

# Challenges Between the Green Trade Barriers and the WTO Treaties: Restrictions Faced by Developing Countries when Promoting Environment Friendly Products and the Way to Slove it

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**Abstract.** In the context of deepening international trade and economic growth, environmental issues have become increasingly prominent, leading to the emergence of Green Trade Barriers as a potential obstacle to trade relations. This paper examines the issues surrounding environmental requirements in international trade, particularly the emergence of Green Trade Barriers. It highlights the legislative inequalities and implementation challenges faced by different countries in meeting these requirements. The ambiguity in environmental regulations creates opportunities for developed countries to establish trade barriers while posing difficulties for developing nations to comply economically and technologically. The author proposes reevaluating and enhancing mutual assistance measures to achieve the goal of environmental protection in international trade law.

**Keywords:** International trade law, Green Trade Barriers, developing countries, sustainable development, environmental protection.

## 1. Introduction

After the conclusion of the Uruguay Round, traditional methods such as tariffs and non-tariff barriers have become less viable options for restricting imports. As a result, the establishment of new measures to protect domestic industries of commodity importers has become inevitable [1]. With the continuous furthering of the environmental friendly awareness, recently, Green Trade Barriers have emerged as increasingly controversial and prevalent in the global trade markets, although their implementation may not be equitable for all World Trade Organization (WTO) members. These barriers often serve as pretexts to justify protectionism and restrict free trade, regardless of their original intention. In this word, they employ the principle of legal equality to conceal legal inequality. Through the influence of the world trade law system, some members have been deprived the authority to exploit the nature resource in their countries.

From one hand, Green Trade Barriers limit the development of the developing countries. For example, they impose discriminatory requirements such as increased packaging standards, regulations on raw material sourcing, and specific fishing methods. These demands often result in inequalities since they are accompanied by higher costs and advanced technical requirements. Also, developed countries assign additional environmental obligations to developing countries, such as preserving primary forests.

On the other hand, Green Trade Barriers render developing countries more passive in the face of influential developed nations. As the latter possess greater influence in trade markets and legislation, less influential countries are compelled to adhere to treaties, which masks an underlying inequality. Consequently, importers face compliance measures that act as barriers to trade and increase costs. In this scenario, discerning consumers actively seek products produced that adhere to high ethical, environmental, and human health standards, deriving intrinsic satisfaction from their choices. Compliance measures inevitably impose costs on importers, serving as trade barriers in the process [2].

Indeed, some past cases have shown that the Green Trade Barriers are tending to protect the global environment and ecological environment to some extent., such as the Tuna Case. With the growing

global awareness of climate safety and environmental concerns, the existence of the Green Trade Barriers is integral, which can emphasize and promote every country to pay more attention to the environmental protection works and measures.

However, Green Trade Barriers also have undeniable negative effects. For instance, setting different levels of requirements to domestic and foreign goods violates the Most-favored-nation Treatment Principle and the National Treatment Principle. In this word, balancing the Green Trade Barriers and the international trade rules is exactly crucial, because both material equality of existing rules framework and development prospects of the developing countries are mentioned under this theme. This problem affects all members of the World Trade Organization and necessitates comprehensive analysis and in-depth study. In light of these considerations, this paper aims to examine the challenges posed by Green Trade Barriers on developing countries and explore potential strategies to promote a harmonious coexistence between environmental protection and international trade.

## **2. Overview of Green Trade Barriers and WTO Rules**

### **2.1. Definition of Green Trade Barriers**

The definition of Green Trade Barriers encompasses their underlying purpose, observed phenomenon, and the negative effects they generate. Green Trade Barriers are essentially a principle intended to safeguard natural resources and the ecological environment. However, they are frequently exploited as a means to protect domestic industries. This exploitation transforms Green Trade Barriers into a novel type of non-tariff barrier, imposing restrictions on international trade. Unfortunately, in certain instances, these barriers are also utilized as a pretext for certain countries to interfere in the internal affairs of others. Such misuse of Green Trade Barriers undermines their original intent and contributes to the complexities surrounding their implementation and evaluation.

### **2.2. Main Sources of Green Trade Barriers**

The main sources of the Green Trade Barriers are the treaties and the regulations established by some international organizations, like the European Union.

One of the primary legal sources is Article XX of the GATT, known as General Exceptions. It permits contracting parties to adopt or enforce measures necessary for the protection of human, animal, or plant life or health, as well as the conservation of exhaustible natural resources, provided these measures are not applied in a manner that discriminates between countries or constitutes a disguised restriction on international trade.

Also, in the preamble of Agreement on Technical Barriers to Trade (TBT), which can be treated as the principle of it, says that every country should be allowed to take measures necessary and appropriate to make sure the quality of its exports, or at the aim of protecting human, animal or plant life or health, of the environment. These measures should not be arbitrary or impose unjustifiable discrimination when facing with countries have the same conditions or a disguised restriction on international trade.

And for the regulations, for example, as the commission staff working document executive summary of the fitness check, made by the European Commission 17.11.2021 shows, the EU Timber Regulation committed to halting illegal logging globally and keeping illegally harvested timber and wood-based products out of the EU market.

### **2.3. Trade Barriers and Challenges Faced by Developing Countries in Green Trade**

#### **2.3.1 Increased export costs and reduced international competitiveness of the goods[3]**

The demanding nature of green trade, which requires higher levels of technology in areas such as packaging, transformation, and storage, poses challenges for developing countries. In contrast, developed countries, benefiting from their advanced agricultural and industrial process, often face

fewer obstacles as the standards align with their existing capabilities. This discrepancy in technological readiness places developing countries at a disadvantage, particularly those reliant on scale and lower prices to compete in international markets. Consequently, the increased costs associated with meeting green trade requirements impede their international competitiveness, reinforcing market entry barriers imposed by developed countries and limiting the benefits that developing countries can derive from the global trading system.

### **2.3.2 Restriction of a sovereign state's right to exploit natural resources within its borders**

Developing countries mainly rely on exporting natural resources to generate foreign exchange. However, the demands of the green trade significantly restrict their authority to fully exploit their domestic natural resources. In the pursuit of environmental protection, developing countries are faced with additional responsibilities and limitations, as they must ensure that their production processes align with international standards. This can be perceived as a pretext to interfere in the internal affairs of others. Given the larger areas of primary forest and grassland found in developing countries compared to developed counterparts, the unequal distribution of environmental responsibilities places developing countries in a challenging position. It hinders their ability to fully utilize their natural resources for economic development, perpetuating material inequality in the global trade landscape.

## **3. Challenges of Green Trade Barriers and Constraints of WTO Rules**

### **3.1. Complexity of Green Standards and Certification Systems**

#### **3.1.1 Differences in positions between legislators and law-abiding countries**

From the foregoing discussions, it become apparent that although the legislators and the law-abiding countries seems to belong to the same range, the impact of the Green Trade Barriers on them is surely different or even unequal. Green Trade Barriers mainly limit the trade about natural resource and ecological environment.

Typically, the developing countries have more forest areas, which leads to less arable land areas, but the existence of the procedure to exploiting them legitimately is indispensable. This is because that even if these developing countries governments chose to cut down these trees in order to gain more arable land areas, the agricultural products produced there still cannot be traded in the international market, because the decline of the forests do harm to the global environment and lack of permission. Compared with developing countries, those developed are more urbanized and with higher technological level. They suffer a lower cost of complying the requirement of the Green Trade Barriers and a smaller natural resources, as the developed countries are more likely to be a resource importing countries. In this word, the legal equality does not actually bring about material equality but rather an inequality masked by legal framework, which forces developing countries to comply with the barriers and makes it difficult to overcome them.

#### **3.1.2 Abstract wording of treaties and regulations**

Concrete treaties often employ abstract language, creating challenges when attempting to interpret their true meaning. This lack of clarity creates ambiguity and confusion when countries attempt to comply with and enforce these provisions. For example, Article XX of GATT, which addresses general exceptions, does not provide a clear and specific criterion for determining whether a measure is arbitrary or unjustifiable. The absence of a well-defined standard makes it challenging for countries to assess the legitimacy and conformity of their actions with respect to Green Trade Barriers. Consequently, interpreting and applying the provisions of Article XX becomes a complex task, as it relies heavily on subjective judgments and varying interpretations.

Although the existence of the WTO Dispute Settlement Mechanism offers a mechanism for resolving disputes related to, the process itself can be lengthy and time-consuming. [1] Panel investigations and the overall dispute settlement process add to the complexity and delays in resolving conflicts arising from the abstract wording of treaties and regulations. This can hinder the

effectiveness and efficiency of addressing disputes and enforcing compliance with the established rules.

### **3.1.3 Lack of clear standards and multiple environmental requirements**

The establishment of green trade principles by the WTO through treaties and regulations lacks a clear and official standard. While these legal instruments provide a formal framework, the absence of a unified standard allows each country to establish its own Green Trade Barriers, as long as they adhere to the National Treatment Principle, which requires equal treatment of imported and domestic products. Originally intended to protect imported products from suffering higher requirements, the National Treatment Principle becomes problematic when applied to Green Trade Barriers. Developing countries, with lower technology levels, often struggle to meet the same requirement as developed countries, leading to a distortion of the green trade purpose of the terms and a violation of the principle of free trade. Consequently, different countries set their own environmental standards based on their economic and technological capabilities, resulting in multiple standards in the world trade market and a lack of unified certification. This situation transforms the principles of environmental friendliness into the Green Trade Barriers.

Furthermore, the influence of specific standards, such as the Oeko-Tex Standard 100, highlights the complexity and flexibility of Green Trade Barriers. For example, the re-edited Oeko-Tex Standard 100 served as a Green Trade Barrier in the American textile market by testing the harmful residues in textiles. Under its influence, Chinese and Indian textiles faced limitations in the U.S. market. And based on the Oeko-Tex Standard 100, China built up a new standard to test the ecological textiles [4], which can prove that with the complexity and the flexibility of the Green Trade Barriers, developed countries have more excuses to protect their domestic industries, and developing countries are becoming more and more passive to comply with the continuously changing and improving standards.

## **3.2. Dispute Cases Related to Green Trade under WTO Rules**

In examining specific dispute cases, we gain valuable insights into the practical implications of Green Trade Barriers and their impact on international trade. One such case is the COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE FITNESS CHECK on Regulation (EU) No 995/2010 of the European Parliament and ... of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation), which sheds light on the EU Timber Regulation (EUTR) and its effectiveness in addressing the import of timber.

On one hand, domestic operators, particularly smaller ones, encounter challenges in meeting the requirements of the EUTR. Factors such as a lack of awareness or unreliable documentation create difficulties, and as a result, competent authorities may hesitate to initiate lawsuits. On the other hand, each national legislation had a different level of an effective enforcement, further complicating compliance with Green Trade Barriers. These challenges not only make it difficult for stakeholders to adhere to the regulations but also undermine the original intent of the policy.

The document also pointed out that the EU policy objectives were aiming to illegal logging and forest degradation, which was not necessarily supported by national legislative frameworks. While Voluntary Partnership Agreements (VPAs) were established to enhance forest governance and stakeholder participation in certain countries, the lengthy negotiations and slow implementation progress exposed the limited effectiveness of these measures in preventing illegal timber from entering the EU market. Worse more, the number of the countries participating in VPA process and the shares of the timber products covered by FLEGT license was also limited. Only one country (Indonesia) out of 15 had an operational licensing system, and merely 3% of EU timber imports were covered by the FLEGT license. In a word, the FLEGT licensing system, designed to protect the global environment, especially forests, encountered challenges in compliance by developing countries. The presence of corruption among government officials further facilitated non-compliance with the policy objectives. A notable example is the case of Marina Zhuravleva and her husband Viktor Sivets, involving their illicit activities as former heads of Ukraine's State Agency of Forestry Department, where they facilitated the acquisition of timber by foreign firms at discounted prices and netted more

than 30 million dollars, highlighting the influence of political factors on Green Trade Barriers. These complex dynamics contribute to the intricacy of the problem.

By examining these dispute cases, we gain a deeper understanding of the complexities surrounding Green Trade Barriers and their constraints under WTO rules. It underscores the importance of addressing these challenges to ensure the effectiveness and fairness of environmental protection measures within international trade.

#### **4. Balancing Environmental Protection and Compliance with International Trade Regulations**

Environmental protection issues have received long-term attentions from people all around the world. Similarly, Green Trade Barriers have emerged as a response to the growing concern and urgency surrounding environmental pollution, aiming to emphasize the need for countries to mitigate environmental harm during trade. However, from a legislative perspective, these barriers overlook the material inequality between developed and developing countries. In terms of implementation, these countries who shoulder a higher level of environmental protection will not actively fulfill their responsibilities or adhere to corresponding qualification certification due to economic development, technological limitations, or political reasons. Consequently, Green Trade Barriers exhibit several inherent problems in their establishment and implementation. As a result, looking for a more effective form to balance environmental protection and compliance with international trade regulations is undoubtedly crucial.

##### **4.1. Exploring Mechanisms for Coordinating Green Trade Measures and International Trade Rules**

The main contradiction between green trade measures and international trade rules arises from some technologically advanced countries unreasonably increasing the environmental demands on imports to protect domestic industries and seek economic benefits. While developing countries continue to experience economic growth, developed countries face slowing economic growth, particularly after the 2008 financial crisis. Under these circumstances, developed countries implement high tax rates, stringent standards, and even direct restrictions on the import of some products exported by developing countries under the guise of environmental protection [5]. To avoid this kind of misuse of Green Trade Barriers, mechanisms must be explored to coordinate green trade measures with international trade rules.

##### **4.1.1 Revising and supplementing relevant treaties and articles**

One of the key challenges in addressing Green Trade Barriers lies in the abstract wording of relevant treaties and articles, which often leads to disputes among WTO members. For example, the interpretation of the term 'necessary' in paragraph (b) Article XX of GATT can vary, causing uncertainty and complexities in resolving trade disputes. Although the WTO Ministerial Conference or General Council can release authoritative interpretations through Article IX of WTO Agreement, the negotiation process and voting requirements for such interpretations can be time-consuming and inefficient.

In particular, the panels, as observed in cases like the shrimp-turtle dispute and the US trade dispute over the gasoline with De Venezuela and Brazil, exercise caution when determining the necessity of trade measures under Green Trade Barriers [6]. This cautious approach makes it challenging for Green Trade Barriers to pass panel examinations, further prolonging the time required for dispute resolution.

To address these issues, revising and supplementing relevant treaties and articles is essential. On one hand, it can clarify the specific content of environmental protection measures, avoiding ambiguous interpretations. On the other hand, it can provide a solid legal basis for environmental protection demanding and measures. By reducing ambiguity and clarifying operational measures,

these modifications can minimize the misuse of Green Trade Barriers as pretexts for unfair trade practices and safeguard the economic benefits of developing countries.

#### **4.1.2 Enhancing transparency and accountability in green trade measures**

In light of potential misuse of Green Trade Barriers, prioritizing transparency and accountability in their implementation becomes crucial. Developing countries often find it challenging to comply with rapidly changing and complex environmental standards imposed by developed nations. Therefore, transparent communication and engagement between countries when implementing green trade measures can lead to a more balanced and fair approach.

One way to enhance transparency is to establish a mechanism for regular dialogue among trading partners, where they can discuss their respective environmental objectives and challenges. This dialogue can help identify areas of cooperation and capacity-building to enable developing countries to better meet the requirements set by developed nations. Moreover, transparent and accessible information about the environmental standards applied by each country will enable exporters to make informed decisions about how to meet these requirements effectively.

Furthermore, accountability mechanisms should be in place to ensure that countries do not misuse Green Trade Barriers as a protectionist tool. Regular monitoring and evaluation of the impact of green trade measures on trade flows and developing countries' economic interests can help identify and address any unjustified trade restrictions. These mechanisms can be integrated into the WTO Dispute Settlement Mechanism, ensuring that trade disputes related to green trade measures are resolved in a fair and timely manner.

#### **4.1.3 Reinstating and expanding non-actionable subsidies**

Currently, Article 8 of Agreement on Subsidies and Countervailing Measures (SCM Agreement) allows assistance to help existing facilities meet new environmental requirements, provided they impose additional constraints and financial burdens on firms. However, the agreement's provisions are not adopted at present. Recently, members of WTO have emphasized the necessity of reinstating and expanding non-actionable subsidies to ensure the principles of relevant WTO agreements are adhered to. This approach aims to achieve material equality in the multilateral trade framework, counteracting any misuse of Green Trade Barriers, and protecting the interests of developing countries during the legislative process.

By providing subsidies that lower the costs of complying with environmental requirements, developing countries' firms will be more incentivized to embrace and adhere to these standards willingly. Reinstating non-actionable subsidies can contribute to a more balanced and fair trade environment, fostering international cooperation in the pursuit of sustainable development goals.

### **4.2. Legal and Policy Strategies for Developing Countries to Address Green Trade Barriers**

We must acknowledge that the entrance of developing countries to WTO has provided them a considerable degree of economic developments and opportunities for making progress. The primary motivation of these members who joined the WTO was driven by economic benefits. Fundamentally, requirements such as environmental protection and human rights are additional considerations, not the initial objective. For example, the Free Trade Agreements (FTAs) commit the parties to promoting corporate social responsibility and responsible business. The social responsibility and responsible business here include environmental responsibility. However, in the present context, mandating that every member meet stringent environmental requirements might be perceived as merely following a trend, disregarding varying economic levels and technological capabilities. In the past, with the advance of technology and economy, developed countries often dominated the formulation of international trade rules in the early stages, and then elevate domestic standards to international standards, making it difficult for developing countries to enter the market, which affect the equality of free trade. [3]

From the perspective of legal and policy strategies for developing countries to address green trade barriers, they must gradually implement environmental protections policies under the premise of

meeting their current economic situation and technological capabilities. Excessive demand for environmental standards will not only increase the cost of exported goods and reduce their international competitive power, but also pose unfavorable influence on technological and economic development chronically. In this word, although studies show that the impact of green trade barriers will continuously weaken if the goods of the exporting country can meet the requirements of the importing country [7], developing countries still need to steadily implement environmental policies while ensuring their own economic and technological conditions.

Recognizing the challenges posed by Green Trade Barriers, it is crucial for developing countries to adopt effective legal and policy strategies to address these barriers while promoting their own sustainable development.

#### **4.2.1 Implementing environmental policies in line with economic and technological realities**

Developing countries must strike a balance between environmental protection and economic growth. It is essential to implement environmental policies that align with their current economic situation and technological capabilities. Overly stringent environmental requirements could lead to increased export costs and reduced international competitiveness for developing countries. By gradually adopting environmental policies that consider their economic and technological conditions, these countries can advance towards sustainable development without compromising their growth prospects.

#### **4.2.2 Strengthening capacity building**

The foundation of environmental requirements lies in technological capabilities [8]. Developed countries often utilize their advanced technology to impose higher environmental standards, effectively creating Green Trade Barriers that protect their domestic industries and limit the interests of developing countries. While misuses and injustices associated with Green Trade Barriers persist, the increasing awareness of environmental issues underscores the importance of strengthening capacity building to meet these requirements.

Developing countries should establish clear environmental and technological goals that align with the international trade environment and their economic development objectives. By bridging the gap between domestic and international requirements, developing countries can not only overcome Green Trade Barriers but also enhance their international image and product competitiveness.

#### **4.2.3 Facilitating international coordination and technology transfer**

Environmental protection is a global concern, yet developing countries, with lower technological capabilities, often bear higher environmental protection responsibilities. To address this imbalance, the redistribution of environmental responsibilities is necessary, considering objective fairness. Developed countries can play a crucial role in achieving this by conducting technology transfer to developing countries or offering policy incentives for goods that meet environmental requirements. This approach emphasizes the recognition of environmental issues as global challenges, fostering international coordination without resorting to trade barriers.

However, the current technology transfer from developed countries to developing countries falls short of meeting the latter's needs [9]. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) acknowledges the responsibility of developed countries to transfer technology to least developed countries, but it lacks specific guidelines on the form of transfer [10]. To facilitate technology transfer effectively, developing countries must enhance their intellectual property protection systems to ensure the smooth flow of technology and knowledge. This will contribute to the successful adoption of environmental requirements and promote sustainable development on a global scale.

### **4.3. Promoting Dual Objectives of Sustainable Development and Trade Liberalization**

It is undeniable that the Green Trade Barriers have two sides, which includes discriminatory and rationality [11]. As what has been mentioned earlier, the Green Trade Barriers have issues of

legitimacy and unfairness at both the sides of legislative and executive aspects. However, it is not the evidence to deny the existence of it. Sustainable development is always a huge event which matters people all around the world. Emphasizing environmental issues are surely an evitable outcome, complying the new consumption trend with the growing awareness of environmental protection. Also, they are ways for each countries' governments to show their concerns for the global climates internationally. Actually, because of the existence of it is reasonable and necessary, WTO chose to allow the establishment of it.

In a word, sustainable development is as important as trade liberalization. We must make sure that the Green Trade Barriers can be only treated as a way to reach the sustainable development, not a kind of discrimination. And, while promoting trade liberalization, sustainable development policies also should be coordinated with it. In this process, the interests of developing countries also especially need to be taken into account.

While acknowledging the challenges and shortcomings of Green Trade Barriers, it is essential to recognize their role in promoting sustainable development. As environmental concerns grow worldwide, Green Trade Barriers can be viewed as a means to align trade practices with sustainable development goals. However, it is crucial to prevent these barriers from becoming a form of discrimination and ensure they genuinely contribute to environmental protection.

#### **4.3.1 Harmonizing environmental protection and trade liberalization**

Promoting harmonious coexistence between environmental protection and trade liberalization is of utmost importance. Green Trade Barriers should be seen as a mechanism to achieve sustainable development, not a tool for discrimination. By integrating sustainable development policies with trade liberalization efforts, the interests of developing countries can be effectively addressed, fostering an inclusive and fair trading system.

#### **4.3.2 Balancing sustainable development goals**

Sustainable development and trade liberalization are interdependent goals that should be balanced and mutually reinforcing. While pursuing trade liberalization, countries must ensure that environmental concerns are adequately addressed. Policies that promote sustainable development should be integrated into trade agreements, with special consideration given to the interests of developing countries.

In conclusion, the global challenges of environmental protection and sustainable development require a cooperative and holistic approach. Green Trade Barriers, despite their shortcomings, can serve as a means to promote environmental consciousness and accountability. By adopting effective legal and policy strategies, developing countries can address these barriers while promoting their own sustainable development objectives. The ongoing collaboration between nations, the strengthening of international coordination, and the enhancement of WTO rules are all crucial steps towards achieving the dual objectives of sustainable development and trade liberalization on a global scale.

## **5. Conclusion**

After the Uruguay Round, the implementation of Green Trade Barriers has become a prominent strategy for developed countries to address environmental concerns, replacing traditional tariffs and non-tariff barriers in the past. However, this approach has raised several challenges, particularly for developing countries. The complexity and vagueness of the relevant WTO rules on environmental requirements have led to violations of sovereignty and economic interests for developing nations. Developing countries often face unequal treatment, being required to meet the same environmental standards as developed countries, despite having more significant environmental resources. This results in higher export costs and reduced competitiveness, ultimately undermining their economic growth and violating their sovereignty. In some cases, the imposition of Green Trade Barriers can even lead developing countries to resort to deceptive practices, such as disguising natural disasters, in an attempt to gain larger and legitimate arable land areas.

Despite these challenges, we must acknowledge the legitimacy of Green Trade Barriers' existence in addressing global environmental issues. As the world faces pressing environmental challenges, it is crucial to foster ongoing dialogue and cooperation among nations. Green Trade Barriers serve as a reminder of the importance of environmental consciousness in international trade and the need for a comprehensive and inclusive approach.

Moving forward, a balanced and collaborative effort is essential to strike a harmonious coexistence between environmental protection and trade liberalization. By considering the interests of all countries and promoting sustainable development, we can pave the way for a more equitable and environmentally conscious global trade system. Only through joint efforts and a commitment to finding innovative solutions can we truly achieve the dual objectives of sustainable development and trade liberalization for the betterment of our planet and its inhabitants.

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