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Green Due Diligence as a New Form of Protectionism — The Conflict Between Sustainable Trade and Human Rights

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ABSTRACT
The global shift toward sustainability has transformed environmental due diligence from a voluntary corporate practice into a regulatory instrument of international trade. This paper critically examines how Green Due Diligence requirements, introduced under the guise of promoting sustainable trade, may function as a new form of protectionism that disproportionately burdens producers from developing countries. Through a legal and policy-based analysis, the study explores the tension between environmental objectives and human rights obligations, particularly the right to development and economic self-determination. It argues that while sustainability standards aim to ensure ecological accountability, their extraterritorial application often reinforces structural inequalities and limits market access for vulnerable economies. The paper further evaluates the implications of European Union due diligence legislation and similar frameworks, questioning their compatibility with World Trade Organization principles and international human rights norms. Ultimately, it proposes a balanced model of sustainable trade governance that reconciles ecological responsibility with social justice, advocating for a human right–based approach to green regulation through Human Rights Due Diligence. This approach seeks to prevent sustainability-driven protectionism while ensuring equitable participation of all nations in the global green economy.

KEYWORDS: Climate Justice; Business and Human Rights; Trade Protectionism; Human Rights Due Diligence.

1. Introduction

The international trading system is currently undergoing a profound normative and regulatory transformation. Over the past decade, environmental protection and human rights have shifted from peripheral concerns accommodated through limited trade exceptions to central elements shaping market access conditions and trade governance. Climate change, biodiversity loss, and persistent human rights violations in global value chains have prompted states—particularly in the Global North—to adopt regulatory instruments that integrate sustainability objectives directly into trade-related regulation. Among these instruments, *green due diligence* has emerged as a prominent and increasingly influential mechanism.[1]

Green Due Diligence (GDD) refers to mandatory obligations imposed on corporations to identify, prevent, mitigate, and account for adverse environmental impacts arising from their activities, including those occurring throughout transnational supply chains.[2] These obligations extend beyond traditional product-based standards and instead focus on production processes, sourcing practices, and corporate conduct, often with extraterritorial implications. Recent regulatory initiatives, such as the European Union's Corporate Sustainability Due

[1] Gabrielle Marceau, 'Trade and Environment in the WTO' (2015) 42 *Journal of World Trade* 839.
[2] John G Ruggie, Just Business: Multinational Corporations and Human Rights (WW Norton, 2013).

Diligence Directive (CSDDD), the EU Deforestation Regulation, and comparable national supply chain laws, exemplify this regulatory trend.[3]

From a policy perspective, GDD is framed as a corrective response to governance gaps in global value chains, addressing market failures and ensuring that international trade does not come at the expense of environmental integrity or fundamental human rights.[4] From a legal perspective, however, its emergence signals a shift in trade regulation itself. Rather than relying on overt tariff barriers or quantitative restrictions, states increasingly employ regulatory measures that condition market access on compliance with sustainability-related norms. This development reflects a broader move toward what has been described as "regulatory" or "behind-the-border" protectionism.[5]

The incorporation of environmental and human rights standards into trade governance is not inherently incompatible with the multilateral trading system. Indeed, sustainable development has long been recognised as an objective of the World Trade Organisation (WTO).[6] Nevertheless, the unilateral design and extraterritorial reach of many green due diligence measures raise fundamental concerns regarding their compatibility with core principles of international trade law, including non-discrimination, proportionality, and respect for different levels of economic development. These concerns are particularly acute for developing and least-developed countries, whose producers may face significant barriers to compliance.

The central problem addressed in this article lies in the growing tension between GDD regimes and the foundational principles of the international trading system, as well as their contested relationship with human rights protection. While GDD is promoted as a mechanism to enhance environmental sustainability and corporate accountability, for at least three reasons it may simultaneously function as a new form of protectionism that restricts effective market access for foreign producers, these are as follows:

First, GDD measures often impose complex and costly compliance requirements that disproportionately affect producers in developing countries.[7] Second, the unilateral nature of GDD raises concerns about regulatory fragmentation and the erosion of multilateralism.[8] Third, a paradox emerges when GDD is examined through a human rights lens. Although such measures are justified as tools for advancing human rights, their exclusionary effects may undermine economic and social rights in exporting countries, including the rights to work, to an adequate standard of living, and to development.[9]

Despite the growing importance of GDD in trade governance, existing scholarship has tended to examine environmental trade measures and corporate human rights due diligence in relative isolation. The intersection between green due diligence, trade protectionism, and human rights remains underexplored. This article seeks to address this gap by providing an

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3 European Commission, *Proposal for a Directive on Corporate Sustainability Due Diligence*, COM (2022) 71 final.

4 Robert Howse, 'The World Trade Organization and the Protection of the Environment' (2000) 94 *American Journal of International Law* 1.

5 Anu Bradford, The Brussels Effect: How the European Union Rules the World (Oxford University Press 2020).

6 World Trade Organization, *Marrakesh Agreement Establishing the World Trade Organization* (1994).

7 Dani Rodrik, The Globalization Paradox (Oxford University Press, 2011).

8 Sungjoon Cho, 'Linkage between International Trade and Labor Standards' (2002) 96 *American Journal of International Law* 287.

9 Philip Alston, 'The Right to Development' (1988) 82 *American Journal of International Law* 205.

integrated legal analysis of green due diligence as both a trade-regulatory instrument and a human rights governance mechanism.

The primary objective of this study is to critically examine GDD as an emerging regulatory paradigm and to assess its character as either a legitimate instrument of sustainable trade or a form of disguised protectionism. This article is structured as follows. Part II contains methodology. Part III analyses the green due diligence as a tool of protectionism. Part IV examines the compatibility of green due diligence measures with WTO law. Part V analyses the human rights implications of green due diligence, with particular emphasis on developing countries and global value chains. Part VI proposes normative and policy recommendations for reconciling GDD with a human right–based approach, such as green Human Rights Due Diligence (HRDD), to accommodate SDGs and sustainable trade. The final part contains conclusion

2. Methodology

This study adopts a qualitative legal research design grounded in doctrinal and normative analysis, complemented by comparative regulatory assessment and policy-oriented evaluation. The methodological framework is informed by the interdisciplinary nature of the research problem, which lies at the intersection of international trade law, environmental regulation, and international human rights law.

Doctrinal legal analysis is employed to examine the consistency of green due diligence measures with the rules and principles of the World Trade Organisation (WTO), particularly the General Agreement on Tariffs and Trade (GATT) and related jurisprudence. This approach focuses on identifying applicable legal norms, interpreting treaty provisions, and analysing relevant dispute settlement reports to assess the legality and systemic implications of sustainability-driven trade regulation.

Normative legal analysis is used to evaluate the legitimacy of green due diligence from a human rights perspective, drawing on international human rights instruments and the human rights due diligence developed under the United Nations Guiding Principles on Business and Human Rights (UNGPs). This normative component allows the study to assess not only whether green due diligence complies with formal legal standards, but also whether it advances SGDs and human rights outcomes.

3. Mechanisms by Which GDD Can Function as Protectionism

The GDD refers to the systematic assessment and mitigation of environmental and human rights risks across global value chains, including climate-related impacts, deforestation, and related social dimensions. It has emerged as a central policy instrument in high-income jurisdictions seeking to enforce sustainable production and responsible corporate behaviour across borders, particularly within the European Union (EU). Proponents frame GDD as a normative, risk-based mechanism to advance sustainable development and protect rights, while critics warn that GDD can function as a strategic, economically protective tool that erects non-tariff barriers to trade or reshapes global markets in ways that favour certain actors or jurisdictions. This part highlights the risk that they may operate as protectionist instruments when deployed with strategic aims or without sufficient global coordination.[10]

[10] Alessandra Lehmen and Geraldo Vidigal, ‘Trade and Environment in EU-Mercosur Relations: Negotiating in the Shadow of Unilateralism’ (2025) 30 *European Foreign Affairs Review* 87.

When due diligence obligations impose rigorous environmental and human rights criteria on suppliers and products abroad, they can function as de facto non-tariff barriers, particularly if compliance demands exceed producers' capabilities in developing countries or require costly changes to supply chains. The EU's environmental due diligence architecture—e.g., deforestation controls and climate-related due diligence—illustrates how such standards can impose compliance costs and create entry barriers for foreign firms, especially in high-exposure sectors such as agriculture and forestry. The EU Deforestation Regulation (EUDR) and related sustainability instruments can function not only as environmental protection measures but also as regulatory tools that may, in effect, shield domestic producers while disciplining foreign competitors supplying land-use–intensive goods. Although formally origin-neutral, the regulatory architecture of the EUDR interacts with structural features of global agricultural production in ways that tend to disadvantage exporters from developing countries, particularly those reliant on smallholder-based production systems.[11]

A prominent argument is that EU regulatory leadership in human rights and environmental due diligence (HREDD) and related regimes exerts a "Brussels effect," whereby EU standards diffuse globally as firms seek to access the EU market, even if the foreign jurisdictions are not party to the same regime. This diffusion can create divergence among supply chains and induce foreign firms to adopt EU-compliant standards to maintain access to European markets, thereby shaping global practice in ways that may appear protectionist but are presented as global environmental governance.[12] The EU's sustainability regime—encompassing the Deforestation Regulation (EUDR), the Corporate Sustainability Due Diligence Directive (CSDDD), and the Carbon Border Adjustment Mechanism (CBAM)—functions as a central regulatory lever through which environmental and human rights objectives are operationalised within trade and investment flows, generating significant spillover effects for supplier countries and multilateral trading partners. Although these instruments pursue distinct regulatory aims, together they form an integrated architecture of sustainability-based conditionality that increasingly structures access to the EU market.[13]

In this sense, the EU sustainability regime does not merely regulate environmental externalities but actively reconfigures competitive conditions in international markets. Its cumulative operation across environmental, climate, and corporate governance domains transforms sustainability standards into a central determinant of trade participation. While normatively justified by urgent environmental imperatives, this regulatory strategy raises complex legal and ethical questions regarding proportionality, equity, and the legitimacy of unilateral sustainability governance in an interdependent global economy.

Beyond specific sectoral rules, the EU's broader set of sustainability instruments—environmental crime enforcement, taxonomy for sustainable activities, anti-greenwashing directives, and competition-influencing mechanisms—constitute a regulatory ecosystem that can indirectly privilege EU firms or those aligned with EU standards.[14] Lehmen and Vidigal characterise this array as a "sustainability arsenal" that, along with measures not typically linked to trade policy, can influence production patterns and international agreements.[15] In this

[11] Achmad Damanhuri, 'Projecting Potential Impact of European Union Deforestation Regulation on Indonesian Palm Oil Industry' (2023) 5 *International Journal of Science and Society* 748.

[12] Mairon G Bastos Lima and Almut Schilling-Vacaflor, 'Supply Chain Divergence Challenges a "Brussels Effect" from Europe's Human Rights and Environmental Due Diligence Laws' (2024) 15 *Global Policy* 260.

[13] Lehmen and Vidigal 2025, p. 87-114

[14] *Ibid.*

[15] *Ibid.*

framing, GDD is entangled with broader unilateralist strategies that shape global competition and market access.

In some sectors, the scope of mandatory due diligence is expanding rapidly (e.g., forest-risk commodities, palm oil, and textiles), amplifying the potential for protective effects when imports to the EU must meet explicit environmental and human rights criteria. A case in point is the Indonesian palm oil sector, where addressing how the EUDR-related due diligence regime could act as a barrier to exports if compliance is costly or logistically challenging for producers in supplier countries.[16]

Notwithstanding concerns regarding regulatory unilateralism and market exclusion, sustainability-based due diligence regimes can also function as catalysts for supply-chain transformation toward more environmentally sustainable and socially responsible practices, particularly when implementation is accompanied by meaningful capacity-building support and predictable compliance timetables. When regulatory expectations are clear, phased, and supported by technical and financial assistance, firms and producer communities in supplier countries may be incentivised to invest in improved production methods, traceability systems, and labour standards that enhance long-term competitiveness rather than merely satisfy short-term compliance demands.[17]

The current EU-led model of environmental due diligence risks reproducing hegemonic trajectories in global governance, especially if it relies on regulatory asymmetries and power imbalances that hinder capacity-building in developing countries. This critique emphasises the need for a decolonising turn in global supply-chain regulation to ensure that accountability mechanisms are legitimate, proportionate, and context-sensitive, rather than imposed solely through EU regulatory power.[18] To avoid the risk that GDD regimes operate as *de facto* protectionist instruments, it is essential that regulatory conditionality be systematically aligned with capacity-building measures and shared-rule governance frameworks. Absent such alignment, sustainability requirements risk functioning primarily as market filters that privilege producers with existing regulatory and technological advantages, rather than as mechanisms for improving environmental and human rights outcomes across global value chains.[19]

The EUDR against Indonesian palm oil is a very interesting case study.[20] A focused examination of the EUDR reveals a three-level risk framework, with compliance obligations that drive due diligence across the supply chain. The introduction of such obligations is expected to affect Indonesian palm oil, including potential administrative barriers and shifts in comparative advantage, framed in terms of both environmental protection and protectionist risk. The analysis emphasizes that while the EUDR aims to curb deforestation, its implementation may protect EU producers and disrupt Indonesia's palm-oil exports, particularly if compliance burdens are not matched by supportive policy infrastructure.[21]

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16 Achmad Damanhuri, 'Projecting Potential Impact of European Union', *Op. Cit.*

17 *Ibid.*

18 Michael Mason, Lena Partzsch and Teresa Kramarz, 'The Devil Is in the Detail—The Need for a Decolonizing Turn and Better Environmental Accountability in Global Supply Chain Regulations: A Comment' (2023) 17 *Regulation & Governance* 970.

19 Rocío Redondo Alamillos and Frédéric de Mariz, 'How Can European Regulation on ESG Impact Business Globally?' (2022) 15 *Journal of Risk and Financial Management* 291.

20 DS 593: European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop – Based Fuels, <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm>.

21 Achmad Damanhuri, 'Projecting Potential Impact of European Union', *Op. Cit.*

4. Compatibility of GDD Measures with WTO Law

The GDD measures—which include obligations to identify, prevent, mitigate, and remedy adverse environmental and human rights impacts across corporate value chains—have become increasingly significant in European and global governance of sustainable trade. This part will evaluate the compatibility of GDD with WTO law, focusing on (i) the intersection of GDD with core WTO disciplines (non-discrimination, national treatment, and exceptions), (ii) how recent EU measures—deforestation due diligence, human-rights–centric due diligence, and Border Carbon Adjustments (BCAs), including the Carbon Border Adjustment Mechanism (CBAM)—are designed to fit within or challenge WTO rules, and (iii) governance implications for unilateralism, global value chain (GVC) governance, and sustainable development. Drawing on strategic and doctrinal debates surrounding BCAs, GDD, and EU trade governance, this synthesis emphasizes design features that influence WTO compatibility, highlights policy design choices that mitigate protectionist distortions, and outlines a research agenda to trace compliance dynamics across sectors.

4.1. The Intersection of GDD with Core WTO Disciplines

The GDD compatibility with international trade law hinges on whether its regulatory design respects core WTO obligations while achieving environmental and developmental goals. Proponents emphasize the normative and justice-oriented aims of GDD (risk reduction, the legitimacy of climate initiatives, a just transition), while critics caution that poorly designed GDD can act as de facto non-tariff barriers or as unilateral leverage in trade relations.[22] This dual framing reflects ongoing debates over regulatory unilateralism and the diffusion of standards through market-access incentives rather than multilateral harmonization alone. In this context, GDD is viewed as either a potential instrument of climate governance or a constraint on trade, depending on institutional design and governance arrangements.

In addressing this debate, it is necessary to refer to the WTO's fundamental principles as a basis for evaluating the applicability of GDD in a fair-trade context. The principle of non-discrimination is an important key to this test, along with other rules implemented in the European Union.WTO disciplines require measures to be applied non-discriminatorily and not to override national treatment or market-access commitments. Forest-risk commodity regulations and due diligence frameworks that treat domestic and imported products differently risk non-compliance unless justified by objective criteria and non-discriminatory applicability across trading partners.

From a WTO law perspective, the compatibility of forest-risk regulations—exemplified by EUDR-type due diligence and market-access conditions—falls to be assessed, in the first instance, under GATT Article I:1 (most-favoured-nation treatment) and Article III:4 (national treatment), which prohibit both de jure and de facto discrimination among like products of different origins and between imported and domestic products. To the extent that such measures are found to modify the conditions of competition to the detriment of imports or to accord advantages contingent upon origin-linked compliance capacities, they may constitute prima facie violations of these non-discrimination disciplines. Justification may nevertheless be sought under Article XX, in particular paragraphs (b) and (g), where the regulatory objective relates to the protection of human, animal or plant life or health, or to the conservation of exhaustible natural resources, provided that the measure is demonstrably apt to contribute to the stated environmental objective, is no more trade-restrictive than necessary in light of

[22] Jelena Bäumler, ‘Germany’s Supply Chain Due Diligence Act: Is It Compatible with WTO Obligations?’ (2022) 25 *Zeitschrift für Europarechtliche Studien* 265.

reasonably available alternatives, and satisfies the requirements of the chapeau by avoiding arbitrary or unjustifiable discrimination and disguised restrictions on international trade.[23]

The GDD regimes that impose technical or procedural requirements on products can fall under the TBT or SPS frameworks if they affect product characteristics or food/health safety. WTO jurisprudence supports the characterization of mandatory due-diligence traceability and certification schemes as "technical regulations" within the meaning of Annex 1.1 of the TBT Agreement where such schemes prescribe binding conditions for market access and are applicable to identifiable products. In *EC–Asbestos*, the Appellate Body clarified that a technical regulation exists when a measure applies to specific products and lays down, on a mandatory basis, product characteristics or related processes and production methods, including through prohibitions on placing non-compliant products on the market.

Building on this functional approach, the Appellate Body in *US–Tuna II (Mexico)* held that labeling requirements linked to production methods may likewise constitute technical regulations where compliance with prescribed criteria is a precondition for marketing a product with a legally meaningful status, notwithstanding that the underlying distinctions concern process-based attributes rather than intrinsic physical characteristics. Applied to green due-diligence regimes, mandatory traceability obligations, risk-classification systems, and certification requirements that condition lawful placement of goods on compliance with sustainability criteria plausibly satisfy both elements of the Annex 1.1 test: they are product-specific in application and impose enforceable conformity obligations. Consequently, such measures may attract scrutiny under TBT Articles 2.1 and 2.2, including the non-discrimination requirement and the obligation not to create unnecessary obstacles to trade, thereby supplementing—and in some respects constraining—the regulatory space otherwise available under the GATT and Article XX.[24]

Contemporary climate policy is increasingly structured around a logic analogous to that embodied in GATT Article XX, whereby trade-restrictive measures adopted in pursuit of environmental objectives are treated as presumptively legitimate provided that they are not deployed as a pretext for protectionism and are designed and implemented in a proportionate and even-handed manner. This normative orientation is evident in the growing emphasis on regulatory calibration, transitional arrangements, and differentiated implementation timelines, all of which mirror the necessity, proportionality, and chapeau-type constraints developed in WTO jurisprudence. Measures such as carbon pricing instruments, border adjustments, and environmental due diligence obligations are thus increasingly assessed not solely by reference to their trade effects, but also by their demonstrable contribution to environmental protection, their responsiveness to disparate regulatory capacities among trading partners, and the availability of cooperative or capacity-building mechanisms.

In this sense, Article XX reasoning has evolved from an *ex post* justificatory device within dispute settlement into an *ex ante* design template for climate regulation, shaping how policymakers seek to reconcile ambitious environmental governance with the multilateral trading system's commitment to non-discrimination and the avoidance of disguised restrictions on international trade.[25] Accordingly, careful regulatory calibration is indispensable to satisfy both the "necessity" and means–ends rationality tests under Article XX(a) and (b), the

[23] Enrico Partiti, 'Regulating Trade in Forest-Risk Commodities' (2020) 54 *Journal of World Trade* 31.
[24] Alaa Al Khourdajie and Michael Finus, 'Measures to Enhance the Effectiveness of International Climate Agreements: The Case of Border Carbon Adjustments' (2020) 124 *European Economic Review* 103405.
[25] Haoyu Zhao, 'Implementation of the EU's CBAM under the WTO Rules: Process, Relations, Responses' (2023) 27 *Lecture Notes in Education Psychology and Public Media* 244.

conservation-related requirements of Article XX(g), and the overarching non-discrimination obligations embedded in the chapeau of Article XX as well as in GATT Articles I and III.

In doctrinal terms, this entails demonstrating a genuine relationship between the measure and the pursued public policy objective, limiting trade restrictiveness in light of reasonably available alternatives, and ensuring even-handed application across comparable domestic and foreign conditions. Absent such calibration, sustainability-oriented measures risk failing not only the justificatory thresholds of Article XX, but also the baseline competitive-neutrality disciplines that structure the multilateral trading system.[26]

4.2. GDD Measures and WTO Compatibility

The broad and cross-sector nature of GDD may potentially impose a costly compliance burden on foreign suppliers, this in turn could raise concerns under Article I:1 and III:4 if they disadvantage imports from particular countries or sectors and apply unequally to domestic producers. The risk that stringent green due diligence requirements may operate as de facto trade barriers if implemented without adequate transitional support is expressly addressed, albeit indirectly, through Special and Differential Treatment (SDT) provisions embedded in several WTO agreements, most notably TBT Article 12 and SPS Article 10. These provisions require Members, in the preparation and application of technical regulations and sanitary or phytosanitary measures, to take account of the special development, financial, and trade needs of developing country Members, including through longer compliance timeframes, technical assistance, and flexibility in regulatory design. When GDD regimes entail mandatory traceability systems, certification procedures, or risk classification methodologies, the absence of such SDT-oriented accommodations may exacerbate compliance asymmetries and turn formally origin-neutral sustainability criteria into functionally exclusionary market-access conditions.

From a systemic perspective, incorporating phased implementation, recognition of equivalent foreign measures, and targeted capacity-building is therefore not merely a matter of development policy, but a mechanism for aligning environmental regulation with the non-discrimination obligations of GATT Articles I and III and with the chapeau requirements of Article XX. In this way, SDT provisions within the TBT and SPS Agreements operate as operational safeguards against the protectionist spillovers of sustainability-driven regulation, reinforcing the legitimacy of environmental measures while preserving competitive equality within the multilateral trading system.[27] Conversely, well-calibrated measures with clear, non-discriminatory rules and transitional arrangements can mitigate discrimination issues while achieving environmental objectives.

Measures primarily targeting imported products or the supply chains of imported goods—without equivalent domestic obligations—risk triggering discrimination concerns under GATT Article III:4. For instance, the German Supply Chain Due Diligence Act has been scrutinized for its cross-border implications, with evaluations of its design's accommodation of WTO obligations, particularly non-discrimination, and its inclusion of transitional support for foreign suppliers.[28]

A central design imperative of Border Carbon Adjustments (BCAs) and related climate-linked trade measures is universal application, coupled with strict adherence to a non-discriminatory regulatory architecture, to avoid de facto differentiation among countries or

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[26] *Ibid.*
[27] Jelena Bäumler, 'Germany's Supply Chain Due Diligence Act, *Op. Cit.*
[28] *Ibid*.

among like products. Even where measures are facially origin-neutral, differential treatment may arise through benchmarking methodologies, default emissions values, product scope definitions, or the recognition of foreign regulatory regimes, all of which can modify the conditions of competition in ways that implicate GATT Articles I and III. From a WTO law perspective, the legal sustainability of BCAs therefore depends on whether carbon costs are imposed on imported and domestic products according to equivalent metrics and verification standards, and whether comparable production conditions are afforded comparable regulatory treatment irrespective of national origin. Failure to ensure such even-handedness risks converting climate instruments into instruments of implicit industrial protection, thereby undermining both the legitimacy of environmental objectives and the coherence of the multilateral trading system's non-discrimination disciplines.[29]

Likewise, another critical dimension is the "diffusion through unilateral leadership" of EU standards. For example, the CBAM and human rights due diligence regimes may exert influence on non-EU markets through supplier adaptation (the Brussels effect). While diffusion can bolster global environmental governance, it risks provoking protectionist sentiments if not accompanied by inclusive governance and capacity-building in partner countries.[30]

The effectiveness of the enforcement architecture—independent audits, credible monitoring, and mechanisms to challenge or remedy non-compliance—affects perceptions of protectionism and its legitimacy. Credible enforcement mechanisms and transparent governance structures are indispensable to preventing "greenwashing" and ensuring that sustainability-oriented trade and due diligence regimes deliver genuine environmental and human rights benefits rather than merely symbolic or procedural compliance. Absent effective monitoring, verification, and sanctioning frameworks, formally stringent regulatory standards risk devolving into box-ticking exercises that neither alter underlying production practices nor deliver measurable public-interest outcomes.

From both a regulatory legitimacy and WTO-compatibility perspective, robust enforcement and procedural transparency also function as safeguards against arbitrary application and selective targeting, thereby reinforcing the even-handedness requirements embedded in GATT non-discrimination disciplines and the chapeau of Article XX. In this respect, institutional design is not ancillary but constitutive of the legal and normative defensibility of green trade measures, linking regulatory credibility to both environmental effectiveness and systemic trade-law coherence.[31]

As a result, GDD measures occupy a critical position at the intersection of environmental protection, climate justice, and international trade governance. The literature on WTO law acknowledges the potential compatibility of GDD with WTO rules but stresses that the multilateral trade principles is crucial, these includes: universal, non-discriminatory applicability; adherence to non-discrimination and national-treatment norms; robust transitional arrangements; and credible enforcement mechanisms are necessary to prevent the conversion of environmental goals into non-tariff barriers or disguised protectionism.

Empirically, the EU experience with EUDR and CBAM—alongside domestic frameworks like the German Supply Chain Due Diligence Act—serves as an instructive model for testing WTO compatibility in practice while underscoring the risks that unilateral governance could generate developmental and political tensions in partner economies.

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[29] Alaa Al Khourdajie and Michael Finus, 'Measures to Enhance the Effectiveness of International Climate Agreements', *Op. Cit*.

[30] Bäumler, Jelena, 2022. 'Germany's Supply Chain Due Diligence Act', *Op. Cit*.

[31] Rizwan Ali and others, 'Determinants of Corporate Social Responsibility Disclosure of Banking Sector in Pakistan' (2021) 18 *Social Responsibility Journal* 1019.

5. Human Rights Implications of GDD

The GDD is coupled environmental protection with human rights safeguards in global supply chains. This reflects the normative premise that environmental harms and human rights abuses are interlinked and must be prevented through corporate accountability. Similarly, the UNGPs underpin this logic, urging States and businesses to prevent adverse impacts and to remedy harms where they occur, including in transnational supply chains through Human Rights Due Diligence (HRDD). Within this framework, this Part addresses how HRDD obligations—whether voluntary, soft-law-inspired, or mandatory can works under national regimes to safeguard environmental protection and human rights protection.

5.1. The Normative Architecture of GDD within HRDD

The UNGP framework has inspired a spectrum of regulatory approaches, from soft-law guidance to hard-law entitlements, and from private regulatory initiatives to state-driven instruments. Due diligence frameworks that originate in soft law instruments—such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights—tend to "harden" over time as States progressively incorporate their standards into mandatory reporting regimes, statutory duties of care, and liability-based enforcement mechanisms. This process of juridification enhances corporate accountability and justiciability, thereby strengthening the capacity of due-diligence regimes to influence firm behaviour and remediate adverse environmental and human rights impacts.

At the same time, however, the transformation of voluntary expectations into legally binding obligations substantially increases compliance costs and operational complexity for firms, particularly where regulatory requirements extend extraterritorially through supply-chain traceability, contractual cascading, and audit-based verification systems. From a trade and development perspective, these regulatory hardening risks amplify asymmetries in compliance capacity across firms and jurisdictions. Therefore, this situation may intensifying concerns about de facto market exclusion and reinforcing the need for proportionality, phased implementation, and capacity-building measures to accompany the expansion of mandatory due diligence obligations.[32] This dynamic, highlight a central distributive concern: firms in developed and developing economies must bear rising compliance costs, which can ripple through to suppliers, workers, and communities in the Global South.

The analytical distinction between "hard" regulatory obligations and "soft" governance mechanisms, including voluntary guidelines, multi-stakeholder initiatives, and industry standards, which differ in their legal enforceability, institutional accountability, and capacity to generate binding compliance expectations. The hard-soft law divide in the European Union's implementation of the UNGPs, as reflected in the progressive shift from voluntary corporate responsibility initiatives toward binding due-diligence obligations under national supply-chain laws and EU-level instruments such as the CSDDD and the CSRD, illustrating how regulatory scoping, enforcement intensity, and claims of public legitimacy are constructed through statutory duties while continuing to depend on private governance mechanisms—such as industry codes of conduct, third-party audits, and certification schemes—for practical implementation and compliance verification.

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[32] Chiara Macchi and Claire Bright, 'Hardening Soft Law: The Implementation of Human Rights Due Diligence Requirements in Domestic Legislation' (2019) SSRN Electronic Journal <https://doi.org/10.2139/ssrn.3524488> accessed 13 August 2026.

This distinction matters for vulnerable actors, as mandatory HRDD regimes typically generate greater predictability and leverage for rights-holders but also impose higher compliance costs on producers in developing contexts.[33] Contemporary HRDD architectures, while framed in universalistic terms of corporate responsibility and risk management, risk reproducing entrenched North–South power asymmetries by reallocating compliance burdens, monitoring costs, and liability exposure onto suppliers and producers in developing economies.

In the absence of complementary reforms in global economic governance—particularly in trade, investment, and development finance regimes that structure price formation, market access, and bargaining power—HRDD may function less as a mechanism of structural rights protection than as a vehicle for externalizing regulatory and development costs down the supply chain. These distributive effects are further compounded when affected workers, smallholders, and indigenous communities are excluded from meaningful participation in the formulation, implementation, and evaluation of due diligence obligations, limiting the responsiveness of regulatory standards to local socio-economic realities and weakening prospects for durable compliance.

From this perspective, the legitimacy and effectiveness of HRDD depend not only on the formal existence of statutory duties and reporting requirements but also on their integration with participatory governance, value-chain rebalancing, and institutional capacity-building in producer countries, without which due diligence regimes risk reinforcing the very structural inequalities they purport to address.[34] The normative architecture of HRDD thus integrates rights-based protections, climate, and environmental justice goals, and development considerations. While HRDD is widely promoted as a regulatory instrument capable of advancing both rights protection and sustainable development, the literature cautions that its distributive consequences are highly sensitive to institutional design choices, including the scope of covered entities and activities, the substantive standards incorporated, the modalities of verification and auditing, the availability and accessibility of remedies, and the rigor of public enforcement mechanisms.

These design variables critically shape whether HRDD regimes operate as vehicles for empowerment and risk reduction or, conversely, as mechanisms that shift compliance costs and legal risks onto vulnerable producers, workers, and communities in developing economies without corresponding improvements in economic security or bargaining power. Accordingly, the effectiveness of HRDD as a development-sensitive governance tool depends not merely on its normative objectives but on whether its regulatory architecture is calibrated to address underlying power asymmetries within global value chains.[35]

5.2. Distributive Effects of HRDD on Vulnerable Actors in Developing Economies

The Compliance costs of performing HRDD—risk assessments, supplier mapping, traceability, auditing, remediation planning, and public disclosure—can be substantial for firms and suppliers with limited resources. This burden tends to propagate downstream to smallholders and cottage-scale producers, who must align their practices with buyer requirements and certification standards. In particular, smaller firms, smallholders, and informal producers are likely to face disproportionate compliance costs under HRDD and

[33] Daniel Augenstein, 'Negotiating the Hard/Soft Law Divide in Business and Human Rights: The Implementation of the UNGPs in the European Union' (2018) 9 *Global Policy* 254.

[34] *Ibid*.

[35] Frank Vanclay and Philippe Hanna, 'Conceptualizing Company Response to Community Protest: Principles to Achieve a Social License to Operate' (2019) 8 *Land* 101.

sustainability-linked regulatory regimes unless these frameworks are accompanied by targeted capacity-building, financial support, and sustained technical assistance to enhance traceability, documentation, and risk-management capabilities. Absent these supportive measures, formally uniform due diligence obligations may translate into exclusionary market dynamics, reinforcing concentration among larger, better-resourced firms and exacerbating existing inequalities within and across developing economies.[36]

When HRDD obligations translate into higher procurement costs or stricter supplier selection criteria, buyers may favour larger, better-capitalized suppliers capable of absorbing compliance costs and meeting reporting requirements. This dynamic can reduce the diversity of suppliers from developing economies and concentrate opportunity among a few well-resourced firms, potentially marginalizing smallholders and informal producers.[37] Yet, if designed with transitional relief and targeted capacity-building, HRDD can also expand market access for compliant producers by signalling higher standards and reducing reputational risk for buyers.[38]

Likewise, HRDD designs must address gendered dimensions of supply chains, given that women often occupy informal, low-wage, and precarious positions within global value chains. Embedding gender-responsive safeguards within HRDD frameworks is increasingly understood as a legal and policy obligation grounded in international human rights and labour standards, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), core International Labour Organization (ILO) conventions on non-discrimination and decent work, and the effectiveness criteria for grievance mechanisms articulated in the UNGPs. In practical terms, this requires ensuring that women workers, including those in smallholder and informal production settings, have equal and meaningful access to complaint mechanisms, remedies, skills training, and opportunities for occupational mobility and advancement. Absent such gender-sensitive design, HRDD regimes may inadvertently intensify gendered vulnerabilities by reinforcing occupational segregation, informalization, and unpaid care burdens, thereby constraining the capacity of due diligence regulation to contribute to substantive equality and inclusive, sustainable development.[39]

HRDD inquiries often intersect with child-rights protections. The potential of HRDD regimes to curtail child labour is closely linked to their alignment with international child rights and labour standards, particularly ILO Convention No. 138 on Minimum Age, ILO Convention No. 182 on the Worst Forms of Child Labour, and the Convention on the Rights of the Child (CRC). Where due-diligence obligations are designed to incorporate child-sensitive risk assessments, confidential and accessible complaint mechanisms, and remedial actions that prioritize the best interests of the child—including access to education, family income support, and community-based protection systems—HRDD can operate as a preventive and corrective governance tool rather than a purely exclusionary compliance mechanism.[40]

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[36] Jürgen Von Heyden and others, ‘Effects of the German Due Diligence Act on Supplier Selection in the Agri-Food Sector’ (2025) 74 *German Journal of Agricultural Economics*.

[37] Konstantin Viktorovich Moiseev, ‘Liability of Transnational Corporations for Violations of Children's Environmental Rights’ (2025) 20 *Actual Problems of Russian Law* 120.

[38] Jimena Solar, Yovita Ivanova and Christoph Oberlack, ‘Human Rights and Environmental Due Diligence Regulations for Deforestation-Free Value Chains? Exploring the Implementation of the EU Regulation on Deforestation-Free Products in the Cocoa and Coffee Sectors of Peru’ (2025) 16 *Global Policy* 602.

[39] Dewan Afrina Sultana, ‘Sustainability and Transparency to Safeguard Fashion Industry Workers’ (2021) *Pro Futuro* 10.

[40] Konstantin Viktorovich Moiseev, ‘Liability of Transnational Corporations’, *Op. Cit.*

6. Conclusion

This article has examined GDD as an increasingly central instrument in contemporary trade and sustainability governance, arguing that while it is normatively framed as a tool for environmental protection and human rights promotion, it also carries a significant risk of functioning as a new form of regulatory protectionism. The analysis has demonstrated that sustainability-based market access conditions—particularly when designed and implemented unilaterally by major importing jurisdictions—can reshape competitive dynamics in global value chains in ways that disproportionately burden producers in developing economies, thereby raising concerns not only under WTO non-discrimination disciplines but also under international human rights and development norms.

From a trade-law perspective, the article has shown that GDD measures, including forest-risk regulations and supply-chain due diligence obligations, are subject to scrutiny under GATT Articles I and III and, where framed as technical or procedural product requirements, under the TBT and SPS Agreements. While such measures may be justified under GATT Article XX when they pursue legitimate environmental objectives, their legal sustainability depends critically on proportionality, necessity, and even-handed application, as well as compliance with the chapeau's prohibition of arbitrary or unjustifiable discrimination. The growing tendency to design climate and sustainability regulation around Article XX–type reasoning underscores the extent to which environmental objectives have become structurally embedded in trade governance, but it also highlights the need for careful regulatory calibration to prevent sustainability rationales from masking trade-restrictive effects.

On this basis, the article advances a development-oriented conception of GDD that situates HRDD within the broader objectives of the Sustainable Development Goals, climate justice, and equitable value-chain upgrading. In this framework, sustainability regulation should be integrated with development cooperation, technology transfer, gender-responsive capacity-building, and predictable transitional arrangements. WTO disciplines on transparency and Special and Differential Treatment—particularly under TBT Article 12 and SPS Article 10—provide underutilized normative tools for embedding such considerations within trade-related sustainability regulation, reinforcing the compatibility of environmental ambition with inclusive market participation.

Ultimately, the effectiveness and legitimacy of HRDD will depend on whether it evolves into a mechanism of shared responsibility and structural transformation, or whether it remains primarily a tool of market conditioning that reallocates risk without redistributing power or value. If sustainability-oriented regulation is to avoid becoming a new modality of protectionism, it must be designed not only to protect forests and reduce emissions, but also to expand economic opportunity, strengthen local institutions, and deliver accessible remedies to those most affected by global production. Without such recalibration, HRDD risks entrenching the very inequalities that sustainable trade governance is meant to overcome, thereby weakening both its normative foundations and its long-term political sustainability.

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