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Greening the Gates or Guarding the Market? Green Protectionism and the Evolution of EU Trade Defence Instruments

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Abstract

The intersection of climate ambition and international trade governance has produced one of the most contested fault lines in contemporary global economic law. The European Union, through its European Green Deal (EGD) and a suite of associated legislative instruments, has fundamentally reoriented its trade defence architecture towards environmental objectives. This paper critically examines the evolution of EU Trade Defence Instruments (TDIs) within the framework of green industrial policy, analysing how anti-dumping and countervailing duty mechanisms, the Carbon Border Adjustment Mechanism (CBAM), the EU Deforestation Regulation (EUDR), and the Foreign Subsidies Regulation (FSR) collectively constitute a new generation of green-justified trade barriers. Drawing upon primary EU legislative sources and WTO dispute settlement jurisprudence, alongside secondary academic scholarship, the paper interrogates whether these instruments represent a legitimate convergence of climate and trade governance, or whether they amount to a form of sophisticated protectionism dressed in ecological rhetoric. The analysis reveals a structural tension between the EU's stated climate goals, its obligations under multilateral trade law, and the asymmetric economic impacts these measures produce for developing and emerging economies. The paper concludes that the EU's green trade agenda, while normatively grounded, risks undermining the multilateral trading order unless it is accompanied by genuine differentiation, technology transfer commitments, and reform of WTO dispute settlement capacity.

Keywords: Green Protectionism, EU Trade Defence Instruments, Carbon Border Adjustment Mechanism, WTO Compatibility, European Green Deal, Anti-Dumping, Countervailing Duties, Carbon Leakage

1. Introduction

Few questions in contemporary international political economy are more contested than whether a government can use environmental justifications to shield its domestic industries from foreign competition. This debate has acquired new urgency as the European Union, the world's largest single trading bloc, has systematically embedded climate criteria into instruments that once served purely defensive commercial purposes. The result is an emergent architecture that blurs the boundary between genuine ecological governance and economic self-interest, giving rise to what scholars increasingly describe as 'green protectionism' (Lottici et al., 2014; Sutton & Saha, 2025). The EGD, launched in 2019 under the von der Leyen Commission, committed the EU to climate neutrality by 2050 and established a comprehensive policy roadmap that reaches into trade, industrial, and fiscal policy domains (European Commission, 2019). Among the most consequential expressions of this commitment are the CBAM, which entered its transitional phase in October 2023 (*Regulation (EU) 2023/956*, 2023); the countervailing duties imposed on Chinese battery electric vehicles (BEVs) in October 2024 (*Commission Implementing Regulation (EU) 2024/2600*, 2024); the EUDR of 2023; and the FSR of 2022, through which the EU has investigated Chinese wind and solar investments. Taken together, these instruments represent a qualitative shift in how the EU constructs and deploys trade defence.

The stakes of this shift are considerable. Developing nations, including Brazil, India, Indonesia, and South Africa, have mounted growing diplomatic challenges to these measures, viewing them as a form of 'regulatory imperialism' that imposes EU standards on sovereign policy choices without commensurate financial or technological support (Sutton & Saha, 2025). The World Trade Organization's dispute settlement system, itself severely impaired by the paralysis of its Appellate Body since 2019, offers an increasingly unreliable forum for resolving these tensions (Featherston, 2024). Meanwhile, China has initiated formal WTO dispute proceedings against the EU's BEV countervailing duties (WTO, 2025a), crystallising the geopolitical dimension of what might otherwise appear to be a technical trade law question. This paper proceeds as follows. The second section surveys the scholarly literature on the trade-environment nexus, with particular reference to the concept of green protectionism. The third section outlines the methodological approach. The fourth section maps the pre-existing architecture of EU TDIs and traces their doctrinal evolution. The fifth section analyses the specific green-inflected instruments now operating alongside, or transforming, that architecture. The sixth section subjects these instruments to critical legal and political economy analysis, with particular attention to WTO compatibility. The seventh section examines the asymmetric impacts on developing countries and emergent North-South tensions. The paper concludes with reflections on the systemic implications for global trade governance.

2. Literature Review

The academic literature at the intersection of trade and environmental policy has expanded dramatically since the early 2000s, though the specific contours of green protectionism as a coherent analytical category remain contested. Three broad strands of scholarship are particularly relevant to this paper. The first strand addresses the conceptual foundations of green protectionism. Lottici et al. (2014) offer one of the clearest formulations, arguing that environmental standards, green economy rhetoric, and climate response measures are increasingly deployed by developed economies to construct trade barriers against developing countries. Their account frames green protectionism not merely as an unintended consequence of good-faith environmental regulation but as a structural tendency within the political economy of advanced industrial states, where domestic industries can capture the regulatory process to insulate themselves from low-cost competition under ecological cover. This analysis resonates with Baldwin's (1985) earlier work on the political economy of non-tariff barriers, which identified the vulnerability of regulatory systems to producer capture, and Hoekman and Mavroidis's (2015) more recent observation that technical standards and regulations have displaced tariffs as the primary instruments of modern protectionism.

A second strand engages more directly with the WTO legal framework and the legitimacy conditions under which environmental trade measures may be justified. The foundational case law particularly the Appellate Body's rulings in *US-Gasoline* (1996), *US-Shrimp* (1998), and *EC-Seal Products* (2014) established that measures primarily aimed at environmental protection could satisfy the general exceptions in GATT Article XX, provided they were not applied as disguised restrictions on international trade (WTO Appellate Body, 1998; WTO Appellate Body, 2014). De Stefano (2026) develops this jurisprudential lineage in the specific context of the CBAM, concluding that the regulation's WTO compatibility remains contingent on avoiding protectionist application, whether *de jure* or *de facto* a test confirmed in the recent EU-Palm Oil disputes of 2024 and 2025. Mehling et al. (2025) go further, arguing that the CBAM's primary value may lie not in directly preventing carbon leakage which *ex-ante* modelling suggests is relatively modest, between 3 and 15 percent but in its capacity to incentivise foreign jurisdictions to adopt explicit carbon pricing, thereby generating policy spillover effects that outweigh the mechanism's direct trade impact. A third strand focuses on the geopolitical reconfiguration of trade governance, examining how geoeconomic competition between the EU, the United States, and China is reshaping the normative architecture of international trade. Chase & Pinkert (2021) and Lenk (2026) argue that the EU has fundamentally reconceptualised security in trade, moving from a market-access model to a strategic autonomy paradigm in which defensive trade instruments serve both economic and geopolitical objectives. Leonelli and Clora

(2024) situate this shift within the broader contest over green industrial policy, showing how the US Inflation Reduction Act and the EU's Net-Zero Industry Act reflect a mutually reinforcing logic of green subsidisation that privileges domestic over multilateral solutions. The Sutton & Saha (2025) synthesises these threads, observing that the EU's green trade agenda generates substantial tensions with developing countries that view unilateral border measures and supply chain regulations as an intrusion on the Paris Agreement's principle of nationally determined contributions and common but differentiated responsibilities. What the existing literature does not adequately address is the cumulative and systemic character of the EU's green TDI evolution that is, the manner in which multiple instruments, each individually defensible, collectively constitute a green trade barrier architecture that is qualitatively different in scope and impact from any single measure considered in isolation. This gap motivates the present paper's integrative analytical approach.

3. Methodology

This paper employs a doctrinal-analytical methodology grounded in international trade law and international political economy. The doctrinal dimension involves close reading and critical interpretation of primary legal sources principally EU regulations and implementing measures, WTO Agreements (particularly the GATT 1994, the Agreement on Subsidies and Countervailing Measures, and the Anti-Dumping Agreement), and WTO dispute settlement reports to assess the legal structure and potential vulnerabilities of the instruments under review. The political economy dimension draws on secondary scholarship, institutional reports, and policy analysis to situate legal developments within their broader structural context. The paper does not employ quantitative trade modelling or econometric analysis, recognising that the causal relationship between specific EU measures and trade flows is difficult to isolate from a range of confounding variables. Instead, the analytical approach is interpretive and comparative: it compares the stated objectives of specific instruments against their observable design features and political economy, and draws inferences about the degree to which environmental and protectionist motivations are entangled.

This approach draws on the tradition of legal-political economy analysis exemplified by Howse and Regan (2000), who proposed that the intent-effect distinction is insufficient to resolve trade-environment conflicts, and that normative assessment must attend to both the process by which measures are adopted and the structural position of the parties affected. Primary sources include: Regulation (EU) 2023/956 establishing the CBAM; Regulation (EU) 2023/1115 (EUDR); Regulation (EU) 2022/2560 (FSR); the European Commission's implementing regulation on BEV countervailing duties (October 2024); and WTO dispute records for DS630 (EU-BEV CVDs, China). Secondary sources are drawn from peer-reviewed journals, established policy institutions including Bruegel, CSIS, and the Brookings Institution, and institutional sources including the European Parliament Legislative Train Schedule and WTO official communications.

4. The Architecture of EU Trade Defence Instruments: From Commercial Defence to Green Governance

4.1 Classical Trade Defence Instruments

TDIs, as defined under WTO law and transposed into EU legislation, originally encompassed three main categories: anti-dumping measures, which counteract imports sold in EU markets below their normal value; countervailing measures, which offset foreign government subsidies; and safeguard measures, which address import surges causing serious injury to domestic industry, regardless of unfair practice (European Commission, n.d.). These instruments are grounded in the GATT 1994 and the associated WTO Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures (ASCM). For most of the post-war period, the EU's deployment of these instruments followed a relatively conventional commercial logic: they were triggered by industry complaints, applied through technically complex administrative procedures, and ultimately aimed at restoring 'level playing field' conditions for EU producers. The EU consistently maintained that its use of TDIs was among the most restrained among major trading powers, applying the 'lesser duty rule' which

caps duties at the minimum level necessary to remove injury rather than matching the full margin of dumping or subsidy as an additional condition beyond WTO requirements (European Commission, n.d.).

Since approximately 2019, however, the Commission has introduced a series of reforms and new instruments that have transformed the TDI architecture in two related but distinct directions. The first is a shift towards more aggressive enforcement against subsidisation, particularly from China, in strategic sectors. The second is the introduction of genuinely novel instruments the CBAM and the EUDR chief among them that are not formally classified as TDIs but serve functionally equivalent trade-restricting roles while being legally grounded in climate and environmental policy rather than trade law. Together, these developments constitute what may be termed the green turn in EU trade defence.

Table 1: Key EU Trade Defence and Green Border Instruments (2012–2026)

Instrument	Legal Basis	Year	Target Sector(s)	WTO Classification
Anti-Dumping Duties on Chinese Solar PV	EU Basic Regulation 2016/1036	2013–2018	Solar panels, cells, wafers	Anti-Dumping Agreement
Anti-Dumping / CVDs on Steel Products	EU Reg. 2016/1036 & 2016/1037	Ongoing	Steel, aluminium	AD & ASCM
FSR	Regulation (EU) 2022/2560	2023	Cross-sector (green tech focus)	No direct WTO equivalent
CBAM	Regulation (EU) 2023/956	2023–2026	Steel, cement, aluminium, fertilisers, electricity, hydrogen	GATT Art. I/III / Art. XX (argued)
EUDR	Regulation (EU) 2023/1115	2023–2025+	Cattle, soya, cocoa, palm oil, wood, coffee, rubber	GATT Art. III / TBT / SPS
CVDs on Chinese Battery Electric Vehicles	Regulation (EU) 2016/1037	2024	Battery electric vehicles	ASCM / GATT Art. VI
Net-Zero Industry Act (NZIA)	Regulation (EU) 2024/1106	2024	Solar, wind, batteries, hydrogen, nuclear	Domestic subsidy / potential SCM issues

Source: Author's compilation from European Commission legislative sources and WTO records.

4.2 The Green Mutation of Classical Instruments: Solar Panels and Electric Vehicles

The antecedents of the EU's current green TDI strategy lie in its response to Chinese solar panel exports during the early 2010s. China's share of global photovoltaic (PV) cell production surged from 14 percent in 2006 to 60 percent by 2013, facilitated by extensive state financial support (Boullenois et al., 2023). Between 2013 and 2018, the EU, following the United States, imposed anti-dumping and countervailing duties on Chinese solar panels, cells, and wafers. These measures temporarily disrupted Chinese export growth but failed to restore EU manufacturers' competitive position, and

were eventually discontinued as the EU's energy transition goals created powerful incentives to access low-cost solar panels regardless of their origin (McWilliams et al., 2024). This episode is analytically significant because it reveals the fundamental tension that recurs throughout the green TDI debate: the EU simultaneously wants to protect domestic manufacturing of green technologies and to accelerate the deployment of those technologies at the lowest possible cost. Where these objectives conflict, as they frequently do when Chinese manufacturers offer substantially cheaper products, the EU must make a political choice that cannot be reduced to either pure trade defence or pure climate policy. As the Bruegel analysis of solar manufacturing demonstrates, approximately half of the EU's module assembly capacity faced shutdown risk by early 2024 precisely because of the competitive pressure from Chinese producers whose cost advantage is partly, though not exclusively, attributable to state support (McWilliams et al., 2024).

The BEV countervailing duty case of 2023–2024 represents a more legally sophisticated iteration of this same dynamic. In October 2023, the Commission launched an ex officio anti-subsidy investigation into Chinese-made battery electric vehicles, selecting BYD, SAIC, and Geely as sampled producers (Featherston, 2024). The investigation concluded in October 2024 with the imposition of definitive countervailing duties ranging from 17.0 percent for BYD to 36.3 percent for SAIC, with a residual rate of 21.3 percent for cooperating but unsampled producers and 37.6 percent for non-cooperating producers (Lapr v te et al., 2024). The duties apply for a five-year period and are framed as a response to actionable subsidisation under the EU's Basic Anti-Subsidy Regulation and the WTO ASCM. Several aspects of this investigation warrant critical scrutiny. First, the Commission's sampling exercise excluded all European-owned car manufacturers that import their Chinese-made BEVs into the EU, despite the fact that European and US brands including Tesla constitute the majority of BEV imports from China (Hu & Gros, 2025). This structural asymmetry is difficult to reconcile with Article 27.1 of the EU's Anti-Subsidy Trade Defence Instrument, which governs sampling procedure, and raises serious questions about whether the investigation was genuinely oriented to address subsidisation or to protect EU-owned producers. Second, the EU maintained a sizeable trade surplus in BEVs during the investigation period of 2022–2023, which complicates the causation analysis between subsidised imports and material injury to EU industry (Hu & Gros, 2025). Third, China's rapid retaliatory response anti-dumping probes into EU brandy, pork, and dairy, specifically calibrated to target France, Denmark, and Spain illustrates how green TDIs generate geopolitical cascades that extend far beyond the original sectoral dispute (Noerr, 2024).

5. The Carbon Border Adjustment Mechanism and the New Generation of Green Trade Barriers

5.1 CBAM: Architecture and Rationale

The CBAM, established by Regulation (EU) 2023/956, represents the most legally novel and geopolitically significant element of the EU's green trade architecture. It entered its transitional phase on 1 October 2023, requiring importers of specified carbon-intensive goods to report embedded greenhouse gas emissions without yet paying a financial adjustment. From 1 January 2026, the definitive regime will require authorised CBAM declarants to surrender CBAM certificates corresponding to the carbon content of their imports, with the price of certificates linked to EU Emissions Trading System (ETS) allowance prices (*Regulation (EU) 2023/956*, 2023). The CBAM's stated rationale is threefold: to prevent 'carbon leakage', whereby production migrates to jurisdictions with less stringent carbon pricing to avoid ETS costs; to maintain the competitive position of EU industry as ETS free allowances are phased out between 2026 and 2035; and to encourage third countries to adopt their own carbon pricing mechanisms, thereby advancing global decarbonisation (Dolphin & Ferrucci, 2026). It initially covers cement, iron and steel, aluminium, fertilisers, electricity, and hydrogen sectors responsible for the most carbon-intensive production and is expected to expand to cover all ETS-covered goods by 2030 (Mehling et al., 2025).

From an international trade law perspective, the CBAM's compatibility with WTO obligations is far from settled. The GATT's most-favoured nation principle (Article I) and national treatment obligation (Article III) prohibit discrimination between domestic and imported 'like' products. The EU's central legal argument is that the CBAM does not discriminate against imports per se but rather equalises the carbon cost faced by all producers domestic and foreign selling into the EU market, and that imported goods are only 'like' domestically produced goods if they embody comparable levels of carbon intensity (Benson et al., 2023). This argument faces at least two difficulties. First, whether goods with identical physical characteristics but different carbon footprints constitute 'non-like' products under WTO jurisprudence remains deeply contested and unresolved (Das & Bandyopadhyay, 2023). Second, the CBAM's methodology for calculating embedded emissions relies on default values derived from average EU production processes for countries that cannot demonstrate their actual emissions, which may systematically overstate the carbon content of imports from countries with comparable but differently organised industrial processes. Even if the CBAM fails one or more GATT obligations, the EU intends to invoke Article XX particularly paragraphs (b) and (g), which permit measures necessary to protect human, animal, or plant life or health, or relating to the conservation of exhaustible natural resources as a general exception (GMF, 2023). The plausibility of this defence is conditioned by the chapeau of Article XX, which prohibits 'arbitrary or unjustifiable discrimination' or a 'disguised restriction on international trade'. The EU's decision not to rebate CBAM revenues to exporting countries, and to allocate them to the general EU budget rather than to climate finance, is particularly vulnerable under the chapeau, as it suggests that the commercial dimension of the revenue stream is not incidental (Benson et al., 2023).

5.2 The EU Deforestation Regulation as Green Non-Tariff Barrier

The EUDR, Regulation (EU) 2023/1115, mandates that seven forest-risk commodities cattle, cocoa, coffee, oil palm, rubber, soya, and wood and their derivatives may only enter the EU market if operators can demonstrate, through geospatial due diligence, that they were not produced on land deforested after 31 December 2020 (*Regulation (EU) 2023/1115*, 2023). With initial forecasts suggesting the regulation could affect approximately 401 billion USD in annual exports to the EU (Cotula & Nanda, 2024), largely from developing economies in Latin America, Southeast Asia, and Sub-Saharan Africa, the EUDR has generated intense opposition from producer-country governments. While the regulation's environmental motivation is genuine deforestation linked to agricultural commodity production is a major driver of biodiversity loss and carbon emissions its structural design imposes disproportionate compliance costs on smallholder producers and developing-country exporters who lack the administrative and technological infrastructure to produce compliant supply chain documentation at scale (Cotula & Nanda, 2024). The EU's country classification system, which determines the level of scrutiny required based on assessed deforestation risk, further introduces a sovereign ranking mechanism that producer countries have challenged as politically arbitrary.

In legal terms, the EUDR operates as a product market regulation rather than a border tariff, but its trade-restrictive effects can be equivalent to or more severe than a quantitative restriction when compliance is practically unattainable for large categories of producers. The question of whether it constitutes a technical regulation under the WTO Agreement on Technical Barriers to Trade (TBT Agreement), and whether it satisfies the TBT's requirements of non-discrimination and avoidance of unnecessary obstacles to trade, remains open to dispute. The EU-Palm Oil cases, in which WTO panels found certain EU biofuel measures under the Renewable Energy Directive to be *prima facie* inconsistent with MFN and national treatment obligations (De Stefano, 2026), provide a cautionary precedent that the EUDR's framers would be wise not to dismiss.

6. Green Protectionism: A Critical Assessment of the EU's Trade Defence Evolution

6.1 Legitimacy and Structural Tension

The concept of green protectionism, as Lottici et al. (2014) note, captures the manner in which environmental measures acquire greater social legitimacy than traditional tariffs, making them both more politically durable and more resistant to legal challenge. This observation has particular force in the EU context, where the EGD commands wide public support and where the Commission has successfully institutionalised climate objectives across virtually all policy domains, including trade (European Commission, 2019). The political economy of this process matters: when solar panel manufacturers facing Chinese competition, or steel producers facing the prospect of carbon costs that foreign competitors do not bear, lobby for trade protection, they can now do so in the language of climate justice and green industrial sovereignty rather than the discredited idiom of simple commercial protectionism. This shift does not automatically render their claims illegitimate, but it does make the counterfactual question would these measures have been adopted in the absence of green justification? correspondingly harder to answer. What the critical trade law literature identifies as the defining problem is the dual-use character of these instruments: they serve simultaneously as environmental governance tools and as mechanisms for competitive repositioning. The Net-Zero Industry Act's target of 40 percent domestic manufacturing of net-zero technologies by 2030 (NZIA, Regulation (EU) 2024/1106) is illustrative. Framed as a supply chain resilience and decarbonisation measure, it is functionally equivalent to a local content requirement a category of subsidy that is explicitly prohibited under the WTO ASCM when contingent on the use of domestic over imported goods (Leonelli & Clora, 2024). The EU has argued that the NZIA's targets are non-binding benchmarks rather than contingency conditions, but the practical effect of directing public procurement and financing preferences toward domestically manufactured clean technologies is likely to produce similar trade distortions.

6.2 The Sampling and Causation Problems in BEV Countervailing Duties

The BEV CVD investigation exposes particular fault lines between the legal form and political function of green TDIs. At the doctrinal level, the exclusion of European-owned importers of Chinese-made BEVs from the sampled group is difficult to justify on any grounds other than the protection of EU corporate interests. Under the WTO ASCM, countervailing duties are designed to offset subsidy-induced competitive advantages enjoyed by foreign producers, not to protect specific ownership categories of industry. The Commission's investigation found sufficient evidence of countervailable subsidies provided through state-owned banks, preferential export insurance, income tax exemptions, and input supply preferences (Hu & Gros, 2025). However, the determination of injury is also required to establish a causal link between these subsidised imports and material harm to the domestic EU industry a standard that is considerably more challenging to satisfy when the EU maintained a trade surplus in BEVs during the investigation period and when import penetration, while growing rapidly, still represented a relatively modest share of total EU sales as of the end of 2023 (Hu & Gros, 2025). The political context further complicates any assessment of the investigation's integrity as an impartial trade remedy. China's lobbying campaign targeting member states it perceived as persuadable including its imposition of temporary anti-dumping duties on brandy that targeted France, and its anti-subsidy probe into dairy products from France, the Netherlands, and Belgium reveal the extent to which the BEV CVD dispute became a vehicle for broader strategic competition (Noerr, 2024). Germany's last-minute reversal from abstention to opposition within the Council is equally revealing: its decision reflected the interests of German automakers heavily dependent on the Chinese market, demonstrating that the EU's 'trade defence' process is not insulated from the strategic calculations of major member states with divergent interests (McWilliams et al., 2024).

6.3 WTO Dispute Settlement and the Appellate Body Paralysis

The capacity of affected third countries to challenge EU green TDIs through WTO dispute settlement is severely constrained by the ongoing paralysis of the WTO Appellate Body. Since December 2019,

when the Appellate Body lost the quorum necessary to hear appeals, WTO panel reports have been routinely appealed into a procedural void by the losing party a practice sometimes called 'appealing into the abyss' (Sutton & Saha, 2025). The practical effect is that WTO panel rulings, even where they find EU measures inconsistent with multilateral trade obligations, cannot generate binding legal precedent and cannot compel compliance. In the BEV dispute (DS630), China and the EU agreed in July 2025 to arbitration procedures under Article 25 of the Dispute Settlement Understanding, incorporating the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which functions as an interim substitute for the defunct Appellate Body for the parties that have joined it (WTO, 2025a).

This is a constructive development, but it also illustrates that WTO dispute resolution has been effectively privatised into a network of bilateral arrangements that lacks the systemic authority of the original appellate mechanism. For countries lacking the diplomatic leverage to negotiate such arrangements with the EU, the practical recourse remains severely limited. The EU-Palm Oil cases offer a cautionary illustration of the broader legal landscape. WTO panels in 2024 and 2025 found that certain EU measures restricting palm oil-based biofuels were *prima facie* inconsistent with the MFN and national treatment obligations of GATT Articles I.1 and III:4, finding that they accorded less favourable competitive treatment to palm oil from Malaysia and Indonesia (De Stefano, 2026). These findings have direct implications for the CBAM and EUDR, both of which employ country-classification or emissions-differentiation approaches that could similarly be shown to disadvantage products from specific jurisdictions in ways that are not demonstrably related to their actual environmental characteristics.

7. North-South Asymmetries and the Equity Dimension of Green Trade Governance

Perhaps the most enduring normative challenge to the EU's green trade defence architecture is the asymmetric burden it places on developing and least-developed countries. The Paris Agreement's principle of common but differentiated responsibilities and respective capabilities (CBDRRC) explicitly recognises that countries at different levels of development should bear different levels of obligation in the transition to a low-carbon economy. The EU's unilateral green trade measures CBAM, EUDR, the methane regulation requiring equivalent monitoring standards from EU gas and oil importers from 2027 do not incorporate meaningful differentiation based on development status. In the case of the CBAM, the Dolphin & Ferrucci (2026) notes that while aggregate trade disruption from the mechanism's phased implementation appears limited at the macro level, the distributional effects are highly uneven. The mechanism effectively requires that countries exporting to the EU pay a carbon price that the EU sets unilaterally, without regard to whether those countries' development pathways or their historical responsibility for cumulative atmospheric emissions justify equivalent carbon pricing burdens. India's economic affairs secretary characterised the CBAM as 'unfair and detrimental' in July 2024, and India has indicated that concerns about the mechanism will influence its ongoing free trade agreement negotiations with the EU (Carbon Brief, 2024). The BASIC group Brazil, South Africa, India, and China has more broadly threatened to obstruct climate negotiations at COP30 in response to what they regard as the EU's unilateral approach to climate-trade linkage (Mehling et al., 2025).

The EUDR presents an analogous equity problem with particularly sharp contours for African producer states. Countries like Côte d'Ivoire and Ghana, where cocoa exports to the EU represent a substantial share of export revenues, face compliance requirements that presuppose administrative, technological, and financial capacities they do not currently possess (Cotula & Nanda, 2024). The regulation's geospatial monitoring requirements, though technically workable for large agri-business exporters, are operationally prohibitive for the smallholder farmers who dominate agricultural production in many affected economies. While the EU has made commitments to provide implementation support through partnership initiatives, these commitments are neither legally binding nor proportionate to the scale of adaptation the regulation demands. The conceptual problem here runs deeper than the distribution of compliance costs. When the EU uses border measures to export its environmental standards compelling foreign producers to meet EU-equivalent process and

production requirements as a condition of market access it is exercising a form of extraterritorial jurisdiction that is in tension with both the sovereignty principle in international law and the WTO's general presumption against process-based trade distinctions. The WTO Appellate Body's 1998 ruling in *US-Shrimp* acknowledged that process-based conditions could, in principle, be justified under GATT Article XX(g), but insisted that unilateral measures must be accompanied by serious good-faith efforts at multilateral negotiation before being imposed (WTO Appellate Body, 1998). The EU's approach to both the CBAM and the EUDR has been predominantly unilateral, with consultation processes that, despite the Commission's claims to the contrary, do not constitute genuine multilateral negotiation of the kind the *US-Shrimp* standard envisages.

Table 2: Key Developing-Country Impacts of Selected EU Green Trade Instruments

Instrument	Primary Affected Regions	Nature of Impact	Development Equity Concern
CBAM	Russia, Ukraine, Turkey, India, China, North Africa	Carbon price on energy-intensive exports; estimated financial burden on exports to EU	No differentiation by CBDRRC; no technology transfer mechanism; proceeds to EU budget
EUDR	Sub-Saharan Africa (cocoa, coffee), SE Asia (palm oil, rubber), Brazil (soya, cattle)	Market access denial for non-compliant supply chains	Disproportionate compliance cost for smallholders; limited financial and technical support
BEV CVDs	China primarily	Duties of 17–37.6% on BEV exports; retaliatory trade cascades affecting EU agri-food sectors	Reflects geopolitical competition rather than classical anti-subsidy logic
Methane Regulation (2027)	Middle East, US, Africa oil and gas exporters	Equivalent monitoring standards required for EU imports from 2027	Imposes EU regulatory standards on sovereign energy producers without compensation

Source: Author's compilation from Carbon Brief (2024), Cotula & Nanda (2024), Dolphin & Ferrucci, (2026), Sutton & Saha (2025).

8. Conclusion

The EU's evolution of TDIs in the context of the EGD represents one of the most significant transformations in the history of European trade policy. What has emerged is not simply a set of environmental regulations with incidental trade effects, but a purposive architecture of green trade governance in which border carbon adjustments, supply chain regulations, countervailing duties in strategic green sectors, and foreign subsidy controls collectively reinforce the EU's ambition to shape the terms of globalisation in accordance with its ecological and industrial priorities. This architecture cannot be evaluated purely on the terms its architects propose as a straightforward exercise in carbon leakage prevention or fair competition enforcement because its political economy is demonstrably shaped by considerations of industrial competitiveness and strategic autonomy that exceed any purely environmental rationale. This does not mean the instruments are entirely without legitimate environmental foundation. The CBAM addresses a genuine market failure: the asymmetric internalisation of carbon costs between EU and non-EU producers competing on the same market creates structural incentives for carbon leakage and undermines the effectiveness of the EU ETS. The EUDR responds to a real and urgent environmental problem, in that European consumption patterns

have historically contributed to tropical deforestation without assuming any corresponding accountability. The BEV CVDs reflect genuine evidence of systematic state subsidisation that has compressed market prices below competitive levels. These foundations are real, but they are necessary rather than sufficient conditions for the legitimacy of the measures in question. Sufficiency requires that the measures be designed in ways that are proportionate, non-discriminatory, and attentive to the equity claims of affected parties conditions that the current architecture only partially satisfies.

The path towards a more legitimate green trade governance architecture passes through several structural changes. First, the CBAM's definitive regime requires a meaningful differentiation mechanism for least-developed countries and for countries that have adopted climate commitments that, while not consisting of explicit carbon pricing, achieve comparable environmental outcomes through alternative regulatory approaches. Second, the EUDR's compliance framework requires substantial financial and technical support transfers that are proportionate to the regulation's demands on affected producer economies. Third, the WTO's capacity to adjudicate green trade disputes must be restored through an agreement on Appellate Body reform that has eluded the membership for nearly a decade; the proliferation of bilateral arbitration arrangements like the MPIA is an insufficient substitute for systemic juridical authority. Fourth, and perhaps most fundamentally, the EU should pursue its green trade goals through multilateral negotiation of environmental standards rather than the unilateral imposition of border conditions a process that will require it to accept constraints on its own regulatory autonomy in exchange for shared environmental outcomes. None of these changes are imminent, and the geopolitical context characterised by deteriorating EU-China relations, transatlantic trade friction under the Trump administration's tariff regime, and escalating developing-country pushback against European unilateralism makes their negotiation considerably harder. The risk, as Mehling et al. (2025) observe, is that instruments designed to discipline free-rider behaviour in climate governance instead provoke a fragmentation of the global trading system into competing green blocs, each imposing its own standards as conditions of market access. That outcome would be bad for climate and bad for trade a double failure whose prevention requires more systemic ambition than the EU's current approach provides.

References

- Benson, E., Majkut, J., Reinsch, W. A., & Steinberg, F. (2023). *Analyzing the European Union's carbon border adjustment mechanism*. Center for Strategic and International Studies. https://csis-website-prod.s3.amazonaws.com/s3fs-public/2023-02/230217_Analyzing_EU_CBAM.pdf
- Boullenois, C., Kratz, A., & Goujon, R. (2023). *Opening salvo: The EU's electric vehicle probe and what comes next*. Rhodium Group. <https://rhg.com/research/opening-salvo-the-eus-electric-vehicle-probe-and-what-comes-next/>
- Carbon Brief. (2024). *Q&A: Can "carbon border adjustment mechanisms" help tackle climate change?* <https://www.carbonbrief.org/qa-can-carbon-border-adjustment-mechanisms-help-tackle-climate-change/>
- Chase, P., & Pinkert, R. (2021). *The EU's triangular dilemma on climate and trade*. German Marshall Fund of the United States. <https://www.gmfus.org/news/eus-triangular-dilemma-climate-and-trade>
- Commission Implementing Regulation (EU) 2024/2600 imposing definitive countervailing duties on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China, 2024 O.J. (L).

- Cotula, L., & Nanda, A. (2024). *Can Europe's new deforestation regulation address concerns about trade and climate justice?* International Institute for Environment and Development. <https://www.iied.org/can-europes-new-deforestation-regulation-address-concerns-about-trade-climate-justice>
- Das, K., & Bandyopadhyay, K. R. (2023). *Making a border carbon adjustment mechanism work for climate, trade, and equity.* Trade and Environmental Sustainability Structured Discussions. <https://tessforum.org/latest/making-a-border-carbon-adjustment-mechanism-work-for-climate-trade-and-equity>
- De Stefano, C. (2026). The international law reading of the EU carbon border adjustment mechanism (CBAM). *European Papers-A Journal on Law and Integration*, 2026(1), 276-288.
- Dolphin, G., & Ferrucci, G. (2026). *Greening at the border: Carbon Border Adjustment Mechanism incidence on EU member states and their trading partners.* CEPR VoxEU. <https://cepr.org/voxeu/columns/greening-border-carbon-border-adjustment-mechanism-incidence-eu-member-states-and>
- European Commission. (2019). *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal* (COM(2019) 640 final). Publications Office of the European Union.
- European Commission. (2023). *Proposal for a regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem (Net Zero Industry Act)* (COM(2023) 161 final). Publications Office of the European Union.
- European Commission. (n.d.). *Trade defence: EU trade.* European Commission, Directorate-General for Trade. https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence_en
- European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, Appellate Body Report, WT/DS400/AB/R; WT/DS401/AB/R (2014).
- European Parliament. (2024). *Carbon border adjustment mechanism as part of the European Green Deal.* Legislative Train Schedule. <https://www.europarl.europa.eu/legislative-train/carriage/carbon-border-adjustment-mechanism/report?sid=10001>
- Featherston, R. (2024). *Slamming the brakes: The EU votes to impose tariffs on Chinese EVs.* Center for Strategic and International Studies. <https://www.csis.org/blogs/trustee-china-hand/slamming-brakes-eu-votes-impose-tariffs-chinese-evs>
- Hoekman, B., & Mavroidis, P. C. (2015). Embracing diversity: Plurilateral agreements and the trading system. *World Trade Review*, 14(1), 101–116
- Howse, R., & Regan, D. (2000). The product/process distinction-an illusory basis for disciplining'unilateralism'in trade policy. *European Journal of International Law*, 11(2), 249-289.

- Hu, W., & Gros, D. (2025). *The EU's anti-subsidy investigation against Chinese battery electric vehicle imports: Industrial policy and geopolitics in disguise?* (IEP@BU Policy Brief No. 39). Bocconi Institute for European Policymaking. <https://iep.unibocconi.eu/publications/policy-briefs/policy-brief-n39-eus-anti-subsidy-investigation-against-chinese-battery>
- Jernigan, W., & To, A. (2025). *How the EU's CBAM will impact the business and carbon pricing landscape*. World Economic Forum. <https://www.weforum.org/stories/2025/12/eu-cbam-impact-business-carbon-pricing-landscape/>
- Lapr v te, F.-C., Lin, W., & Harbor, T. (2024). *Definitive duties adopted by the EU on Chinese battery electric vehicles to counteract subsidies to apply by October 30*. Cleary Gottlieb Foreign Investment and International Trade Watch. <https://www.clearytradewatch.com/2024/10/definitive-duties-adopted-by-the-eu-on-chinese-battery-electric-vehicles-to-counteract-subsidies-to-apply-by-october-30/>
- Lenk, H. (2026). Carrots and Sticks: Can the EU Balance Trade and Security in a Geoeconomic Order?. In *The EU Charting its Course in a Geopolitical World: Interdisciplinary European Studies* (pp. 49-75). Cham: Springer Nature Switzerland.
- Leonelli, G. C., & Clora, F. (2024). Retooling the regulation of net-zero subsidies: lessons from the US Inflation Reduction Act. *Journal of International Economic Law*, 27(3), 441-461.
- Lottici, M. V., Galperin, C., & Hoppstock, J. (2014). "Green Trade Protectionism": An Analysis of Three New Issues that Affect Developing Countries. *Chinese Journal of Urban and Environmental Studies*, 2(02), 1450016.
- McWilliams, B., Tagliapietra, S., & Trasi, C. (2024). *Smarter European Union industrial policy for solar panels* (Bruegel Policy Brief No. 02/2024). Bruegel. https://www.bruegel.org/system/files/2024-02/PB%2002%202024_3.pdf
- Mehling, M. A., Dolphin, G., & Ritz, R. A. (2025). The European Union's CBAM: averting emissions leakage or promoting the diffusion of carbon pricing?. *Journal of Environmental Policy & Planning*, 27(6), 687-705.
- Noerr. (2024). *The EU's countervailing duties on electric cars: Entering a new era of trade relations with China?* Noerr LLP International Trade Insights. <https://www.noerr.com/en/insights/the-eu-countervailing-duties>
- Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market*, 2022 O.J. (L 330) 1.
- Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No. 995/2010*, 2023 O.J. (L 150) 206.
- 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.

Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 amending Regulations (EU) No. 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on the wholesale energy market, 2024 O.J. (L 2024/1106).

Sutton, T., & Saha, S. (2025). *The risks and opportunities of the EU's green trade agenda*. Brookings Institution. <https://www.brookings.edu/articles/the-risks-and-opportunities-of-the-eus-green-trade-agenda/>

United States—Import Prohibition of Certain Shrimp and Shrimp Products, Appellate Body Report, WT/DS58/AB/R (1998).

World Trade Organization. (2025a). *DS630: European Union—Definitive countervailing duties on new battery electric vehicles from China*. WTO Dispute Settlement. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds630_e.htm

World Trade Organization. (2025b, April 25). *Panel established to review EU duties on battery electric vehicles from China*. WTO News. https://www.wto.org/english/news_e/news25_e/dsb_25apr25_e.htm