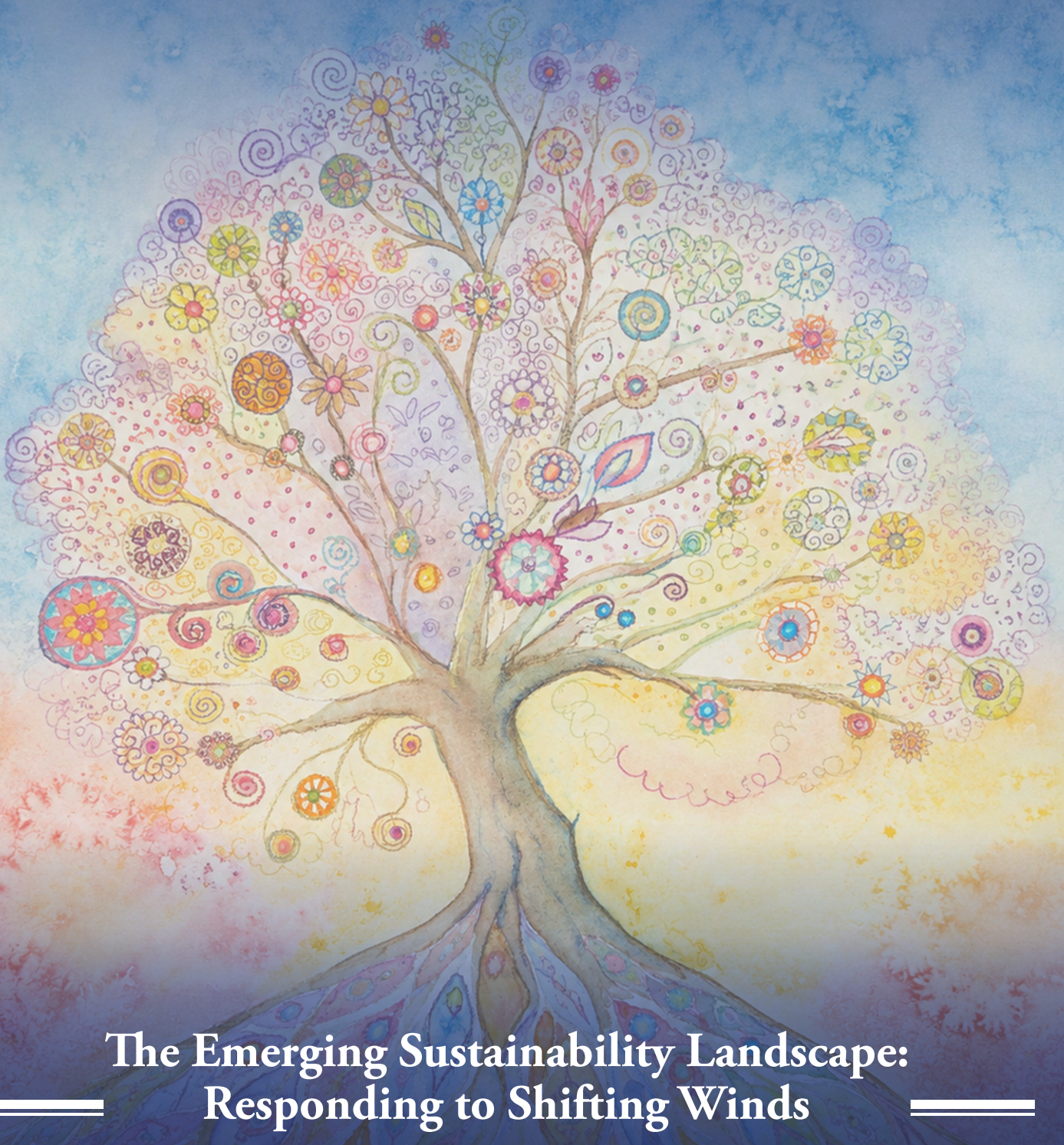




CENTRE FOR TRADE AND INVESTMENT LAW

Creating Ideas For Better Trade Policy



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**The Emerging Sustainability Landscape:
Responding to Shifting Winds**

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NINTH ANNIVERSARY ISSUE



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India and the European Union Advancing Closer Economic Ties through Bilateral Trade Agreement



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FROM THE EDITOR'S DESK

The Centre for Trade and Investment Law (CTIL/Centre) is completing almost a decade of existence. CTIL will be turning 10 next year and the 9th Anniversary is a good occasion for the Centre to look back, in order to look ahead in its next phase of growth and transformation.

CTIL has provided the much-needed legal support to the Department of Commerce, other line Ministries and agencies of the Government of India in relation to trade negotiations, framing of trade policies and policy instruments, and examination of the legal complexities of disputes. At the same time, we have realised that external policies or negotiation functions constitute only a small function of the mandate of the Centre. Many of the challenges are internal, including filling the gaps in domestic legislation, meeting compliance challenges with treaty obligations, and receiving timely and relevant inputs through consultations with the concerned stakeholders and associations.

For India's trade policy, this decade was of phenomenal efficiency. Five trade agreements were concluded or brought into force in the window of 2024-26 alone, including the India-European Free Trade Association Trade and Economic Partnership Agreement, the India-United Kingdom Comprehensive Economic and Trade Agreement, the India-Oman Comprehensive Economic Partnership Agreement, the India-New Zealand Free Trade Agreement, and the India-European Union Free Trade Agreement. This is more than in several



preceding years combined, and the Centre's professional staff had some part in nearly all of them. Our team spent much of this period working alongside the Ministry of Commerce and Industry and other government departments and agencies, on the drafting and negotiation phase including legal scrubbing, in addition to working countless hours on internal consultation and working on mandate development. In these interesting times, no one can afford to sign off assuming that negotiated outcomes would automatically kick in. Work is likely to be unceasing and ever flowing even in matters where negotiations have been formally closed. In this regard, one can hardly ignore the work at the World Trade Organization (WTO) including the Ministerial Conference at Yaoundé, Cameroon in March 2026

and the successful eighth trade policy review at the WTO in July 2026.

An area where India's trade policy has evolved perceptibly in the last few years is sustainability. The concept has gained currency; yet, at the same time, it presents challenges and opportunities. Embracing sustainability is a moving target and the sustainability transition has to be just and fair. This is easier said than done. The pages that follow in this Magazine attempt to give some sense of these issues and how a country with major aspirations can navigate this field. The Magazine seeks to present a diversity of views for a more rounded understanding on the topic of sustainability in relation to international economic relations.

During 2025-26, CTIL organised several impactful conferences, seminars and workshops on topics that matter to businesses, policy makers and trade law professionals. CTIL along with the Centre for WTO Studies (CWTOS) actively undertook various programmes under the WTO Chairs Programme (WCP). Specifically in the field of sustainability, a panel discussion held jointly with O.P. Jindal Global University on carbon pricing and climate action was of particular salience, examining the challenges in carbon accounting requirements and the immediate need for technology transfer and climate transition funds. The Centre has closely worked with Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), Amfori and several leading law schools in India and abroad to generate discussions on these important topics.

There are several other areas where intellectual leadership in trade policy is needed, and the Centre has a role to play. In addition to publishing two books

on India's approach to investment treaties, the Centre was involved in substantive discussions in revising the model Bilateral Investment Treaty (BIT). These discussions should continue in the coming year. Investment Law Compass, the Centre's monthly newsletter had, by 2026, become something of a ready reference and practical guide to negotiators, practitioners and academics concerning new developments in the field of investment law.

In relation to capacity building, CTIL supported the regional rounds of the 24th John H. Jackson Moot Court Competition, one of the oldest moots in WTO law and one that has, over the years, sent a fair number of its participants into careers in trade law. Gujarat National Law University hosted a conference, with CTIL's involvement, on services mobility, traditional knowledge governance and trade in health services. Separately, the Centre ran training modules for probationers of the Indian Trade Service and conducted various projects under the TradeLab clinical legal education programmes. There are other numerous contributions which may not be falling within the theme of this Magazine.

On this occasion, we are deeply grateful to the Ministry of Commerce and Industry and to the Indian Institute of Foreign Trade (IIFT) for their continued support, and especially to Mr. Piyush Goyal, Hon'ble Minister of Commerce and Industry, Mr. Rajesh Agrawal, Commerce Secretary, Mr. Yashvir Singh, Additional Secretary, and Ms. Kapil Chaudhary, Joint Secretary. We would like to specially recall the help of Mr. Darpan Jain, Additional Secretary, Ms. Petal Dhillon, Joint Secretary and Ms. Anoopta Nair, Director. There are many others who have supported the Centre in manifold ways.

None of this work would have happened without CTIL's competent and dedicated staff who worked

against heavy odds. My thanks go out to every member of the CTIL team, whose research, drafting and quiet persistence made this year remarkable. Long negotiation cycles, tight work deadlines, and research and publication requirements are easy to describe and hard to live through, and the team did both with great satisfaction. As we step into our 10th year, our vision is simple. We want CTIL to remain a place where practical policy work and serious scholarship meet and remain ready to welcome the next generation of trade lawyers who can contribute to India's nation building.

I would like to specially thank the efforts of Mr. Tathagata Choudhury, Ms. Mirnalini Baskaramoorthy and Ms. Sharona Mann for their tireless contribution to this Magazine.

Trade law does not stand still; neither, we hope, will this Centre. We welcome comments on this edition and look ahead to the work still to come.

Yours sincerely,

James J. Nedumpara
Professor and Head,
Centre for Trade and Investment Law

ABOUT CTIL



Established in 2016 by the Ministry of Commerce and Industry, Government of India, CTIL serves as a premier institution dedicated to strengthening India's institutional capacity in international economic law. CTIL provides legal analysis, strategic counsel, and policy inputs to assist the Government of India across WTO engagements, bilateral trade negotiations, and dispute settlement mechanisms.

Beyond its advisory role in shaping India's trade policy and promotional frameworks, CTIL is a recognised thought leader in international law. The Centre advances legal expertise and develops trade and investment law capacity nationwide through high-impact research, publications, and specialised training programs for government stakeholders, industry leaders, and academic institutions.

Apart from acting as a repository of information on international trade and investment law, CTIL also houses the Trade Remedies Advisory Cell (TRAC/Cell), which provides end-to-end, complimentary assistance to domestic industries navigating trade remedial investigations. Through TRAC, the Centre supports Indian producers in compiling data, preparing filings, and managing complex proceedings before the Directorate General of Trade Remedies (DGTR).

The Emerging Sustainability Landscape: Responding to Shifting Winds

For much of the past few decades, sustainability was largely a matter of voluntary corporate practices, expressed through private standards, eco-labels, certifications and corporate social responsibility commitments. Over the last decade, however, it has evolved into market access conditions in many developed economies, increasingly embedded in trade-related regulation. Spanning environment and climate, human rights, labour standards, inclusivity, and equity-based governance, sustainability regulations pose a high cost of adaptation. In fact, certain developed economies have adopted domestic regulations like the carbon border adjustment mechanisms (CBAM), requirements on importation of deforestation-free products and criteria for green public procurement. Climate action is where the evolving regulations are predominant. Additionally, other sustainability requirements, including those of labour and governance, also pose high compliance costs on businesses as well as institutional and administrative burden for governments. Taken together, these requirements pose compliance challenges for exporters of developing countries and risk eroding their competitiveness.

Many developing countries view this expanding scope of sustainability cautiously, fearing de-industrialisation, loss of export markets, higher compliance costs, and constraints on their "right to development". Constraints in navigating emerging sustainability requirements risks exclusion from the modern global value chains (GVCs) that continue to shape the future rules of global trade. Adaptation is,

therefore, a necessity for retaining market relevance and preserving competitiveness.

The response of the Global South should therefore be through a two-pronged approach. First, the Global South may continue to be vigilant against trade-restrictive behaviours that may be disguised as sustainability objectives. Second, the Global South must use well-designed policies to create structural incentives for increasing the green export competitiveness of domestic industries, ensuring market access to premium markets and upward value additions in the GVCs. Policy framing should be aligned with the reality of the Global South, so far, being a standard-taker rather than a standard-maker. Therefore, while framing trade policies, the Global South should anticipate and account for the challenges of the short-term while aiming to develop lasting competitiveness in the long term. Alongside, the focus should be to progressively develop quality infrastructure, including testing, certification, monitoring, accreditation and verification mechanisms. Over time, a greater role in standards development will help the Global South in moving from standard-takers to standard-makers.

Major developing countries like India can leverage the pressures from external demands of sustainability only if commensurate domestic policy framework evolves to streamline and reduce the compliance burden of Indian exporters, enables smoother conformity assessments and signals globally that Indian supply chains are reliable. On the carbon pricing front, India

has already started to take these steps. The development of India's Carbon Credit Trading Scheme (CCTS) is an example. The CCTS covers seven key industrial sectors and incorporates its own registration, monitoring, verification and accreditation mechanisms. Another policy initiative of the Government of India is the Export Promotion Mission. The Export Promotion Mission provides logistical support and other forms of assistance to Micro, Small, and Medium Enterprises (MSMEs) and aims to enhance their overall global competitiveness. Furthermore, India's rapid solar expansion, coupled with a conscious push towards green hydrogen and hydrogen derivatives like ammonia and methanol, could position India to attain competitiveness through decarbonisation in carbon-intensive sectors like steel while progressively enhancing alignment with evolving regulatory regimes. These also offer opportunities under Article 6 of the Paris Agreement. Overall, bilateral and plurilateral cooperation on standards, certification, infrastructure, and clean technology innovation, in addition to partnerships in renewable energy, hydrogen value chains, and electric mobility ecosystems can reinforce India's sustainability trajectory.

India's conscious move towards developing a regulatory framework that is aligned with the emerging global markets will help India continue to integrate into green value chains and remain resilient in the times to come. However, meaningful progress will depend on ensuring that all stakeholders, including MSMEs, can participate and benefit from the emerging opportunities. India should therefore demystify legal and technical standards for MSMEs to ensure their GVC entry and participation.

Two structural conditions will also determine success. The first is access to green finance. Developing

countries like India face high capital costs with demand often outpacing actual disbursement. To meet its 2070 net-zero goals, India needs an estimated \$10 trillion in funding. Therefore, climate finance is a prerequisite rather than a supplement to domestic actions. This reinforces the need for operationalising commitments like the United Nations Framework Convention on Climate Change (UNFCCC)'s New Collective Quantified Goal. This is particularly important as the current geo-political headwinds may risk shrinking the lending pool. The World Bank's decision to drop 45% of its climate lending offers an example. The second structural condition is the access to critical minerals. Critical minerals like lithium, cobalt, nickel, and rare earths underpin clean energy and electric vehicle transition. Developed economies are moving towards preferential arrangements where access to these minerals is made conditional upon technology, infrastructure, funding commitments. How developing countries like India can navigate this landscape depends upon developing adequate traceability and due-diligence mechanisms.

The constraints and challenges to competitiveness from the emerging global sustainability architecture are being faced by businesses worldwide. Fragmentation of compliance requirements, high certification costs, complex traceability requirements with disproportionate effects on MSMEs of developing countries. These, in addition to the limited ability to contribute to standard setting, are challenges shared across the global south. Therefore, South-South co-operation may be enhanced to learn from each other's experiences, pool technical capacity and build consensus.

India and New Zealand

Strengthening Economic Ties through Free Trade Agreement



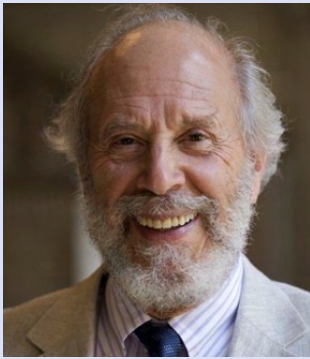
India and Oman

Strengthening Economic Ties through Comprehensive
Economic Partnership Agreement



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of this Magazine



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SMRITHI BHASKAR



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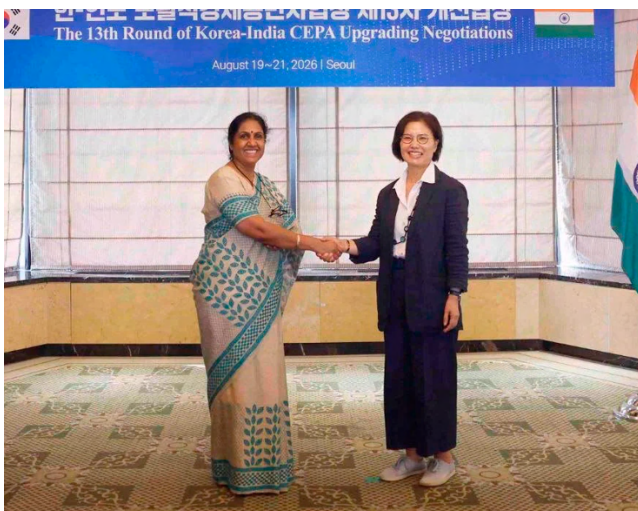


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SHAMBHAVI PANDEY







TESTIMONIALS

MR. DARPAN JAIN

Additional Secretary (TNB),
Department of Commerce

Over the last 9 years, CTIL has been a pillar of support. Its high-quality, professional and prompt legal services have not only sharpened my understanding of complex trade and investment law issues, but also given me the confidence to tackle difficult questions of law. What stands out is CTIL's rigour, depth of research, and unwavering commitment. Today, CTIL stands among India's leading institutions on international trade law and continues to meaningfully shape India's trade policy through its valuable contributions.



DR. RUPANJALI KARTHIK

Director (Services SMD),
Department of Commerce

My association with CTIL over the years has been professionally enriching. CTIL has emerged as a premier institution supporting India's trade and investment policy objectives through its high-quality research, legal expertise, and unwavering commitment to public service. A distinguishing feature of the Centre is its exceptional team of professionals, whose dedication, responsiveness, and analytical rigour have consistently contributed to informed policymaking.

The Centre has repeatedly demonstrated its ability to provide timely and well-researched inputs on complex bilateral, regional, and multilateral trade issues, often under challenging circumstances and tight timelines. The institutional capacity that CTIL has built over the past nine years is commendable and reflects its commitment to excellence. The Centre has become an indispensable knowledge partner in India's engagement with the evolving international economic landscape. I extend my sincere appreciation to the entire CTIL team, particularly Dr. James, under whose leadership the Centre continues to provide excellent support to the Department of Commerce. I wish the CTIL team success and greater achievements in the years to come.



MS. ANOOPA NAIR ▲

Director (Services SMD),
Department of Commerce

It has been an absolute privilege to be associated with the Centre for Trade and Investment Law in my professional capacity as Director in Department of Commerce. The exceptional quality of its human resources and the institutional capacity that CTIL has built over the years is truly remarkable. What stands out most is the dedication, professionalism, and intellectual commitment of CTIL's personnel. My work has been mostly associated with the Services team in CTIL, and I would like to particularly appreciate Mr. Kailas Surendran and Mr. Pranav Narang, who have consistently provided high-quality legal advice on various bilateral and multilateral matters, often under demanding timelines, while maintaining the highest standards of research and analysis. I sincerely appreciate the outstanding manpower of CTIL and commend the Centre for building a team that has become an asset to India's trade policy framework. I wish CTIL continued success going forward.



commitment. We greatly value this collaboration and look forward to further strengthening our partnership to advance trade awareness and capacity of Indian industry and provide valuable suggestions to policymakers.

MR. SUMANTA CHAUDHURI ▲

Former Principal Advisor,
CII International Trade Policy

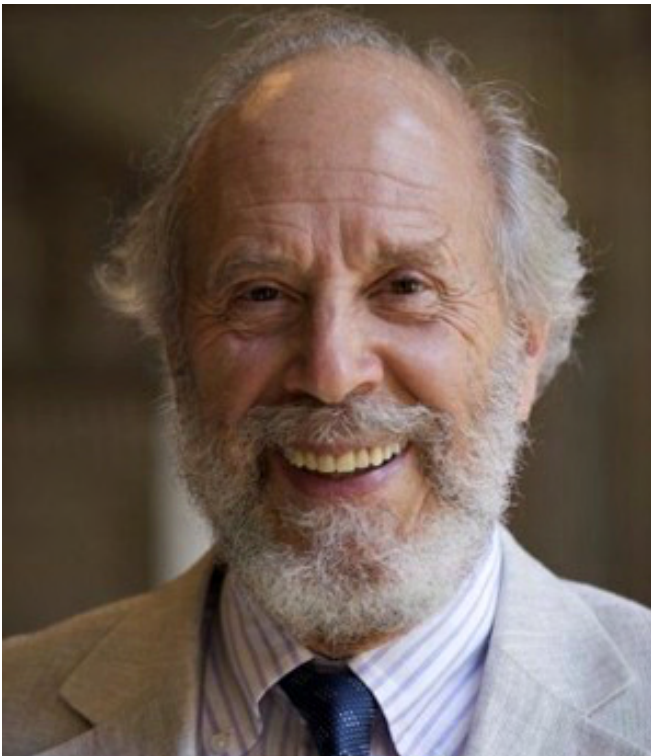
The International Trade Policy Division of CII has had the privilege of working closely with CTIL over the past three and a half years on capacity-building initiatives covering free trade area (FTAs), micro, small, and medium enterprises (MSMEs), sustainability and trade and other key aspects of international trade. Joint studies as well as industry interaction and inputs on CBAM, Deforestation regulation have also been undertaken.

We congratulate CTIL on completing nine years of impactful contributions to shaping India's international trade and investment policy. It has been a pleasure partnering with CTIL, whose dynamic leadership and talented young team have consistently demonstrated excellence, professionalism, and

INTERVIEW

PROF. GIORGIO SACERDOTI

Sustainability and the Future of Sustainable Trade Governance and Dispute Settlement



***Giorgio Sacerdoti** is Emeritus Professor of International Law, Department of Legal Studies at Bocconi University. Previously, he was a tenured Professor of International Law and European Law (Jean Monnet Chair since 2004) at Bocconi University (1994-2013). Professor Sacerdoti has been a Member of the Appellate Body of the WTO from 2001-2009 and the Chairman from 2006-2007. Professor Sacerdoti has a master's degree in Comparative Law from Columbia Law School (1967) and a bachelor's degree in law from the University of Milan (1965). He was admitted to the Milan Bar in 1969 and the Cassazione (Supreme Court of Italy) in 1978.*

Q1: As a former Appellate Body member, how do you view the ongoing dispute settlement reform process in addressing disputes involving sustainability measures? Do you consider the current jurisprudential tools adequate to address the emerging wave of sustainability-related measures?

There is not really much of an ongoing dispute settlement reform process. Since the Marrakesh Agreement of 1994, there was no examination of the panel system within the Doha Ministerial Conference, and there has been some further work done in Geneva on the appellate stage, though that work has also stalled. Discussions are occurring between ambassadors, but no discussions have taken place regarding the reform of the existing dispute system. The system is currently working at a low level in the panel system; if the two countries involved in a trade dispute are not parties to the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), then the losing party can "appeal into the void" since there is no functioning Appellate Body to hear appeals. This means that the panel report stands as an interpretation of the dispute but does not become a binding decision for the losing party.

Disputes within the WTO that include environmental or sustainability requirements are not new. The *US–Shrimp* case included environmental provisions in the early days of the organisation, while there have been other cases, including the *US–Tuna*, *Brazil–Retreaded Tyres*, and the *EU–Seal Products*.

While the EU's regulations are generally covered by Article XX of the General Agreement on Tariffs and Trade (GATT), the Appellate Body has been sensitive towards non-trade issues, such as sustainability and health measures, including hormones, genetically modified organisms and asbestos regulations. Similarly, a recent WTO dispute concerning palm oil found certain aspects of the EU measure to be unduly restrictive.

To add on, where a measure is found to be inconsistent with the provisions of Article XX, it must be modified or withdrawn accordingly. However, if the measure is found to be contrary to the chapeau of Article XX of GATT, as in the case of the EU's regulation on palm oil, it is easier for the respondent to correct the measure, since it only needs to remedy the discriminatory or excessive element of the measure. However, this may be considered to be less satisfying to the other party since the underlying environmental restriction itself remains in place. The existing rules are generally considered to be balanced between the members of the WTO, and there has been no major clash between the members of the WTO thus far. One exception to this rule is the Russia-EU case regarding the EU's CBAM. This trade dispute, however, remains largely theoretical, as the EU currently imports very little from Russia that would be subject to CBAM, given the sanctions imposed following Russia's aggression against Ukraine. Additionally, though the EU has traditionally pursued consultations between members before initiating trade disputes, the EU has declined consultations with Russia on political grounds.

Q2: As counsel and arbitrator in EU trade matters (e.g. the 2020 EU-Ukraine dispute), what lessons can be drawn from the EU's approach to enforcement of trade treaties?

Beyond the WTO, the EU has been active in initiating trade cases against other countries through bilateral trade treaties. In these cases, the EU traditionally acts

as the complainant. Such disputes have occurred between the EU and Ukraine in the past, and the EU was the winning party. Since Russia invaded Ukraine, however, Ukraine has been in a state of war, and Ukraine's priorities have changed as a result. Thus, there is no indication of whether the EU is still pressing Ukraine to comply with the findings of the panel, or whether the Ukraine-based issue related to timber export restrictions remains relevant, since it is unclear whether this is still a concern for Ukraine. The trade dispute between the EU and Ukraine was established through the same rules as those within the WTO; the bilateral trade treaty between the two countries established that its trade panel would follow WTO case laws, such as those relating to quantitative export restrictions. As such, there were no novel findings in the panel system between the EU and Ukraine.

Beyond the EU and Ukraine, the EU has initiated other trade disputes under bilateral treaties. One against South Africa in relation to countervailing duties, which the EU won, and one against Algeria in relation to subsidies and preferences for domestic industries, which is still pending. Additionally, there were other cases between the EU and Korea, though not in relation to standard trade measures but in relation to labour and sustainability issues. In these cases, the outcomes of the panels are not binding, but led to negotiations between the parties. The EU claimed that Korea had not adopted the labour standards of the International Labour Organization (ILO) to which it had agreed to adhere to under the bilateral trade treaty.

The WTO trading system is currently experiencing a semi-paralysis within the WTO, and as such, the WTO Members may look to bilateral trade treaties to resolve trade issues between members. However, despite the existence of many long-standing bilateral trade treaties around the world, there are few cases initiated within these treaties. An exception to this general rule is the US-Mexico Rapid Response Labour

Mechanism, which is a commission for the consideration of labour-related disputes between the two countries.

Q3: You were a principal drafter of the OECD Anti-Bribery Convention and have advised the World Bank and UNCTAD on governance and development. Drawing on your own experience negotiating a binding international anti-corruption instrument, what lessons might trade negotiators draw when governance criteria start being folded into market access?

The provisions of many trade agreements include non-trade issues such as requirements regarding anti-corruption and labour standards. Additionally, some BITs may include provisions requiring private parties to follow certain due diligence and labour standards within the supply chains of the companies that are covered by those BITs.

For instance, the previous Israel-India BIT had non-rigid due diligence and labour provisions. Additionally, though the EU-Korea trade agreement required the country to adopt certain labour standards, a 2021 panel of experts under that treaty found that Korea's ratification efforts towards the ILO's core labour conventions were tangible and not deficient under the agreement, even though Korea had not, at that point, ratified them. Korea has since ratified three of the four core conventions at issue (Nos. 29, 87 and 98) in April 2021, and only the forced-labour-related convention (No. 105) is still unratified. It is notable that the country, as one of the world's major industrial nations, was until recently not a party to conventions that nearly every other country has agreed to.

The attempts to use trade agreements to enforce these anti-corruption and labour standards have led to mixed results. One of the purposes of trade agreements is to ensure that the development of trade between members of the WTO does not occur at the cost of their non-trade values, such as those related to

human rights, labour rights, or environmental protection (as with the EU-Mercosur trade agreement regarding Amazon rainforest deforestation). However, the inclusion of these clauses within trade agreements poses certain enforcement challenges due to the difficulty in evaluating their effect. In other words, ensuring compliance with a maximum permitted tariff level is relatively straightforward, whereas ensuring that factories comply with minimum labour standards presents significantly greater challenges. This remains true even in the world's most developed countries.

Thus, though the anti-corruption and labour rights provisions are generally aimed at good governance, the provisions are made more difficult to enforce. Exceptions to this issue may include countries like the US, whose size and market power within the world's economies allow it to force changes in specific factories (as with the US's use of its market leverage under the US-Mexico agreement to press for improved labour conditions, such as respect for local unions, in individual Mexican factories).

Q4: Given the standard-taker not standard-maker position developing countries find themselves in, how effective do you think existing WTO flexibilities for developing countries are as a legal shield against the proliferation of standards, and how do you think future reforms should address a world of embedded sustainability conditionality?

The WTO agreements provide for international standards for the goods and services of Members and encourage the developing members of the WTO (including major members like India, South Africa, Indonesia, and Brazil) to participate in bodies that establish those international standards. In many instances, though, the standards are established not within the WTO itself (in part because of the limitations of the WTO in setting such standards), but by the industry itself (for instance, the standards

for certain types of cell phones are established by companies like Apple). Governments may nonetheless encourage or require common standards to address issues such as product interoperability (for example, incompatible phone chargers across manufacturers), though standards can also be used strategically to exclude competitors.

Although the WTO system may appear to provide greater flexibility to developing countries, such flexibility is not necessarily the solution, given the risk that it may encourage the adoption of outdated technologies.

For example, the EU has proposed delaying the implementation of a ban on the sale of internal combustion engine vehicles after 2035, because it is primarily beneficial to the countries that have the most developed electric vehicle industries, such as China. Additionally, a Swiss canton once banned cars from its cities after the introduction of motor vehicles in those cities in favour of horse carriages, which were less polluting. However, the Swiss canton's citizens began to resent the lack of convenience in the canton's cities, and thus the law was repealed, once it became clear that the remainder of the Swiss nation had abandoned the use of horse carriages in its cities.

Instead of seeking exceptions or flexibilities, it may be more beneficial for countries generally, including developing countries, to increase their participation in the international organisations that establish international standards (such as patent and agricultural standards bodies), and to secure more equal representation within those bodies.

Q5: We find a new world where trade relations are more political and less multilateral, rule based. As governments increasingly turn to "clubs" (whether on critical minerals, digital trade, or green standards) rather than the forum of the WTO, what is lost and what, if anything, is gained from a systemic, rules-based perspective?

The original idea behind the GATT and the WTO was that trade relations should not be based upon the political views of individual member countries, except in exceptional circumstances. However, over the past decade, trade relations between members of the WTO have become increasingly politicised, departing from this original design. Over the past decade, political issues have had an impact upon trade; the United States, for instance, has threatened to initiate trade wars with other members of the WTO based upon non-trade issues (such as the US President's threat to impose 100% tariffs on Canada for non-trade, political reasons). Additionally, only a few members of the WTO have the economic power over their trading partners to implement such trade threats; smaller countries don't have that power. This development within the WTO is generally considered to be negative. Additionally, the trade discrimination that is often established between members of the WTO for reasons that are outside of the trade relations between those countries should be limited.

A proposal for such a club, put forward by Professor Petros Mavroidis, is that the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) be institutionalised as a permanent "MPIA club" with a standing bench of adjudicators enlarged from the traditional seven persons under the WTO Appellate Body (DSU Article 17.1) to fifteen. This is a proposal about the size of the permanent adjudicating body itself, not about the number of participating WTO members. The MPIA's actual country membership already exceeds sixty. While the plurilateral of the WTO are open to all members of the organisation, the clubs are only established for members that have adhered to the same trade agreements and conditions (as with the digital trade initiative). Another reason for clubs within the WTO is in response to the use of critical resources of members of the WTO for non-trade purposes (as with China using its exports of critical minerals to other members of the WTO for political leverage). Other clubs, relating to green and

sustainable trade, are still evolving. Digital trade, for instance, remains an area of the WTO that is not governed by a dedicated trade agreement, although it could potentially be addressed through existing WTO agreements. These clubs have emerged in response to weakness in the existing multilateral trading system and the WTO members' inability to reach consensus on issues such as establishing new standards for digital trade or addressing the influence of producers of critical goods over other WTO members. Thus, the creation of separate clubs and agreements for members of the WTO may lead to little additional benefit to that organisation if the clubs do not remain open to the future possible membership of the organisation in the clubs.

Q6: You have served as an ICSID arbitrator across decades that included major renewable energy subsidy disputes (e.g., the Spanish solar cases). What guidance would you give governments that are designing green subsidy and production-linked incentive schemes, so they do not later face costly investment claims if policies are revised?

Many of the BITs were established during a time when domestic regulations of the industries within those countries were more supportive of the development of industries, particularly in comparison to the regulations that have developed in those countries more recently. Modern BITs have however, introduced standards related to health, environment, etc that have led to additional BIT disputes.

While right to regulate clauses have been expressly included in many BITs, that right, in principle, has always existed. Countries should, however, consider including a clause analogous to Article XX of the GATT in BITs, specifying that regulatory changes must not discriminate in favour of domestic industry or against investment based on its foreign origin, since regulatory changes are, in practice, often intended to protect domestic industry once foreign investment becomes too competitive. Relatedly, though investors

may be able to enforce the concept of "legitimate expectations" within BITs, the concept is not absolute within the BITs; it is based upon the measure at issue, the change in that legislation or measure, and the benefit or loss of benefit that may result from that change in measure. For instance, a government offers a ten-year tax break to attract investment: if that measure is withdrawn only after four years, the investor may have a legitimate claim, particularly where the commitment was written into a contract or concession. In the Spanish cases, subsidies were offered to boost renewable energy investment, then reduced once the cost became too high for the Spanish budget, prompting investor claims. However, it must be noted that while a BIT guarantees a certain standard of treatment, it does not guarantee a level of profit.

Additionally, governments while signing BITs should provide adaptation periods for industries to adjust to changes to individual industries' operating conditions. They should provide for additional funding for industries that had committed resources to establishing industries before making any changes to such measures; and they should recognize that providing for the development of each country's industries is more beneficial than providing BITs that provide additional protections to those investors that may be impacted by the development of those industries.

ARTICLE

CARBON CREDIT TRADING: AIMING TO TRANSFORM THE DEVELOPMENT AND ENVIRONMENT DEBATE



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INTRODUCTION

The traditional conception of the dilemma of carbon footprint reduction in developing countries has collapsed it into a binary conflict between industrial development, irreconcilably pitted against environmental policy. In this debate, developing

countries have often argued that developed countries industrialised earlier without any concern for sustainability and are binding the former with restrictive sustainability regimes, before they had a chance to fully develop. Developed countries have responded by arguing that the environment is a universally beneficial public good that must be preserved for the sake of humanity.¹ The Carbon Credit Trading Mechanism (CCTM), envisaged under Article 6 of the Paris Agreement, 2015,² transforms this binary narrative by treating carbon as a potentially tradable economic asset rather than an externality-based liability.

This article examines the evolution of the CCTM and its potential benefits and challenges, with a view to gauging how far it succeeds in transforming the environment versus growth debate in India towards sustainability-linked competitive gains, and the extent to which pain points persist.

EVOLUTION OF CARBON CREDIT TRADING MECHANISM: FROM KYOTO TO PARIS

The Kyoto Protocol, 1997,³ adopted at the 3rd Conference of the Parties to the UNFCCC, in Japan 1997, was a milestone which represented the first international legally binding emissions reduction scheme.⁴ It recognised, for the first time, that carbon credits should be regarded as tradable permits that allow entities to buy and sell rights to emit greenhouse gases.⁵

Around two decades later, at the 21st Conference of Parties to the UNFCCC (COP21) in France in 2015, the Paris Agreement was adopted.⁶ The Agreement set a lofty target of holding the increase in global average temperature to well below 2 degrees Celsius above pre-industrial levels while pursuing efforts towards limiting the rise in temperature to 1.5 degrees Celsius over pre-industrial levels.⁷ It marked a remarkable advance from the Kyoto Protocol in three respects.

Firstly, it provided for mandatory preparation, maintenance and communication of Nationally Determined Contributions (NDCs) by all countries, towards the overarching goal of temperature reduction. Secondly, it established market-based mechanisms for carbon trading, in the form of voluntary sale of Internationally Transferred Mitigation Outcomes (ITMOs)⁸; for mutual exchange and cooperation among countries; and for funding and hosting projects for reducing greenhouse gas emissions,⁹ in addition to a non-market mechanism for the same.¹⁰ Finally, it also enshrined the principle against double counting of carbon credits under Articles 4.13 and 6.2,¹¹ for environmental integrity in the accounting of

countries' national carbon accounts.

The Paris Agreement's novelty lies in providing the necessary sovereign flexibility to member parties to determine their contributions towards the collective goal of climate change mitigation, as per domestic policy constraints and priorities.

The following section examines the emerging opportunity for India to capitalise on probable competitive gains, borne out of the CCTM regime, while deftly addressing the prevalent industrial policy pains.

DOMESTIC POLICY PAIN POINTS

India has operationalised its engagement with Article 6 of the Paris Agreement under Section 14(w) of the Energy Conservation Act, 2001,¹² as amended in 2022.¹³ The Central Government has notified the CCTS which establishes a domestic carbon credit trading regime with a compliance mechanism¹⁴ for nine energy-intensive sectors under the regulatory purview of the Bureau of Energy Efficiency (BEE).¹⁵ It also adds a voluntary offset mechanism for other sectors, in accordance with the policy direction of the Ministry of Power, and overseen by the National Steering Committee for the Indian carbon market.¹⁶ However, notwithstanding this progress in aligning India's domestic carbon market with the Paris Agreement, there remain at least three areas of domestic policy concern which call for careful consideration.

First, whilst the domestic legal architecture for carbon trading is in place, India has taken a conservative view on activities for which generation of ITMOs under Article 6.2 of the Paris Agreement would be

authorised. Other Global South countries in Asia cover energy, agriculture, land use and forestry, waste management and industrial processes for economy-wide mitigation under their carbon market laws.¹⁷ By contrast, India only permits this for a limited set of frontier technology transferred activities like storage-linked renewables, green hydrogen, compressed biogas, green ammonia, carbon capture utilisation and storage, and sustainable aviation fuel.¹⁸

The exclusion of carbon-intensive sectors like steel, cement and fertilizers from this list arguably stems from a deliberative policy imperative of preserving domestic carbon space for decarbonisation of these sectors, which are already under competitive pressure from instruments like the EU's CBAM.¹⁹

Ultimately, meeting India's NDC obligations will require expansion of the CCTS methodology to other sectors like agriculture, waste and transport.

Instances of policy uncertainty, reflected in the removal of clean cooking fuel from the list of eligible activities in 2025,²⁰ risk exacerbating the anomaly created by the limited scope of the list of eligible activities. Therefore, the institution of resilient and strategically calibrated policy measures remains crucial to inspire the necessary confidence in carbon credit investors, especially for long-term projects, for meaningfully shaping India's Article 6 participation. Second, regulatory reforms are required to establish clear corresponding adjustments to prevent double

counting, in meaningful adherence of the principles under Articles 4.13 and 6.2 of the Paris Agreement.²¹ At present, the Indian CCTS cannot easily monitor, track and verify adjustments corresponding to ITMOs exported internationally. The Nationally Designated Authority for the Implementation of Article 6 of the Paris Agreement²² needs the operational infrastructure and regulatory mandate to link the Indian Carbon Market registry with UN

databases. In addition, international buyers of Article 6 carbon credits require proof that emission reductions are additional and would not have occurred without the revenue generated from the carbon credits sold. This highlights the need for updating the BEE rules to align with the mechanism under Article 6.4 of the Agreement.

Third, the current global standards for validation of carbon credits, such as Verra and the Gold Standard, do not recognise

nuclear power as an eligible sector for carbon credit trading.²³ This distrust of nuclear energy arguably stems from the Fukushima Daichi Incident (2011).²⁴ However, it should be noted that Verra and the Gold Standard are not binding gatekeepers for Article 6.2 under the Paris Agreement and cannot foreclose nuclear energy-related ITMOs under Article 6.2, especially under bilateral agreements.

India's MoU with Japan on the Joint Crediting Mechanism with Japan under Article 6.2 of the Paris Agreement illustrates the hope that could emanate from bilateral agreements, by virtue of its broad ambit of sectoral coverage which might potentially also

“The exclusion of carbon-intensive sectors like steel, cement and fertilizers from this list arguably stems from a deliberative policy imperative of preserving domestic carbon space for decarbonisation of these sectors, which are already under competitive pressure from instruments like the EU's CBAM. ”

include nuclear energy-based cooperation.²⁵ Further, Japan's current domestic energy strategy has explicitly shifted from a policy of reducing reliance on nuclear energy to one of maximising the use of renewables and nuclear power as carbon-free power sources. Japan's revised Strategic Energy Plan,²⁶ approved in February 2025, positions nuclear and renewable energy as key power sources for transitioning towards decarbonised energy generation. A combined reading of Japan's domestic energy strategy and India's MoU with Japan on the Joint Crediting Mechanism may prove to be promising for nuclear energy cooperation.

GREEN COMPETITIVE GAINS

Having flagged the potential domestic policy pain points, arising either structurally from Article 6 or its implementation in India, a wider appreciation of India's long term strategic interests would suggest that India would be better served by not treating it as an external imposition, but as an opportunity to harness carbon credit trading as a tool to upgrade its industrial base for new green competitiveness aligned to global standards, and accelerate the transition towards cleaner production system in the interest of all citizens. Such an approach would be beneficial to India in the form of multiple gains.

First, the evolution of carbon credits into a legitimate commodity class allows them to be viewed by companies as financial assets rather than mere

“India's MoU with Japan on the Joint Crediting Mechanism with Japan under Article 6.2 of the Paris Agreement illustrates the hope that could emanate from bilateral agreements, by virtue of its broad ambit of sectoral coverage which might potentially also include nuclear energy-based cooperation.”

compliance obligations.²⁷ In this context, Indian firms operating in high ITMO potential sectors can create new revenue streams to obtain clean technology investment and transform themselves to be leaders in the low-carbon transition.

Second, in a volatile international trade regime, carbon credit trading will help companies safeguard profitability whilst navigating complex frameworks like the EU's Emissions Trading System and CBAM.²⁸

Third, as regulators tighten emission caps and investor scrutiny linked to such regulatory changes increase, engaging with carbon credit trading will provide a hedge against regulatory risk. However, beyond a defensive regulatory risk strategy, the monetisation of surplus credits and access to the gateway to large-scale climate finance beckon.

Finally, carbon trading opens the pathway to fostering new green industries, including renewable energy, green hydrogen, electric mobility and carbon capture technologies, thereby stimulating green innovation and creating green industry-driven employment at scale.²⁹

Public and private sector companies alike must now move forward from any notion of insular protectionism that binds the hands of policymakers, to pushing the case for green competitive gains by harnessing carbon trading. The case of the Delhi Metro Rail Corporation is particularly inspiring. It has

achieved significant competitive gains from carbon trading under Kyoto's Clean Development Mechanism by positioning itself as a leader in sustainable urban transport.³⁰

CONCLUSION

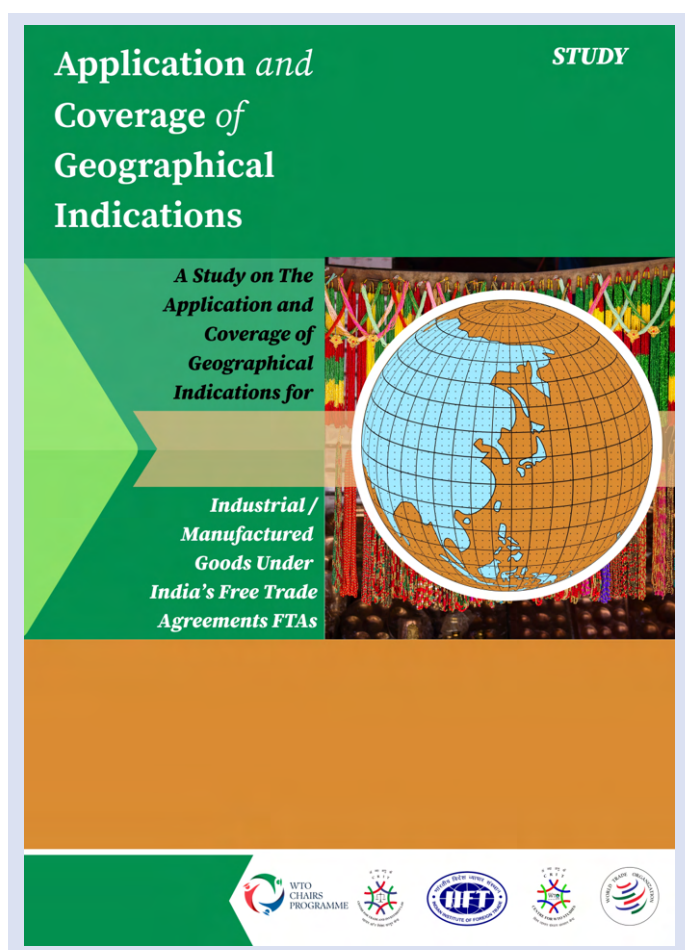
India's calibrated approach to ITMOs, driven in part by EU CBAM pressures, and the historic gatekeeping against the inclusion of nuclear power point to concerns for India with the architecture of Article 6 of the Paris Agreement. However, these structural issues can in part be progressively overcome through bilateral agreements. In addition, necessary domestic policy and regulatory reform backed by benchmark execution by leading companies can unlock the exciting promise that carbon credit trading holds as a potential strategic lever for domestic industrial transformation.³⁰

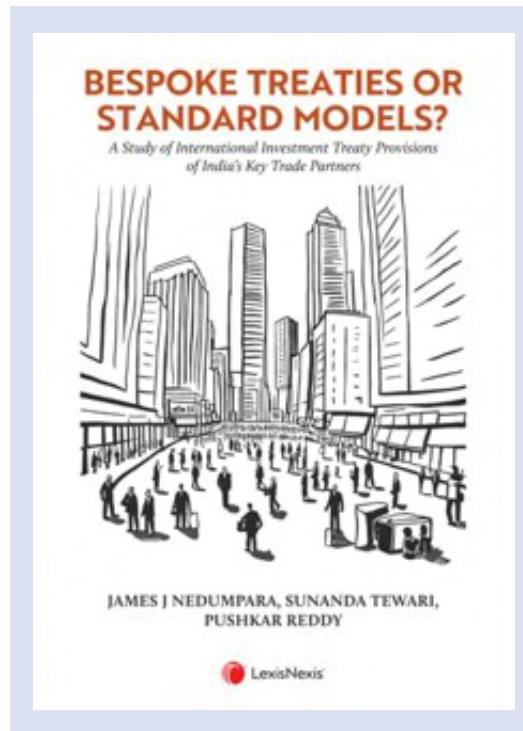
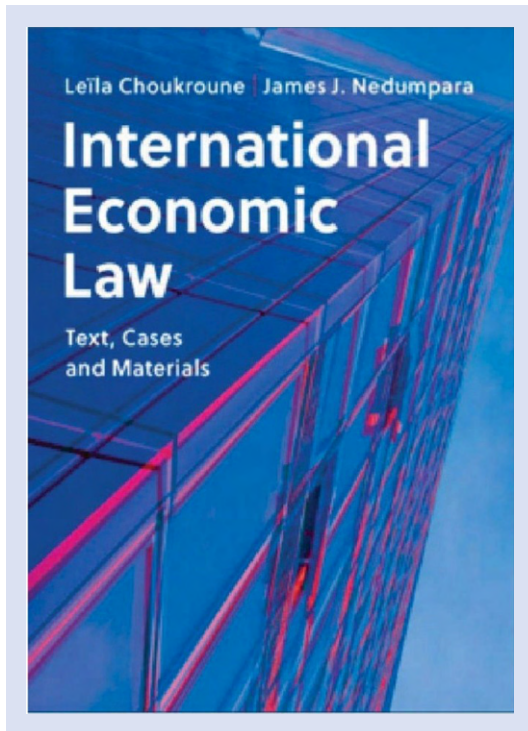
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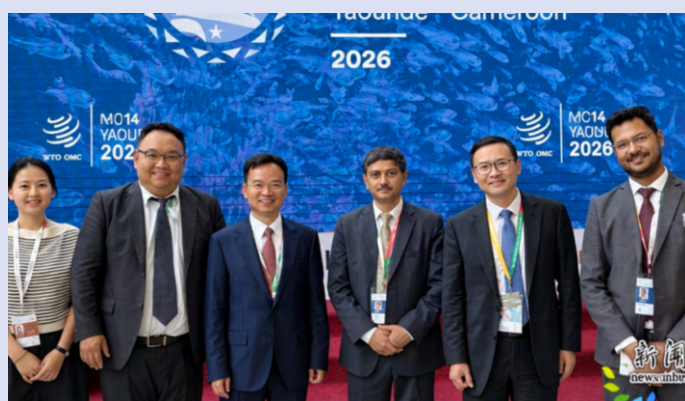
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WCP STUDIES





14th Ministerial Conference of WTO at Yaoundé, Cameroon



India's 8th Trade Policy Review



India ratifies WTO Agreement on Fisheries Subsidies



INTERVIEW

PROF. ISABELLE VAN DAMME

Navigating Sustainability for Developing Countries



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firm, where she worked on WTO disputes. She has also worked as a College Lecturer, Director of Studies and the Turpin-Lipstein Fellow at Clare College, University of Cambridge, where she taught EU law, public international law and WTO law. Prof. Van Damme holds a Ph.D. from the University of Cambridge, an LL.M. from Georgetown University Law Centre, and bachelors degree from the University of Ghent.

Q1: EU's CBAM can be characterised as "market access gateways" that developing countries must navigate or challenge. From the perspective of WTO treaty law, how strong is the EU's defence of CBAM under existing exceptions, particularly Article XX of GATT?

A request for consultations was filed by the Russian Federation against the EU, but for a long time the dispute did not proceed further, largely because of the situation in Ukraine. Very recently, the Russian Federation has requested the establishment of a WTO panel.

Many WTO Members and their industries are deeply concerned about CBAM. However, so far, most WTO Members have refrained from initiating a WTO dispute. The question that comes to mind is why. One explanation might be that many WTO Members still prefer to negotiate with the EU, on the understanding that the design or application of the measure might still change. Another is that WTO Members might

anticipate that the result of a successful WTO challenge would be that the EU could keep the measure and would only need to modify certain aspects of it.

Turning to the EU's defence of CBAM, the EU would likely rely on several sub-paragraphs of Article XX of the GATT 1994. Irrespective of the specific claims to be presented, the current state of WTO case law reflects a considerable degree of deference toward WTO Members adopting what might be termed as environmentally friendly measures. This deference manifests in several practical ways. Where respondents once faced a considerably high burden in demonstrating the necessity of a contested measure under Article XX(b) of the GATT 1994, that bar has been lowered. For example, in respect of climate-related measures, the distinction that panels have drawn between 'alternative' and 'complementary' measures has made it difficult for complainants to identify a less trade restrictive, reasonably available alternative. Another line of justification could see the EU invoke Article XX(g) of the GATT 1994.

What seems increasingly clear, however, is that a measure's justification will turn less on its core design than on the finer details of its implementation, such as the scope of exemptions, the methodology used for calculations, and the degree to which the EU affords recognition to equivalent measures adopted by trading partners. These are the features likely to attract scrutiny from a panel, and they correspond with the pressure points in respect of which negotiated adjustments are being pursued. Moreover, there is a growing recognition among WTO Members, including developing countries, that emissions must carry a cost, and that the real question is not whether to price emissions but how to do so equitably.

The EU's CBAM should also be understood partly

through the lens of regulatory sequencing. By acting first, the EU has secured a first-mover advantage, as illustrated by the fact that the United Kingdom (UK) has adopted a parallel instrument which, while not identical, follows a similar logic as the EU's CBAM.

Q2: In your view, does the current state of WTO jurisprudence lend greater credibility to these regulations? Also, if a panel finds that the EU may adopt climate-related measures but must reconsider aspects of their implementation, does that in some sense confirm that sustainability measures can legitimately be introduced and imposed by Member States?

It is useful to take into account the adopted panel reports in the *EU – Palm Oil* initiated by Indonesia and Malaysia. That panel extended considerable deference to the EU across several dimensions, including its reading of the sub-paragraphs of Article XX of GATT 1994 and Article 2 of the Agreement on Technical Barriers to Trade (TBT Agreement), Agreement. The panel reaffirmed the requirement that a measure must be apt to make a material contribution to its stated objective, while placing the burden on the complainants to identify a less trade restrictive alternative capable of achieving the same level of protection. In those disputes, Indonesia and Malaysia advanced numerous examples of such alternative measures, but the panel characterised those measures as 'complementary' in nature rather than 'alternative'. As a result, the burden of identifying a genuine alternative has become, in practice, very difficult. Moreover, that panel's assessment of "even-handedness" resulted in the conclusion that certain criteria embedded in the measures at issue were found to carry features of hidden discrimination, taking into account the characteristics of the products at issue.

A dimension of both disputes that has perhaps received less attention is that Indonesia and Malaysia brought claims under TBT provisions requiring that their interests, as developing countries, be taken into account. It seems that, in these disputes but also others, panels have typically rejected those claims on mostly procedural grounds. "Taking into account" seems to only require that consultations occurred, and concerns of developing countries are acknowledged. That raises a question of whether that obligation should be interpreted differently, so as to impose also limitations on the substance of measures. To illustrate this point, in the *EU – Palm Oil* there was considerable discussion about the smallholder exemption in the EU measures. Malaysia and Indonesia argued that the EU's definition of a smallholder bore little correspondence to the actual landholding patterns or living standards of their smallholder farmers. The panel in both disputes ultimately deferred to a study on which the EU had relied, on average farm sizes across sectors globally, even though the farm sizes in that study were not representative of farms in Indonesia and Malaysia.

Finally, the panel's handling of the TBT Agreement's obligation to base measures on relevant international standards directly addressing sustainability claims, greenhouse gas emissions accounting, and life cycle analysis raises questions that will likely recur in future climate-related disputes. Indonesia and Malaysia identified International Organization for Standardization (ISO) standards that, they argued, were relevant to attributing greenhouse gas emissions to products. However, the panel rejected the relevance of those standards because, in essence, they did not preclude the EU from adopting a different approach in attributing and accounting for greenhouse gas emissions.

Q3: Your 2023 article in the *Journal of International Economic Law* asked whether the Appellate Body "dug its own grave." The issue note argues that the Global South is trapped as "standard takers, not standard makers." Does the paralysis of the Appellate Body compound this power asymmetry, and how realistic is it that any reformed WTO dispute settlement mechanism would give developing countries a more meaningful voice in shaping the jurisprudence that governs these sustainability measures?

The article was framed deliberately as focusing on a question rather than an assertion. The conclusion reached was that responsibility for the current impasse of WTO dispute settlement cannot be attributed to any single factor. Rather, the current state of that system of dispute resolution results from a collective failure shared among many stakeholders within the system, such as litigators, governments, and institutions alike. While certain stakeholders undoubtedly bear a greater responsibility than others, the exercise of assigning blame is, on the whole, unproductive.

Part of that collective responsibility relates to the structural rigidity of the treaty framework itself. Unlike many other judicial systems and tribunals, where rules are periodically revisited and updated as a matter of course, the WTO treaties are difficult to amend. A system incapable of updating its own foundations will, inevitably, struggle.

Turning more directly to the standard-takers-versus-standard-makers framing, there is a distinction between "rulemaking" processes and "enforcement" through third-party dispute resolution. Enforcement and rulemaking are fundamentally separate functions and conflating them risks obscuring where the actual leverage points lie. As for the notion of a "reformed"

WTO dispute settlement mechanism, for those participating in the MPIA, a version of reform arguably already exists. Whether that arrangement enjoys full, system-wide consensus is a separate question, but it is worth recalling the trajectory: for a long time, the paralysis of the Appellate Body was met with denial, followed eventually by acute alarm once its implications became unavoidable. Today, sentiment has shifted again toward a quiet acceptance that the Appellate Body, at least in the form long familiar to stakeholders, is unlikely to return.

One might then ask what this means for developing countries seeking to shape jurisprudence on sustainability measures. The answer might partly be that influence requires participation. A country's voice is heard by engaging directly in disputes, whether as a complainant, as a respondent (a role over which a country often has little control), or, critically, as a third party. Dispute activity involving both MPIA and non-MPIA members is once again on the rise, and a meaningful number of developing countries do participate. Yet it remains striking how often developing countries refrain from third-party participation, particularly in disputes between major players. The reluctance is frequently framed in political terms: a wish not to be seen as "picking sides" or straining relationships with significant trading partners. But this framing misunderstands the nature of third-party participation, which exists primarily as a vehicle for sharing interpretive views on how the rules ought to be read – an input that is genuinely useful to adjudicators and represents an underused avenue for developing countries to shape outcomes.

On the question of coalition-building, i.e., whether joining forces with other countries makes litigation more tractable, the picture is more complicated. Developing countries do not always share aligned

interests with respect to any given measure, and disagreements among them can be as pronounced as those between developing and developed members. This makes coordinated action harder to achieve in practice than in theory. Finally, some caution is warranted before collapsing the standard-taker/standard-maker dynamic entirely into a question of dispute settlement participation.

Q4: You are contributing a chapter on "EU open strategic autonomy: Unilateral applications and implications" to an Elgar handbook. How should developing countries read the EU's strategic autonomy discourse? Is there a defensible legal distinction between legitimate climate policy and protectionism dressed in environmental principle, and does the current WTO toolkit allow panels to draw that line effectively?

The concept of "strategic autonomy" is a term borrowed originally from the EU's defence policy. The concept now functions primarily as an umbrella encompassing a broad range of EU trade policy instruments, competition law tools, and newly devised regulatory mechanisms. The most recent EU policy documents make this clear, as new instrument are increasingly reframed under the strategic autonomy banner, among them CBAM, the Forced Labour Ban Regulation, the Foreign Subsidies Regulation, the Anti-coercion Instrument, and the International Procurement Instrument. Whether strategic autonomy constitutes a legal principle in any formal sense remains unclear; it is more commonly described as a mindset or a political objective.

Trade and environment disputes were once, in retrospect, relatively distinct; the centre of gravity of a contested measure was identifiable, discriminatory elements could be isolated and addressed, and the

legal analysis followed accordingly. That relative clarity, in retrospect, began to fade with the first set of WTO raw materials disputes, cases in which environmental objectives became inextricably entangled with development concerns and industrial policy ambitions. The EU's green and digital transition, its de-risking agenda, and its security-of-supply concerns now fall within a single policy framework, at least according to the European Union. This might affect how to argue that a measure is purely protectionist and entirely unconnected to environmental objectives.

More broadly, there is a jurisprudential trend of growing deference toward measures characterised, at least by the respondent, as climate-related or decarbonisation-oriented. Third-party adjudicators are, it seems, increasingly reluctant to second-guess the underlying policy choices embedded in those measures. In consequence, WTO panels appear to be gravitating toward what might be termed process-based review: rather than interrogating the scientific or empirical foundations of a contested measure, they examine the manner in which it was adopted — the scope of the evidence base, internal consistency, and the coherence between stated objective and regulatory design.

The recent *US–Inflation Reduction Act* dispute offers an illustration of how panels are beginning to grapple with the merging of environmental sustainability and industrial policy, particularly in the context of the public morals exception. That panel looked at a range of indicators as a basis for evaluating the measure's legitimacy. For example, the panel scrutinised the internal logic of the measure against its stated objective: is the measure actually targeted at its source, or does it instead impose collateral harm on trading partners whose conduct does not contribute to the

problem? A measure which causes disproportionate damage to parties unconnected to the stated objective may, under this framework, be indicative of a purpose other than the one declared.

Q5: You co-authored a book examining the EU's Foreign Subsidies Regulation, which gives the Commission broad powers to investigate and remedy foreign state support that distorts the EU single market. To what extent might firms receiving state-backed green financing be subject to scrutiny under the EU's Foreign Subsidies Regulation when competing in EU markets or participating in EU procurement??

The Foreign Subsidies Regulation (FSR) is notable for the breadth of its triggering concept for the notification obligation: a "financial contribution" under the regulation is a considerably wider category than a subsidy under the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and the notification obligation attaches to this broader concept, since the purpose for which the financing was provided does not qualify the notification obligation. There are no carve-outs for green financing; a financial contribution directed at supporting a company's renewable energy activities is subject to the same notification regime as any other form of state support. This is significant for Indian firms in sectors such as wind and solar.

A practical complication compounds this formal legal exposure. Many companies, particularly at the outset of the FSR regime, have struggled to identify and record all the financial contributions they have received. The notification obligation requires disclosure of contributions that companies might not have perceived as state support at the time of receipt, and their recordkeeping infrastructure has often not

been designed to capture this information systematically. One constructive step available to governments is to provide companies with clear, affirmative communication that a given financing arrangement constitutes a financial contribution, enabling companies to manage their disclosure obligations proactively rather than retrospectively.

It bears emphasis that notification does not in itself determine the outcome. A large proportion of notified transactions proceed without a finding of competitive distortion. But the notification burden itself is substantial and operationally disruptive, particularly in procurement contexts, where even the prospect of further scrutiny has in a number of cases prompted companies to withdraw bids and exit tender processes.

Furthermore, the European Commission retains the ability to examine cases on its own motion even where the formal notification thresholds have not been met, meaning that the absence of a notification obligation does not guarantee immunity from investigation. For many Indian companies, the more immediate regulatory burden might in practice arise not from the FSR but from newer EU instruments that place conditions on market access.

Q6: Given the International Court of Justice's (ICJ's) 2025 Advisory Opinion on Obligations of States in respect of Climate Change, where it affirmed the customary international law duty of climate due diligence and rejected the treatment of climate law as a self-contained regime, do you foresee WTO adjudicators moving beyond the traditional reluctance to engage with principles such as Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), the right to development, and historic responsibility? Could these principles

evolve into legally relevant interpretive tools in assessing the legitimacy and proportionality of climate-related trade measures under GATT Article XX and modern FTAs?

This is an area that deserves much closer examination. I have already written a short piece exploring some of the possible implications of the Advisory Opinion for how future trade disputes might be argued. There are several avenues through which it could influence legal reasoning. While the Advisory Opinion was not intended to address international trade law directly, it nevertheless contains observations, including references to fossil fuel subsidies, that could become relevant in future trade-related litigation.

One important implication concerns the obligation requiring States to take into account the interests of developing countries. In that context, the ICJ's discussion of CBDR-RC could be used as interpretive guidance. Rather than treating such obligations as merely procedural requirements, the Advisory Opinion suggests that they demand a more substantive balancing of interests. This could strengthen arguments that decision-makers must meaningfully consider differentiated responsibilities rather than simply demonstrating procedural compliance.

A second area relates to the necessity analysis under WTO law, particularly the distinction between "complementary" and "alternative" measures. The Advisory Opinion places considerable emphasis on due diligence as an obligation of conduct requiring States to pursue multiple necessary actions, rather than choosing among alternative policy options. Read in that light, one could argue that where different climate measures are capable of operating alongside one another, the Advisory Opinion supports the view

that States may be expected to implement several measures simultaneously in order to discharge their climate obligations.

That said, the Advisory Opinion does not change WTO law as such. It was not intended to reinterpret WTO agreements, nor can its language simply be transposed into WTO obligations. WTO adjudicators remain bound by the treaty text. That said, in future disputes, complainants might rely on the Advisory Opinion for interpretive purposes, to call for a more demanding interpretation of existing obligations and of the conditions contained in WTO exception clauses.

The ICJ recognised that States possess different capabilities and responsibilities, while at the same time avoiding conclusions that would predetermine questions of state responsibility in individual cases. This cautious approach is understandable, particularly given the advisory nature of the proceedings and the extraordinary level of participation by States in those proceedings. The Court appears to have been careful not to prejudge specific questions of international responsibility.

The ICJ's discussion of fossil fuel subsidies is particularly interesting. The references are relatively brief and somewhat general, suggesting that they reflect a carefully negotiated compromise within the Court. Several individual opinions reveal varying degrees of enthusiasm for addressing fossil fuel-related measures more directly. Consequently, while these passages might influence future discussions, including within the WTO on subsidy transparency, they should always be read in their proper context and should not be overstated.

Ultimately, the Advisory Opinion enriches the

interpretive landscape without fundamentally altering the existing framework of WTO law.

Q7: You authored the chapter on national security in the second edition of the Oxford Handbook of International Trade Law and have represented governments directly in WTO disputes involving security exceptions. The invocation of Article XXI GATT by defendants in cases like *Russia – Traffic in Transit* raised difficult questions about self-judging defences and the balance between State sovereignty and rule-based adjudication. Do you see a risk that climate and environmental exceptions could evolve along a similar doctrinal trajectory? If powerful states develop broad self-judging environmental defences, what does that mean for developing countries trying to use their own domestic policy space against those same exceptions in disputes where they are respondents?

It seems important to underscore that Articles XX and XXI of the GATT 1994 are fundamentally different provisions. There is certainly room to debate whether particular interpretations of Article XXI are correct, but I do not think concepts developed under Article XXI can simply be imported into Article XX. One has to respect the text of the relevant provision.

Equally important is the distinction between a genuinely self-judging provision and a provision that is accorded a significant degree of deference under the applicable standard of review. Those are two different concepts, and should be kept analytically distinct.

An interesting question is whether climate change concerns could ever fall within the scope of Article XXI. One could imagine circumstances involving small island States facing existential threats from sea-level rise, where climate change acquires a different

dimension because it results in loss of territory. That then raises questions about how far Article XXI should extend.

At the same time, Article XXI possesses characteristics that distinguish it from Article XX. One notable feature is that it permits measures to be adopted in time of war or other emergencies in international relations without requiring the kind of product-specific analysis ordinarily found elsewhere in the GATT. Invoking Article XXI therefore has systemic implications. A Member relying on Article XXI(b)(iii) must accept that the complainant may invoke the same provision in response. In today's trading environment, opening that door might come at a very significant cost.

For that reason, one should not be too quick to move climate-related disputes into the framework of Article XXI. Despite what we currently observe in international practice, not everything should be characterised as an issue of national security. Perhaps for many years we spoke too little about security in international trade law. Today, however, there is a risk that we speak about it too much.

If Members seek greater regulatory autonomy for climate measures, Article XX already provides considerable flexibility. The more important question is whether Article XX jurisprudence should evolve further. As we discussed earlier, there might be room to reconsider aspects of the necessity analysis and to think carefully about how governments should construct legal arguments under Article XX. Those arguments must remain grounded in the facts of the dispute, the design of the challenged measure, and the interpretation of the treaty text, not in an expansion of self-judging justifications.

What has been observed more generally, in the policies of WTO Members, is the increasing convergence of decarbonisation, economic security, and industrial policy in their articulation of policy rationales. These objectives are becoming progressively intertwined, and that development makes litigation decisions significantly more complex for all WTO Members, whether developed or developing.

Governments must now ask themselves whether they wish to challenge measures such as local content requirements or industrial policies adopted elsewhere and accept legal interpretations that might subsequently constrain their own domestic policy choices, when they might themselves wish to pursue similar policies in the future. That strategic trade-off has become considerably more significant than it was in the past.

Q8: Recent geopolitical developments appear to have blurred the distinction between national security and national interest. Traditionally, Article XXI was often understood as addressing temporary or reactive situations. Increasingly, however, States appear to rely upon it in support of long-term strategic industrial policies. Particularly in the absence of appellate guidance, does that change the way we should understand the provision?

That is a fair observation. Certain measures, such as sanctions, are clearly reactive. Others like decisions to place particular products under export control might be considered by WTO Members to also be strategic rather than solely reactive.

There remain many unresolved questions in this area. Governments increasingly invoke a range of concepts together: economic security, industrial policy, decarbonisation, protection of domestic employment,

and security of supply. These have almost become policy buzzwords that frequently appear in combination rather than as distinct objectives.

That creates a particularly difficult task for adjudicators. They might increasingly have to undertake what one might describe as a "centre of gravity" analysis to determine the principal objective of a measure. We already see elements of this approach emerging in parts of WTO jurisprudence. These developments make adjudication more complex. They also reinforce the importance of reading WTO jurisprudence carefully and objectively.

ARTICLE

SUSTAINABILITY IN RECENT IMPERFECT TRADE DEALS

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INTRODUCTION

The global trading system faces a conundrum wherein governments must act quickly to address geopolitical disruptions and urgent sustainability challenges. This need for responsiveness arises both domestically, where governments must design and implement policy, and internationally, where Members must coordinate rules capable of addressing shared concerns. The WTO consensus-based decision-making practice allows any single Member to stall negotiations,² whether to extract leverage in unrelated areas or simply to block progress for any reason. Yet, consensus has also played a constructive role in the GATT/WTO system. A useful example is India's insistence that the Draft Rules of Conduct apply not only to the first Appellate Body members and all actors of the Dispute Settlement Mechanism (DSM), but also to the Textiles Monitoring Body and textiles-

related disputes, as a condition for joining the consensus on the confirmation of the first Appellate Body members. The example shows that consensus can be used constructively to secure institutional safeguards.

The present geopolitical context is different today. In recent months, the global situation has changed dramatically, and urgency and worrying instability is now present everywhere. Multiple actions and decisions by governments need to take place. Changing and adding norms in response to Members' needs must therefore be possible and effective. The WTO's traditional consensus-based rule-making remains slow, contested, and increasingly deadlocked. There are many traditional trade actions and measures that can be adapted to today's needs, using Members' sovereign right to regulate on trade-related matters and Members' call for those actions to be discussed in the WTO. For example, allowing an open sub-group

of Members to move ahead may contribute to the evolution of international trade and enhance the WTO's ability to adapt to new economic realities in reforming.

With a view to adapting and responding to some of those new needs, States have adopted what I have grouped as "imperfect agreements" which are instruments that are incomplete,³ transitional, not completely consistent, or made in part of soft law norms and principles, and yet they can produce positive regulatory and trade effects. They reflect a new way of working, one in which governments exercise their sovereignty differently, and in which de facto coordination among a subgroup of Members can generate normative change and feed into eventual informal and formal rulemaking. Imperfect agreements' primary purpose is to facilitate and promote trade and continue the spirit and the principles of the GATT/WTO. Given that institutional inaction carries serious risks, imperfect actions and imperfect agreements that advance international trade and WTO values are preferable to paralysis.

With some of its Members' actions and decisions, dynamic means of building agreements have emerged during MC14. Some Members decided to move forward with an agreement, for example, the decision by a sub-group of 33 Members to maintain the moratorium on electronic transmissions. This partly reflects coordinated domestic measures and actions, allowing them to continue their domestic actions on relevant issues before the formal conclusion at the WTO.

Where hard law commitments are unattainable, when the "royal route" is not possible because of geopolitical storms, an alternative route must be explored. They can use their basic sovereignty power to calibrate the level of bindingness of their instruments, deploying best-endeavour language, principles, or guidelines, to foster State practices that may eventually harden into

obligations. Soft law principles can also be used, as even if not binding, they serve the same objectives as many traditional formal trade agreements and preserve transparency. The ICJ's Climate Change Advisory Opinion illustrates the potential wherein principles that have always existed and long been treated as soft, were considered as applicable law to environment-related treaties.⁴

This short text examines how recent imperfect agreements have engaged with sustainability, and discusses an Indian domestic carbon measure, the state practice of some aspects of which could be used as a basis for a plurilateral agreement.

MINI-DEALS, TARGETED TRADE DEALS, AND SUSTAINABILITY

Targeted trade deals (TTDs) and Mini-Deals often focus on specific sectors and place greater emphasis on regulatory dialogue, cooperation, and shared standards than on enforcement. The WTO Global Value Chain Development Report 2025 identified 185 such deals in critical minerals and digital trade alone, capturing an emerging pattern of norm-setting in areas where multilateral consensus is out of reach.⁵

Under WTO law, such instruments do not generally conflict with the Marrakesh Agreement, given that their primary function is to encourage dialogue and cooperation rather than alter existing binding obligations. Beyond political signalling, they generate State practice and normative expectations that gradually shape regulatory behaviour, functioning as a bridge between voluntary cooperation and eventual legal codification.

Sustainability has begun to appear in some of these deals. Critical minerals TTDs increasingly reference forced labour prohibitions and environmental obligations. Yet sustainable development remains insufficiently and inconsistently integrated across this

category. Rather than pursuing harmonisation, Members should consider instruments based on equivalence and mutual recognition, allowing different standards to be accepted as equivalent without requiring a single approach. The WTO supports these principles under the TBT Agreement, the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), and the General Agreement on Trade in Services. The Steel Standards Principles, launched at COP28 with WTO support, recognised equivalence and mutual recognition as central to sustainability cooperation in the sector.⁶

IMPERFECT AGREEMENTS AND THE E-COMMERCE AGREEMENT AS MODEL FOR SUSTAINABILITY

The E-Commerce Agreement (ECA), one of MC14's most significant outcomes, represents a new generation of trade instruments. Dynamic and hybrid in character, it carries a WTO symbol despite some contending that it sits outside the system. Around 67 Members have committed to implementing it on an interim basis, pending formal incorporation as a plurilateral agreement under Annex 4, with WTO dispute settlement rules applied *mutatis mutandis*. This ECA structure allows Members to operationalize commitments domestically before ECA is formally integrated into the WTO, building regulatory alignment and domestic enforcement capacity through soft law and regulatory best practices. The ECA's present legal character remains transitional. Its interim implementation stands on a novel acceptance mechanism under the responsibility of the WTO Director-General possible, notably via the acceptance mechanism. So ECA's obligations are not (yet fully) enforceable as a WTO obligation, only as ECA obligations under the ECA-specific DSM for those who accepted it. At the same time, ECA is not purely external to the WTO since the Director-General has transmitted a certified true copy, and the Agreement provides for entry into force for accepting Members

after the forty-fifth instrument of acceptance.⁷ This illustrates that, even before Annex 4 incorporation, ECA is operating thanks to the WTO institutional support.

Incorporating a plurilateral agreement into Annex 4 by consensus remains the most direct path or "the royal route", but uninvolved Members can easily block it, as seen with both the Investment Facilitation for Development Agreement and the E-Commerce Joint Statement Initiatives (JSI). In March 2026, the US proposed two responses to this impasse: (1) "interim plurilaterals", allowing a subgroup to implement voluntary temporary agreements without full consensus, monitored over a set period before potential formal incorporation; and (2) a "critical mass" test, whereby an agreement would be incorporated once participants account for a defined share of trade in the covered products.⁸

This reveals a broader structure common to imperfect agreements: they operate through both an international cooperation mechanism and domestic implementation by willing participants. The ECA illustrates this dynamic. With the Director-General, Ngozi, actively supporting such new forms of agreements between sub-groups of governments, and with the Agreement transmitted under a WTO document symbol, the ECA shows that these arrangements can remain connected to the broader WTO system even before formal Annex 4 incorporation.⁹ The ECA model raises a broader question: could a similar architecture be used for sustainability standards? India's CCTS provides the domestic side of such a model that starts domestically, and which can be exported regionally or internationally.

INDIA'S CARBON CREDIT TRADING SCHEME

India offers a concrete illustration of sustainability as an industrial strategy implemented through domestic

regulatory instruments with trade-facing effects and which can provide the relevant expertise to cooperate efficiently with other States. Its CCTS, notified in 2023, establishes the framework for the Indian Carbon Market through both compliance and offset mechanisms.¹⁰ Under the compliance mechanism, obligated entities in energy-intensive sectors are assigned greenhouse-gas emission-intensity targets; entities that outperform their targets may receive tradable carbon credit certificates, while entities that fall short must acquire credits to meet their obligations.¹¹ Although the CCTS is a domestic instrument rather than an international treaty obligation, it is trade-relevant because, *inter alia*, it creates a carbon-pricing and monitoring architecture in sectors exposed to the EU's CBAM.¹² Under CBAM, where importers can prove that a carbon price has already been paid during the production of imported goods, the corresponding amount may be deducted.¹³ The CCTS therefore does not automatically exempt Indian exporters from CBAM. Its relevance lies instead in creating a domestic carbon-pricing and verification architecture that could support future deduction claims if Indian carbon prices are effectively paid, verifiable, and accepted under EU CBAM rules.

The trade relevance of this linkage lies in CBAM's treatment of carbon prices effectively paid in third countries. Where such a price can be verified, it can then be considered in calculating the CBAM financial adjustment. The CCTS therefore provides India with a domestic carbon-pricing and verification architecture that could support future technical dialogue on carbon-price recognition. In this sense, the CCTS-CBAM-Strategic Agenda linkage mirrors

“The CCTS therefore does not automatically exempt Indian exporters from CBAM. Its relevance lies instead in creating a domestic carbon-pricing and verification architecture that could support future deduction claims if Indian carbon prices are effectively paid, verifiable, and accepted under EU CBAM rules.”

the functional logic of the ECA approach. It suggests a pathway in which domestic experience and expertise, technical cooperation, and accumulated State practice may form plurilateral agreements that continue to expand and gradually support harder or more coordinated sustainability rules for a sustainable future.

Of note, the CCTS is supplied by the EU–India Strategic Agenda 2025.¹⁴ The Strategic Agenda does not incorporate India's CCTS into the EU's CBAM, nor does it exempt Indian exporters from CBAM. Rather, it creates a soft cooperation framework through which India and the EU can coordinate on carbon markets, monitoring, reporting and verification, benchmarks, green technologies, and low-

carbon industrial production. This is again a good example of a soft law process (and norms) that goes in the direction of sustainable and effective trade cooperation, implemented domestically but which can easily be used in mutual recognition and equivalence international mechanisms and in plurilateral agreements.

CCTS is also internationally relevant because some of its architecture and components could be used as a basis for an international agreement related to carbon. Indeed, this logic appears to be carried forward in the provisional India–EU FTA text, particularly Annex 14-A on carbon border adjustment measures,¹⁵ although the text remains subject to legal revision, signature, and completion of internal procedures.

The CCTS is an example of (domestic and international) sustainability policy functioning simultaneously as an industrial decarbonisation strategy and trade-adaptation strategy. It is also an

example of how domestic actions can serve as a basis of plurilateral coordination and cooperation, even if only with soft law, for the benefits of international trade and its participants.

CONCLUSION

The imperfect agreements surveyed in this note are not stopgaps or symptoms of institutional failure. They are a deliberate response to the genuine difficulty of updating a consensus-based system under conditions of geopolitical fragmentation, rapid technological change, and urgent sustainability demands and wars. Their normative legitimacy grows as participation widens, domestic implementation accumulates experience, and informal coordination gradually attracts formal recognition.

Sustainable development must be woven into these arrangements from the outset, not appended as an afterthought. The India example is instructive: a domestic carbon standard designed with export competitiveness in mind, paired with a soft international instrument that coordinates rather than compels, and leaving open the possibility of eventual plurilateral codification. This is sustainability as industrial strategy in its most practical form, and it is the kind of model that the ECA approach makes replicable across sectors and jurisdictions. Where multilateral consensus is unavailable, groups of willing Members can implement sustainability commitments domestically, coordinate through imperfect agreements, and build the State practice that serves as a stepping stone toward fuller integration into the multilateral system.

1. I want to thank Priyadarshini Ventakesh for her assistance.

2. Procedures for the Appointment of Directors-General, WTO Doc. WT/L/509 (20 January 2003). See also, WT/L/93 on paragraph IX.1 and WT/L509 which declares in para. 20 that consensus is customary in WTO.

3. Gabrielle Marceau, Imperfect Agreements Can Protect and Implement the Rule of Law and Sustainable Development: A New Way of Working at the WTO, TESS Forum (7 May 2026), <https://tessforum.org/latest/imperfect-agreements-can-protect-and-implement-the-rule-of-law-and-sustainable-development-a-new-way-of-working-at-the-wto>.
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7. See Agreement on Electronic Commerce: Transmission of Certified True Copy, WTO Doc. ECA/DEP/1 (10 June 2026) (recording the WTO Director-General's transmission of a certified true copy of the Agreement on Electronic Commerce, done at Yaoundé on 28 March 2026, and noting that the Agreement enters into force for accepting WTO Members after deposit of the 45th instrument of acceptance).
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11. Government of India, Press Information Bureau, Market Mechanisms for Climate Leadership (23 June 2025). European Commission, Carbon Border Adjustment Mechanism, Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism, 2023 O.J. (L 130) 52. See also 'Practical Steps Towards Enhanced Transparency and Interoperability of Emissions Measures Related to Trade in Goods' presented by India

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<https://www.youtube.com/live/SZme7ddo8Pk>.

12. Council Regulation 2023/956, Establishing a Carbon Border Adjustment Mechanism, 2023 O.J. (L 130) 52.
13. High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council on a New Strategic EU-India Agenda, JOIN(2025) 50 final (17 September 2025).
14. European Commission, EU-India: Text of the Agreements, Free Trade Agreement, Annex 14-A, 'Carbon Border Adjustment Measures' (2026)

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ARTICLE

CIRCULAR ECONOMY: What the EU's New Rules Mean for Indian Industry



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INTRODUCTION

Circular economy principles - keeping materials and resources in use for as long as possible, reducing resource use and waste, and recovering value at the end of life – once sat largely in the voluntary domain of corporate sustainability. That is changing, as these principles are increasingly written into binding product regulations, in particular in the EU. With that shift, compliance is moving from the voluntary domain to a requirement for market access.

For Indian industries, which count the EU among their largest export markets, this raises a practical question- how to adapt while remaining cost-competitive. India's own regulatory trajectory is converging with these developments, which eases the transition, though significant work remains.

Below, we highlight the key compliance points across three EU regulations bearing on the circular economy. While these regulations impose a wide range of obligations, we have flagged those of particular note to the Indian industry - ones that raise similar challenges on comparable timelines - and then suggest steps for Indian industry to meet them.

ECO-DESIGN FOR SUSTAINABLE PRODUCTS REGULATION

The Eco-design for Sustainable Products Regulation (ESPR), in force since July 2024, is a framework regulation governing the design, manufacture and product information of goods sold in the EU. For the most part, it does not itself set product-specific rules; those arrive through delegated acts adopted sector by sector under work plans, the first covering 2025-2030.

One block of obligations, however, applies directly from the ESPR itself, without waiting for a sector

delegated act- the rules on unsold consumer products. These take two forms. First, large enterprises that discard unsold consumer products are required to disclose annually the quantity, the reasons and the treatment, beginning with the first full financial year in which the Regulation is in force (FY 2025 for most firms). Second, from 19 July 2026, large enterprises are banned from destroying certain unsold products. The ban currently applies only to apparel, clothing accessories and footwear, which are among India's most EU-exposed sectors. Both obligations extend to medium-sized enterprises from July 2030, and micro and small enterprises are exempt from both.

Three features of the product-specific regime, along with the sectors it affects most, make it especially significant for Indian exporters. First, compliance is a condition of market access a non-compliant product cannot be sold in the EU. Second, each regulated product must carry a Digital Product Passport, which is a verified record of its composition, recycled content, durability, and recyclability. Third, although the legal duty rests formally with the EU importer, importers will pass the documentation, testing and traceability burden down their supply chain, which will result in the substantive design and data traceability load falling on Indian suppliers, most heavily on MSMEs.

The priority sectors for adoption of product-specific rules read almost like a roster of India's top EU exports. They are indicatively sequenced as: iron and steel (2026); textiles and apparel, aluminium and tyres (2027); furniture (2028); and mattresses and certain horizontal recycled content requirements (2029). Iron and steel, first out of the gate, are doubly exposed, since they also fall under CBAM, which is already in operation. This leaves Indian exporters to navigate new, overlapping EU regimes at once.

PACKAGING AND PACKAGING WASTE REGULATION

Unlike ESPR's sector-by-sector approach, Packaging and Packaging Waste Regulation (PPWR) imposes horizontal obligations across all packaging and packaged goods, spanning design, substances, recyclability, reuse and refill, labelling, extended producer responsibility (EPR) and waste treatment.

PPWR is especially important for two reasons. First, its rules apply to all packaging, regardless of material, and they apply to anyone selling packaging or packaged goods in the EU. Accordingly, the regulation effectively requires every company selling into the EU to assess its obligations and reconsider its packaging choices. Second, the timeline is immediate, as obligations start to take effect from 12 August 2026.

The immediate obligations include design rules to minimise substances of concern in all packaging and to limit per- and polyfluoroalkyl substances in food-contact packaging; a requirement that all packaging be recyclable (with rules becoming stricter over time); (EPR); and conformity assessment and declaration of conformity supported by technical documentation. Further obligations phase in over time - for instance, from 2030, minimum recycled content for plastic packaging, with the threshold rising in 2040.

As with the ESPR, the testing and documentation burden will be passed on to Indian suppliers. This is because the key product obligations attach not only to whoever places the packaging on the market, but to

any importer or distributor selling under its own brand, who in turn demands compliance from its suppliers. In practice, this means the Indian exporter

“Indian exporter must generate the underlying conformity dossier, including information on packaging design and component materials, the standards applied, test reports, along with supporting evidence for each substantive requirement.”

must generate the underlying conformity dossier, including information on packaging design and component materials, the standards applied, test reports, along with supporting evidence for each substantive requirement. These obligations may attach to an Indian exporter as a "manufacturer", or as a "supplier" required to provide information to an EU manufacturer.

For EPR, in particular, the fees are eco-modulated and are required to reflect the packaging's recyclability performance grade. The EU entity paying the fees has a financial incentive to push recyclability demands, and the cost of higher fees, onto its suppliers.

EU BATTERIES REGULATION

The EU Batteries Regulation applies to all batteries and products containing batteries. It sets demanding obligations that apply from the cradle-to-the-grave, including human rights and environmental supply chain due diligence on mineral extraction and processing, product design and performance, and end-of-life treatment. These will also reach Indian suppliers.

Some of these obligations unfold on a tight timeline. From February 2027, a battery passport is mandatory for EV and certain other batteries, giving each battery a verified digital record accessible by QR code. From August 2027, human rights and environmental due diligence obligations require policies and

management systems (including traceability) subject to third-party audit, and reporting on compliance. From 2031, certain categories of batteries must meet minimum recycled content thresholds for cobalt, lead, lithium, and nickel, rising further from 2036.

For Indian exporters, three compliance issues stand out. As with the other regulations, information collection is a recurring burden, since the obligations rest on traceable and verified data. This will be cumbersome to assemble and must be built into systems in advance. Second, meeting the design and performance requirements (e.g., recycled content) will mean reworking product design. Third, the due diligence regime will extend to the supply chain in India. Indian cell, component and battery makers will have to map and control their upstream mineral supply chains, and to open those supply chains to third-party audit; and they will have to provide required information to EU importers.

KEY TAKEAWAYS FOR THE INDIAN INDUSTRY

Three cross-cutting challenges emerge. The first is the information gathering burden for the supply chain – each regime rests on traceable, verified data that must be generated upstream. This weighs most heavily on smaller entities, especially on MSMEs, which sit furthest down the contractual chain and are least equipped in both systems and resources to capture and maintain such data. The second is design change – the new design requirements, like recycled content, recyclability requirements, and restrictions on substances of concern, will require Indian suppliers to rework product and packaging design. The third is cost – both the compliance costs of testing, documentation, audit and redesign, and the likely contractual pass-through of costs like eco-modulated

EPR fees will impose a heavy financial burden on Indian entities.

Against these challenges, the Indian industry should treat early compliance as a source of competitive advantage rather than as a defensive cost. Firms that embed traceability and data record systems now, rather than scrambling to assemble records later, will be better placed to retain their EU presence as the relevant provisions come into effect. This means mapping upstream supply chains, engaging suppliers early, and, for larger firms, helping MSMEs within their own chains to comply; it will also mean reworking product design.

Business and sector associations have a particularly important role. They can pool resources to develop shared compliance toolkits, sector-specific templates and training, and organise sessions to share information and guidance so that individual firms are not solving problems alone. At this juncture, coordination is key to converting a fragmented, entity-specific scramble into a manageable and shared transition.

TRADELAB



ABOUT TRADELAB

TradeLab, a Geneva-based initiative, brings together students, academics, and legal practitioners to empower stakeholders to harness the benefits of research in international trade law and investment law. Through pro bono Legal Clinics, TradeLab establishes connections between students and seasoned legal professionals with research organisations, SMEs, and civil society, fostering the development of enduring legal capacity.

Conceived by professors of international law, Prof. Joost Pauwelyn and Prof. Sergio Puig, TradeLab has garnered a global presence since 2013. Renowned practitioners and academics, including Prof. Jennifer Hillman, Prof. Debra Steger, and Prof. Valerie Hughes, have joined the initiative. Currently, Prof. Katrin Kuhlmann and Prof. Jan Yves Remy serve as Co-Presidents, while Prof. James J. Nedumpara holds the position of Vice-President. TradeLab's clinics are currently operated at esteemed universities such as Georgetown University, The Graduate Institute, Kenyatta University, University of Ottawa, and National University of Singapore.

The Legal Clinics are composed of small groups of highly qualified and meticulously selected law students who collaborate on specific legal inquiries posed by beneficiaries, including SMEs, non-governmental organisations, industry bodies, and others. These students work over the course of a semester, conducting comprehensive legal research and drafting several versions of their work. These drafts are shared with academic supervisors (faculty at CTIL and their respective law schools), mentors, and beneficiaries for feedback and guidance. The output encompasses a diverse range of legal documents, such as legal memoranda, research projects, reports, drafts of laws, and other tailored outputs that meet the specific needs of the beneficiaries. At the conclusion of the semester, the groups submit a written output and present their project orally in class, in the presence of the beneficiaries and other invited guests.

TRADELAB-INDIA OPERATIONS

The TradeLab-India operations adhere to a hub-and-spoke model, with the CTIL serving as an anchor institution between universities and beneficiaries. This arrangement facilitates seamless coordination and communication among all parties involved. The

Legal Clinics provide a mutually beneficial experience for all stakeholders: beneficiaries gain access to expert work at no cost and develop their capacity; students acquire practical experience, earn academic credits, and expand their professional networks; academic supervisors and mentors share their expertise on contemporary legal issues and enhance their ability to attract and engage top students with demonstrated skills.



Participating universities for 2026 include NALSAR School of Law, Dharmashastra National Law University, and Hidayatullah National Law University.

Our beneficiaries include, among others, the Centre for International Legal Studies; UNESCAP; the International Institute of Sustainable Development; Laghu Udyog Bharati; the Services Export Promotion Council; the Indian Steel Association; and the Indian Industries Association.

The Legal Clinic's objectives are as follows:

Firstly, to enhance students' substantive legal knowledge of international economic law. Students learn not through traditional in-class teaching but by working collaboratively in teams on a specific legal project of practical significance to their beneficiaries.

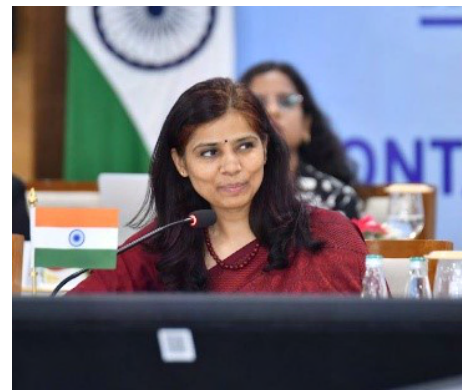
Secondly, the clinic aims to improve students' professional skills to enable them to become successful

lawyers. This includes developing the ability to analyse complex legal problems, apply the law to a set of facts, interact with beneficiaries, work in groups with other lawyers across cultures and language barriers, deliver compelling oral presentations, write legal memoranda or submissions, and adapt the explanation of legal expertise to diverse audiences.

Thirdly, the clinic aims to stimulate personal skills and aspirations of students. It aims to make them aware of professional opportunities in the international economic law field and to discover new challenges and opportunities. Through interactions with other students and a diverse range of beneficiaries (including from other countries), participants will develop interpersonal skills, gain insights into different cultures, and experience the challenges and needs of a wide variety of stakeholders affected by international economic law.



India's BRICS Presidency 2026





INTERVIEW

PROF. KATRIN KUHLMANN

Micro International Law and Sustainable Development: From Global Rules to Local Realities



***Katrin Kuhlmann** is a leading expert on international economic law, development, trade law, agriculture and food security, and comparative law. Her research and teaching focus on international law and development, trade law and regional trade agreements, international economic law and institutions, digital law and regulation, agricultural law, fashion and the law, sustainable development, international legal theory, and empirical and interdisciplinary approaches to*

international law. In addition to her academic appointment as Professor from Practice and Faculty Director of the Center on Inclusive Trade and Development, she is also the faculty director of the International Trade Law Certificate program at Georgetown Law. In 2010, she founded the New Markets Lab, a non-profit law and development innovation lab focused on empirical legal and regulatory research. Prof. Kuhlmann is widely published in international law and development, international trade law, and comparative international law. She has also previously served as a trade negotiator at the Office of the U.S. Trade Representative and sat on its Trade Advisory Committee on Africa for over a decade. She holds J.D. from Harvard Law School and B.A. from Creighton University and was the recipient of a Fulbright scholarship to study international economics.

Q1: Could you please explain what distinguishes your concept of "Micro International Law" from the traditional understanding of international law, and whether your approach seeks to address any current limitations within the field?

"Micro International Law" starts from the premise that international law plays a very important role and should be preserved and strengthened; however, it provides a different way to study and approach international law. Instead of starting from the highest level of international governance, Micro International

Law considers how disaggregated legal models and the experiences of individuals, small businesses, farmers, women in export sectors, Indigenous communities, and other stakeholders shape international law. It presents a possible subfield of international law and is not a replacement for international law, even though applying the micro international law approach would alter certain aspects of the field. Micro international law is intended to be complementary to other approaches, including the antecedents on which it builds, like transnational law, new legal realism, and Third World Approaches to International Law, and is designed to address gaps and areas that have not been well studied in international law (Katrin Kuhlmann, *Micro International Law*, 61 *Stanford Journal of International Law* 2025).

Micro international law's main contribution is the disaggregated study of smaller-scale legal interventions (detailed, stakeholder-focused approaches at the domestic and local levels) that influence and are influenced by international law and contribute more pluralistic modes of transnational legal diffusion. Micro international law has several elements, including conceptual, empirical, and procedural dimensions. Its methodological or empirical dimension is meant to fill a gap in international legal analysis and scholarship through a set of tools to understand law and regulation at a more granular level and the disaggregated elements that influence and are influenced by international law. Another aspect is procedural and process-oriented, linking smaller-scale interventions and stakeholders into broader international legal systems. Directionally, micro international law takes more of a bottom-up rather than a top-down approach; however, it suggests a circular relationship between domestic law and international law based on the aggregation of granular legal interventions. Overall, it

also has a strong comparative and interdisciplinary focus.

Cutting across all of this is a normative dimension designed to enhance equity in the international legal system, which remains a challenge in international law. Although many aspects of international law prioritise equity, it is difficult to turn these aspirations into practice. By examining legal approaches and stakeholder interests at a more disaggregated level, including legal intervention points and smaller lessons across a broader range of countries, micro international law could help enable international law to more effectively deliver on its promise of enhancing equity for countries and individuals worldwide.

It is also important to note that other fields, such as economics, have long had a micro dimension alongside the macro dimension, and there is a widely held understanding that one must understand both the macro policy level and the micro details of firms and individual behaviour. International relations and political science also increasingly incorporate a micro dimension, and international law should not lag behind other fields in adopting a micro approach.

At a high level, international law centres around treaties, international agreements, and other instruments, with states and institutions as the main actors in the formation and enforcement of international law. Although there is growing recognition that communities and individuals are important stakeholders, they have not historically been at the centre of international law. Micro international law recognises the centrality of states in international law, but it expands consideration of international law's design and impact on individuals, communities, and other stakeholders. Most stakeholders are not typically consulted in the design of international law, and, even when consultation

processes exist, they are often poorly structured or implemented. Many individuals and many small businesses do not realise the extent to which international law affects them, so they are unlikely to engage in the details. This is illustrated by changes brought about by trade agreements, for example, which have a tangible impact on people worldwide, most of whom are entirely left out of the rulemaking process. Globally, international law is often shaped by powerful stakeholders and large economies, leading to questions on whether the system is broadly representative. Micro international law's framework provides different pathways for assessing stakeholder priorities and engagement with international law, which will be important as international law continues to evolve.

Micro international law also focuses on implementating the law in action to examine how things work in practice rather than through legal instruments alone. The micro international law approach addresses implementation and enforcement gaps in a manner that reflects socio-legal and contextual priorities. It enables a deeper examination of social and sustainability issues through a tailored, disaggregated approach rather than more standardised, uniform approaches. It also highlights locally responsive differences in how countries implement international legal commitments through domestic law.

The empirical dimension of micro international law is central to the approach. At a more macro level, other important empirical work examines treaty design, treaty compliance, or how a judicial body makes decisions. While these are critical to the study of international law, they are still somewhat top-down. Micro international law is designed around more bottom-up empirical approaches: it is more field-

based, more stakeholder-driven, and more focused on the granularity of how laws are designed and implemented. I introduced a method in the paper, called micro mapping, which I have been working on for nearly a decade. It breaks law and regulation down into smaller parts and then uses this disaggregated analysis to compare different countries' approaches to legal design and implementation (including implementation of international treaties). The process of micro mapping is also a method for engaging stakeholders, which can be used to pinpoint where stakeholders are impacted by law in both design and practice.

Q2: International law has historically been structured around the sovereignty of states, with a strong top-down orientation. By introducing a micro approach that centres individuals, local practices, and non-state actors, are we challenging or redefining the very foundation of sovereignty in international law? What reason would larger, more powerful states have to adopt or support this shift, especially when they continue to benefit from the existing system?

Micro international law does not reject the concept of sovereignty. It recognises the importance of sovereign states in creating and applying international law. It also recognises the importance of universal norms, for example in international human rights law, although it questions the notion of "universality" in other contexts. While these elements are embedded in the approach, micro international law reframes sovereignty as part of a more inclusive, multi-stakeholder legal ecosystem.

As a former trade negotiator, I saw the power of international treaties and agreements, but after spending the last two decades doing research and fieldwork, I have seen how high-level legal

instruments are often removed from the people they are meant to benefit. As a result, despite the existence of a good treaty on paper, it may not be effective in practice.

I will now address your question of why powerful countries would want to support the micro international law approach. First, micro international law can be an important approach for delivering more tangible results from international legal instruments. Second, micro international law suggests that there is considerable scope for adaptation and implementation of international law at the domestic level, so it provides important flexibility for states. Finally, international law is often exported, and less economically powerful states, which have legal innovations of their own, are rarely the ones making the rules. Micro international law could help shift these dynamics.

More systemically, we are currently at a crossroads, with many areas of international law under stress. Globally, we all have a stake in the system's survival. However, we need new approaches and different ways of thinking. Power imbalances are inherent and increasingly apparent. While some countries may benefit from the status quo, many states want to see international law not just survive but evolve. Thus, we need approaches like micro international law to open new pathways for legal change and better address distributional effects.

To use international trade law as an example, global rules are facing serious challenges. The dispute settlement system is stalled, and the negotiation function of the multilateral system is also struggling. There have been some more recent successes – the WTO Agreement on Fisheries Subsidies is one great example. The WTO Trade Facilitation Agreement is another. Joint statement initiatives, irrespective of

whether they are the right tool for advancing all trade negotiations, have generated important discussion and moved some issues forward. There has also been a proliferation of regional trade agreements that incorporate a wide range of issues, including those related to sustainability and inclusion. Domestically, trade rules show both innovation and increasing signs of protectionism. A more nuanced approach is needed to strengthen the role of both states and stakeholders in these processes and also to address distributional issues, which often require local or domestic solutions that international law cannot readily be addressed from the top-down, without resorting to zero-sum trade and industrial policies.

Challenges also exist in international investment law, including regarding the scope of a government's right to regulate and how to integrate sustainability considerations. Further, international approaches to problems such as food security and sovereign debt are lacking, and there are considerable gaps in the implementation of international human rights. In all of these areas, not all countries are given equal opportunity to shape the rules of the future. With significant technological changes like artificial intelligence (AI), which will further standardise international legal design, it is more important than ever to emphasise more disaggregated domestic legal solutions as a way to improve upon and safeguard international law.

Q3: You discuss how micro international law has a process-focused dimension that entails improved accountability and engagement mechanisms. How would this process-focused dimension look within the broader global legal and political landscape? How can such inclusive, bottom-up processes realistically take root within existing international legal frameworks?

Micro international law's process-focused dimension

calls for stronger accountability and engagement mechanisms within international legal structures and institutions to gather input and act on stakeholder needs at all levels of governance, thereby incorporating more diverse perspectives, both internationally and domestically. Most states have some kind of process for stakeholder input in rulemaking, including administrative law procedures, but larger companies and those with resources are better equipped to engage in these processes, whereas most individuals and small businesses struggle to participate.

Some international institutions and instruments include feedback or accountability mechanisms, although they often have limitations. A number of institutions, including the WTO, engage in public discussion, but it is often done outside of formal negotiation processes. Others, like the World Bank, have procedures that enable stakeholders and communities to raise concerns about project implementation under certain circumstances, but these are often narrow in scope. Instruments like trade agreements contain an emphasis on cooperation and consultation, yet there is little empirical study of how well these mechanisms have worked in practice. One more promising example is the ILO, which has a tripartite structure that balances the interests of the state, employers, and workers, ensuring that a range of stakeholders are represented while preserving state sovereignty in treaty negotiations and implementation.

Without better processes for providing input, whether in scholarly, policy, or institutional approaches – we risk overlooking important details in legal design. Consultations can also run the risk of becoming a box-ticking exercise; even if there is an administrative process or procedural aspect for gathering input, it is

often unclear what is done with the input received. States and institutions need to go beyond merely inviting feedback to actively factor stakeholder input into legal design in an accountable way. This is an area in which further research should be done to connect micro-level stakeholder input and domestic legal interventions with international processes, such as cooperation provisions in trade agreements, ideally with deeper study of how these processes are used and the impact they generate.

An illustrative example of both process gaps and the importance of stakeholder input is a study that colleagues and I worked on regarding the WTO moratorium on customs duties on electronic transmissions, which recently expired. We surveyed nearly 500 businesses in Kenya and South Africa to determine whether small businesses were aware of the moratorium and its implications. We found that the majority were unaware of the moratorium and the possible impact lifting it would have on small businesses, and most did not know what their governments were negotiating. The majority of companies noted that lifting the moratorium and allowing additional taxes on digital transmissions could negatively impact their businesses in terms of employment and competitiveness. While governments have to carefully consider policy approaches in the digital economy, stakeholders will present different perspectives than those discussed at high levels in international institutions. For the moratorium, stakeholder input should have been sought before a decision was made. Beyond the moratorium, this study highlights an important gap in international (and domestic) rulemaking.

Q4: You rightly identified that the international community's reliance on a limited set of legal methods and norms and the tendency to cast the rules of more powerful nations as a common

standard in the name of "universality" or "best practices" contribute to some of the pressing challenges facing international law today. How can global norm-setting be made more inclusive (ensuring meaningful participation from smaller states and individuals) and legitimate and how do we determine which values should hold normative authority when both powerful and weaker states have set problematic examples?

Micro international law is designed to expand the scope of legal methods and models that can contribute to international law in order to avoid overreliance on a limited set of legal approaches in the name of "universality." There is a lot to learn from the diversity, heterogeneity, and pluralism that exist in legal systems around the world, which could strengthen international law. There is a small but important body of scholarship in this area that I hope will continue to expand, including a recent book on innovative private law approaches edited by Kevin E. Davis and Mariana Pargendler titled *Legal Heterodoxy in the Global South*.

In recent work on digital rules and legal diffusion, I examined how countries' legal innovations are shaping the content of international law from a bottom-up perspective (Katrin Kuhlmann, "Digital Regulation and Development: A Global Micro and Macro Comparison", 56 *Georgetown Journal of International Law* 2025). While powerful economies, such as the European Union, influence regulation through instruments like the General Data Protection Regulation, there is also significant bottom-up diffusion from a wider range of economies. Countries and regions are experimenting with rights-based approaches, digital inclusion, and social measures. Digital inclusion has begun to more frequently appear in trade agreements, and provisions are becoming more detailed and stakeholder driven. There are some

notable examples of micro innovations around the world. India is undertaking interesting initiatives to understand how communities are affected by the digital economy. New Zealand has established processes for integrating input from Indigenous communities, and Singapore has been a notable innovator in digital governance. Countries like Chile and Canada are taking innovative steps to promote women's economic empowerment through trade agreements, and these efforts increasingly extend to the digital economy.

Overall, we should reevaluate the notion of "best practices" to capture a much wider range of legal innovation. Terminology such as "good practices", "fit for purpose", or "tailored practices" may be more appropriate, because each country must decide which laws work best for local stakeholders and contexts. In terms of digital regulation and more broadly, what works in Europe will not necessarily work everywhere, and importing complex laws may create significant difficulties in practice. Legal transplantation also deprives both governments and stakeholders of the engagement and discourse needed to create effective rules. As another example, very comprehensive European agricultural regulations have been exported to regions such as Africa, where numerous issues have arisen in both design and practice, as several of the micro mapping studies have documented. India is an interesting counterpoint, as are other countries in Asia, Africa and Latin America, because it has sought to establish legal approaches that respond to the needs of stakeholders like small farmers and local communities rather than importing systems that do not understand complex history, culture, and internal dynamics. Internationally, although interoperability of rules is desirable, this does not mean that every country must be regulated in exactly the same way.

As evidenced by customary international law and,

increasingly, some forms of soft law, norm setting is an ongoing and circular process that integrates domestic experiences. Domestic legal systems are often innovation laboratories. We should study these interventions without focusing solely on the dominant approach or "best practice". International organisations and researchers should also exercise caution when benchmarking countries' legal systems and should consider factors that enable a broader approach to legal innovation at the domestic level.

Q5: You mention New Zealand's efforts to prioritise Māori communities as a strong example of inclusive outcomes, but ultimately, it was still the state that led and implemented the change. Within the micro international law framework, how do you envision redefining the role of the state in such processes? While some countries may take progressive steps domestically, what happens when the state is indifferent or even hostile to stakeholder needs? Can micro international law offer tools or pathways for change when the state is not a willing actor?

The New Zealand example that I included in the Micro International Law paper is a very good example of a micro approach in which a government sets out to incorporate stakeholder input at all stages of an international legal process (in this case, all stages of a trade agreement negotiation). Although this approach has not been perfect, it is something to learn from and adapt. However, saying it was merely the state acting on its own is somewhat misleading. The approach resulted from the advocacy of Indigenous communities, even if it was ultimately administered at the state level. If states are unwilling to add more procedural safeguards, impetus can come from outside.

Numerous other micro examples exist in the

environmental and sustainability space, ranging from the creation of "green courts" in various countries, environmental impact studies, local initiatives like the Green Belt Movement in Kenya, which recognised the importance of linking environmental sustainability and women's economic empowerment, and many other interventions. Over time, these initially disaggregated and locally led legal innovations have diffused to influence regional practices and international law.

Q6: In discussing macro-international law, you contrast the top-down approach in international trade law that focuses on WTO-level developments with a bottom-up approach that examines how national systems implement trade rules and affect local stakeholders. Building on this, how do we strike a meaningful balance between protectionist policies adopted by some states to shield domestic interests, under the guise of sovereignty or development, and the broader goals of globalisation aimed at ensuring free and fair competition? How can international trade law reconcile these tensions to promote both equity and efficiency in global markets?

Your question highlights the interconnected nature of international and domestic trade rules and the need for better balance between top-down and bottom-up approaches. The challenges you emphasise are reinforced by distributional issues at the stakeholder and community levels, which have been central to the discourse on trade and industrial policies. Micro international law could point to different outcomes than those we have seen so far. Domestically, if stakeholders were better engaged and consulted, this would call into question the use of protectionist measures like tariffs, which tend to particularly impact small businesses and more vulnerable stakeholders. As noted, many sustainability interventions are

inherently micro in nature, and studying this dimension could have important implications for both trade and industrial policy.

The connection between domestic and international law is critical, as intervention in one country can negatively affect stakeholders elsewhere, calling for a more balanced global approach. This underscores the normative aspect of micro international law, particularly with respect to the need for increased legal pluralism. Internationally, trade rules have not adequately recognised the nuanced, differentiated needs of a range of countries, which has been a longstanding debate. In addition, although there has been increased dialogue on sustainability and inclusion, some international approaches have been criticised for their lack of specificity and impact. As some of my forthcoming work emphasises, the system of global rules needs to evolve to incorporate inclusion and sustainability more meaningfully and more concretely so that these issues become more actionable and less abstract, which micro-international law approaches could help facilitate.

Going back to your earlier questions, international rules affect everyone, but there is not always awareness of how to get involved or even where to focus. Disaggregating domestic and international legal interventions and breaking them into the smallest pieces could be particularly helpful and insightful. International law and policy (and trade law and policy) can seem too big and amorphous, while the distributional effects are much more isolated and personal.

Through the Center on Inclusive Trade and Development at Georgetown University Law Center, my colleagues and I have been studying inclusive and sustainable trade and development both at an

institutional level and from a more micro perspective, including by examining sectors or value chains. In the fall semester, I will teach a new course on fashion, trade, and sustainable development. Research shows that policy measures in this sector can be regressive and significantly impact impoverished families, and many instruments also have a gendered dimension, such as the "pink tax" that disproportionately burdens women consumers.

Applying a micro approach to trade and industrial policy and considering legal solutions at a more disaggregated, personal level will be critical at a time when countries and institutions are divided. International law is constantly changing; it is never static. Its next phase will depend on how we integrate new approaches and models to create a system that serves as many people as possible, and micro international law could be one tool to help us get closer to this goal.

ARTICLE

PRECAUTIONARY PRINCIPLE IN THE EMERGING GLOBAL TRADE ORDER: A REAPPRAISAL



Shiny Pradeep possesses expertise in international trade law, with key areas of her work including trade and environment, trade in services, and industrial policy. Shiny advises the Ministry of Commerce and Industry, Government of India on legal and policy issues pertaining to environment, labour, gender and trade in services. She has been part of the negotiating teams in many of India's recent and ongoing trade negotiations in the trade and sustainable development and trade in services Chapters, including the India-Australia, India-EU, India-UK, India-EFTA TEPA and India-UAE CEPA agreements. Shiny also works on industrial policy issues, specifically from a sustainability perspective. She has been actively involved in the research on the EU CBAM, EUDR and domestic regulation reforms in the services sector in India.

INTRODUCTION

Precautionary principle's origin appears to lie in the German domestic law relating to prevention of acid rain, forest die back and North Sea pollution, and later, more concretely, in the Federal Emission Control Act, 1974.¹ A part of the literature suggests the origin of precautionary principle in Swedish law.² Notwithstanding its exact origin, precautionary principle evolved in the context of risk of imminent and serious environmental hazards. Gradually, the elements of causation, risk, and extent of scientific certainty or uncertainty developed (despite the longstanding variations in nature and scope).³ An evolved formulation of the precautionary principle is found in Principle 15 of the Rio Declaration – “[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures”.⁴

Despite its consolidation, the meaning and scope of application of precautionary principle varies across different international instruments and streams of international law and policy.⁵ In fact, the legal status of precautionary principle has also lacked clarity and the terms “precautionary principle” or “precautionary approach” have been used variably (sometimes interchangeably also).⁶

FUNCTIONS OF PRECAUTION

More than two decades back, Daniel Bodansky

classified three functions which precautionary principle serves – (I) a reason not to postpone action; (ii) a license to act and; (iii) a duty to act.⁷

The first function, where precautionary principle is negatively formulated, merely serves to ensure that lack of inaction is not excused by lack of conclusive scientific uncertainty. In the second function, precautionary principle serves to justify regulatory measures taken for environmental purposes despite their adverse or restrictive trade impact. This function, where the precautionary principle serves as a license to act, is highly relevant in the trade context. The third function is the strongest version of the precautionary principle - a duty to act. Here, precaution requires states to take preventive actions. As this article illustrates, certain complexities in interpretation and application of the precautionary principle arise in the trade context due to a shift in positions of states in using precautionary principle as a license to act towards using it as a duty to act, to prevent environmental harms.

INTERNATIONAL JURISPRUDENCE SO FAR

In international law, the status of precautionary principle has remained contested.⁸ Adjudicatory bodies have largely deferred to the treaty language in providing guidance on the applicability of the precautionary principle to a specific matter.⁹ This is true in the context of general international law as well as international trade law.¹⁰

With respect to law of the sea and marine pollution, the precautionary principle has been accorded a

relatively greater significance. For instance, the International Tribunal for the Law of the Sea in its Advisory Opinion on Obligations of States in respect

of Climate Change in 2024 held that for determining necessary measures to prevent marine pollution, scientific certainty is not required.¹¹ The States are rather required to take necessary measures to prevent marine pollution from anthropogenic GHGs to prevent potential deleterious effects.¹²

In contrast, the ICJ appears to have followed a more cautious approach.

In its 2025 Advisory Opinion on Obligations of States in respect of Climate Change, instead of according precautionary principle a standalone recognition, the ICJ emphasised on its relevance, along with several other principles (equity and common but differentiated responsibilities and respective capabilities and polluter pays), in the interpretation and application of the “most directly relevant legal rules”.¹³ The treaty-based approach followed by the ICJ is in consonance with its earlier judgments.¹⁴ The ICJ also held the precautionary approach as “an integral part of the general obligation of due diligence”, to prevent harm in case of plausible indications of potential risks.¹⁵ Similar has been the case in WTO law. Overall, the ICJ's approach to precautionary principle does not suggest a freestanding application of the precautionary principle - that which would require reverting the burden of proof to the proponent of a proposed activity. In fact, courts have generally been circumspect of relying exclusively on the precautionary principle. In other words,¹⁶ the courts have refrained from recognising the precautionary principle as a ‘duty to act’ and retained it more as a

“In other words, the courts have refrained from recognising the precautionary principle as a ‘duty to act’ and retained it more as a reason not to defer action in the face of risk. ”

reason not to defer action in the face of risk.

PRECAUTIONARY PRINCIPLE IN THE TRADE CONTEXT

Traditionally, the precautionary principle has been invoked with respect to imminent environmental or health risks. This holds true in the trade context as well. The only agreement of the WTO where the precautionary principle explicitly finds a place is the SPS Agreement.¹⁷ Given that precautionary principle's utility in trade law lies justifying trade restrictive measures on environmental or health grounds, the WTO Panels and Appellate Body have deferred to the treaty text and taken a rather cautious approach in relying on the precautionary principle.¹⁸

Interestingly, in the trade context, the role of the precautionary principle is no longer restricted to setting standards on food safety and health. It has broadened its reach to prohibiting and regulating trade in chemical products, preventing deforestation and forest degradation in other countries (by prohibiting importation of products produced on deforested lands), and regulating trade in wastes. Do the discrete elements of precautionary principle fit squarely within the context of such measures to justify their trade restrictive impact? Is the application of precautionary principle challenging in respect of trade related regulatory measures? An example of the European Union Deforestation Regulation may be relevant.

EUROPEAN UNION'S DEFORESTATION REGULATION

The EUDR was announced in June 2023, with potential application from December 2025 (later postponed to December 2026).¹⁹ However, despite its prospective application, a cut-off date was set retrospectively as 31 December 2020 – for a product to be assessed as deforestation free.²⁰ Interestingly, the EU justified the cut-off date on the basis of the “precautionary principle”.²¹ The EU also claimed this as consistent with international commitments, Sustainable Development Goals, and the global goal of halting deforestation by 2020.

On the precautionary angle, the EU's logic of setting the cut-off date back in time was to prevent any accelerated deforestation in anticipation of the regulation's entry into force. Through the application of a retrospective date, the EU sought to ensure that

“Gradually the exercise of precaution requires the existence of a plausible environmental risk and taking of an action to prevent such risk – in the absence of full scientific certainty.”

products that contribute to deforestation or forest degradation during the preparatory phase and negotiation of the EUDR were not placed on the EU market. In other words, the EU's use of precautionary principle reveals the EU's intent of considering it as a ‘duty to act’.

Despite the intent to prevent harm, and even considering it as a reasonable exercise of prudence, whether or not such an action fulfils the discrete elements of the precautionary principle remains arguable. As elaborated earlier, the exercise of precaution requires the existence of a plausible environmental risk and taking of an action to prevent such risk – in the absence of full scientific certainty.

Importantly, the lack of full scientific certainty in the present context does not mean lack of any or all scientific certainty. If such were the case, any proposed

action with broad environmental goals could be justified as an exercise of precaution irrespective of its other socio-economic implications. In the EU's decision to set a back date to EUDR, while the anticipation of the risk can be considered reasonable, what is the threshold of evidence needed to establish the risk?

While there is no clear answer to the above question, it raises another fundamental question – does the precautionary principle need to be applied in pursuit of all actions for environmental preservation – if there is a risk of irreversible damage? Perhaps not. Precaution in such cases, while not completely absent, applies implicitly as part of prudence, due diligence, and vigilance. It, then, is nothing but a broader exercise of the duty to prevent harm. This is also confirmed by the ICJ's approach of integrating precautionary approach with the general obligation of due diligence.²² Diligence will, as a matter of course, have to be assessed for proportionality of risk of harm, the proposed or intended action and the trade restrictive impact it entails. In fact, in case of the EUDR, the EU sought to bridge the proportionality gap between the intended action and its unexpected impact on traders by deferring its application.²³

WHERE DOES PRECAUTION FINALLY STAND?

In effect, when the goal is of long term environmental preservation and actions contributing to the risk are diffuse - with each action only incrementally adding to the damage - precaution works better under the overarching general obligations of prevention and due diligence. Another question that then arises is - would dispensing with the discrete application of precautionary principle have any ramifications on how the trade impact of such measures is assessed?

Arguably so. While the assessment of the trade restrictive impact of such measures and the proportionality of the risk of harm will be examined as part of broader exercise of due diligence, the greater the degree of trade impact, the higher are the chances of a measure being deemed inconsistent with the WTO law.

CONCLUSION

Due to challenges in setting probability thresholds, evidentiary standards and proportionality limits, the standalone application of precautionary principle in international law remains a matter of contestation. With respect to trade measures with environmental objectives, the application of precautionary principle poses unique challenges. The complexity lies in establishing the nature of risk, the scientific basis, and the proportionality of the action. While the risk of harm is imminent and conclusively established, the cause and effect relationship between the intended actions and actual risk prevention remains diffuse. Often, the degree of impact a proposed measure can entail in mitigation of the harm is not clearly established. While states, in their attempts to address the global environmental challenges, may increasingly use precautionary principle as a “duty to act” - such a duty is likely to be assessed as an exercise of due diligence and the customary duty of harm prevention. Laying discrete standards of evidence and establishing proportionality limits to justify exclusive or predominant reliance on the precautionary principle may not be plausible in the trade context. Application of precaution, in other words, is likely to remain a case-by-case exercise.

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ARTICLE

BEYOND CARBON: WHY INCLUSIVE TRADE MUST BE CENTRAL TO SUSTAINABLE INDUSTRIAL POLICY



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Ph.D. in International Trade Law, (University of Birmingham, UK); an LL.M. from (LSE, UK) and a LL.B. from (University of Delhi).

INTRODUCTION

The resurgence of industrial policy has become one of the most defining features of contemporary economic governance. From the United States' CHIPS and Science Act¹ to the EU CBAM,² governments are increasingly intervening to shape production, protect strategic industries, and accelerate the transition to a low-carbon economy. While these policies pursue a range of objectives, they are also pursued in the name of economic security, motivating efforts to enhance national resilience, safeguard strategic sectors, and reduce vulnerabilities in global supply chains. While these developments are centred on achieving legitimate concerns grounded in sustainability and economic security, they also raise a critical yet unexplored question: economic security and sustainability for whom?

Much of the current discussion focuses on decarbonisation, clean technologies, and environmental resilience. These objectives are essential. Climate change represents an existential threat, and industrial policy must play a central role in reducing emissions and supporting green transformation.³ However, sustainability and economic security cannot be equated to carbon metrics alone. That would be going contrary to the very mandate of sustainable development enshrined in the UN 2030 SDG Agenda and the very objective of economic security.⁴ A truly sustainable industrial policy to secure economies must also consider how the benefits and costs of economic transformation are distributed across workers, firms, regions, countries, genders, and generations.

Without deliberate efforts to ensure that opportunities created through industrial transformation are broadly shared, the green transition risks reinforcing existing inequalities and generating new forms of exclusion. And that is neither sustainable nor in the best interests of making secure and resilient economies.

SUSTAINABILITY, INDUSTRIAL POLICIES, AND INCLUSION

The renewed embrace of industrial policy is largely driven by climate objectives. Governments are investing heavily in renewable energy, electric vehicles, critical minerals, green hydrogen, and clean manufacturing. Success is often measured through indicators such as emissions reductions, renewable energy capacity, or the deployment of clean technologies.⁵ These indicators are important but not comprehensive or exhaustive.

Sustainability and economic security cannot be reduced to carbon metrics alone. Such a narrow understanding risks departing from the holistic vision of sustainable development embodied in the United

Nations 2030 Agenda for Sustainable Development, which integrates economic, social, and environmental objectives. While many contemporary industrial policies seek to advance sustainability through decarbonisation, clean technologies, and green industrial transformation, they often pay insufficient attention to the distributional consequences of these transitions. Industrial policy interventions frequently channel resources, subsidies, and regulatory advantages towards large firms, technologically advanced sectors, and economically dominant regions that are already well positioned to capture new opportunities. Meanwhile, smaller firms, women-led businesses, workers in declining industries, rural communities, and developing-country producers may face significant adjustment costs while receiving limited support to participate in emerging green value chains.

As a result, industrial policies that are designed primarily around competitiveness, strategic autonomy, or emissions reduction may inadvertently deepen existing inequalities within and between countries. This outcome sits uneasily with the core principles of the 2030 Agenda, which emphasises inclusivity, equity, and the commitment to "leave no one behind." Similar commitments are reflected across a range of international frameworks, including the Addis Ababa Action Agenda,⁶ the ILO's Just Transition Guidelines,⁷ and numerous international declarations on inclusive and sustainable development. A policy that reduces emissions but concentrates economic opportunities among already powerful actors cannot be considered fully sustainable if it simultaneously excludes large segments of society from the benefits of transformation. Indeed, by exacerbating social and economic disparities, such policies may undermine the social cohesion, political legitimacy, and long-term resilience that sustainability and economic security are ultimately intended to promote.

ECONOMIC SECURITY POLICIES AND INCLUSION

Economic security is a loosely defined and rapidly evolving concept that, to date, lacks a universally accepted definition. Traditionally associated with the notion of national security, its scope has expanded quite exponentially in the recent decades.⁸ As a result, policymakers have increasingly invoked economic security to address a wide range of risks and vulnerabilities that may directly or indirectly threaten their nation's economic stability, resilience and strategic autonomy.⁹

At its core, economic security refers to a state's ability to sustain economic stability and growth while protecting itself against external and internal shocks. It encompasses the safeguarding of critical infrastructure, strategic industries and supply chains, as well as ensuring reliable access to essential resources such as energy, food, technology and critical minerals.¹⁰ Economic security measures increasingly blur the distinction between economic regulation and national security exceptions under Article XXI of the GATT. Yet beyond the legal debate lies a deeper normative concern: economic security policies may reinforce exclusionary structures in global trade while remaining insufficiently attentive to “who bears the costs of these transitions”.

While contemporary industrial policies are increasingly framed around environmental sustainability, their underlying logic is frequently rooted in concerns over economic security. Industrial policies designed primarily through the lens of economic security often risk overlooking questions of

inclusion and distribution.¹¹ A narrow focus on environmental outcomes can obscure significant social and economic consequences of such industrial policies.

Green industrial policies may generate substantial gains for large firms with the resources to adapt to new regulations, secure subsidies, and integrate into global value chains. At the same time, small and medium-sized enterprises may struggle to meet new standards or absorb transition costs. Workers in carbon-intensive sectors may face job displacement without adequate support. Regions and countries (particularly developing ones) dependent on traditional industries may experience economic decline even as national sustainability indicators improve. Hence, as governments pursue industrial upgrading and environmental objectives, the existing structural inequalities risk becoming more pronounced.

New sustainability standards, carbon border measures, and environmental due diligence requirements can create opportunities for some firms while imposing significant compliance costs on others. As a result, such policies may reinforce existing inequalities by concentrating support among large firms, capital-intensive industries, and already-advantaged regions, while paying insufficient attention to the needs of small businesses, women entrepreneurs, informal workers, marginalised communities, and

developing-country trading partners. If industrial policy is to contribute meaningfully to sustainable development, economic security objectives must be complemented by explicit measures that promote social inclusion, equitable participation, and broad-based access to the opportunities created by industrial

“New sustainability standards, carbon border measures, and environmental due diligence requirements can create opportunities for some firms while imposing significant compliance costs on others.”

transformation.

The inclusion-blind nature of current economic security strategies reflects a broader tendency to treat economic resilience as a purely state-centric or geopolitical concern rather than a people-centred one.¹² However, inclusion should not be viewed as external to economic security. Rather, inclusive participation, diversified economic opportunities, and equitable integration into global trade networks are themselves essential components of long-term resilience, sustainability and legitimacy in the international trading system.

Governments may argue that national security obligations toward domestic populations justify prioritising resilience over inclusiveness. The problem, however, lies in how resilience is conceptualised. Current approaches often equate resilience with control, localisation, and strategic exclusivity. Yet resilience can also be understood in more inclusive terms. Economies that are diversified across multiple actors, regions, and sectors may be less vulnerable than systems dependent on narrow geopolitical blocs or concentrated industrial champions.¹³ Inclusion, therefore, should not be seen as competing with resilience; rather, it can strengthen resilience itself.

WHY INCLUSIVE TRADE POLICIES MATTER

Trade policy can play a critical role in ensuring that the benefits of industrial transformation are distributed more broadly and equitably. While industrial policies determine how governments support domestic production and strategic sectors, trade agreements increasingly shape the rules, incentives, and standards

that govern economic integration. As countries pursue ambitious industrial strategies, trade policy offers an important avenue for mitigating the exclusionary effects that can arise when industrial support is concentrated among large firms, advanced industries, or already prosperous regions. By incorporating provisions that promote inclusive participation in trade, support small and medium-sized enterprises, enhance opportunities for women- and minority-owned businesses, facilitate workforce

adjustment, strengthen labour protections, and encourage technology and knowledge diffusion, trade agreements can help ensure that industrial transformation contributes to wider societal objectives.¹⁴ In this sense, trade policy should not be viewed merely as a mechanism for market access, but as a governance tool that can embed principles of inclusion

and equity within the broader framework of sustainable industrial development. If negotiated through a genuinely sustainable lens—one that places social inclusion alongside economic and environmental objectives—trade agreements can complement industrial policies by helping to align economic security with the broader commitments of the 2030 Agenda and the principle of “leaving no one behind”.

Trade agreements cannot by themselves eliminate the inequalities that industrial policies may generate, but they can serve as an important corrective mechanism, creating obligations, cooperation frameworks, and policy space that may then encourage governments to pursue industrial transformation in ways that are not only green and resilient, but also inclusive and equitable.

“Trade policy can play a critical role in ensuring that the benefits of industrial transformation are distributed more broadly and equitably.”

BEYOND CARBON THEN?

If sustainable industrial policy is to deliver broad-based prosperity, inclusion must be embedded from the outset rather than added as a corrective measure after implementation. This requires expanding the definition of industrial policy success. Governments should assess not only whether industrial policies reduce emissions but also who benefits from the resulting opportunities.

Inclusive trade policies can help address these challenges. Trade agreements can support SME participation, promote women's economic empowerment, facilitate skills development, and encourage cooperation on labour and environmental standards. Export promotion programmes can target underrepresented groups. Trade-related technical assistance can help smaller firms comply with sustainability requirements and access new markets. After all, skills training, social protection, access to finance, and targeted support for disadvantaged groups are also essential complements to industrial policy.

The future of sustainable industrial policy depends on moving beyond a carbon-only perspective. In the transition to a greener future, carbon matters. But people matter too. Beyond carbon then?

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CTIL EVENTS

JUNE 2026

Leveraging India's Modern FTAs: Unlocking Export Opportunities in UK & European Markets

Partners: FICCI

Event Location : Ludhiana



CTIL convened a conference to provide exporters, MSMEs, industry representatives, policymakers, trade professionals, and other stakeholders with a comprehensive understanding of the opportunities arising from India's evolving trade architecture, in light of the FTAs with the United Kingdom, the EU, and the EFTA countries. The expert-led discussions focused on European regulatory frameworks, standards, certification requirements, and compliance obligations that increasingly shape market access and competitiveness. The conference also explored strategies for enhancing Punjab's export potential by identifying sector-specific opportunities, addressing trade-related challenges, and promoting greater integration into global value chains. The conference was graced by Mr. Ajay Mahajan, Mr. CA Sunil Kumar, and Mr. Rajan Rikhi, among others.

MAY 2026

Strengthening Healthcare and Pharmaceutical Market Access: Need for Standards & Compliance

Partners: CII and Eurofins Assurance

Event Location : Hyderabad



CTIL in collaboration with CII and Eurofins Assurance organised a stakeholder dialogue to discuss the role of standards, regulatory compliance, and quality assurance in enhancing India's competitiveness in global healthcare and pharmaceutical value chains. The discussions underscored the importance of standards, regulatory preparedness, and policy cooperation in strengthening market access, export competitiveness, and India's integration into global healthcare value chains. The event was graced by Mr. Sumanta Chaudhari, Mr. Ashit Kundra, Dr. Aparna Dhawan, and Dr. Saurabh Lall, among others.

Next-Gen Trade Pacts: Leveraging India's Partnership with Europe under FTAs

Partners: FICCI

Event Location : New Delhi



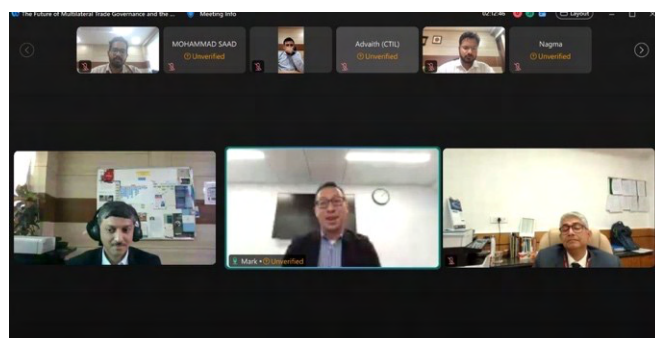
CTIL in collaboration with FICCI, organised a conference to deliberate on India's evolving trade engagement with Europe and the opportunities emerging under ongoing and prospective FTAs. Thematic discussions also focused on regulatory and compliance frameworks in Europe, services trade opportunities, and the implications of the EU's CBAM for Indian industry. The event was honoured by the presence of Mr. Anant Swarup, Mr. Darpan Jain, Mr. Amandeep Grewal, and Dr. Senu Duggal, among others.

APRIL 2026

The Future of Multilateral Trade Governance and the Role of the WTO

Partners: South Asia International Economic Law Network

Event Location : Virtual



CTIL, in partnership with the South Asia International Economic Law Network (SAIELN), organised a Virtual Trade Talk on "The Future of Multilateral Trade Governance and the Role of the WTO." The discussion examined the evolving challenges confronting the multilateral trading system, including the functioning of the WTO's dispute settlement mechanism, the rise of plurilateral approaches, the increasing use of national security exceptions, and the broader implications of geopolitical and technological developments for international trade governance. The deliberations also addressed the continuing relevance of the WTO's monitoring and negotiation functions, the role of consensus-based decision-making, and the future trajectory of multilateral cooperation in international trade. The dignitaries of the event include Prof. James J. Nedumpara, Mr. Amitabh Kumar, and Prof. Mark Wu.

Carbon Governance and Global Justice: Reconciling Trade Competitiveness and Climate Responsibility

Partners: Centre for Studies in International Trade and Investment Laws, Dharmashastra National Law University (DNLU)

Event Location : Jabalpur



CTIL in collaboration with the Centre for Studies in International Trade and Investment Laws, DNLU, Jabalpur, organised the WCP International Symposium on "Carbon Governance and Global Justice: Reconciling Trade Competitiveness and Climate Responsibility." The discussion brought together leading experts from academia, policy, and research institutions to deliberate on the evolving relationship between international trade and climate governance, with a particular focus on carbon border adjustment mechanisms, equitable climate action, and the challenges faced by developing economies. The symposium also included technical sessions on themes such as carbon data governance, emerging asymmetries in climate-linked trade measures, and India's evolving carbon credit frameworks, providing a platform for meaningful academic and policy engagement. The event was graced by Dr. Rosmy Joan, Dr. Atul Kaushik, Dr. Ankit Awasthi, Dr. Shruti Nandwana, and Prof. James J. Nedumpara.

WTO Panel Ruling on Transnational Subsidies: European Union Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia (DS 616)

Partners: South Asian International Economic Law Network

Event Location : New Delhi



CTIL in collaboration with SAIELN, organised a panel discussion on "WTO Panel Ruling on Transnational Subsidies: European Union Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia (DS 616)." The session brought together experts from academia, legal practice, and policy institutions to deliberate on the evolving legal framework governing transnational subsidies and their interface with international trade law. Discussions focused on the implications of the WTO Panel Report in DS 616, particularly the interpretation of "financial contribution by a government" under the SCM Agreement and the attribution of cross-border financial support. The panel examined the limits of expanding subsidy disciplines through principles of international law and the challenges in addressing transnational industrial financing within existing WTO rules. The panellists for the event were Prof. James J. Nedumpara, Mr. Ashutosh Kashyap, Mr. Parthasarathi Jha, Mr. Mukesh Bhatnagar, and Mr. Sharad Bhansali.

Panel Discussion: Carbon Pricing and Climate Actions: Exploring Innovative Options under Trade Agreements

Partners: O.P. Jindal Global University

Event Location : New Delhi



CTIL, in collaboration with O.P. Jindal Global University and the South Asian International Economic Law Network (SAIELN), organised a panel discussion on "Carbon Pricing and Climate Actions: Exploring Innovative Options under Trade Agreements." The session brought together experts from academia, government, and policy institutions to deliberate on the evolving landscape of carbon pricing and its intersection with international trade. Discussions focused on the implications of the EU's CBAM, challenges for developing economies, and the role of domestic and international frameworks, including trade agreements, in addressing these issues. The event was graced by Prof. Archie Parnell, Prof. James J. Nedumpara, Prof. R Sudarshan, Mr. Abhishek Acharaya, Mr. Anil Jauhri, Ms. Shiny Pradeep, and Mr. Ashok Kumar.

MARCH 2026

24th John H. Jackson Moot Court Competition (West & South Asia Regional Rounds)

Partners: National Law University

Event Location : Jodhpur



CTIL supported one of the most prestigious WTO law moots, reaffirming its commitment to capacity-building in international trade law. The competition provided a rigorous platform for emerging legal talent to engage with complex questions of international economic law through advanced legal research and oral advocacy. CTIL's engagement underscored its growing role in shaping the next generation of trade lawyers, negotiators, and policy professionals in South Asia. The participants comprised representatives from leading law schools and distinguished scholars and practitioners of WTO law.

India International Disputes Week 2026

Partners: CII

Event Location : Chandigarh



CTIL participated in a high-level dialogue on positioning India as a credible global hub for cross-border trade and investment dispute resolution. The discussions explored evolving international jurisprudence, institutional capacity-building, and strategic collaboration with global arbitration centres. Through expert interventions by Prof. James J. Nedumpara and Mr. Pranav Narang, CTIL showcased its expertise in trade litigation and international economic governance. The event was attended by Ms. Krati Singh, Mr. Hari Veluri, Mr. Joshua Phang, and Mr. Amrinder Singh, among others.

FEBRUARY 2026

Seminar on Leveraging the India–Oman CEPA

Partners: FICCI

Event Location : Kochi



The seminar focused on translating the India–Oman CEPA into practical business opportunities by equipping exporters and industry stakeholders with insights on tariff liberalisation, digital trade, and investment frameworks and opportunities through trade in services. The CTIL presentations were highly appreciated by the Omani delegation, including at the highest levels and multitude of Indian stakeholders. The engagement reflected CTIL's broader commitment to bridging the gap between trade negotiations and industry implementation, while strengthening India's strategic economic partnerships in the Gulf region. The event was graced by H.E. G.V. Srinivas, H.E. Mahboob Issa Al Raisi, Mr. A.P.M. Mohammed Hanish, Mr. Abdul Latheef Uppala, Mr. Sheraz Anwar, and Mr. Anirudh Sankar.

JANUARY 2026

9th International Conference on Law and Economics

Partners: Gujarat National Law University

Event Location : Gujarat



At this flagship interdisciplinary conference, CTIL advanced discussions on services trade, professional mobility, governance of traditional knowledge, and trade in health services. Through focused academic

engagement, CTIL highlighted its multidisciplinary expertise at the intersection of trade law, governance, and inclusive public policy, further strengthening its profile as a premier research institution in international economic law. The event was honoured by the presence of Prof. James J. Nedumpara, Mr. Shanay Shah, Dr. Rupa Chanda, Ms. Sushma Kindo, and Mr. Sreejith Narayanan Edamana.

International Conference on the Role of International Trade in Global Energy Transition

Partners : National Law University Odisha (NLUO)
Event Location : Odisha



CTIL, in collaboration with the Centre for International Trade Law, NLUO, organised a two-day International Conference on the theme "Role of International Trade in Global Energy Transition" at the University's campus in Cuttack, under the aegis of the WCP. Discussions at the Conference focused on the role of the multilateral trading system at the intersection of international trade and global energy transition. High-level technical sessions deliberated on green industrial policy, sustainable trade frameworks, clean energy systems, regulatory practices, carbon governance, and challenges faced by developing economies in the global energy transition. The Conference was attended by Hon'ble Mr. Justice Biraja Prasanna, Mr. Prasanna Satapathy, and Prof. N.L. Mitra. The event also witnessed the presence of

Ambassador Ujal Singh Bhatia. The Conference featured special addresses by Prof. Werner Zdouc, Dr. Kaushik Deb, Prof. James J. Nedumpara, and Ms. Alice Tipping.

DECEMBER 2025

The Investment Facilitation Landscape: Emerging Trends and Approaches

Partners: The International Trade Centre, UN Trade and Development, the World Bank, the World Economic Forum and CII
Event Location : New Delhi



CTIL convened with leading global institutions and policymakers, the event examined emerging trends in investment facilitation and regulatory reform. Discussions focused on streamlining investment ecosystems, improving regulatory efficiency, and aligning investment governance with sustainable development objectives. CTIL played a leadership role in conceptualising and convening the engagement, demonstrating its growing influence in shaping India's investment policy discourse. The event was graced by Prof. Karl P. Sauvant, Mr. Amitabh Kumar, Mr. Manoj Joshi, Dr. V. Anantha Nageswaran, and Mr. B.V.R. Subrahmanyam.

Finolegal Convergence Summit 2025

Event Location : New Delhi



CTIL contributed expert perspectives on fintech regulation, digital trust, and cross-border compliance in an increasingly digitised global economy. Through active participation by CTIL experts, the summit highlighted the importance of adaptive regulatory frameworks capable of supporting innovation while ensuring legal certainty and consumer trust. CTIL's participation reinforced its expanding footprint in digital trade and technology governance. The event was graced by Dr. Upasana Arora, Mr. Vikash Singh, Dr. Pradeep Rai, and Mr. Ajay Singh, among others.

NOVEMBER 2025 Security Exceptions in Domestic & International Courts/Tribunals

Event Location : New Delhi



This high-level trade talk examined the increasing use of security exceptions and emergency economic powers in global trade governance. Discussions explored the evolving jurisprudence surrounding "essential security interests" under WTO law and investment treaties, while assessing implications for India's regulatory and strategic space. The keynote address was delivered by Hon'ble Justice S. Ravindra Bhat and the panellists include, Mr. Sanjay Chadha, Mr. Sanjay Notani, Ms. Moushami P. Joshi, and Ms. Sujaya Sanjay.

INBA 14th Annual International Conference

Event Location : New Delhi



CTIL contributed to critical discussions on contemporary developments in international trade and investment law, including supply chain restructuring, digital trade expansion, and emerging regulatory frameworks.

Leveraging the UK–India CETA: A New Era for MSME Exporters

Partners: FICCI

Event Location : Kochi



Focused on empowering MSMEs in Kerala, the seminar translated the India–UK CETA into practical export opportunities by addressing market access, SPS/TBT standards, and sector-specific trade strategies. CTIL provided technical expertise and institutional guidance, helping bridge the gap between trade negotiations and implementation for local industry stakeholders. The event was graced by Mr. Alex Ninan, Mr. APM Mohammed Hanish, Mr. Richard Heald, and Mr. Gurkaran Singh Bains, among others.



The seminar brought together policymakers, trade experts, and industry representatives to explore the transformative potential of the India–UK CETA for regional industries and India's broader global trade strategy. CTIL experts delivered technical insights on services, SPS/TBT disciplines, and trade remedies, underscoring CTIL's role as a trusted knowledge partner in India's FTA ecosystem. The event was graced by Mr. Stephan Hickling, Mr. Sandeep Verma, Mr. Manish Gupta, and Mr. Akshay Hada, among others.

Trade and Sustainability Workshop and Conference

Partners: CII, Amfori

Event Location : New Delhi



OCTOBER 2025

Seminar on India–United Kingdom Comprehensive Economic Trade Agreement

Partners: FICCI

Event Location : Jaipur

CTIL spearheaded discussions on sustainability provisions in modern FTAs, climate-linked trade measures, and responsible supply chains. The conference explored how sustainability objectives can complement trade and developmental goals, while addressing concerns relating to technology transfer and policy flexibility for developing countries. The discussions included expert views from Mr. Stuart Newman, Mr. Petros Sourmelis, and Prof. James J. Nedumpara.

India–EFTA TEPA

Event Location : New Delhi



Marking the commencement of India's landmark trade pact with the EFTA bloc, the event highlighted emerging opportunities for trade, investment, and strategic economic cooperation with Switzerland, Norway, Iceland, and Liechtenstein. CTIL facilitated dialogue between policymakers and industry leaders, reinforcing its role as a bridge between trade negotiations and stakeholder engagement. The discussion included views from Mr. Pranav Kumar, Prof. James Nedumpara, and Ms. Sunanda Tewari.

SEPTEMBER 2025

Seminar on Demystifying the IPR Chapter in the India–UK CETA

Partners: Department for Promotion of Industry and Internal Trade (DPIIT), Department of Commerce

Event Location : New Delhi



CTIL convened a landmark discussion on India's first comprehensive FTA intellectual property chapter, focusing on balancing innovation with public interest safeguards and developmental priorities. The seminar clarified the evolving contours of India's trade-linked IP framework while reaffirming the importance of preserving legal flexibilities such as compulsory licensing and public health protections. Through its leadership and moderation, CTIL demonstrated its central role in shaping informed policy dialogue on complex trade issues. The event was honoured by the presence of Prof. Antony Taubman, Ms. Himani Pande, Mr. V. Lakshmikumaran, and Mr. Karan Thapar, among others.







INTERVIEW

PROF. ARCHIE PARNELL

Adapting to CBAM: Risks and Response Options



Archie Parnell is a Visiting Professor at Jindal Global University Law School in India, where he teaches tax courses one of which covers taxation's application to climate change. Before stepping into academia, Professor Parnell was a trial attorney at the Tax Division of the US Department of Justice and on the Staff of the Ways and Means Committee of the House of Representatives. He has held senior roles in the field of Taxation at ExxonMobil, Coudert Brothers and Goldman Sachs. He has served on various committees and advisory boards, including the OECD's Business and Industry Advisory Committee. In Hong Kong, he was a member of the Board of Review. Professor Parnell was also Chair of the

Capital Markets Tax Committee of Asia and participated in the Hong Kong Joint Liaison Tax Committee.

Q1. The issue note frames the Global South's challenge with a striking metaphor: "the sword and the shield." Could you unpack what that means in practice for developing countries?

The metaphor captures the structural dilemma developing countries face with CBAM and the EUDR. The "sword" is the legal and diplomatic challenge, WTO disputes, bilateral negotiation, and invocation of CBDR under the Paris Agreement. The "shield" is domestic industrial policy building carbon pricing credibility and achieving standards compliance so that border measures either do not apply or are offset. What is new about CBAM is not the use of external trade instruments to reshape domestic economies that has happened continuously for centuries. What is new is (1) the justification (namely, environmental necessity), (2) the mechanism (data requirements rather than price signals through tariffs), and (3) the asymmetry of institutional capacity between those who design the instrument and those subject to it. India has not filed a formal WTO complaint but has raised concerns in The WTO Committee on Trade and Environment meetings, submitted written questions to the European Commission, and engaged bilaterally through the India-EU Trade and Technology Council. The India-EU FTA, concluded on 27 January 2026, establishes a formal technical dialogue through Annex

14-A and includes an MFN commitment.

The use of external trade instruments to reshape domestic economies is not new, it is as old as organised international commerce. British tariffs, under what was referred to as the Calico Acts, in the 18th and 19th centuries imposed duties of well over 50% on Indian textiles while allowing British manufactured cotton into India at minimal rates. This systematically destroyed India's textile manufacturing base. What is new about CBAM is the justification, the mechanism, and the institutional asymmetry, not the underlying dynamics. Understanding this history clarifies what a successful response might look like. Countries that have resisted external economic coercion have rarely done so by refusing to engage. They have turned the instrument to their own advantage. India should consider developing an India Border Adjustment Mechanism (IBAM) that accepts CBAM's logic, but turns the mechanism around, and redirects revenue from Brussels to New Delhi. On the sword: India's diplomatic holding position, reserving the right to litigate without yet triggering it, is sophisticated and correct. On the shield, IBAM makes building the shield self-financing where revenues from the domestic carbon charge could be retained in India and ring-fenced for verified green projects, and fund the Measurement, Reporting and Verification (MRV) infrastructure the shield requires.

Q2: India's updated Nationally Determined Contribution (NDC), released in March 2026, raises its non-fossil capacity target to 60% by 2035 and deepens its emissions intensity commitment. In your view, what can India do to translate these climate commitments into a credible trade narrative that changes how foreign buyers, investors, and standard-setting bodies perceive Indian supply chains?

India's March 2026 NDC, noting 60% non-fossil capacity by 2035 and a deeper emissions intensity commitment, is ambitious on paper. The credibility gap is between the NDC as a diplomatic document and what foreign buyers, ESG investors, and standard-setting bodies can verify at the supply chain level. What is genuinely new about CBAM and the battery passport rules is that they work through data rather than price. Its now data that is most important and not simply the tariff price.

India's NDC is a price-era response to a data-era problem. India's Perform, Achieve and Trade (PAT) scheme under the Bureau of Energy Efficiency provides facility-level energy data across key sectors since 2012, but measures energy intensity rather than absolute emissions. India's NDC is speaking at the wrong level of granularity for the audience that matter commercially. A foreign buyer procuring steel from Jharkhand does not need to know India's national renewable capacity target, they need a verified facility-level carbon intensity figure. That a compliance officer in Frankfurt can use without commissioning independent verification.

Previous external trade instruments, like the Calico Acts, worked through price. CBAM works through data, requiring producers to maintain and disclose verified information about internal production processes to EU-specified standards. That is a qualitatively more intrusive conditionality. India's PAT scheme is an underappreciated foundation, but it measures energy intensity rather than absolute emissions. India does not need a world-class MRV System before initiating the FTA Annex 14-A dialogue, it needs a credible roadmap. IBAM provides the institutional hook: a transparently governed domestic carbon charge on exports, ring-fenced for verifiable green projects and independently audited,

gives foreign buyers and ESG investors something concrete, not just a national commitment but a verified, facility-level carbon price.

Q3: There is a growing school of thought that developing countries like India are "standard-takers," not "standard-makers," on issues such as carbon, batteries, and deforestation. Do you think this accurately captures the current position? If so, what would it take to shift that balance, particularly in sectors like steel and green hydrogen where it has genuine scale?

The standard-taker characterisation is largely accurate but not permanent. India is the world's second-largest steel producer at around 140 million tons per year, but China produces roughly seven times of that. India's steel leverage comes from the forecast to be the fastest-growing major steel market through the 2030s. Standards are set through the ISO, the International Electrotechnical Commission (IEC), and EU regulatory processes in which India has no formal seat. India's MRV weakness directly compounds the problem: a country without credible facility-level emissions data cannot participate meaningfully in technical discussions about carbon intensity methodologies.

So, "standard-taker" is an unfortunate but accurate term as a description today. However, this is not a law of nature but it is a policy choice India has been making by default rather than by design. The asymmetry that allowed the British tariff policy to reshape India's domestic textile economy now allows Brussels to set carbon intensity methodologies for Indian steel without Indian input. The mechanism has changed from customs duties to technical standards. The underlying dynamic has not. Whoever sets the green steel standard needs India's compliance to make it globally relevant due to India's fast growing steel

market. Concretely, it should actively participate in ISO and IEC deliberations through properly funded expert delegations; deploy market size as leverage; lead the global green hydrogen certification framework before someone else does; and adopt IBAM. A country that actively prices its own export emissions under internationally recognised MRV standards is by definition a standard-participant, not a standard-taker.

Q4: India's CCTS is still maturing as an institution. How credible is it, in its current form, as a signal to international markets that Indian industrial emissions are being priced and verified in a manner that could be recognised by trading partners? What are the most urgent gaps that need to be addressed?

India's CCTS, established under the Energy Conservation (Amendment) Act, 2022, is still in early institutional development. It is intensity-based rather than establishing an absolute cap, which is the same limitation that makes Chinese Emissions Trading System offsets negligible under CBAM.

In its current form, India's CCTS sends a signal more like a diplomatic handshake than a verified commercial credential. The three most urgent gaps are: first, MRV- credibility the PAT scheme's facility-level data is a foundation, but needs investment in emissions conversion methodology and genuinely independent third-party verification; second, price signal the intensity-based design risks replicating China's pre-2025 problem where absolute emissions can still rise within a functioning scheme; third, international equivalence without a bilateral recognition agreement with the EU could render CCTS credits non-offsetable with CBAM liability regardless of domestic credibility. IBAM is the practical bridge. Rather than waiting for CCTS to

mature to a level the EU will spontaneously recognise, India should use the FTA Annex 14-A dialogue to develop IBAM in parallel. The PAT scheme provides the data foundation; the CCTS provides the underlying market; the IBAM could provide the internationally recognised collection mechanism; and the FTA Annex 14-A provides the legal pathway.

Q5: EU's sustainability regulations are increasingly becoming conditions for market access. For India's SME exporters deeper in the supply chain, what is the realistic pathway to global value chain participation? How should policy architecture be designed to support them?

This is an extremely important question. India's SME exporters face compounding compliance requirements. The EU Battery Regulation requires battery passports for all EV and industrial batteries above 2kWh from 2027. The EUDR requires plot-level geographic coordinates and satellite-verified deforestation-free status for seven commodities, affecting Indian coffee, rubber, and wood product exporters. India's Production-Linked Incentive (PLI) schemes are primarily designed for large anchor manufacturers, not the SME supply base.

Indian SME exporters are not currently on a realistic pathway to sustained Global Value Chain participation under the new sustainability conditionalities. The cascade of compliance obligations to the smallest and least resourced actors' mirrors what British tariff policy did to India's textile ecosystem in the 17th and 18th centuries, not just large manufacturers but the entire ecosystem of weavers, dyers, spinners, and village traders who depended on them.

For a coffee cooperative aggregating from hundreds of smallholders in Coorg or Chikkamagaluru, providing

plot-level geographic coordinates and satellite-verified deforestation-free status is an extraordinary data infrastructure requirement with no existing support. PLI schemes solve the anchor manufacturer problem. They do not solve the tier 2 and tier 3 problem. What is needed is shared compliance infrastructure, industry-level carbon accounting platforms and sector-specific MRV tools affordable at SME scale. IBAM revenues ring-fenced for green projects could fund this kind of shared compliance infrastructure, using CBAM's own logic to solve the problem CBAM creates for India's most vulnerable exporters.

Q6: India has significant strengths in green hydrogen and solar, but the value-addition question remains unresolved. How does India avoid the historic pattern where it exports basic products but imports high-margin derivatives? What role can trade agreements and investment treaties play?

India's pattern in solar is already showing early signs of the commodity trap: module manufacturing has scaled, but cell manufacturing, wafer production, and polysilicon remain dependent primarily on imports from China. In green hydrogen, India is at an earlier stage where the value-chain architecture is still being set. India's MRV weakness is a direct obstacle to value-added participation in green hydrogen because certification frameworks require verified emissions intensity data for the entire production chain.

India has a genuine opportunity in green hydrogen to break one of the most persistent patterns in its economic history but only if it decides now to compete in the equipment and derivative layer, not just the molecule itself. Exporting green hydrogen molecules while importing the electrolyzers that produce them and the green ammonia plants that convert hydrogen into a transportable derivative

would be the cotton and textile story repeated, defining India's economic position in the green economy for a generation. A less obvious prerequisite: green hydrogen certification requires verified emissions intensity data for the entire production chain. India's current MRV weakness is a direct obstacle to accessing premium markets in Europe and Japan that pay above commodity prices for certified low-carbon hydrogen. Trade agreements can embed technology transfer and joint venture obligations as conditions of market access. The India-EU FTA, concluded in January 2026, is an opportunity to do this. IBAM revenues ring-fenced for electrolyze manufacturing capacity, green ammonia infrastructure, and MRV development create a dedicated domestic financing mechanism for the value-chain steps India needs to capture.

Q7: India has consistently raised concerns about the discriminatory and trade-distortive effects of foreign carbon border measures. At the same time, some argue that India's most effective response lies in building a domestic policy architecture that makes such measures less consequential. Does India need to choose between these two approaches?

India has raised concerns about CBAM in WTO meetings and through bilateral channels but has not filed a formal dispute. Key legal provisions in play include GATT Article XX, the SCM Agreement, and the Paris Agreement's CBDR principle. India's MRV weakness is linked to the legal position taken by the EU. The EU's defence of CBAM will partly rest on the argument that it prevents carbon leakage and India's counterargument depends on producing verified facility-level emissions data.

India does not need to choose between the legal and domestic tracks, but framing the choice as binary

misses the most historically validated option, active counter-engagement that turns the external instrument to India's advantage. The most successful responses to external economic coercion have never been purely defensive. The US in the 19th century took the tariff Britain had used against American manufacturing and made it the primary instrument of American industrialisation. China used WTO membership to gain market access while building domestic industrial capacity. India's legal approach, raising concerns while reserving the right to litigate, is accurate. But strengthening MRV serves both tracks simultaneously, (1) the foundation of India's credible counterargument under GATT Article XX and (2) the foundation of IBAM's operational credibility. IBAM, if it could be agreed under the FTA's Annex 14-A platform converts the legal argument from abstract to concrete; the diplomatic argument from defensive to constructive; and the domestic reform agenda from a cost to a self-financing investment.

Q8: If you were to suggest any institutional reforms that developing countries could take instead of simply reacting to sustainability conditionalities, what would they be?

The case for prioritising MRV infrastructure is strong because it underpins everything else. India's MRV functions are fragmented across BEE, Ministry of Environment, Forest and Climate Change, state pollution control boards, and sector regulators, with no single authoritative body materially weaker than China's dedicated national system. India's strongest existing asset is the PAT scheme's facility-level energy data since 2012. A SEBI-style independent statutory authority with rule-making power, enforcement authority, and technical staff is the institutional archetype most likely to achieve international credibility quickly.

If there is one reform to prioritise, it would be the creation of a genuinely independent, internationally credible MRV authority a dedicated body whose sole function is to produce facility-level emissions data that foreign buyers, investors, regulators, and trading partners can rely on without commissioning independent verification on top. The capacity to generate, verify, and disclose economic data has always been a prerequisite for participation in the defining trade institutions of each era. We are at exactly that inflection point now for sustainability data.

Everything else depends on this single reform: CCTS credibility, CBAM offset recognition, EU Corporate Sustainability Due Diligence Directive (CS3D) compliance, battery passport data, green hydrogen certification, and IBAM. IBAM without credible MRV is just a tax. IBAM with a credible MRV is a sovereign carbon pricing instrument that keeps India's carbon revenues at home while satisfying Article 9 of CBAM. The institutional model is Securities Exchange Board of India; an independent statutory authority with its own technical staff, internationally peer-reviewed methodologies, and legal authority to require facility-level reporting and conduct independent audits. IBAM revenues ring-fenced for verifiable green projects fund the MRV authority whose credibility makes IBAM work. In the 20th century, port capacity determined market access. In the 21st century, verified sustainability data is that infrastructure – and unlike the ports, this one pays for itself.

DISCLAIMER: The opinions expressed here are in a personal capacity. It is not an endorsement by either CTIL or the Government of India.

ARTICLE

THE CLIMATE ADVISORY OPINIONS: WHAT HAVE THEY DONE SO FAR?



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Smrithi Bhaskar is an international disputes specialist at Sidley Austin where she advises governments, companies, and industry associations on international trade law and policy, public international law, and dispute resolution. She also advises clients on policy developments in Geneva, including developments at the World Health Organization and the WTO. Prior to joining Sidley, Smrithi worked at CTIL in New Delhi, where she advised the government of India on international trade law and policy issues, including the negotiation of free trade agreements. Smrithi holds a Master's in International Dispute Settlement (MIDS) from the University of Geneva and the Geneva Graduate Institute.

INTRODUCTION

It has been a little over a year since the ICJ delivered its Advisory Opinion (AO) on the Obligations of States in Respect of Climate Change, and over two years since the International Tribunal for the Law of the Sea (ITLOS) delivered a similar AO on Climate Change and International Law. These were the first instances where questions regarding the existence, scope and nature of the obligations of States to address climate change were answered by international adjudicators.

These were novel and challenging questions, especially given the transboundary nature of climate change, the *erga omnes* nature of the obligations, and the difficulty of attributing the harm to particular States. The AOs also required the adjudicators to creatively apply existing rules of international law to the novel challenges of climate change.

While this is not the first time AOs have been used to settle novel and complex questions of law, the climate change AOs stand apart in that they appear to have had an immediate influence on the conduct of States.

ADVISORY OPINIONS – AN INTRODUCTION

AO, as the name suggests, is formally non-binding on States – rather, provide legal advice to the organisations and institutions that request these opinions.¹ These opinions bind no State, resolve no contentious dispute, and award no remedy. As the

ITLOS noted, an AO "as such has no binding force".² This label may undersell their effect.

“In contrast, the climate AOs appear to have influenced State-conduct in a relatively short time. What is more, States appear to be expressly attributing specific aspects of their conduct to the AOs, thus acknowledging the impact of the AOs.”

While AOs are non-binding, they do clarify States' obligations under international law. States, via international organisations, initiate advisory proceedings precisely because they expect AOs to influence the behavior of other States. Some authors even go so far as to suggest that AOs are increasingly used as "contentious proceedings in disguise", to resolve difficult and hotly contested issues of international law.³ The ICJ appears to have

been conscious of the potential effect of its AO, as it acknowledged that its conclusions would "allow the law to inform and guide social and political action to address the ongoing climate crisis".⁴

In practice, the track record of AOs in shaping State-conduct varies from AO to AO and situation to situation. Several authors identify the Wall and Nuclear Weapons AOs as examples of AOs that did not change the ground reality.⁵ Following the Chagos AO,⁶ the UK initially rejected the AO, on multiple grounds including on the basis that it was not legally binding.⁷ Despite this initial position, the UK eventually started and concluded negotiations with Mauritius on the status of the Chagos archipelago, with express reference to the ICJ's decision.⁸

In contrast, the climate AOs appear to have influenced State-conduct in a relatively short time. What is more, States appear to be expressly attributing specific aspects of their conduct to the AOs, thus acknowledging the impact of the AOs.

IN DOMESTIC COURTS

The uptake of the ICJ AO in domestic climate change litigation has been swift. Within a week of the opinion, it was referenced by applicants in an appeal against South Africa's authorisation of an offshore oil and gas project.⁹ Litigants have invoked the AO to frame and sharpen claims in corporate accountability proceedings in South Korea, Japan, Malaysia and Switzerland.¹⁰

In this past year, the AOs have not only been referenced by litigants, but also by domestic courts as part of their reasoning. For example, in the *Greenpeace Netherlands and citizens of Bonaire v. The Netherlands*, the Hague District Court relied on the findings in the ICJ AO and the AO of the Inter-American Court of Human Rights in setting out the obligations of the Netherlands with respect to climate change.¹¹ In doing so, the Court found that the Netherlands's climate policy had shortcomings, including the lack of absolute emission reduction targets.¹²

Similarly, in Canada's Federal Court's interim ruling in *Lho'imggin*, the court reiterated the ICJ's opinion that states bear a general duty under international law to protect the climate system for the benefit of present and future generations.¹³ The Federal Court noted that though the AO itself does not “directly impose legal obligations on states”, it “outlines key principles that may affect state conduct and has substantial persuasive legal authority.”¹⁴

A court in Costa Rica have similarly relied on the AOs.¹⁵

IN NDCs

The Paris Agreement requires States Parties to

periodically notify NDCs which are self-defined national targets and action plans to meet the climate goals under the Paris Agreement.¹⁶ In its AO, the ICJ found that the content of NDCs is not left to the unfettered discretion of parties: NDCs must represent a progression, reflect each party's highest possible ambition, and, taken together, be capable of achieving the 1.5°C temperature goal.¹⁷ The discretion of parties in preparing NDCs is to be exercised in accordance with an obligation of due diligence.¹⁸

This aspect of the AO appears to be already influencing the behavior of, at least some, States. In the round of NDCs submitted ahead of and following COP30, Vanuatu, Mexico, the Bahamas, Colombia and Bangladesh expressly drew on the AO in framing their national climate plans.¹⁹ Because NDCs must be implemented through “domestic mitigation measures” – which the ICJ read to include national legislation, administrative procedures and enforcement mechanisms – an AO-informed NDC is, in effect, a commitment to AO-informed domestic law.

IN POLICY

The AOs are also being absorbed into domestic and international policy making. The UN General Assembly adopted a resolution welcoming and operationalising the ICJ AO;²⁰ the Human Rights Council cited it expressly in its resolution on sea-level rise;²¹ and the Committee on Economic, Social and Cultural Rights drew on it in its General Comment on the environmental dimension of sustainable development.²² At the national level, France has adopted a resolution to reaffirm France's climate ambition, which references the ICJ AO.²³ In the Philippines, a resolution in the House of Representatives called for the integration of the AO

into national climate policy, domestic legislation, and the country's negotiating positions.²⁴ Similarly, in Denmark, a parliamentary question was posed to the Minister of Climate, Energy and Utilities as to how Denmark will comply with its obligations, based on the ICJ AO.²⁵

WHERE NEXT?

The ICJ and ITLOS AOs appear to be influencing State conduct in a relatively short time. Sceptics could argue that references to the AOs in the NDCs and domestic policy making appear to have come from States that supported the AO and were already in support of strong climate action. However, the 141 votes in favour of the UN General Assembly Resolution endorsing the ICJ AO is cause for optimism.

The AOs will continue to entrench themselves as a baseline standard in domestic rulemaking. Given the ICJ's conclusion that a state's failure to take appropriate action with respect to combating climate change is an internationally wrongful act, regulators, licensing authorities and domestic courts may use this as a benchmark to test whether domestic laws are sufficient.

This will affect not only climate change specific laws, but also due diligence rules, environmental impact assessments and licensing decisions. Future NDCs, and the legislation implementing them, will increasingly be drafted – and challenged – against the AOs' yardsticks. Where States fall short, their domestic constituents or other States may challenge

their actions before available domestic and international fora with reference to the obligations clarified in the AO.

“ Given the ICJ's conclusion that a state's failure to take appropriate action with respect to combating climate change is an internationally wrongful act, regulators, licensing authorities and domestic courts may use this as a benchmark to test whether domestic laws are sufficient. ”

Finally, there are more advisory opinions on climate change around the corner. A request is pending before the African Court on Human and Peoples' Rights, filed by the Pan African Lawyers Union in May 2025, asking the Court to clarify the human rights obligations of African States in the context of climate change – the first request of its kind before that Court.²⁶ It completes a “quartet” of climate advisory proceedings alongside ITLOS,

the ICJ, and the Inter-American Court of Human Rights. Each opinion has cited and reinforced the others. Moreover, the example set out by the Commission of Small Island States on Climate Change and International Law in establishing a treaty organisation and filing a request for an ITLOS AO is a model that may be followed again, opening up avenues for more AOs in the future.

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1. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, p. 236.
 2. Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (Advisory Opinion) (Case No 31, 21 May 2024) (Advisory Opinion), para. 114.
 3. M. Stavridi, The Advisory Function of the International Court of Justice: Are States Resorting to Advisory Proceedings as a “Soft” Litigation Strategy?, Journal of Public & International Affairs, (April 22, 2024).
 4. Obligations of States in Respect of Climate Change, Advisory Opinion, I.C.J. Reports 2025, (hereinafter “ICJ Climate Change AO”), p. 130.

5. E. Schoeger, How do States React to Advisory Opinions? Rejection, Implementation and What Lies Between, *American Journal of International Law*, 292 (2023), 17, p. 296; M. Bothe, Nuclear Weapons Advisory Opinions, MPIL (2016).
6. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95.
7. Statement of the United Kingdom, United Nations General Assembly, 73rd Session, 22 May 2019, Doc. A/73/PV.83, p. 11/26.
8. Preamble, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago Including Diego Garcia.
9. Green Connection NPC and Another v Minister of Forestry, Fisheries and the Environment and Others – Application (2024).
10. See J. Chowdhury, One Year On: From Legal Clarity to Global Implementation of the ICJ Climate Advisory Opinion, 22 July, 2026. See also, A. Waser, V. Menoud, D. Muller and H. Maleh, Swiss Court decides to hear landmark climate litigation, L&S; Ma et al. v. KEPCO et. al., 2025; RimbaWatch & Ors v. Ministry of Domestic Trade; RimbaWatch & Ors. V. Ministry of Natural Resources (2025); Climate Justice Case – Japan (2025).
10. Greenpeace Netherlands and 8 citizens of Bonaire v. The Netherlands (Decision) (2023), para. 5.26.
12. Id., paras. 11.12, 11.13, 12.2.
13. Lho'Imggin v. Canada, Federal Court Decision, 2025 FC 1586, para. 41.
14. Id., para 42.
15. Citizen (Mario Pena Chacon) v. Costa Rica (2026), Climate Litigation Database.
16. Paris Agreement, Article 3.
17. ICJ Climate Change AO, paras. 241-245.
18. ICJ Climate Change AO, paras. 241–246.
19. See the NDCs of Vanuatu, Mexico, The Bahamas, Colombia and Bangladesh, available on the UNFCCC NDC register; J. Chowdhury, One Year On: From Legal Clarity to Global Implementation of the ICJ Climate Advisory Opinion, 22 July, 2026.
20. Advisory Opinion of the International Court of Justice on the obligations of States in respect of climate change, United Nations General Assembly, UN Doc. A/80/L.65, May 2026.
21. Resolution adopted by the Human Rights Council on 7 October 2025 on Sea-level rise and its effects on the full and effective enjoyment of human rights, UN Doc. A/HRC/RES/60/20, October 2025.
22. General comment No. 27 (2025) on economic, social and cultural rights and the environmental dimension of sustainable development, Doc. E/C.12/GC/27, November 2025.
23. Resolution to reaffirm France's climate ambition at European Level, February 4, 2026, Resolution TA No. 234.
24. J. Chowdhury, One Year On: From Legal Clarity to Global Implementation of the ICJ Climate Advisory Opinion, July 22, 2026.; Resolution recognizing climate change as a human rights and intergenerational justice emergency, welcoming the advisory opinions of the International Court of Justice and the International Tribunal for the Law of the Sea on the obligations of States in respect of climate change, welcoming United Nations General Assembly Resolution A/80/L.65, and urging the Executive Department to integrate said Advisory Opinions into Philippine climate policy, domestic legislation, and international negotiations, House Resolution No. 1074 (Philippines).
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26. Request for an Advisory Opinion on the Obligations of States Parties in respect to the Climate Change Crisis in Africa, Application No. 1 of 2025 (African Court on Human and Peoples' Rights), filed 2 May 2025.

ARTICLE

THE CASE FOR A PROACTIVE APPROACH TO SUSTAINABLE TRADE



Colette van der Ven is an international lawyer and policy expert known for her work at the intersection of trade, sustainability, and economic transformation. She is the Founder and Executive Director of TULIP Consulting, an impact-driven advisory firm that supports governments and international organizations on green industrial policy, the circular economy, carbon pricing, and trade law and policy. Colette also serves as a Senior Researcher at Europe Jacques Delors, a Research Fellow at the LSE's Firoz Lalji Institute for Africa, and a Visiting Lecturer in International Economic Law at the Geneva Graduate Institute. Previously, she practised international trade law at Sidley Austin LLP in Geneva,

representing governments in WTO disputes and leading the firm's Trade and Development Initiative. A member of the New York Bar, she holds a JD and MPP from Harvard, has authored over 50 publications on trade and sustainability, and regularly writes for leading international media.

INTRODUCTION

Momentum towards sustainable trade has generated growing pushback across the Global South. At the WTO, developing countries are increasingly challenging sustainability initiatives, which are perceived as advancing developed countries' environmental and market-access priorities while imposing disproportionate costs on developing-country producers and undermining their competitiveness. Much of this criticism has centred on unilateral trade and sustainability measures – most notably the CBAM – adopted outside the framework of negotiated trade agreements but with potentially significant implications for international trade.

Developing countries have legitimate concerns that such measures can become non-tariff barriers to their exports, particularly where compliance costs are high, domestic capacities are limited, and they have had little role in shaping the rules. These measures have also attracted normative criticism: they can be perceived as regulatory imperialism, while sitting uneasily with principles such as CBDR-RC.¹ Yet a predominantly critical and reactive approach – which starts with developed countries' trade and sustainability measures and focuses on resisting or minimising the effects of these measures – risks obscuring a second dimension of the sustainable-trade agenda: how trade itself can be leveraged to advance developing countries' own climate, development and industrial-policy priorities.

A more proactive sustainable-trade strategy for the Global South would enable developing countries to leverage trade and investment to meet their own climate, development and industrial-policy objectives.² Doing so involves focusing on three – often mutually reinforcing – pillars: (i) using trade to facilitate access to the goods, services, and technologies needed to advance domestic sustainability objectives; (ii) developing new export opportunities in sustainable goods and services; and (iii) pragmatically engaging with unilateral trade and sustainability measures.

PILLAR 1: USE TRADE TO ADVANCE DOMESTIC SUSTAINABILITY PRIORITIES

This pillar involves identifying which goods, services and technologies are necessary to facilitate a country's own climate and industrial policy priorities. Take the case of Indian steel. Reducing CBAM costs for a handful of firms by shipping green steel to the EU will not suffice to decarbonise India's steel sector – given that EU exports comprise a mere 2% of all steel produced in India with the majority being produced for the domestic market.³ Decarbonising Indian steel, in line with the objectives set out in the Green Steel Roadmap, requires identifying where international trade and investment cooperation can be leveraged to address steel decarbonisation bottlenecks. For instance, this can be done through technology co-development in green hydrogen technologies, financial derisking mechanisms, investment facilitation, and regulatory cooperation.⁴ Sustainable trade cooperation, then, becomes a means of accelerating a transformation India has already identified as economically and environmentally important. Reflecting this approach, the recently signed India-EU FTA includes references to

cooperation on decarbonising India's hard-to-abate sectors, as well as alignment on green steel standards.⁵

Another example is Ecuador's renewable sector. Its heavy reliance on hydropower has made its electricity system vulnerable to drought, contributing to recurring blackouts and increasing reliance on costly and polluting diesel generation. Attracting investment in renewable energy and diversifying electricity supply has, therefore, become a domestic energy-security and sustainability priority. The EU-Ecuador Sustainable Investment Facilitation Agreement, adopted in 2025, responds to this through a dedicated annex on trade facilitation and promotion in renewable energy and raw materials, including provisions relating to investment conditions, grid access and environmental assessment.⁶ Here, the starting point is not an EU market-access requirement but a domestic energy, security, and economic problem for Ecuador, where international investment cooperation can form part of the solution – while aligning with EU market access interests.

Mauritius also shows why regional trade can sometimes be necessary to make sustainable solutions economically viable. Like many other countries, it faces increasing waste from solar panels and electric-vehicle batteries but, because of its small market, lacks the volumes required to support viable recycling facilities. Regional cooperation that allows such waste streams to be aggregated across neighbouring economies could create the economies of scale needed for investment in recycling and waste management. Trade policy in this context becomes part of the infrastructure of a circular economy rather than simply a means of selling goods abroad.

PILLAR 2: BUILD COMPARATIVE ADVANTAGE IN SUSTAINABLE GOODS AND SERVICES

Sustainable trade also invites developing countries to identify and actively develop areas of comparative advantage in emerging markets for sustainable goods and services. Importantly, such comparative advantage need not simply be inherited; it can also be built through targeted industrial policy. A proactive sustainable-trade strategy therefore involves not only identifying existing green comparative advantages, but also investing in the capabilities needed to create new ones.

For example, as the green transition is creating new demand for clean technologies, the EU and India are exploring opportunities to develop India as a production hub for electrolyzers needed for green hydrogen, and potentially for green hydrogen itself.⁷

Morocco is similarly seeking to use abundant solar and wind resources, proximity to Europe and its existing industrial base to become an exporter of green hydrogen and derivatives such as green ammonia.⁸

Agricultural producers build on very different forms of comparative advantage. Nepal, for instance, is developing a comparative advantage in niche agricultural exports such as speciality coffee, tea and spices through sustainable production and certification, targeting higher-value markets.⁹ Mauritius could similarly reposition parts of its traditional sugar industry around certified

sustainable and higher-value products, building on initiatives around Fairtrade and Bonsucro certification, organic farming and renewable energy from bagasse.¹⁰

Comparative advantage need not be confined to goods: Costa Rica has successfully turned biodiversity and environmental protection into an economic asset, building an internationally recognised ecotourism sector around its reputation as a green destination.

PILLAR 3: STRATEGICALLY ENGAGE WITH UNILATERAL TRADE AND SUSTAINABILITY MEASURES

A proactive agenda does not mean ignoring the market-access consequences of sustainability measures adopted elsewhere. Rather, it means responding selectively and strategically: identifying where such measures create genuine competitive vulnerabilities, which firms and sectors are most exposed, and where adjustment could protect – or potentially strengthen – a country's competitive position.

Market-access challenges created by unilateral trade and sustainability measures are by now well documented.¹¹ A string of unilateral regulations, many of which are spearheaded by the EU, including the CBAM, the EUDR, and the EU CS3D, risk becoming non-tariff barriers, making access to major developed-country markets

increasingly conditional on environmental and social production externalities. Compliance typically translates into additional costs – reflecting both the resources required to align production processes with

“ As the green transition is creating new demand for clean technologies, the EU and India are exploring opportunities to develop India as a production hub for electrolyzers needed for green hydrogen, and potentially for green hydrogen itself. ”

the measure's requirements (e.g., greening production) and the ability to demonstrate compliance (for instance, through traceability and geolocation schemes or monitoring, reporting and verification infrastructure).¹²

Yet the impact of sustainable trade measures on the Global South is not uniform. These measures do not simply impose additional costs; they alter the relative competitive positions of firms and countries. For instance, empirical research conducted by TULIP Consulting found that in the Indian steel sector, MSMEs can face significant obstacles and will likely lose EU market access as a result of CBAM.¹³ Conversely, large, integrated steel producers tend to have the financial resources to keep CBAM costs low, and consider it as an opportunity to gain a competitive advantage.¹⁴ At a country level, while both Morocco's and Egypt's fertiliser sectors are highly exposed to the EU CBAM, Moroccan firms will be much better positioned than Egyptian ones to remain competitive in EU exports, reflecting vastly different production methods.¹⁵

This has important implications for how developing countries may choose to respond. Reacting to unilateral sustainability measures need not mean simply opposing them or seeking blanket exemptions or financial support. Governments can identify where exposure is economically significant, which firms and sectors face the greatest adjustment constraints, and where targeted interventions – whether finance, technology, MRV systems, traceability infrastructure

or regulatory cooperation – could preserve or even improve competitiveness.¹⁶ In other words, even a reactive agenda can become more strategic and better aligned with a country's domestic priorities.

FROM RULE-TAKERS TO STRATEGIC ACTORS

The sustainable-trade debate is too often framed around rules made in developed countries and their consequences elsewhere. This framing is understandable: measures such as CBAM and the EUDR can impose real costs, raise legitimate questions of fairness and constrain market access. Developing countries should continue to challenge poorly designed measures and seek a fairer distribution of adjustment costs.

But sustainable trade should not be reduced to managing the spillovers of developed-country regulation. A more proactive agenda starts from a different question: how can trade and investment contribute to developing countries' own

economic transformation? The answer will necessarily differ across countries. For India, it could include building capabilities in electrolyser manufacturing, while Mauritius may focus on leveraging regional trade to create the scale required for circular-economy investments.

This shift also implies a different model of international cooperation. Trade agreements, investment partnerships, Aid for Trade and climate

“ Governments can identify where exposure is economically significant, which firms and sectors face the greatest adjustment constraints, and where targeted interventions – whether finance, technology, MRV systems, traceability infrastructure or regulatory cooperation – could preserve or even improve competitiveness. ”

finance should not be organised primarily around helping developing countries comply with sustainability requirements determined elsewhere. They should increasingly start with developing countries' own climate, development and industrial-policy priorities and identify where international cooperation will be most needed.

The objective, ultimately, is not to turn developing countries into better rule-takers. It is to expand their agency within the transition towards sustainable trade: enabling them to use trade strategically to pursue domestic transformation and climate objectives, while building new sources of competitiveness.

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TRADE REMEDIES ADVISORY CELL

In global trade today, competition is no longer shaped by market forces alone. Subsidies, dumping, import surges, and distorted pricing have become part of the landscape, placing significant pressure on domestic industries, particularly MSMEs that often lack the resources to defend themselves through complex legal and economic processes.

This is where the TRAC, housed at the CTIL, has quietly emerged as one of India's most important institutional interventions in the trade space.

TRAC was created with a simple but powerful objective, to ensure that Indian industries, especially smaller players, can effectively access and use India's trade remedy framework. In doing so, it has helped bridge a long-standing gap between the law on paper and the ability of industry to use it in practice.

Trade remedy investigations are technical, data-intensive, and often prohibitively expensive. Preparing anti-dumping petitions, responding to investigations, compiling injury data, analysing costing structures, and navigating procedural requirements typically require specialised legal and economic expertise. For many MSMEs, these barriers are enough to prevent participation altogether. TRAC has changed that equation.

By offering integrated legal, economic, and technical support free of cost, the Cell has made India's trade defence mechanisms far more accessible to domestic industry. Its work spans drafting petitions, assisting with data analysis, advising industries during investigations, and helping businesses understand how trade remedy tools can be used to counter unfair

trade practices.

What makes TRAC particularly significant is that its contribution goes beyond case support. Over the last few years, TRAC has also played an important role in building trade remedy awareness across industries. Through workshops, outreach programmes, and stakeholder consultations conducted alongside institutions such as the DGTR and industry bodies like the CII, TRAC has helped bring technical trade law conversations closer to businesses that previously remained outside the system.

Its workshop on *"Trade Remedies and MSMEs: Building Capacity for Fair Trade"* reflected this larger mission, equipping smaller industries with both the knowledge and confidence to engage with India's trade defence architecture.

This matters because trade remedies are no longer niche legal instruments. In an increasingly fragmented global economy, they have become essential tools of industrial resilience. Countries across the world are using them more aggressively, and India's domestic industry needs the institutional capacity to respond with equal sophistication.

TRAC's work reflects an important shift in India's trade policy thinking: that trade remedies cannot remain limited to large corporations with access to expensive advisory networks. It must also work for smaller manufacturers, emerging sectors, and businesses that form the backbone of India's industrial economy. In that sense, TRAC represents more than an advisory mechanism. It is part of a broader effort to democratise access to trade law expertise in India.

At a time when global trade is becoming more contested and strategically charged, institutions like TRAC are helping ensure that Indian industry is not merely participating in international trade but is equipped to compete fairly and defend its interests effectively.

TRADE REMEDIES AND MSMEs: BUILDING CAPACITY FOR FAIR TRADE

The CTIL, under the WCP, in collaboration with the DGTR and the CII, organised a one-day workshop on "Trade Remedies and MSMEs: Building Capacity for Fair Trade" on 15 July 2025 at the India Habitat Centre, New Delhi.

The workshop aimed to strengthen MSMEs' understanding of India's trade remedy framework by building awareness of anti-dumping, countervailing, and safeguard measures and enhancing their capacity to effectively access and utilise these instruments. Through expert-led technical sessions, senior DGTR

officials, the Director of the WTO Rules Division, and leading trade remedy practitioners provided practical insights into recent procedural reforms, evidentiary requirements, and petition preparation. Interactive discussions enabled MSME representatives to share implementation challenges and engage directly with policymakers and experts.

By bringing together government, industry, and legal experts, the workshop reinforced CTIL's commitment to translating technical trade law into practical capacity building. It enhanced participants' understanding of India's trade remedy regime, strengthened their ability to engage with trade remedy processes, and generated valuable stakeholder feedback for future policy and procedural improvements.



PANEL DISCUSSION ON RULING ON TRANSNATIONAL SUBSIDIES AND DS 616

TRAC, through CTIL, in collaboration with the SAIELN and the Indian Society of International Law (ISIL), organised a panel discussion on "WTO Panel Ruling on Transnational Subsidies: European Union Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia (DS 616)" on 16 April 2026 in New Delhi.

The discussion brought together leading experts from academia, legal practice, and policymaking to examine the WTO panel report in DS 616 and its implications for the regulation of transnational subsidies under the WTO framework. Deliberations focused on the interpretation of "financial contribution by a government" under the SCM Agreement, the attribution of cross-border financial support, the limits of expanding subsidy disciplines through general principles of international law, and

the treatment of domestic subsidies and "public body" determinations. The panel also reflected on the broader implications of the ruling for future WTO disputes and industrial policy.

The event attracted significant regional, national, and international media attention. It concluded with an engaging discussion with participants, underscoring the need for a balanced and coherent approach to regulating transnational subsidies within the evolving global trading system.









INTERVIEW

PROF. LORAND BARTELS

Trade, Climate, and Regulatory Sovereignty



Lorand Bartels is Professor of International Law in the Faculty of Law at the University of Cambridge, where he teaches international law, including WTO law. He is also a Counsel at Freshfields LLP. Professor Bartels is the Chair of the UK's Trade and Agricultural Commission advising the Government and Parliament on the impact of new FTAs on the maintenance of UK animal and plant health, environmental and animal welfare standards, and has since advised on the UK-Australia and UK-New Zealand FTAs. He was appointed MBE in the 2022 Queen's New Year Honours List for services to UK trade policy. He holds a PhD in law from the European University Institute (2002) and degrees in English literature and law from the University of New South Wales (1996).

Q1. In your published 2012 paper in the European Journal of International Law, you examined the WTO legality of the EU's Emissions Trading System as applied to aviation, a relatively early intervention. More than a decade later, the EU has now enacted a full CBAM. Looking back, how well did the WTO legal framework you analysed in that earlier context travel into the CBAM debate and where do you think the law has moved in ways you did not anticipate?

The basic structure of WTO law applicable to CBAM is the same as it was for the Emissions Trading System (ETS) applied to aviation. The outcomes, however, look somewhat different now than they might have looked then. CBAM violates the GATT obligations in the same way that the aviation regime did. It is, at its core, discriminatory. The difference lies in the way CBAM can be justified, as opposed to the way the aviation regime might have been justified.

What has changed over the past 14 years is a general acknowledgement that combating climate change constitutes a legitimate objective in WTO law. That was not clearly the case before. There was previously an open question about whether climate change could provide a legal basis for trade measures given its extraterritorial dimension. The argument that climate change affects each country and therefore each country can protect itself against its negative effects is

now much better accepted. There is even a WTO panel report, in the case of the *EU-Palm Oil (Malaysia)*, which agreed with this.

What has not really changed is the analysis of unjustifiable discrimination, assuming the objective of CBAM is in principle, legitimate. Those are the same, and that is where the debate will inevitably move.

Q2. Do you think the WTO Members decision to bring a challenge againsts the EU and UK CBAM is legally well-founded, or does the absence of a functioning WTO Appellate Body make it, in practice, a largely symbolic exercise in norm-setting?

It is not clear that CBAM is necessarily illegal, it might make more sense for India to negotiate a better version of CBAM rather than challenge it, which India did to some extent in its FTA with the EU, although that did not amount to very much. I think more can be done. The real legal vulnerability in CBAM is that it does not take account of other countries' climate mitigation policies, rather it essentially assumes that everyone does what the EU does. India might be able, through negotiations, to have the carbon accounting mechanism used for CBAM better reflect its interests than the default value system. Negotiations on that specific point are more promising than a broader challenge.

Even though the EU would almost certainly ignore a panel report deriving from an Indian challenge by appealing into the void, there is still value in having such a report if it goes in the right direction for India despite India's inability to enforce it.

Q3: Your scholarship has engaged extensively with the question of extraterritorial jurisdiction in

trade law including the conditions under which domestic regulatory measures that reach beyond a state's borders can be justified under Article XX of the GATT. The EU's CBAM is, by design, an extraterritorial reach into the production processes of exporters. Does the CBAM, in your reading, sit within the space that Article XX GATT has historically accommodated, or does it stretch that provision in ways that a WTO panel should find uncomfortable?

The view on the jurisdictional scope of Article XX of the GATT, as stated more than 20 years ago, has not changed: one needs to find a link between the regulating WTO member measure and the interest being protected that would support jurisdiction in regulatory terms, and Article XX should respect that.

On that basis, the view has shifted when it comes to climate change. As long as combating climate change is seen as a legitimate interest of the WTO member, that member can act to regulate it. It does not matter that the way of regulating that interest involves placing conditions on production processes in other countries. The analogy is food safety: a country that does not want to allow food unfit for human consumption into its territory is pursuing a legitimate interest, and the fact that this may have an impact on how food is produced in the exporting country is irrelevant. One has to focus on the geographical location of the interest being protected. That is something that has changed in the last 15 years or so.

A WTO panel would not find it difficult to agree that the EU is able to protect itself against climate change. *EU-Palm Oil (Malaysia)* case has already established a precedent on that point. Applying GATT Article XX to measures like CBAM that relate to climate change would not be an overextension of that provision.

Q4: It has been argued that the EU CBAM as designed does not respect the principle of CBDR-RC. Do you think CBDR-RC carries any meaningful legal weight in a WTO dispute, or does its legal force remain confined to the climate regime and if so, does that asymmetry disadvantage developing countries like India in seeking redress?

In so far as the principle of CBDR-RC reflects customary international law, it is applicable within the WTO legal system. Its main value in the CBAM context is as an interpretive tool for understanding terms such as justifiability and discrimination.

The way it works in a concrete sense is this: if the EU decided to administer CBAM in line with CBDR, and even more so in relation to least developed countries, then the principle could be invoked to justify differential treatment. But the question of whether the EU would be required to differentiate according to the CBDR principle is a different one. The answer is that it is not required.

The argument that treating unequal countries alike constitutes discrimination, the Aristotelian idea invoked in the Appellate Body report of *US—Shrimp*, is not a compelling one in this context and did not really make sense in that case either. The conclusion is that CBDR is not a constraint on the design of CBAM, but the EU may rely on it to justify differential administration of CBAM if it chooses to do so.

Q5: The Global South is currently "standard-takers and not standard-makers." In your view, what concrete legal architecture within FTAs or the multilateral system could help countries like India move from standard-taking to co-designing or at least influencing regulatory benchmarks particularly for sectors like steel, aluminium, and

fertilisers, which are sensitive sectors in such countries?

Standard-making power derives from having an attractive market and conditioning access to that market on compliance with your standards. This is what has been called the Brussels Effect, previously known as the California Effect. The Delaware Effect is the opposite: a race to the bottom. The more relevant dynamic here is the protective, upward standard-setting type.

For countries like India, the best path to becoming a standard setter is to exploit market size in order to require those who want to export to India to meet Indian standards, making it uneconomical to manufacture to different standards for different markets. That is how the Brussels Effect works, and it is how India could eventually become a standard setter in the sense of consumption-type standards.

Production standards are a different matter. There is no mechanism for forcing other countries to adopt particular production standards, it is ultimately market power. India does have a large market, though it has been reluctant to open it fully. That remains the most powerful lever if India seriously wants other countries to adopt its standards. The idea of blocking other countries from setting their own standards, for instance in digital trade, is essentially futile. One can try to guide the process using the tools available, but the tide cannot be stopped.

Q6: The EUDR has drawn sharp criticism from producer nations for imposing a "collective penalty" through benchmarking that does not distinguish between legally and illegally operating producers. What legal tools does a country like India have to negotiate, challenge, or shape its implementation?

The deforestation regulation is perhaps not as harsh as the "collective penalty" framing suggests, there is more differentiation in the current version, which has also abandoned the ban system for the time being. But those differences of view on the regulation's current form, matter less than the question of what tools a country like India has to respond to instruments of this kind.

An important tool is WTO law, which does a good job of allowing countries to regulate for legitimate reasons while requiring that they do so in a proportionate and non-discriminatory way. The deforestation regulation, on most readings, does not meet that standard. It is a heavy-handed type of regulation requiring the equivalent of tagging and tracking every animal in a supply chain, with data accuracy standards that the EU itself has not always maintained, as the EU and Certain Member States — Palm Oil (Malaysia) case demonstrated. The arguments that it is disproportionate and unnecessary are available. But for those arguments to have any traction, one needs to engage with the legal process.

China engages by bringing cases and is taken seriously. I think India should recognise the value of a rules-based trade system for straightforwardly Indian reasons: if India does not use this tool, it is left with only persuasion and pressure tools that are more primitive and more costly in terms of relationships. There is also the option of a coalition-building approach, finding a group of willing countries to agree on common rules on deforestation and related standards that all can live with. That is the way it works within the EU, where it is a form of international regulation at the regional level. I am sure within India it is the same between the states as well. But that would involve a degree of engagement and willingness to

compromise at the international level. Another option I think would be to find some sort of agreement. WTO law provides a very good roadmap for what should be permissible, and that is the right place to start. It is unfortunate that it is less of an option than it used to be.

Q7: SMEs are disproportionately exposed to compliance burdens and require dedicated capacity-building for GVC participation. What are the most effective legal and institutional models drawing on both developed-country experience and emerging economy examples for building the conformity assessment infrastructure that enables SME-level exporters to demonstrate sustainability compliance credibly and cost-effectively?

As you indicate in your question, this is a developed country problem as well. And a good example of that is Brexit, which hit SMEs much disproportionately than the bigger enterprises because they cannot afford to undergo conformity assessment procedures. It is just too expensive for them. Between the UK and the EU now there is very little SME trade compared to what used to be the case, which is a terrible thing for many reasons, including social reasons. The fact that this could not be resolved between two first-world trading entities in over five years illustrates how difficult it is.

On the practical side, making rules less burdensome, enabling exporter certification, trusted trader schemes, and digital filings are all useful. Mutual recognition of conformity assessors is particularly important, the EU currently requires assessors to be EU entities, which is hard to justify on technical grounds and appears to be largely a political decision. There is a great deal that could be done to facilitate mutual recognition of conformity assessment.

Allowing exporter certification and instituting trusted trader schemes accompanied by digital filings can reduce red tape and is obviously going to be useful. AI might be handy. It is also important not to overstate how good the checking is at the border, because it is essentially a game of faith in most cases, which can mean two things. It can mean that you can soften your compliance requirements without the situation getting much worse, but also it could mean you do not want it to get any worse because it is already pretty bad. Ultimately, that is a policy decision. It is absolutely critical to facilitate this sort of thing for SMEs. However, the question of whether rules should be different for SMEs and larger enterprises is a separate one. The rules are either too burdensome or they are not, and in many cases they are. The answer is more likely to lie in better-designed rules applicable to all, with compliance costs reduced through shared infrastructure, than in a separate SME regime. For instance, the EU is very particular about authorising conformity assessors they need to be EU entities and that is hard to understand. It underscores the importance of mutual recognition agreements and really depends on the field and how regulated the field is.

Q8: A long-term ambition for India is not just compliance with external standards, but co-design and becoming a "standard-setter" with interoperable regulatory frameworks. Is that ambition realistic within the current architecture of international trade law or does the system, as presently structured, systematically favour jurisdictions that already have deep regulatory capacity, carbon pricing infrastructure, and technical standards bodies, making the co-design aspiration more rhetoric than achievable outcome?

Indeed, that is the case. There is no question that jurisdictions with large numbers of technical experts

will have more to say in standard-setting processes and will say more sensible things. To make telecommunication standards, it helps to have Nokia, Ericsson, and Apple behind you. Without that depth of expertise, a country ends up importing the standards that others set. But this is not simply an immutable law of the world, and the solution is to develop that capacity in a meaningful way, attached to industries where the expertise can be built.

What we have seen in China, Southeast Asia, and India is a huge growth in technical expertise. Development does not happen evenly, the concept of a developing country is a gross simplification, as Amartya Sen noted, and there is no reason why large economies like India, Brazil, and China cannot achieve parity with the previously developed world in specific technical domains. You can see that development does not happen evenly in all countries. He said even countries like the United States have pockets of great deprivation. The same in my own country, Australia. You have very wealthy first world level lifestyles in the cities and not quite the same in rural areas. Consequently, there is no reason why big countries and big developers like India, Brazil and China obviously cannot be the equal or near equal of the developed or the previously developed world. Even if one might call oneself as a developing country but we are just talking about technical competence and expertise. I think one needs to look at this on a more granular basis.

The real difficulty is countries that are unable to develop any sort of expertise, and the question for them is whether the standards being set at the international level disadvantage them in their export markets. The only solution for those countries is the law: not over-relying on harmonised standards as a default, as occurs under the TBT Agreement, and

ensuring that the basic principle holds that standards designed to protect legitimate interests are acceptable, provided they are not protectionist, are proportionate, and make sense. If those basic rules are in place, even a small, poor country negatively affected by a standard should in principle be able to challenge it. There is a second line of defence, which is guidelines on what standards should really look like, including accounting standards for carbon and gain and in other ways too.

ARTICLE

BALANCING SUSTAINABILITY AND SOVEREIGNTY: THROUGH THE INDIA-UK CETA



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Sakshi Singh is a Young Professional at CTIL. She holds an LL.M. in International Law from the South Asian University, New Delhi (2025), where her master's dissertation titled "Free Trade Agreements and Digital Trade: A Comparative Analysis with a Focus on India" explored the issues of moratorium on customs duties and data governance under major FTAs. She completed her B.A. LL.B. (Hons.) from the Faculty of Law, Banaras Hindu University (2023) and is UGC-NET qualified. She has contributed a chapter to the book "WTO and Digital Trade" (Bloomsbury India) and has previously interned with CTIL, various law firms, advocates, Judicial Forums and research institutions, including the Indian Law Institute. She has also participated in moot courts, including the John H. Jackson Moot Court Competition. Her research interests lie in international trade law and its intersection with other areas, such as intellectual property rights and environmental law.

INTRODUCTION

International trade agreements have come a long way from the initial aim of reducing tariffs and promoting market access. In recent years, a new breed of FTAs has emerged, capturing what is considered, at present, the connection between trade and sustainable development. Labour rights, environment, climate change, biodiversity, gender equality, and corporate responsibility form part of the list of issues dealt with in modern trade agreements – all of these being important topics in trade negotiations nowadays. All these issues are addressed in the Trade and Sustainable Development (TSD) chapters, which are expected to ensure that economic integration contributes to sustainable development.

For India, the integration of sustainability into trade agreements has historically been a contentious issue. For decades, India opposed attempts to incorporate labour and environmental obligations into multilateral trade rules, arguing that these issues should remain within specialised international institutions such as the ILO and multilateral environmental agreements. India's principal concern was that sustainability standards could be deployed as non-tariff barriers by developed countries, thereby undermining the comparative advantages enjoyed by developing economies.

However, current events appear to suggest that there has been a shift in India's negotiation policy. This is reflected in the fact that an "Environment" chapter exists within the United Kingdom Comprehensive Economic and Trade Agreement, which demonstrates that India is not entirely ignoring sustainability provisions. Rather, it appears to be taking a more practical approach towards this issue.

CHALLENGES BEFORE INDIA'S TSD FRAMEWORK

Despite its advantages, India's approach faces several challenges. Firstly, sustainability standards are playing an increasingly significant role in international markets. Even when the FTA does not have any binding obligations, exporters can face external pressure arising out of consumer preferences, investment expectations, and national regulations in importing countries. As international business is increasingly moving towards sustainable business practices, India finds itself faced with many challenges. The EU CBAM and sustainability reporting, as well as the recently introduced requirements of due diligence in the supply chain, are some examples of how environmental standards are playing a crucial role in global business dynamics. Exporters from India, especially those in carbon-intensive industries, may require substantial investments.

The next challenge is related to implementation capability. The achievement of these sustainability pledges depends upon the strength of national institutions and regulation, as well as stakeholder involvement. However, without sufficient institutional backing and collaboration among the government, industry, and civil society, such pledges may fail to materialise into action. The subsequent task is that of balancing environmental sustainability objectives and development needs. The greening of India's economy will entail immense financial needs in renewable energy generation, environment-friendly manufacturing methods and sustainable technologies. International business obligations can certainly play an important role in achieving this; however, it is equally important for funding mechanisms and technology transfers to also come in

handy. Consequently, in the case of future FTAs signed by India, there should be emphasis on pragmatic cooperation mechanisms by incorporating clauses for technology transfer and assistance. In this way, sustainability promises can be turned into an economic growth and transformation catalyst rather than merely an obligation on the part of developing nations.

UNDERSTANDING THE 'ENVIRONMENT' CHAPTER UNDER INDIA-UK CETA

The India-UK CETA, signed in July 2025, came into force on 15 July 2026, marking a significant milestone as the first Indian trade agreement to have a dedicated chapter on “Environment”. Chapter 21 (Environment) of the CETA sets out a dedicated framework regarding sustainability as a central component of a trade agreement/engagement. The Chapter adopts a cooperative framework aiming to promote sustainable development, mutually supportive trade and environmental policies, high levels of environmental protection, and to enhance the capacities of the parties to address environmental issues. The applicability of this Chapter is limited to measures enforceable at the central level. There is a carve-out for state/local level of governments, i.e. CETA excludes sub-federal laws and regulations from the scope of the Environment Chapter. This is extremely important considering the issues related to the environment are concurrent with the co-extensive powers of the state governments. By including such carve-outs, the Chapter safeguards the regulatory space for the state governments to prioritise their environmental concerns without any constraints.

The Chapter embodies a cooperative approach that is based on common values that respect the differences

in the level of development, national priorities and domestic circumstances. It recognises the importance of achieving the ultimate objectives of the UNFCCC and the Paris Agreement in order to address the urgent threat of climate change. At the same time, it recognises few foundational principles, including equity and common but differentiated responsibilities and respective capabilities in the light of different national circumstances. The Chapter further recognises the urgency for enhanced action in order to reach respective net-zero targets and climate-resilient development. This is a fundamental part of this Chapter where it relies on already existing and accepted international environmental frameworks rather than creating entirely new environmental obligations. It reaffirms commitments under existing multilateral environmental agreements. These references to the UNFCCC, the Paris Agreement, the Convention on Biological Diversity, the Montreal Protocol, the Nagoya Protocol, and others, demonstrate an effort to align trade with the broader architecture of global environmental governance. Importantly, the scope of this framework under CETA is quite broad and covers various environmental-related concerns. For instance, it acknowledges that reducing air pollution contributes to lowering greenhouse gas emissions, and highlights the importance of protecting, conserving and restoring nature and ecosystems. It further highlights other pressing concerns regarding marine environment such as protection and preservation of marine environment from the impact of pollution from the ship, reduction and prevention of marine litter, and acknowledges that illegal, unreported and unregulated (IUU) fishing can have significant negative impacts on the environment. Apart from marine environment conservation, the Chapter also acknowledges the importance of forests in providing livelihoods, job opportunities for local communities,

and the importance of conservation and sustainable use of biological diversity.

The Chapter is unique and notable not only because it addresses several environmental concerns but because it reflects an attempt to mainstream environmental issues in a bilateral trade relation without converting them into binding trade obligations.

At the very core of the Chapter, lies a well-crafted balance between environmental ambition and sovereign policy space. The Parties recognise that each party retains its own sovereign right to determine its own levels of environmental protection and to establish, maintain or modify its environmental laws according to national priorities. Such a safeguard is particularly important from India's perspective. Unlike other trade agreements that encourage regulatory convergence, CETA clarifies that the Chapter does not require harmonisation of environmental standards in order to attain the objectives. Use of such language preserves the regulatory autonomy of the country while acknowledging that different countries have different levels of developmental goals, environmental ambition and priorities.

Another noteworthy provision is the recognition of the importance of facilitating trade and investment in environmental goods and services and the role of technology transfer and capacity building to improve environmental and economic performance. It provides for cooperation through the sustainability subcommittee. Trade and sustainable development chapters are often framed in non-binding terms, allowing parties to retain regulatory autonomy in pursuing environmental, labour and other sustainable development objectives. Consistent with this approach, the present Agreement excludes such

provisions from formal dispute settlement. Instead, the Chapter, provides a framework based on cooperation, dialogue, consultations, and exchange of information, with the highest recourse to ministerial-level consultations for an effective resolution. One may also argue that the absence of enforceable dispute resolution weakens the commitments made for the several aspects of environment and may leave the implementation upon the goodwill of each party rather than a legal obligation. Nevertheless, such inclusion of a dedicated environment chapter in itself is an achievement in India's evolving FTA practice. Overall, this chapter can be seen as a positive step towards integrating sustainability concerns into trade policy space. As India's FTAs future is increasingly adopting sustainability disciplines based on a cooperation model, the CETA may serve as a balanced and comprehensive template for India's next generation of trade agreements.

CONCLUSION

The Environment Chapter in the India-UK CETA represents a major leap for India in incorporating sustainability considerations into its trade policies. India has traditionally been cautious about including environmental considerations in trade deals mainly because of concerns relating to policy limitations and the potential for protectionism through sustainability criteria.

The Chapter tries to achieve a balance between the environmental responsibilities and the sovereign policy space of the country. It affirms existing international obligations related to the environment and recognises the right of each party to set its own environmental protection standards without harmonisation requirements. Therefore, the goal is to ensure the absence of any restrictions to regulatory

flexibility because of sustainability obligations. The environment chapter of the CETA is therefore an example of a balanced approach to the issue of sustainability and national sovereignty.

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WTO CHAIRS PROGRAMME

WCP, initiated by the WTO, was established with the aim of deepening the knowledge and understanding of the multilateral trading regime among academics, citizens, policymakers, and institutions. WCP focuses on developing curricula, advancing research, stimulating public debates, and conducting outreach activities through universities and research institutions. WCP enables teams of trade experts, on the ground in developing and least developed countries, to conduct outreach programmes among policymakers alongside curriculum development and training activities. WCP is guided by an Academic Advisory Board, an external body composed of experienced scholars responsible for ensuring the academic quality of outputs produced by Chair holders. Academic institutions that are awarded WTO Chairs receive support in various areas,

including research, curriculum development, and outreach activities. The Chair holders are appointed through a rigorous and competitive selection process involving various divisions of the Secretariat and the Academic Advisory Board. This multi-step process ensures a thorough evaluation of candidates and upholds the academic standards of the institution. WCP provides both financial and substantive assistance to the Chairs over a four-year period, in alignment with the WTO's technical cooperation mandate. This initiative aims to enhance the human and institutional capacities of beneficiary Members, empowering them to fully utilise the rules-based multilateral trading system.



== CTIL MOUs AND COLLABORATIONS ==

CTIL's Memorandum of Understanding (MOUs) with CII and FICCI, act as an interface to enable the Centre's engagement with the industry for development and impact of any trade or investment related matters. The areas of engagement between the Centre and the stakeholders include aspects related to capacity building, providing legal consultation on trade and investment policy matters, sensitisation or outreach on FTAs, and reports or memos on area of practical concern of industries. As CTIL works at the core of trade and investment policy related matters, the interface provided by such MOUs allows the Centre to conduct stakeholder consultations to provide informed, evidence-based legal advice to the Government of India.

Additionally, CTIL and NITI Aayog, through their joint Statement of Intent, are regularly engaged to collaborate and focus their joint efforts and to fulfill their role in transformative policy reform. The Statement of Intent also seeks to achieve a more sustainable and inclusive development, to comprehensively assess the impact of regulatory reforms or standards in targeted service sectors of interest to India.



Confederation of Indian Industry



NITI Aayog

ALUMNI TESTIMONIALS



Shailja Singh, *Prof. of Practice and Director, Jindal Global Law School*

I spent two years at CTIL, after having worked for 12 years at the CWTOS. The transition from CWTOS to CTIL allowed me to build on my earlier work and engage more closely with legal and policy issues in trade and investment law. Under the leadership of Prof. James, and as the vertical lead for services, digital trade and WTO dispute settlement reform, I had the opportunity to work on some of the most pressing contemporary challenges in international economic law and support the Ministry of Commerce on important policy matters. CTIL was a demanding but deeply rewarding place to work, made special by an excellent team of colleagues and friends. It shaped my professional journey in important ways, and I look back on my time there with deep gratitude and affection.



Ronjini Ray, *PhD Candidate, City University Hong Kong*

I came to CTIL after having worked at trade teams of law firms because I wanted to work on core trade issues and advise the Government of India. I was excited to work with Prof. James, who has been my professor and mentor since 2015. At CTIL, I had the opportunity to advise and work closely with the Ministry of Commerce and Industry and other Ministries. I was involved in many of the FTAs being negotiated by India and also got a chance to attend the 13th WTO Ministerial Conference. Additionally, CTIL is also a vital part of the global international trade law community. Therefore, I was able to cultivate my research interests and present papers at various international conferences. I'm grateful for the opportunity, experience and mentorship I received from CTIL.



Aparna Bhattacharya, *Senior Associate, PwC India*

Looking back, my years at CTIL were some of the most enriching and memorable years of my career. I had the privilege of working on fascinating international trade law issues and contributing to advice provided to the Government of India on matters of real significance. The work was intellectually stimulating, challenging, and constantly pushed me to learn and grow.

What made CTIL truly special, however, were the people. I was fortunate to work alongside exceptionally talented colleagues, many of whom became close friends. The mentorship, camaraderie, and shared passion for trade law created an environment that was both professionally rewarding and personally fulfilling. I will always look back on my time at CTIL with gratitude and fondness.



Achyuth Anil, *Centre for Inclusive Trade Policy and Research Assistant in International Trade (Law) at the University of Sussex*

CTIL has been the most fulfilling, invigorating and engaging place of work I have encountered. My time at the Centre has always been challenging, interesting and educational but also fun with a lot of space for personal and professional growth. The particular questions and topics that the Centre works on are always at the forefront of some of the most pressing issues at that particular time in the field of International Trade and Investment Law. As the Centre advises the Government of India, there are chances of undertaking new and groundbreaking research in India's particular areas of interests or stances in the field can be unique with limited academic disclosure in those areas. On top of the fascinating research, Prof. James is great to work with and a great mentor.



Krishna Bhattacharya, *Consultant (Legal) at Research and Information System for Developing Countries*

Working at CTIL has been one of the most enriching experiences of my professional journey. My association with the Centre began as a TradeLab student, progressed to a Research Fellow, and eventually culminated in my role as an Associate. Each of these steps felt less like a promotion and more like an upgrade in how interesting work could get. During this time, I worked on several FTAs being negotiated by the Government of India, and on a myriad of legal opinions contributing to discussions that shape India's trade policies. The exposure was wide-ranging, spanning Trade in Goods, Economic Cooperation, as well as working in TRAC, and more. If International Trade Law is an ocean, CTIL ensures that you are in the water, navigating and steering it, not just watching about tides. Beyond the intellectually stimulating work, what truly sets CTIL apart is its people. Working under Prof. James has been a privilege; he is a remarkable mentor who combines intellectual rigour

with an enviable ability to make complex ideas feel approachable. Equally, the camaraderie at CTIL makes it an exceptional place to work, where serious research, friendships and laughter coexist effortlessly; and where professional growth comes bundled with genuinely meaningful friendships.



Smrithi Bhaskar, *International Disputes Specialist, Sidley Austin*

I was at CTIL for four years, and I will always look back at my time at the Centre fondly. It was a time of immense growth for me, both personally and professionally. Working at CTIL was a unique experience, not only because of the kind of work that you get to do at the Centre, but also because of the exceptional people here. I think CTIL has attracted some of the best and brightest lawyers in international economic law, all of whom work incredibly hard to make it a collaborative environment, where learning is fostered. I am also incredibly grateful for the opportunities I got as part of the CTIL team, and under the guidance of Prof. James.



Ashita Jain, *International Trade Lawyer*

I am convinced that CTIL is one of the few places in the country that offers the opportunity to continually engage with the most relevant and pressing issues shaping international economic law. During my time at CTIL, I had the privilege of working on both bilateral and multilateral trade negotiations, as well as on numerous opinions that contributed to India's trade policy discussions. Working closely with the Government of India in high-pressure negotiating environments was undoubtedly demanding, but what kept me going was the camaraderie among my colleagues and Prof. James' constant guidance and support. CTIL is a wonderful place to be if you are passionate about international trade, want to remain deeply engaged with the subject, and value being surrounded by like-minded people. I am truly grateful for the opportunities, learning, and friendships that my time at CTIL gave me. My three and a half years there remain a source of immense gratitude and great fondness.



Ashutosh Kashyap, *Asst. Prof., M.S. Ramaiah University of Applied Sciences*

I worked at CTIL for four years, after having worked at a law firm specialising in trade remedy investigations. My time at CTIL was incredibly enriching. Besides the routine legal advisory work to the Department of Commerce, Government of India, I had the unique opportunity to work on the foundations of the TRAC. This experience allowed me to refine my prior work experience in this field. Additionally, I worked on various contemporary issues related to international trade. In my opinion, CTIL is the only place where one can gain such exposure and have the chance to genuinely contribute to the development of trade law. I will always be grateful for the guidance and mentorship provided by Prof. James, and I will always cherish the time spent at CTIL.

CTIL INTERNSHIP PROGRAMME



CTIL's internship programme provides an invaluable platform for experiential learning to undergraduate and postgraduate students across law schools in India on contemporary legal and policy issues related to trade and investment. Interns at CTIL work on a range of issues in international economic law and policy, including the WTO covered agreements, preferential trade agreements, international trade regulations, international investment law, as well as on ongoing trade disputes.

At CTIL, the internship programme offers a conducive environment for students to acquire and hone the requisite skills to emerge as budding legal professionals. While the students work on tasks related to international trade law and policy research, they also get an opportunity to be a part of various capacity building programmes and workshops at CTIL where they get a chance to interact with experts from academia, policy and industry.

CTIL believes that nurturing the right skills goes a long way in creating holistic future ready international trade lawyers. Desirable skills like identifying the problem at hand, exploring and interpreting the applicable law, analysing the legal implications, critical thinking and proposing solutions are important for students to evidence their employability at prestigious research and policy organisations.

CTIL welcomes internship applications from students who are currently pursuing law and who hold a keen interest in the field of international economic law. Applications are to be submitted at CTIL's online application form accessible on the website.

In case of any queries, you may reach out to us at internshipctil@iift.edu.

CTIL PARTNERSHIPS

CTIL maintains partnerships with leading law schools in India and globally in order to cultivate knowledge of international trade and investment law among law students. The Centre co-organises conferences, symposia, essay writing competitions and trade law moots with national law schools in India. Apart from this, the Centre regularly hosts interns from various

law schools research staff in the Centre mentor both undergraduate and postgraduate students through these internships. CTIL staff also participates as judges and coaches for a variety of trade and investment law-related moot court competitions.



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Associate



Mr. Vijay Kumar Rai
Administrative Assistant



Ms. Reenu
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INTERN TESTIMONIALS



Nayantara Rao, *Gujarat Maritime University*

As an international trade law student, this internship felt like a complete learning experience. It was the first time I got to see how different parts of international trade policy fit together in practice. Every task had real depth and made me think beyond what I'd studied in class. The work allowed me to explore various aspects of trade policy, sanctions, compliance frameworks, and the interpretation of WTO agreements. The library was a real treasure, with a vast collection of books and resources that made research both easy and engaging. The best part was the people. My co-interns made all my days lighter and sharper. We learned from

one another constantly, sometimes even over small debates or shared notes. The mentors were approachable and patient. Overall, this internship gave me confidence, clarity, and a stronger sense of direction in my trade law journey.



Aadya Kaushik, *Jindal Global Law School*

I had a highly enriching internship at CTIL, the internship provided me with an opportunity to work on a diverse range of issues spanning international trade law, WTO law, free trade agreements, sustainability regulation, and comparative legal research. The working environment at CTIL was

extremely professional, collaborative, and intellectually stimulating. I am sincerely grateful to my mentors for their constant guidance, constructive feedback, and willingness to discuss complex legal and policy issues despite their demanding schedules. Their mentorship greatly contributed to my learning and helped me approach research in a more structured and analytical manner. Overall, my internship at CTIL has been an invaluable learning experience, and I am thankful to the Centre for providing me with the opportunity to contribute to meaningful research on important issues in international trade law and policy.



Gourav Bishnoi, *National Law School of India University*

My internship at CTIL was an intellectually engaging and deeply rewarding experience. During my time there, I had the opportunity to work on a diverse set of issues spanning international trade and investment law. What made the experience particularly meaningful was the research-oriented environment at CTIL. The work helped me explore an area of law that is usually not taught in such depth in the law schools. I

am especially grateful to my mentors, who, despite their busy schedules, were really approachable and generous with their time. Their insights not only improved the quality of my work but also helped me develop a more structured way of thinking about international law.



Pramitee Singh, *Maharashtra National Law University*

I had a highly fulfilling internship at CTIL, I gained knowledge about international economic law. I gained a good command of the basics of international trade law, which has sparked my interest to explore complex policy issues and pursue opportunities in practice or research. The office atmosphere was welcoming. All mentors were very helpful. Moreover, I had the pleasure of working alongside amazing co-interns who not only shared their knowledge but also made the experience fun and engaging. I am truly grateful for this opportunity.



Khushi Agarwal, *Guru Gobind Singh Indraprastha University*

I had a highly fulfilling internship at CTIL, where I gained profound insights into international trade agreements, agriculture mapping, GATT provisions, the CBAM, and the global nuances of intellectual property rights. It was one of the most enriching internships I have participated in, as it allowed me to delve deeply into the practical application of international trade law a whole new dimension of knowledge that extends far beyond our regular college curriculum. The office atmosphere was incredibly welcoming, and the resources available were of great help. I was exceptionally fortunate to have wonderful mentors, Virender sir and Mirnalini ma'am, who, despite their busy schedules, patiently explained complex tasks and introduced me to advanced concepts. Their continuous guidance played a crucial role in shaping my learning journey. Moreover, I had the pleasure of working alongside amazing co-interns and friends who not only shared their knowledge but also made the entire experience incredibly fun and engaging. I am truly grateful for this opportunity and the solid foundation it has built for my future legal career.



Divyansh Joshi, *Gujarat National Law University.*

I had an immensely enriching and intellectually rewarding internship experience at CTIL. The internship provided me with an invaluable opportunity to engage with subjects that extend far beyond the conventional law school curriculum. The research assignments and discussions significantly enhanced my analytical, research, and drafting skills while deepening my understanding of the practical dimensions of international economic law and policy. The professional environment at CTIL was extremely welcoming, collaborative, and conducive to learning. I was fortunate to work under the guidance of highly knowledgeable mentors who were always approachable and supportive despite their demanding schedules. Their constructive feedback, patience, and encouragement greatly contributed to my academic and professional growth throughout the internship.



Aditi Mishra, *Dharmashastra National Law University*

My internship at CTIL has been one of the most intellectually enriching and rewarding learning experiences of my academic journey. The internship provided me with a unique opportunity to engage with complex issues in international economic law and gain practical exposure to contemporary developments in international trade and investment law. The research-oriented nature of the work enabled me to strengthen my legal research, analytical reasoning, and legal writing skills while developing a deeper understanding of the practical dimensions of international trade law and policy. The mentorship I received significantly contributed to both my academic and professional development.

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