

IISD TRADE AND SUSTAINABILITY HUB

SESSION 27: ROLE OF TRADE POLICY IN REDUCING DEFORESTATION

A PERSPECTIVE ON PPMS AND BEYOND

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CO-HEAD IMPACT AREA 'SUSTAINABILITY GOVERNANCE'

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UNIVERSITY OF BERN

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Commodity driven deforestation vs Sustainable Landscapes



A perspective from Sustainability Science

Swiss National Science Foundation, National Research Programme NRP 73

<http://www.nrp73.ch/en/projects/governance/sustainable-trade-relations-for-diversified-food-systems>

Centre for Development and Environment (CDE)



CDE is Switzerland's centre of excellence for sustainable development. One of the University of Bern's strategic research centres, we are tasked with mainstreaming sustainability in the university's research and teaching.

We conduct research and teaching on behalf of a more sustainable world. Our aim is to chart pathways to sustainable development to initiate transformations in line with the UN's 2030 Agenda.

Sustainable Trade Relations for Diversified Food Systems

Food systems are interdependent. Transforming them into sustainable food systems thus requires a joint effort. In this project, we examine how governments can create more sustainable trade relations in order to promote diversified food systems of a high sustainability value.

Project description (ongoing research project)

With this project we want to support diversified food systems by framing trade relations in a nuanced way. Diversified food systems perform in a more sustainable way than specialized systems, primarily focusing on the quantity of food production. They support ecological and economic diversification, equitably distribute social benefits, and contribute to a diversified food basket. A core research question is: If a domestic government seeks to grant tariff preferences for sustainably produced food, how can it do so in an effective, proportionate, context-sensitive, non-discriminatory, and reliable way, complying with its international obligations and the objectives enshrined in its Constitution? We combine in-depth legal analysis with analysis of best-practice examples, current challenges in private-sector certification, farmers' perceptions, and emerging innovations. Workshops in Bolivia, Laos, and Switzerland will help us to generate transdisciplinary knowledge, and a critical historical

Contact



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On this Subject

[Project Site](#)

Sustainable trade from a consumer country perspective

- **Incentivize** sustainable way of production (positive externalities)
- **Disincentivize** unsustainable way production (negative externalities)

Product
based
regulation

- Product Differentiation

Non
product
based
regulation

- Due Diligence of Business Enterprises

Combination: EU non deforestation regulation, draft

Example of product differentiation

Much discussed in Switzerland (outside of the EU)

Art. 104 a, d of the [Swiss Constitution](#) (new, 2017)

Government to create conditions for “trade relations that contribute to the sustainable development of the agriculture and food sector”



Obligation

to differentiate along the lines of sustainability

to frame these trade measures in an inclusive, non-discriminatory way

to comply with international obligations

Concrete example: EFTA-Indonesia Agreement CEPA

*=Products of HS heading 15.11 und 15.13 (palmoil) imported into Switzerland under this Agreement shall meet the sustainability objectives as set out in Article 8.10 [...] of the Agreement.



8.10 Sustainable Management of the Vegetable Oils Sector and Associated Trade

2. [...]: (a) effectively apply laws, policies and practices aiming at protecting primary forests, peatlands, and related ecosystems, halting deforestation, peat drainage and fire clearing in land preparation, reducing air and water pollution, and respecting rights of local and indigenous communities and workers;

Preferential Tariff Quota for Palm Oil produced in a sustainable way

- Coupled with Chapter on Cooperation & Technology Transfer

Implementation

- Sustainability not further defined
- Accepted certification:

- RSPO, IP

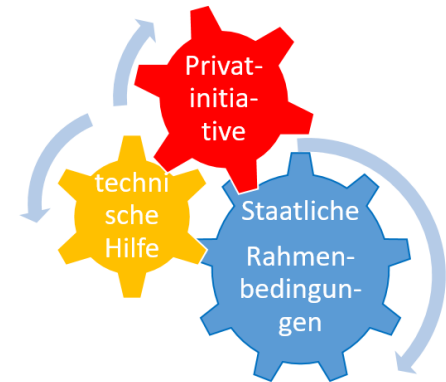
- RSPO, SG

- PLUS (ISCC PLUS)

- Palm Oil Innovation Group POIG

**Verordnung
über die Einfuhr von nachhaltig produziertem Palmöl aus
Indonesien zum Präferenz-Zollansatz**

CEPA Implementation, issues



Look beyond the certification process:

- transformation **requires time and resources**
- landscape approach?

Much palm oil already imported duty free

- not much palm oil falls under the quota (edible fats) (feed: 0)
- only a 'nudge', but example for further agreements
(Sieber, sui generis, 2021)

FTA EFTA Mercosur?



(?)

Vulnerable sectors: gold, meat, soy etc

Paper

Bürgi Bonanomi E., Tribaldos T., PPM-Based Trade Measures to Promote Sustainable Farming Systems? What the EU/EFTA-Mercosur Agreements can Learn from the EFTA-Indonesian Agreement; Springer, 2020

https://link.springer.com/chapter/10.1007/8165_2020_64

= PPM

Product differentiation based on process and production methods (PPMs)

- **Differentiation of seemingly like products** along the lines of process and production methods (PPMs)
- State making the distinction (trade measure)
- Public quality assurance of private labelling schemes

Renewed interest in PPMs

EU, The European Green Deal, 2021

- Sustainable products and services.”

WTO Draft Ministerial Statement on Trade and Sustainability TESSD

- Promote Environment Goods and Services

UNCTAD, Bio Trade for Governments, 2021 (implicit)

Dutch parliament: analysis

Non-Deforestation Regulation, EU

etc

“There are plenty of PPMs out there, but no one talks about them”

Differentiation along the lines of



“There are plenty of PPMs out there, but no one talks about them”

Trade measures



Examples

Timber: EU Timber Regulation / FLEGT Regulation: Legal / illegal

Fish: IUU Regulation : legal/illegal

Biofuels EU Directive on the promotion of the use of energy from renewable sources: sustainable/unsustainable

Public procurement; GPA: GPA: technical specifications to promote the conservation of natural resources

Examples

1987 Montreal Protocol on the **Ozone Layer**: Restricted trade of products produced with certain substances

Organic farming: some specific subsidies only for organic farming

Refugees: Trade preferences for products resulting from refugee employment (eg. Migration Agreement Switzerland-Jordania)



Fragmented

Effectivity?

WTO Jurisprudence

Use of PPMs is partly restricted, but there is some flexibility:

- Open textured rules
- Jurisprudence contradictory
- Assess from case to case; some uncertainty as regards outcome
- but flexibility! use them in a wise way

On safer side

- carefully framed
- consistency versus inside
- incentivize sustainable trade (rather than hinder trade)
- FTAs: less under scrutiny than domestic measures; experimental

Optimal criteria for differentiation, taking a SD perspective

State should

- Confine itself to define **core criteria**
- Core elements should reflect ‘**international common understanding**’
- based on **scientific evidence** (& apply **precautionary principle**; respect democratic outcomes)
- **Fair prices** for producers as core criteria
- Strike a **balance between complexity and simplicity**

Optimal criteria for differentiation?

Accreditation : open to a full range of certification

bottom-up certification (eg. PGS)

Emphasize landscape based approaches

Positively discriminate on behalf of sustainable food systems

Negatively discriminate against food systems with intense negative externalities (animal production)

Apply criteria also versus 'inside' (consistency)

Principle of Non-Discrimination

Combine with **alternative market access!**

effective market concessions should be made on a broader range of agricultural products—including high-value processed goods—stemming from diversified farming systems.



Potential

- **More concrete and targeted than Sustainability Chapters**
- Enable sustainable production processes
- Hinder unsustainable production processes
- Address limits of private governance ('label mess')

Risks

- Infringe on governance systems of others
- Exclusion of vulnerable producers (capital intensive, depending on shape)
- Misuse as a protectionist tool
- Too complex

Thank you.

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WTO Jurisprudence, more details, for discussion

Where is the hurdle with PPMs?



General GATT rules

- “Like products” : Consumer preferences?
- ... & non-discrimination
- Prohibition of import restrictions

GATT exceptions

- Necessity test
- Relating to test
- Extraterritoriality
- Consistency towards inside
- Chapeau’s nuances

Musselli, Solar, Bürgi, forthcoming, 2022

GATT Article XX(b): “Necessity” test

Exception for measures “**necessary to protect human, animal, or plant life or health**”

Less-restrictive alternative reasonably available?

- GATT jurisprudence (US – Alcoholic Beverages; Thailand – Taxes on Cigarettes)



GATT Article XX(g): “Relating to” test

Exception for measures “relating to the conservation of exhaustible natural resources”

Less stringent than “necessity” test, but

- Rather targeted and **focused?**
- “**Related to**” ≠ “**contribute to**”: focus on structure and design, not actual effects (*Rare Earth case*)

Musselli et al, 2022



Extraterritoriality in Article XX(b) and (g)

Can a measure protect resources **outside the jurisdiction** of the regulating state?

There must be a “**sufficient nexus**” with the regulating State

- Eg, US-Shrimp: Sea turtle migratory and could enter US waters

Musselli et al,
2022



Chapeau of Art XX (jurisprudence)

Some (relatively) easy things:

- Early notice & transparency
- Proactively engage with affected countries
- Technology transfer



Due process & fairness

More tricky:

- Not “essentially the same”, but “comparable in effectiveness” (US-Shrimp)
- Less trade restrictive options? (akin to “necessity” test?) (US-Shrimp)
- Multilaterally agreed solutions? Internationally agreed standards?

Musselli et al, 2022