process of the RRM: A government or stakeholder (such as labor unions) can file a complaint against a specific facility suspected of violating workers' rights. During the initial review, the U.S. or Canadian government determines whether there is enough evidence to initiate a formal request for review. Mexican Government Response: The Mexican government investigates and attempts to resolve the issue. If violations persist, U.S. or Canadian officials may conduct an independent verification. If the problem is not resolved, enforcement actions such as tariffs, import bans, or other penalties may be imposed.
10. For a list of RRM cases, please visit the DOL's official page on USMCA Labor Rights Cases. Or https://ustr.gov/trade-topics/enforcement/dispute-settlement-proceedings/fta-dispute-settlement/usmca/chapter-31-annex-facility-specific-rapid-response-labor-mechanism. As one reviewer of this article pointed out, the most recent case (as of October 2025) is US vs Alimentos (https://ustr.gov/about/policy-offices/press-office/press-releases/2025/august/united-states-seeks-mexicos-review-alleged-denial-workers-rights-alimentos-grole-sa-de-cv)
11. The involvement of the DOL of the USTR, under Katherine Tai, directly filing a labor complaint under the USMCA's RRM marks a departure from past practice. Traditionally focused on trade interests, the USTR's active role in labor enforcement reflected a shift toward more socially embedded trade governance. This action signaled the emergence of transnational coalitions between state and civil society actors in the implementation of trade agreements. See: USTR (2021). *United States Requests Mexico Review of Worker Rights Denial at General Motors Facility*. Press release, May 12, 2021]. Available at: https://ustr.gov
12. In early 2022, SINTTIA (Sindicato Independiente Nacional de Trabajadoras y Trabajadores de la Industria Automotriz) secured better wages and working conditions.
13. The petition alleged that Grupo Mexico committed "denials of rights" by resuming operations at the mine despite an ongoing strike and by engaging in collective bargaining with a coalition of workers despite the fact that a union held the right to represent workers at the mine. On of the question pertained to the definition of a Covered Facility which involves "trade related operations".
14. Indeed, the USMCA-RRM have a limited impact on the informal economy as the RRM only applies to exporting firms, which employ about 14% of Mexico's workforce.
15. The General Motors Silao case resulted in U.S. intervention over union election irregularities in Mexico, but no equivalent enforcement exists for U.S. workers, despite cases of labor rights violations in U.S. factories. Under current rules, Mexican firms can be investigated and penalized immediately, while U.S. and Canadian companies are only subjected to scrutiny if they are already under investigation by their own national authorities.
16. From January to August 2025, there were several new cases. See: https://ustr.gov/about/policy-offices/press-office/press-releases/2025/august/united-states-seeks-mexicos-review-alleged-denial-workers-rights-alimentos-grole-sa-de-cv

17. The petition, submitted by the Mexican labor union Transformación Sindical, alleges that MMA failed to recognize the union's legitimacy, refused to sign a collective bargaining agreement, denied union access to the facility, retaliated against pro-union workers—including through dismissals—and promoted a company-aligned union. See:
https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/fta-dispute-settlement/usmca/chapter-31-annex-facility-specific-rapid-response-labor-mechanism

18. Fortnam (2022) argued that the United States planned to utilize the RRM "frequently," and suggested similar tools are likely to be incorporated into future US trade policies.

ABSTRACTS

Labor provisions in the USMCA, and more specifically its RRM, offer a good case study for this special issue. As a tool for labor rights enforcement, it also is a strategic instrument to realign production away from low-cost production areas. The RRM represents a rare instance of an embedded “trade for” linkage, wherein trade policy is explicitly used as a tool to enforce labor rights. It embodies the kind of linkage that the special issue describes as the strongest form of trade integration, both substantively and procedurally, that ties a trade to social and other non-commercial objectives. However, this article reveals the fragility of trade linkages in a volatile political and strategic context. The re-election of Donald Trump endangers the future of the RRM and the broader social dimension of the USMCA. Trump’s America First doctrine and its deregulatory economic agenda suggest a more disembedded and strategically oriented trade policy. This potential rollback echoes the concept of “trade disconnects,” in which integrated social concerns are de-linked or marginalized when they conflict with nationalist, security-based, or purely commercial imperatives. Yet, the RRM remains an important trade policy instrument and is used by the new administration as a strategic tool to block “social dumping” in North America. This article has four sections: 1) the trade-labor linkage in the literature; 2) the USMCA’s RRM and how it improved the NAFTA side-agreement; 3) the RRM cases and their impacts; and 4) the future of the RRM. As the USMCA approaches its 2026 review, it is crucial to assess the RRM's effectiveness and its future trajectory.

Les dispositions sur le travail de l’ACEUM (Accord Canada-États-Unis-Mexico), et plus précisément son mécanisme de réponse rapide (MRR), constituent une bonne étude de cas pour ce numéro spécial. En tant qu’outil pour l’application des droits des travailleurs, c’est aussi un instrument stratégique pour réaligner la production loin des zones de production à faible coût. Le MRR représente un rare exemple de lien « d’encastrement » (commerce et autres enjeux), où la politique commerciale est explicitement utilisée comme un outil pour faire respecter les droits des travailleurs ou d’autres enjeux non-commerciaux. Le MRR incarne le type d’encastrement social du commerce que le numéro spécial décrit comme la forme la plus forte d’intégration économique. Cependant, cet article révèle la fragilité de ce type de liens dans un contexte politique et stratégique volatil. La réélection de Donald Trump met en danger l’avenir de cette dimension sociale de l'ACEUM. La doctrine America First de Trump et son agenda économique de déréglementation suggèrent des politiques commerciales stratégiquement orientées. Ce possible recul fait écho au concept du numéro spécial de « déconnexions commerciales », dans lequel les préoccupations sociales intégrées sont déconnectées ou marginalisées lorsqu’elles entrent en conflit avec des impératifs nationalistes, sécuritaires ou purement commerciaux. Cependant, en ce moment, le MRR est toujours un important instrument de politique commerciale utilisé par la nouvelle administration pour contrer le dumping social en Amérique du Nord. La structure de cet article est organisée autour de quatre sections : 1) le lien entre le commerce et les questions relatives au travail dans la littérature ; 2) le MRR de l'ACEUM et comment il a amélioré l'accord parallèle à l'ALENA ; 3) les cas MRR et leurs impacts ; et 4) l'avenir des MRR. À de l'examen de l'ACEUM de 2026, il est crucial d'évaluer l'efficacité du MRR et sa trajectoire future.

INDEX

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Indigenous Participation: Canada's Trade for Reconciliation

Participation des peuples autochtones dans le commerce : le pari canadien pour la réconciliation

Natalia Serrano Burbano

1 In 2025, it is evident that we live in a deeply globalized world. Through trade exchanges and the liberalization of the movement of goods, services, and people, the global economy has become increasingly interdependent. This interdependence is often presented as an unquestionable pathway to stability and economic growth[1]. Yet, in practice, it produces structural asymmetries that benefit some while marginalizing others. Among those most negatively affected by the current global economic order are Indigenous peoples[2]. They face, on the one hand, a worsening of their structural exclusion, and on the other, persistent attempts to incorporate them into neocolonial economic mechanisms that are fundamentally incompatible with their realities, values, and worldviews[3].

2 One of the strategies adopted by international policymakers has been the introduction of new policies aimed at balancing trade liberalization with non-market considerations. These measures are presented as an attempt to address the gaps of the long-standing promise that market liberalization would bring prosperity and economic growth for all.

3 This vision of a more inclusive economic policy has found resonance at both the multilateral and regional levels. In fact, as early as the preamble of the Marrakesh Agreement establishing the World Trade Organization (WTO), member states recognized the objective of “raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand”[4] as well as the need to “protect and preserve the environment and enhance the means for doing so in a manner consistent with sustainable development”[5].

4 However, given the current paralysis and deadlock of multilateralism, regionalism has emerged as one of the most effective avenues for advancing more inclusive economic policies[6]. In this context, Canada has positioned itself as a global leader in promoting such initiatives.

5 Canada, under the leadership of Trudeau since 2015, has been at the forefront of promoting inclusive trade practices. Through its progressive agenda, Canada aims to democratize trade by pursuing a strategy that marries trade liberalization with social progress[7]. This initiative, known as "The Canadian Progressive Agenda", seeks to integrate provisions into Regional Trade Agreements that prioritize key areas such as workers' rights, environmental protection, minority inclusion, and the reinforcement of governments' regulatory authority in the public interest[8].

6 This initiative is a direct response to the growing contestation of economic globalization over the past few decades[9], driven by concerns that its benefits are not equitably distributed[10]. In light of these concerns, governments worldwide have been compelled to adapt their trade policies to address these challenges and ensure a more inclusive and respectful approach to trade, one that safeguards both the environment and workers' rights[11].

7 A central tenet of the progressive agenda is the inclusion of underrepresented groups, particularly Indigenous peoples. Historically marginalized in international trade dynamics, Indigenous communities have often been perceived as the "weakest link" in the context of economic globalization[12]. They have frequently been excluded from the benefits of international trade, while also facing violations of their rights, including those related to intellectual property and territorial sovereignty. In fact, Canadian trade policy for the protection of Indigenous peoples has been evolving in response to the growing challenges posed by economic globalization.

8 From a foreign policy perspective, Canada is actively working to ensure that Indigenous peoples are not left behind in the process of economic globalization[13]. By prioritizing their inclusion in trade negotiations and safeguarding their rights within trade agreements, Canada aims to address historical injustices and promote a more equitable distribution of the benefits of trade[14]. Through these efforts, Canada is striving to create a trade policy that not only fosters economic growth but also upholds the principles of social justice and respect for Indigenous rights.

9 The fact that Canada is actively advocating for the inclusion of Indigenous peoples in the negotiation and conclusion of trade agreements aligns with its broader domestic policy of reconciliation, while also serving to strengthen its foreign policy narrative as a progressive and inclusive actor. The nation's history with Indigenous peoples is complex, marked by colonial legacies that continue to shape its political, social, and economic landscape[15]. Recognizing the need to address historical injustices, Canada has embarked on a journey of internal reconciliation[16], marked by the recognition of Indigenous rights and constitutional evolution.

10 This article explores how Canada is extending its internal reconciliation efforts to its external trade agenda through the objectives of the Canadian progressive agenda. By prioritizing the inclusion of Indigenous peoples in trade negotiations, Canada aims to bridge the gaps created by historical injustices and promote a more equitable and respectful approach to international trade. This alignment reflects Canada's commitment to not only rectifying past wrongs but also fostering a future built on principles of justice, inclusivity, and mutual respect. This form of negotiation, including free trade agreements, responds to the new ways of creating trade links. The promotion of externalized internal values in trade negotiations gives these negotiations a role beyond classic trade openings.

11 First, we will examine the domestic reconciliation framework in Canada (1), which involves a long and complex process marked by constitutional protections, stolen land, and ongoing efforts to address the injustices of the past. Second, we will explore how this internal objective of reconciliation with Indigenous peoples is reflected in Canada's foreign policy (2). Finally, we will analyze the concrete outcomes of Canada's most recent free trade agreements (3).

01. Reconciliation and Constitutional Protection: Addressing Canada's Colonial Legacy

12 Although Canada is generally considered a peaceful, liberal democratic state that prides itself on its human rights record, interactions between the Canadian state and indigenous peoples reveal an oppressive system of colonial conquest[17]. The relationship between the Canadian state and Indigenous peoples of North America has been marked by a series of episodes since the clash of these two cultures[18].

13 Since 1534, when Jacques Cartier initiated the first of three expeditions to the Gulf of St. Lawrence, marking the inception of New France[19], interactions between European settlers and the indigenous inhabitants have been characterized by collaboration, conflict, and assimilation[20]. European colonization had devastating effects on Indigenous peoples' customs, leading to significant demographic declines due to diseases and constant warfare[21]. However, this encounter between two worlds also fostered alliances and cooperation, shaping the colonization process in North America and establishing a unique legal framework[22].

14 This legal framework was initially established for treaty negotiations between First Nations and the Crown through the Royal Proclamation of 1763[23]. This proclamation set forth specific provisions regarding the acquisition of Indigenous lands, serving as a mechanism for the extinguishment of Indigenous rights while recognizing the legal capacity of self-governing nations in property title transfers[24]. Additionally, Canada has regulated its relations with Indigenous peoples since 1876 through the Indian Act, which has governed various aspects of Indigenous life and relations with the Canadian government.

15 The Indian Act, which remains in effect today, serves as the primary legal framework governing nearly all aspects of Indigenous life in Canada[25]. It dictates access to property, determines who holds Indigenous status, outlines forms of governance, and shapes the education system. Despite its deeply entrenched colonialist nature, the Act continues to hold sway. However, its validity is increasingly challenged as it fails to align with present-day realities or meet the demands for self-determination voiced by Indigenous peoples[26].

16 In response to these challenges, there has been a gradual recognition of Indigenous rights at the constitutional level in Canada. Since the 1990s, this recognition has steadily expanded, reflecting a growing acknowledgment of Indigenous rights and self-determination.

17 Today, this evolving understanding of Indigenous rights is manifested in Canada's foreign trade policy, where the principles of inclusion and respect for Indigenous peoples are increasingly integrated.

18 In Canada, the rights of Indigenous peoples are constitutionally recognized. The Constitution Act of 1982, in its article 35, explicitly states that the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are recognized and affirmed. Additionally, Section 25 of the Canadian Charter of Rights and Freedoms serves as a safeguard for Aboriginal rights, ensuring they cannot be infringed upon by other rights guaranteed by the Charter. These provisions also confirm all the rights and liberties granted by the Royal Proclamation of 1763.

19 Article 35[27] of the Constitution Act of 1982 plays a crucial role in enshrining and reaffirming the rights of Indigenous peoples in Canada.

This article confirms existing rights:

> 35 (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

It defines the indigenous peoples of Canada.

> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

It recognizes territorial claims.

> (3) It is understood that the treaty rights referred to in paragraph (1) include existing rights arising from land claims agreements or those that may be so acquired.

20 **And guarantees equal rights for both sexes.**

> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

21 This article was created to reflect the public consensus that Indigenous people possess some inherent rights[28]. Article 35 has undergone extensive interpretation by the Supreme Court of Canada and stands as a cornerstone in the pursuit of reconciliation, as construed through jurisprudence, and the ancestral rights derived from it[29].

22 Indeed, the Canadian Supreme Court has embarked on interpreting Indigenous peoples' rights based on Article 35[30]. The Court's jurisprudence has evolved in response to Indigenous claims and demands, progressively recognizing their rights.

23 The first landmark case in which the Supreme Court acknowledged the existence of Indigenous ancestral rights was *Calder* (1973)[31]. This decision fundamentally changed the legal landscape in Canada by affirming that Indigenous land rights existed prior to colonization and did not depend on Crown recognition. As a result, it compelled the federal government to establish a modern treaty negotiation process and set the stage for further constitutional and judicial developments aimed at addressing historical injustices[32].

24 A pivotal moment in this evolution was the *Sparrow* decision (1990) [33]. This landmark ruling marked a significant turning point in the Supreme Court's jurisprudence[34]. By recognizing the constitutional supremacy of Aboriginal rights enshrined in Article 35 of the Constitution Act, the Court affirmed its role as a key arbiter in conflicts between the state and Indigenous peoples.

25 From this constitutional affirmation, a series of principles and legal doctrines gradually emerged, forming the foundation of the modern legal relationship between Indigenous peoples and the Crown. For example, *Delgamuukw v. British Columbia*[35] (1997) provided a detailed definition of Aboriginal title, recognizing it as a constitutionally protected right to land. *Haida Nation v. British Columbia*[36] (2004) further established the Crown's duty to consult Indigenous peoples when their rights might be affected. In *Taku River*[37]

(2004) and *Mikisew Cree First Nation*[38] (2005), the Court reinforced that this consultation must be meaningful, carried out in good faith, and grounded in the principle of the honour of the Crown.

26 The Supreme Court interprets the rights safeguarded by Article 35 as a means to advance reconciliation, underscoring its centrality in contemporary relations between the Crown and Indigenous peoples[39].

27 Thus, under the interpretation of Article 35, relations between nations must be contextualized within the broader framework of the Crown's obligations, which are bound by the principles of honor and reconciliation. Section 35 imposes both obligations and limitations on the government, requiring it to safeguard Aboriginal and treaty rights while seeking to reconcile Indigenous interests with those of society at large[40].

28 With constitutional recognition and a commitment to fostering improved relations between Indigenous peoples and the Canadian government, efforts toward reconciliation have been ongoing for many years[41]. This commitment has been particularly pronounced since the establishment of the Truth and Reconciliation Commission in 2008, which submitted its report in 2015.

29 The Truth and Reconciliation Commission was established to address a significant collective grievance among Indigenous elders and communities[42]. For years, Indigenous children had been systematically separated from their families as part of a strategy of assimilation into Western culture. The Commission's report[43] shed light on this dark period in Canadian history, providing a framework for reconciliation and healing[44]. Through the stories of suffering and assimilation experienced by Indigenous children in residential schools[45], the imperative for reconciliation between the two nations was underscored, emphasizing the urgent need for recognition of Indigenous rights within Canada[46].

30 Its report exposed the shocking reality experienced by Indigenous peoples in Canada. It documented with precision the family disruption, cultural, linguistic, and spiritual loss, and the deep intergenerational trauma caused by colonial state policies imposed on Indigenous communities across the territory now known as Canada[47]. Its final summary and 94 Calls to Action[48] represented an official acknowledgment of the historical harm inflicted upon these peoples and a commitment to institutional repair and transformation.

31 Reconciliation has since become indispensable for defining and shaping the relationship between the Canadian government and First Nations, Inuit, and Métis peoples[49].

32 Today, in the light of decolonization and the emergence of human rights, domination over the indigenous peoples has become, in principle, unacceptable and Canada seeks to treat them in a manner compatible with their status as peoples [50].

33 One of the key points of the Truth and Reconciliation Commission's Calls to Action was Call to Action No. 43, which urged the federal government to adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[51]. This declaration, adopted by the United Nations General Assembly (Resolution 61/295) on September 13, 2007, recognizes a wide range of individual and collective rights to which Indigenous peoples are entitled under international law. Although Canada initially opposed its adoption[52], it ultimately endorsed the declaration and incorporated

it into its domestic legal framework through the *United Nations Declaration on the Rights of Indigenous Peoples Act*[53], passed in June 2021.

34 The objective of reconciliation, which has been pursued domestically since the jurisprudential recognition of its constitutional importance and the consolidation of obligations regarding Indigenous peoples' rights within Canada's legal framework, is also reflected in the country's external action. In fact, trade negotiations, as a fundamental activity for a trading nation like Canada, have become an entry point for extending this dimension of reconciliation to the international arena[54].

02. A Reconciliation Objective Reflected in Canada's Trade Policy

35 According to Chrystia Freeland[55], Canada's progressive program aims to uphold social, environmental, and equality principles by embedding corresponding obligations into the agreements it negotiates. Through the incorporation of these progressive objectives into trade agreements, Canada seeks to foster more resilient and sustainable trade practices. These new negotiation paradigms are aligned with the international movements for the humanization of international trade[56]. The appearance of chapters or clauses outside the classic paradigms of international economic law is becoming more and more evident in the newly negotiated trade agreements.

36 In the context of Indigenous peoples, Canada views reconciliation as a guiding principle in advocating for the protection of Indigenous rights at the international economic level. The integration of Indigenous interests into Canada's trade negotiations is driven by multiple factors, including former Prime Minister Trudeau's progressive trade agenda and the overarching goal of reconciliation. This objective is further reinforced by the federal government's commitment to the Truth and Reconciliation Commission's Calls to Action and by the ratification and incorporation of UNDRIP into Canada's domestic legal framework.

37 Furthermore, Canada's endorsement of the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA) underscores its commitment to supporting Indigenous economic empowerment within the realm of international trade[57]. IPETCA, a cooperative arrangement involving four major economies, such as Canada, Australia, New Zealand, and Taiwan, acknowledges the importance of enhancing the capacity of Indigenous peoples and businesses to capitalize on opportunities arising from international trade and investment. By promoting inclusive approaches to trade and collaborating to address barriers faced by Indigenous businesses in international trade, IPETCA aims to strengthen Indigenous economic power and foster greater participation in the global economy.

38 This instrument makes significant reaffirmations, including Canada's commitment to respecting and implementing the 2007 United Nations Declaration on the Rights of Indigenous Peoples[58]. Moreover, it acknowledges the critical role of the environment in the economic, social, and cultural well-being of Indigenous peoples, safeguarding them under its trade clauses. Additionally, it explicitly recognizes the contribution of Indigenous peoples' customs and practices to environmental conservation. Following the line of several environmental agreements, such as the Paris Agreement and the Convention on Biological Diversity.

39 While this arrangement lacks binding legal force, its significance lies in its endorsement and implementation of the inclusive and participatory approach that Canada seeks to adopt in its international trade dealings with Indigenous peoples. By recognizing Indigenous rights and environmental considerations within its trade agreements, the current Canadian government demonstrates its commitment to fostering respectful and mutually beneficial relationships with Indigenous communities on the global stage[59].

40 This treaty acknowledges the positive impact that international trade can have on the economic development of exporting companies, including Indigenous enterprises. These businesses can contribute to profitability, competitiveness, productivity, and innovation within the country. However, it also recognizes that "Indigenous companies and workers are less represented than others in export-oriented sectors and generally earn lower wages"[60].

41 The primary objective of this arrangement is to bolster the economic power of Indigenous peoples on the international stage. It seeks to achieve this by advancing provisions related to Indigenous peoples in Canada's negotiations for free trade agreements, thereby acknowledging and reinforcing commitments made domestically at the international level[61].

42 In the global arena, Canada has championed reconciliation with Indigenous peoples across all its commitments. For example, in its report submitted to the United Nations for the national review on the political forum "Transforming Our World: The 2030 Agenda for Sustainable Development"[62], Canada reaffirms its constitutional and international commitment to incorporate Indigenous issues into its international relations. This commitment to sustainable development on the international stage is closely tied to the formulation of the progressive agenda, whose overarching goal is "building a world where everyone has a place, and no one is left behind"[63].

43 From this overarching objective, Canada aims to "better rebuild for everyone's benefit". Drawing upon diverse strengths and experiences, Canada seeks to establish robust policies aimed at eliminating the obstacles faced by Indigenous peoples[64]. Recognizing the challenges encountered by these communities, such as safe housing, access to decent work, and food security challenges, Canada is committed to addressing these issues and promoting the well-being of Indigenous peoples on a global scale.

44 All these efforts are rooted in the overarching objective of reconciliation, where it is recognized that decisions must be guided by the rights and commitments established through nation-to-nation agreements.

45 In the realm of commerce, Indigenous peoples can be viewed in two distinct roles: as active participants in the market and as vulnerable populations whose lands and cultural practices may be impacted by trade activities[65]. In fact, the voices of indigenous academics claim the insertion of indigenous groups as actors in the trade that existed before colonization, indigenous peoples do not seek inclusion but a recognition of their economic role, which has not ceased[66].

46 The Canadian government adopts a nuanced approach that acknowledges these dual perspectives when formulating its strategy to protect indigenous peoples' rights and interests[67]. Not without this being seen by some political spheres as the continuation of the reconciliation recital at the international level, without solving the internal

problems that exist between the relations between the indigenous peoples and the state government[68].

47 According to the government, this approach aims to "enhance the capacity of Indigenous peoples and businesses to seize opportunities presented by international trade and investment"[69]. To achieve this objective, the government incorporates reserves and exceptions into trade agreements to provide the necessary flexibility for Canada to uphold or implement measures relevant to indigenous peoples and businesses. Simultaneously, innovative provisions are introduced to expand Indigenous peoples' access to and engagement in trade and investment opportunities created by these agreements.

48 Moreover, an Indigenous Trade Working Group[70] has been established to facilitate dialogue between the government and Indigenous communities, particularly in the context of negotiations such as the Canada-United States-Mexico Agreement (CUSMA)[71]. This working group serves as a platform for exchanging ideas and collaborating on common solutions. As a result of this initiative, a booklet on trade and Indigenous peoples was developed, providing guidance and support for Indigenous communities navigating trade-related issues.

03. The Concrete Results of Reconciliation Reflected in Canadian New Generation Trade Agreements

49 Since 2015, championing the Progressive Agenda, Canada has concluded six Regional Trade Agreements[72] (RTAs) that are pivotal to Canadian trade policy and warrant closer examination.

50 The progressive agenda meant for Canada the positioning of a trade negotiation agenda open to the inclusion of Canadian priorities outside the logic of market opening. In many cases, these negotiations have served as international policy tools, creating links beyond trade liberalization and influencing priorities and social conditions in the signatory countries.

51 The first agreement, signed on October 30, 2016, between Canada and the European Union, is the Comprehensive Economic and Trade Agreement (CETA)[73]. As a mixed agreement, it requires ratification by both the EU and its member states. However, delays in ratification by several member states have prevented its full implementation. Consequently, CETA has been provisionally applied since September 21, 2017.

52 Another major agreement concluded under Canada’s Progressive Trade Agenda is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)[74]. Signed on March 8, 2018, it entered into force on December 30, 2018. This agreement involves eleven countries across the Pacific Rim and represents a significant expansion of Canada’s trade network in the Asia-Pacific region.

53 The Canada–United States–Mexico Agreement (CUSMA)[75] was signed on November 30, 2018, following the renegotiation of the North American Free Trade Agreement (NAFTA). It came into force on July 1, 2020, modernizing North American trade rules in key areas such as digital trade, labor, and environmental standards.

54 The modernized Canada–Chile Free Trade Agreement entered into force on February 5, 2019. In 2017, Canada and Chile signed agreements to update the CCFTA, aiming to

foster an open, inclusive, and rules-based trading environment. This modernization aligns with Canada's broader progressive trade policy objectives and its evolving approach to trade governance.

55 Finally, the Canada–Ukraine Free Trade Agreement (CUFTA)[76], which originally entered into force on August 1, 2017, was modernized in response to evolving geopolitical and economic contexts. Canada and Ukraine launched negotiations to update the agreement on January 27, 2022, and the modernized CUFTA entered into force on July 1, 2024, reflecting a broader commitment to deepening bilateral trade relations between the two countries.

56 All of these agreements incorporate provisions that reflect several of the objectives of Canada's progressive trade agenda[77]. For example, the Canada–Chile Free Trade Agreement includes a dedicated chapter on the relationship between trade and gender, making it one of the first Canadian trade agreements to explicitly address this dimension. Similar commitments can be found in several agreements linking trade with environmental protection, such as Chapter 24 of CUSMA, Chapter 24 of CETA, the Canada–Chile parallel environmental agreement, Chapter 20 of the CPTPP, and Chapter 13 of the Canada–Ukraine FTA. Provisions connecting trade and labor are also present in Chapter 19 of the CPTPP, Chapter 23 of both CETA and CUSMA, as well as in the Canada–Chile Parallel Agreement on Labour Cooperation and Chapter 14 of the Canada–Ukraine FTA. In addition, several agreements include provisions aimed at supporting the inclusion of small and medium-sized enterprises (SMEs), notably Chapter 25 of CETA and Chapter 24 of the CPTPP.

57 Regarding Indigenous peoples, four of these agreements[78] incorporate specific provisions related to the recognition and protection of Indigenous rights and interests, reflecting Canada's commitment to promoting their interests internationally and advancing reconciliation while ensuring their inclusion in the global trade arena[79]. Among these agreements, CUSMA and the Canada–Ukraine Free Trade Agreement stand out as having the most tangible results in this regard [80].

58 When it comes to CUSMA**,** the Canadian government celebrated the agreement as a major step forward in protecting Indigenous rights[81], the Canadian government hailed it as a victory for the protection of Indigenous rights, emphasizing its significance in promoting the prosperity and sustainable development of Indigenous peoples both in Canada and worldwide[82].

59 Throughout the negotiations of CUSMA, collaborative efforts were undertaken with Indigenous representatives. Although the initial negotiation proposal explicitly referenced the economic rights outlined in the United Nations Declaration on the Rights of Indigenous Peoples, this reference was ultimately not included in the final text of the agreement (a victory that was, however, achieved in the negotiations with Ukraine). The fact that Canada, a country that initially rejected the declaration upon its adoption[83], included it as an objective in its negotiations underscores its evolving stance toward the defense and acknowledgment of Indigenous populations and the recognition of diverse nations within its national sovereignty.

60 In terms of concrete outcomes, at CUSMA Indigenous peoples are acknowledged in the preamble of the agreement, alongside traditional exceptions and exclusions. One of Canada's major victories was the inclusion of a general exception affirming its ability to implement measures necessary to fulfill its obligations to Indigenous peoples, in

accordance with the interpretation of Article 35 of the 1982 Constitutional Act[84]. Furthermore, the environmental chapter recognizes the indispensable connection between environmental conservation and Indigenous knowledge[85]. Additionally, the inclusion of Indigenous enterprises and initiatives in trade is addressed through chapters on small and medium-sized enterprises and textiles and clothing, affirming the eligibility of Indigenous handmade textiles and clothing for duty-free treatment[86].

61 In the CUSMA negotiations, one of Canada's main objectives was the inclusion of an entire chapter dedicated to Indigenous peoples and their relationship to international trade. However, this objective was not achieved in the negotiations with the United States and Mexico. The same goal, however, was brought into the negotiations for the modernization of the Canada–Ukraine Free Trade Agreement, where the Canadian government succeeded in securing the inclusion of a chapter on Indigenous peoples, an unprecedented achievement in the history of Canada's trade negotiations.

62 Article 25 of the Canada–Ukraine FTA is devoted to the relationship between trade and Indigenous peoples. By identifying the Indigenous peoples present in each territory and acknowledging their distinct histories, the parties recognize the unique context in which national policies are formulated.

63 In the same vein, the parties acknowledge that the Indigenous peoples of both nations, First Nations, Inuit, and Métis on one side, and the Karaites, Crimean Tatars, and Krymchaks on the other, have engaged in trade since time immemorial. Trade is therefore recognized as a fundamental element of their history, identity, cultural heritage, and economic prosperity. On this basis, the parties commit to implementing policies that strengthen these communities' capacity to participate in economic activities and ensure their access to the benefits arising from the free trade agreement.

64 Building on the application and reaffirmation of the rights enshrined in UNDRIP, which is referenced directly for the first time in a free trade agreement, the parties recognize that Indigenous peoples have the right to maintain and develop their own economic systems and institutions. This commitment reflects Articles 3 and 20 of UNDRIP, which guarantee the right of Indigenous peoples to self-determination, including the ability to freely pursue their economic development.

65 Canada normally incorporates its constitutional obligations toward Indigenous peoples in the form of exceptions, either through a general exception, as in CUSMA, or through specific exceptions scattered throughout its trade agreements. However, in the Canada–Ukraine Free Trade Agreement, Article 25.2 clearly establishes that the parties "shall refrain from weakening or reducing the protections afforded to Indigenous peoples under their laws and regulations in order to encourage international trade or investment".

66 In this way, the parties address two complementary perspectives: protection and inclusion. Beyond safeguarding constitutional commitments and the state's regulatory authority, Article 25.4 commits the parties to cooperate with the objective of facilitating the participation of Indigenous peoples in international trade and investment. It also establishes a Committee on Trade and Indigenous Peoples with the purpose of inviting representatives of Indigenous institutions to take part in the implementation of the chapter.

67 The victories related to Indigenous peoples in the other two new-generation trade agreements negotiated by Canada since the introduction of its Progressive Trade

Agenda are more limited than those achieved in CUSMA and the Canada–Ukraine FTA, but they are not insignificant.

68 For example, regarding CETA, Canada was unable to secure a general exception, but provisions concerning indigenous were integrated throughout the agreement. In the trade and environment chapter, for instance, activities related to subsistence and the exploitation of natural resources by Indigenous peoples are excluded, recognizing their traditional processes protected by Canadian domestic jurisprudence[87]. Notably, Canada has reserved the right, through a reservation, to adopt and maintain measures denying EU investors or service providers rights or preferences granted to Indigenous peoples, thus safeguarding Indigenous interests from potentially harmful investments[88].

69 In the case of the CPTPP agreement, although a general exception akin to that achieved in the CUSMA was not secured, provisions pertaining to Indigenous peoples and their protection, as mentioned in CETA, are present. Additionally, the CPTPP uniquely recognizes and protects traditional knowledge within its chapter on intellectual property. Article 18.16 of the agreement specifically addresses cooperation on traditional knowledge[89], aiming to make it exportable while ensuring its protection on an international level.

70 Although Canada was not able to include a general exception on Indigenous peoples in the CPTPP, New Zealand successfully maintained its characteristic exception regarding the Treaty of Waitangi. Article 29.6 protects New Zealand's constitutional commitments toward the Māori people and the preferential treatment granted under the Treaty of Waitangi signed between the Crown and Māori nations.

71 In addition, the CPTPP, reflecting the diversity of its signatory parties, includes a general provision on traditional knowledge and traditional cultural expressions. Under this provision, the eleven member countries[90] commit to adopting measures to respect, preserve, and promote traditional knowledge and cultural expressions.

72 Unfortunately, none of the agreements include countermeasures in the event that commitments made to Indigenous peoples are not upheld. Article 25.7 of the Canada–Ukraine FTA explicitly excludes the application of the agreement's dispute settlement mechanism to the implementation of Chapter 25 on Indigenous peoples. This lack of enforceable mechanisms is consistent with the exclusion of most non-trade considerations, such as those relating to the environment or labor rights, from the dispute settlement systems[91]. However, the increasing presence and acknowledgment of Indigenous peoples in trade agreements are significant developments.

73 This development is a continuation of what is known as inclusive trade, pioneered by Canada during the implementation of its progressive agenda as foreign policy. However, challenges both internally and externally remain. Reconciliation with indigenous peoples at the domestic level is a challenge Canada is working on, but the actual impact of these macroeconomic level clauses on communities is uncertain.

74 However, the strategy of reconciliation extended to the international economic level holds promise for fostering conversations and inclusion of Indigenous populations in international trade in the future.

04. Conclusion

75 The results observed in Canada's international trade negotiations reflect the country's social and constitutional advancements. The relationship between the Canadian government and Indigenous peoples has been shaped by a colonial history that makes the reconciliation process complex, despite the formal recognition of the harm inflicted on these communities. While a progressive government has contributed to the growing inclusion of Indigenous considerations in international economic law, these developments stem not only from domestic legal progress but also from the increasing international recognition of Indigenous rights in public international law.

76 The outcomes reflected in free trade agreements negotiated since 2015 are tangible and diverse. They represent a diplomatic achievement for Canada's foreign policy, which seeks to position the country as a global leader in recognizing the rights and interests of Indigenous peoples at the international level. These developments mirror the long legal and political process through which Canada's domestic framework has progressively acknowledged the place and rights of Indigenous peoples.

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ABSTRACTS

The constitutional recognition of reconciliation has paved the way for the integration of the Crown’s domestic obligations toward Indigenous peoples into Canada’s international commitments. In this context, trade policy has emerged as an additional avenue through which the national objective of reconciliation may be advanced. This paper examines the incorporation of Indigenous peoples' rights and interests in six Canadian trade agreements concluded following the launch of Canada's Progressive Trade Agenda. It analyzes the normative innovations introduced and evaluates the extent to which these agreements move beyond symbolic recognition toward meaningful participation. While the degree of integration varies across agreements, the findings suggest that Canadian trade policy increasingly reflects an effort to align international economic governance with the domestic imperative of reconciliation.

La reconnaissance constitutionnelle de la réconciliation a ouvert la voie à l'intégration des obligations internes de la Couronne dans les engagements internationaux du Canada, transformant ainsi le commerce en un levier supplémentaire pour faire progresser l'objectif national de réconciliation avec les peuples autochtones. Cet article examine l'intégration des droits et des intérêts des peuples autochtones dans six accords commerciaux conclus à la suite du lancement de l'Agenda commercial progressiste du Canada. Il analyse les innovations normatives introduites et évalue dans quelle mesure ces accords dépassent la reconnaissance symbolique pour tendre vers une participation plus substantielle. Si les degrés d'intégration varient d'un accord à l'autre, les résultats suggèrent une volonté croissante d'aligner la gouvernance économique internationale du Canada sur l'impératif interne de réconciliation.

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Mots-clés: peuples autochtones, commerce international, réconciliation, accords de commerce de nouvelle génération, Canada
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Entretien

L’OMC appartient au futur

Entretien avec Gabrielle Marceau sur les nouveaux liens commerciaux

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L’entretien qui suit a été réalisé le 20 août 2025 par Richard Ouellet, Professeur et titulaire de la Chaire de recherche sur les nouveaux enjeux de la mondialisation économique (Faculté de droit, Université Laval).

Gabrielle Marceau a œuvré pendant plus de 30 ans, dans divers postes, comme juriste à l’Organisation mondiale du commerce. Elle est une chercheure de premier ordre sur le droit de l’OMC. Elle a été aux premières loges pour observer l’évolution des relations économiques et commerciales entre les États. Elle partage ici quelques constats sur les nouveaux liens entre les nations commerçantes et sur les nouveaux rôles de l'OMC dans la régie d'enjeux qui débordent la stricte dynamique commerciale.

1 **Interventions économiques :** Gabrielle, d'abord un immense merci pour ta généreuse contribution au colloque tenu à Paris à la Sorbonne en 2024. Et merci pour cette entrevue sur la redéfinition des liens commerciaux. Tu as travaillé pendant plus de 30 ans comme juriste, à différents postes de haut niveau à l'OMC. Tu as été aux premières loges pour constater l'évolution des relations commerciales et des liens économiques qui se tissent et se défont entre nations commerçantes. À ton avis, en quoi consiste cette redéfinition des liens entre les nations commerçantes et qu'est-ce qui a déclenché cette redéfinition ?

Gabrielle Marceau : Je dirais que depuis la pandémie, notamment, nous avons pris la mesure de l'importance du commerce international et de tout ce qui est transfrontière. La pandémie a mis en lumière que non seulement les vaccins, mais toutes leurs composantes et de nombreux produits médicaux venaient de multiples endroits dans le monde. Il faut se rappeler qu'au début de la pandémie, quand le Kazakhstan a imposé les premières restrictions à l'exportation de ses produits agricoles, plusieurs pays ont craint les effets des fermetures de frontières et des difficultés d'accès à une nourriture suffisante. Ces pays sont intervenus d'abord auprès de l'Organisation mondiale de la santé (OMS) et de la *Food and Agriculture Organization* (FAO). L'OMS s'est montrée sensible aux inquiétudes de ces pays mais il était clair que l'OMC est l'organisation qui voit au premier chef à la circulation des produits. Les vrais experts sur les enjeux matériels liés aux frontières sont à l'OMC. Et c'est à partir de ce moment que l'OMC a joué un rôle essentiel dans la gestion de la pandémie. Non pas à cause de son expertise en matière de santé, mais grâce à son expertise sur la libre circulation aux frontières. On a alors vu les réunions se multiplier à l'OMC. L'OMC a partagé son expertise, ses bonnes pratiques et ses données sur la notification des mesures ayant un effet sur la circulation des marchandises. On a créé un système de gestion et de publication de ces notifications. On a entre autres consacré une page WEB sur ces notifications qui s'est avérée très utile pour diffuser l'information. Est-ce que tous les Membres de l'OMC qui adoptaient des mesures de restriction au commerce agricole ou au commerce d'équipements médicaux les notifiaient à l'OMC? Peut-être pas. Mais une chose est sûre, l'OMC est devenue à ce moment un acteur important de la lutte mondiale face à un problème de santé publique. L'OMC a intimement lié son mandat de favoriser le commerce à un enjeu important qui, au départ, n'était pas commercial. C'est un peu ça, les nouvelles fonctions de l'OMC et la redéfinition des liens commerciaux. Finalement, presque tout est question de commerce parce qu'aujourd'hui presque tout est transfrontière.

Mais je voudrais être à la fois claire et nuancée dans mes propos sur la crise sanitaire et la lutte à la pandémie. Les grands défenseurs contre la COVID-19 ont été les médecins, les infirmières et tout le personnel des divers systèmes de santé à travers le monde. Dans certains pays, ces personnes ont dû soigner en attendant que n'arrivent les vaccins ou les équipements médicaux essentiels provenant d'ailleurs. Ce que je dis, c'est que l'OMC a contribué plus qu'on ne le croit à la lutte contre la pandémie. Pour ajouter un exemple et montrer que le rôle de l'OMC évolue, je rappelle que l'OMC a créé pendant la pandémie un système de traçabilité des vaccins qui permettait de connaître les quantités de vaccins disponibles dans chaque pays et la circulation des vaccins d'un pays vers un autre.

Et l'évolution du rôle de l'OMC en matière de santé se constate aussi en matière environnementale et climatique. À son arrivée en poste, la Directrice générale de l'OMC, Mme Ngozi Okonjo Iweala, a insisté sur l'idée que le commerce ne saurait se faire sans tenir compte de ses impacts climatiques. Mais, on le sait, tous les pays ne s'entendent pas à l'égard de la lutte aux changements climatiques. Alors, qu'ont fait les pays qui voulaient agir sur leur territoire et qui ne voulaient pas que la concurrence des produits étrangers nuise à leurs mesures de lutte aux changements climatiques? Ils ont instauré des taxes et des mesures d'ajustement aux frontières. Là encore, les enjeux environnementaux sont devenus des enjeux frontaliers et sont entrés de plein fouet dans la compétence de l'OMC. Des sujets comme le climat et la protection de l'environnement sont des sujets relevant de l'OMC à cause de leur dimension transfrontalière. Et cette dimension transfrontalière ne risque pas de disparaître. Tant que le droit international s'appliquera entre des pays balisés par des frontières, ces pays pourront contrôler ce qui peut entrer sur leur territoire et dire à quelles conditions. On continuera donc de parler de barrières tarifaires ou non-tarifaires et ces barrières nous ramènent inévitablement à l'OMC, le forum où l'on traite de droits de douane et de restrictions à la libre-circulation.

Est-ce que le rôle de l'OMC a évolué ? Oui, il a évolué et il continue d'évoluer. Et pour revenir à la question initiale, le rôle de l'OMC évolue parce que les liens entre les nations commerçantes évoluent. Mais ironiquement, depuis l'arrivée de l'administration présidentielle américaine actuelle, c'est l'enjeu le plus traditionnel du droit international économique qui est partout dans l'actualité : les droits de douane. Et sur les droits de douane, le rôle de l'OMC est toujours le même.

Je dois dire que quand je lis les informations aujourd'hui, j'ai parfois un petit sourire. Depuis que j'enseigne le droit international économique, je commence toujours le trimestre par un cours sur les droits de douane. Pour moi, c'est la base. Souvent, j'ai eu droit à des remarques d'éminents collègues - parfois bien plus célèbres et parfois plus expérimentés que moi – qui se moquaient gentiment de moi et me disaient qu'il n'est plus nécessaire d'enseigner les règles et disciplines relatives aux droits de douane. Ils disaient que cette question est du passé et qu'il faut parler du commerce électronique et des autres questions de l'heure. Aujourd'hui, l'actualité me donne raison. Au plan commercial, les droits de douane sont devenus l'outil privilégié avec lequel le président Trump s'en prend aux autres pays. Revenir à la question des droits de douane est plus nécessaire que jamais. Or, les droits de douane s'appliquent à la frontière. Tant que le droit international tournera autour de la question de savoir ce qu'on peut faire ou non à la frontière, l'OMC sera au cœur des débats.

Les raisons pour lesquelles on prend des mesures à la frontière changent mais l'enjeu de la circulation à la frontière demeure central. Alors oui, les liens commerciaux changent, les intérêts et les valeurs changent. Mais les questions fondamentales restent les mêmes.

IE : J'aurais une question complémentaire à la première. À la fin des années 1990, quand j'ai commencé à étudier le droit international économique, on disait toujours qu'il fallait être prudent, qu'il ne fallait pas que l'OMC se mêle de tous les enjeux qui ne sont pas commerciaux et qu'elle devienne l'organisation mondiale de tout. À l'époque, il était de bon ton de dire qu'il ne faut pas abuser de l'efficacité du mécanisme de règlement des différends de l’OMC et éviter que tous les litiges qui soulèvent indirectement un enjeu commercial ne se retrouvent devant l’Organe de règlement des différends de l’OMC. On disait qu’il faut mettre un frein à l’élargissement des questions que touche l’OMC. À ton avis, ce frein à l’élargissement des compétences de l’OMC, faut-il l’actionner plus ou moins fort aujourd’hui ?

Gabrielle Marceau : Je pense qu'on n'a pas le choix. La mondialisation va se transformer mais ne s’arrêtera pas et la digitalisation qui s’amplifie ne nous donne pas le choix. Chaque jour, tout est plus transfrontière et tous les enjeux sont de plus en plus interconnectés. Au-delà de son rôle lié au règlement des différends, l’OMC est un vaste forum quasi-universel où les Membres peuvent partager leurs vues sur les grands problèmes commerciaux internationaux et sur tout ce qui affecte le libre commerce. Très rares sont les organisations qui offrent un tel espace de dialogue ouvert. Il est vrai qu’on ne peut peut-être plus parler de gouvernance mondiale aujourd’hui mais les pays doivent pouvoir échanger sur ce qui les unit et sur ce qui les divise. Et l’OMC sert notamment à cela. Quand un bien ou un service traverse une frontière, l’OMC est compétente. Cette compétence est parfois en concurrence avec celle d’une autre organisation si le commerce soulève des enjeux sanitaires ou environnementaux. Alors, que ce soit un problème d'environnement ou de santé, il y a des organisations qui vont s'occuper du problème comme tel. Mais si ce problème implique un pays qui ne veut pas d’une marchandise au motif qu’elle est dangereuse pour la santé ou pour l'environnement, le débat est aussi commercial et relève de l’OMC. Et cette expansion du rôle me semble inévitable et nécessaire. Alors ça, je ne pense pas qu'on puisse le changer. Le besoin de discuter de la façon de concilier le commerce, la santé, l’environnement et d’autres enjeux est de plus en plus vif et de plus en plus présent à l’OMC. On aura toujours besoin d’un lieu où peuvent être entendus les arguments d’un pays qui veut restreindre ou interdire la production ou la vente d’un produit ou d’un service. Quand de tels arguments sont soulevés, où et comment peut-on en débattre? Sur une base bilatérale, sur un plan régional, dans un forum multilatéral à vocation universelle? Le rôle de l’OMC est, entre autres, de permettre la discussion autour de ces enjeux transfrontières. Je crois que l’on n’a pas le choix d’adhérer à une conception large de ce qu’est le commerce.

Quand je repense à la pandémie, il me vient un autre exemple de ce à quoi peut servir l’OMC dans le contexte des nouveaux liens commerciaux. À Genève, plus ou moins 50% des infirmières sont françaises et passent la frontière chaque jour. Pendant plusieurs semaines au début de la pandémie, il était interdit aux personnes de franchir la frontière par la voie terrestre. Les infirmières passaient tout de même la frontière et on les laissait passer. Pour régulariser cette situation, l'Organisation mondiale des douanes à Bruxelles et l'OMC ont conçu une *Green Line*, un corridor vert. Est-ce qu’il s’agit ici de commerce? Je réponds oui. En un sens, c’est du commerce de services médicaux. Et le mode de fourniture consistait à laisser les fournisseurs de service, les infirmières, passer la frontière. Et où a-t-on discuté ces enjeux? À l’Organisation mondiale des douanes et à l’OMC. On voit que ma conception large du commerce - qui englobe toute la régie de ce que peuvent ou non faire les pays à leurs frontières- est celle qui prévaut aujourd’hui dans la pratique. Le rôle de l'OMC ne peut donc qu'augmenter et s’élargir.

IE : Est-ce que nous allons vers une démondialisation ?

Gabrielle Marceau : Non. Je suis sûre que non. Apparemment, l'administration américaine veut isoler son économie, se soustraire à toute dépendance, à toute interdépendance. L'administration américaine veut prouver que les États-Unis et l'économie américaine n'ont besoin de personne d'autre. Peut-être que d'autres pays tenteront de faire la même chose. Mais pour moi, il est clair que la mondialisation ne s'arrêtera pas. L'avenir est notamment dans le numérique, le commerce électronique. On n'arrêtera pas l'évolution du numérique et le numérique est une forte manifestation de la mondialisation. Il n'est pas possible de faire reculer la mondialisation. Tout ce qu'on peut faire et tout ce qu'on doit faire, c'est la réguler et aider les plus faibles à s'en sortir. Arrêter la mondialisation, je n'y crois pas. Accepter des baisses de niveau de vie? Renoncer à tout ce qu'apportent les échanges technologiques? Retourner à des agricultures nationales d'auto-suffisance? Ce n'est pas envisageable.

IE : Je suis d'accord avec toi. Nous n'avons pas le choix entre la mondialisation et la démondialisation. Nous avons le choix entre la mondialisation du laissez-faire et une mondialisation régulée tant bien que mal. Selon toi, quelle place peuvent jouer les accords commerciaux régionaux dans la mondialisation ? Est-ce qu'on peut se passer de l'OMC et multiplier les accords commerciaux régionaux comme le craignait Jagdish Bhagwati ? Est-ce que les accords commerciaux régionaux sont la solution, une solution partielle ou pas du tout une solution à la crise du commerce mondial que nous traversons ?

Gabrielle Marceau : Les accords régionaux ne peuvent être qu'une solution partielle. Observons les chaînes de valeur. Un pays peut assurément s'approvisionner dans sa région et auprès d'un petit groupe de partenaires. Mais une région peut très difficilement se refermer sur elle-même. Pensons à l'Europe qui est un continent riche mais qui est dépendante de l'extérieur pour les matières premières, pour l'énergie. Le régionalisme économique a ses bénéfices mais il ne peut être qu'une solution partielle, même pour les régions riches. Les accords commerciaux régionaux ont toujours existé. En 1947, les négociateurs du GATT ont tout de suite eu le souci de concilier le régionalisme avec le système multilatéral qu'on mettait en place. On a inscrit cette conciliation à l'article XXIV et on a fixé les conditions de compatibilité du régionalisme avec le système GATT. À l'époque, le concept d'union douanière était déjà un concept économique bien connu. On l'a inséré à l'article XXIV. Mais on oublie souvent que ce sont les négociateurs de l'article XXIV du GATT qui ont inventé le concept de zone de libre-échange, cette forme de régionalisme économique moins intégrée. J'aime bien voir les relations économiques et commerciales comme des relations humaines. Certaines relations sont des unions fortes, comme dans un couple. Et d'autres relations sont moins intenses comme dans une famille ou dans une famille élargie. Enfin, d'autres relations sont moins exigeantes et basées sur autre chose, comme les relations amicales. Les formes d'intégration économique répondent un peu à la même logique. Quelle qu'en soit la forme, tout le monde a de multiples relations humaines. Il en va de même des relations économiques et commerciales entre pays. C'est ce qui me fait dire qu'on n'arrêtera pas la mondialisation.

IE : Un des changements les plus notables dans les liens commerciaux qui se tissent aujourd'hui est le rapport entre commerce et sécurité. L'administration américaine a proposé au Président Zelensky un accord de paix qui a toutes les allures d'un accord d'investissement dans le secteur minier. Pareil avec la République démocratique du Congo où la protection militaire contre les groupes armés de l'Ouest du pays est liée à l'accès aux minéraux critiques. Avec le Canada, le Président Trump a évoqué la possibilité de lier la révision de l'ACÉUM à un accord sur le *Golden Dome*. Plus largement, on voit bien que la politique tarifaire de Trump est fondée en large partie sur l'argument de la sécurité nationale. À la lumière de ces exemples, que constates-tu quant au lien entre commerce et sécurité ?

Gabrielle Marceau : Tu as raison, ce lien est complètement changé. La jurisprudence traditionnelle du GATT de l'OMC a toujours pu considérer que l'aspect économique n'était pas une question de sécurité. La coercition économique était généralement condamnée. Il y a même eu un rapport de Groupe spécial dans une affaire impliquant Hong Kong, la Chine et les États-Unis, il y a plusieurs années, qui abordait la question de la sécurité et où il était dit que tant qu'il y a un peu de commerce entre deux pays, on ne saurait invoquer l'urgence. Je dois dire que j'ai toujours pensé que ce rapport était aberrant. Je suis d'avis que l'exception de sécurité a été conçue avant tout pour être utilisée avant qu'on en arrive au conflit armé. Dans certains cas, le recours à l'exception de sécurité économique peut même servir à éviter un conflit armé. Ce qui est très ironique aujourd'hui, c'est que les États-Unis invoquent l'exception de sécurité pour amorcer des guerres commerciales, pour attiser les tensions. Les États-Unis se servent de l'exception comme d'un outil de protectionnisme.

J'ai mené une petite recherche il y a quelques mois, Récemment, un très grand nombre de gouvernements, partout dans le monde, ont créé des ministères ou des *Departments* consacrés à la sécurité économique. C'est vrai en Europe, au Japon, en Australie... Commerce et sécurité sont maintenant très proches, très interreliés. C'est la nouvelle réalité, notamment pour la cybercriminalité. Tout le monde veut des minéraux critiques pour faire des appareils électroniques et des véhicules électriques. Or, des minéraux critiques, il n'y en a peut-être pas assez pour tout le monde. Le commerce et les tensions géostratégiques vont désormais ensemble. Maintenant, le lien que fait l'administration américaine entre commerce et sécurité et que tu évoquais dans ta question est-il nouveau? Est-il souhaitable? Il n'est certainement pas nouveau. Je ne sais pas s'il est inévitable. Je sais qu'on a longtemps voulu que le commerce soit un facteur de paix, que les enjeux de sécurité ne guident pas le commerce. Ce que je constate aujourd'hui, c'est que le lien entre commerce et sécurité a changé et que ce nouveau lien est très fort.

IE : Quand on a conçu le libre-échange de l'Après-Guerre, autant Cordell Hull avec le GATT que Schumann et Monet avec l'intégration européenne concevaient le commerce comme un instrument de paix. Aujourd'hui, le commerce est tout le contraire. On en a fait un bâton voire un instrument de sanction.

Gabrielle Marceau : C'est vrai. Le commerce doit d'abord être vu comme un facteur de paix. En fait, il ne faut pas se tromper. Il ne faut pas pour autant affirmer que si deux pays font du commerce entre eux, il n'y aura pas de guerre. Ce qui est vrai, c'est qu'il y a beaucoup moins de risques de conflit armé. Aujourd'hui, les choses sont moins claires. Bien sûr, deux pays qui font du commerce sont liés, sont interdépendants. Mais chaque pays craint aujourd'hui d'être trop dépendant d'un autre. On le voit bien pour le Canada dont le marché est profondément lié au marché américain mais qui cherche maintenant à réduire sa dépendance à l'économie américaine.

IE : Nous sommes tous les deux Canadiens. Nous le voyons. Le lien de confiance entre le Canada et les États-Unis est brisé.

Gabrielle Marceau : Oui, et j'ai l'impression qu'il est brisé pour longtemps. Mais le Canada est dans une position difficile. Si les choses tournent mal avec les États-Unis, je ne suis pas sûre que les Européens vont s'empresser de traverser l'Atlantique pour venir à notre rescousse, sur le plan économique ou sur d'autres plans…

IE : Pour revenir aux nouveaux liens commerciaux, es-tu d'accord avec ce qu'on lit parfois dans la littérature savante du moment? Quant à la conciliation entre le libre commerce et les autres valeurs, on serait passé de l'époque des « *trade and…* » à l'époque des « *trade for…* » ?

Gabrielle Marceau : Si l'expression « *trade for* » veut dire qu'on se sert du commerce comme d'un outil pour atteindre des objectifs non-commerciaux, je suis d'accord. Personnellement, l'expression que j'ai utilisée dans mes conférences récentes est différente. J'aime à dire qu'on est passé du « *trade and…* » au « *…and trade* » parce que tout est associé au commerce. On fait depuis longtemps le lien entre le commerce et la santé ou l'environnement. Maintenant, tout est commercial, tout affecte le commerce et tout est affecté par le commerce. Les taux de change, le numérique, l'eau… On se sert du commerce pour mieux répartir l'eau, les vaccins, pour favoriser le respect des droits de la personne… Si c'est ce que veut dire « *trade for* », je suis tout à fait d'accord. Cela rejoint ce que je disais tout à l'heure à propos des nouveaux rôles de l'OMC.

J'y reviens, tout passe par les frontières. Et ce qui traverse une frontière devient potentiellement sujet de débat à l'OMC. À l'OMC, on pourrait parler de tout. Mais l'OMC n'a pas d'expertise sur tout. Et parfois l'OMC est utilisée d'une drôle de façon par ses Membres.

Voici un exemple éloquent de que je veux dire. Toi et moi concevons que les enjeux de commerce électronique et surtout d'intelligence artificielle devraient au premier chef relever du comité des services de l'OMC ou être discutés à la Commission des Nations Unies pour le droit du commerce international (CNUDCI). Pourtant, il y a quelques années, l'Union européenne a commencé à notifier toutes ses lois et ses règlements relatifs au commerce électronique et à l'intelligence artificielle au Comité sur les obstacles techniques au commerce (Comité OTC). L'argument européen voulait que les développements dans le secteur du numérique allaient affecter les procédés et méthodes de production (PMP) des marchandises. Or, cet enjeu des PMP a toujours relevé du Comité OTC. Les autres Membres de l'OMC ont alors suivi l'Union européenne et ont notifié leurs mesures relatives au numérique au Comité OTC de l'OMC. L'OMC devient par la force des choses le forum où l'on traite d'enjeux qui ne tombent pas forcément dans ses champs d'expertise. Mais elle embrasse ces nouveaux thèmes parce que le commerce est un outil pour faire de tout.

C'est ce que j'avance dans mon livre récent sur l'évolution des mandats et de l'action des organisations intergouvernementales[1]. Le monde change. Les liens commerciaux changent. Les organisations internationales changent. Dans l'histoire du monde, le commerce ne s'est jamais arrêté. Il a toujours évolué. Il en va forcément de même des liens commerciaux.

NOTES

1. Gabrielle Marceau et Henner Gött (dir.), *International Organization Initiatives: How and Why Organizations Adapt and Change*, Oxford Academic, New York, NY, 2025.