

## **PROMOTING SUSTAINABLE DEVELOPMENT IN GLOBAL VALUE CHAINS**

Goal 12 of the 2030 Agenda for Sustainable Development (United Nations General Assembly Resolution 70/1 of 25 September 2015) recommends that states adopt measures to ensure sustainable production and consumption patterns. This goal is usually considered in the framework of public agencies, but it is also relevant to private actors, particularly in respect of their participation in global value chains. This paper offers a means of ensuring that this goal can be implemented in international contracts servicing global value chains.

It first identifies the key stages of global value chains where the most important environmental pressures are experienced and which are capable of shifting current production and supply processes towards sustainability. Next, it adopts the concept of an ecological footprint as a tool for determining the environmental impact of the production and consumption of products and services. Finally, drawing inspiration from mechanisms evolved in the context of corporate social responsibility, this paper suggests how corporate actors can promote sustainability goals in the context of global value chains.

This paper proposes that labelling is the most suitable and effective means of promoting sustainability in global value chains. This is both for practical and for legal reasons.

The paper suggests the creation of a 'Paris Carbon Footprint Label'. On 12 December 2015, states committed themselves 'to limit the temperature increase to 1.5 °C above pre-industrial levels' by controlling their greenhouse gases emissions with a view to significantly reducing 'the risks and impacts of climate change' [see Article 2(1)(a) of the Paris Agreement]. This is a label that is available for a product when each stage in its production process (including extraction, production, process methods, transportation, distribution, etc.) complies with certain national rules. The national rules at issue are those implementing the Paris Agreement, which entered into force on 4 November 2016.

The 'Paris Carbon Footprint Label' ensures that greenhouse gases emissions resulting from each activity of the global value chain meet the applicable national standards. The label aims, therefore, at showing consumers and retailers whether a product was produced in compliance with: (a) the measures and/or objectives established as Nationally Determined Contributions, (b) relevant domestic environmental laws and (c) the laws protecting the rights of indigenous communities of the country where each stage in the production process takes place.

To give an example, Brazil, as part of its Nationally Determined Contribution, has committed to 'reduce greenhouse gas emissions by 37% below 2005 levels in 2025' with a view to

‘holding the increase in global average temperature below 2 °C above pre-industrial levels’ (see Federative Republic of Brazil, Intended Nationally Determined Contribution Towards Achieving the Objective of the United Nations Framework Convention on Climate Change, p. 1 and Federative Republic of Brazil, Additional Information on the INDC for Clarification Purposes Only, p. 1). Brazil has notified specific measures in this context, including, for example, measures concerning the agricultural sector and including the restoration of ‘15 million hectares of degraded pasture lands by 2030’ and the enhancement of ‘5 million hectares of integrated cropland-livestock-forestry systems by 2030’ (see Federative Republic of Brazil, Additional Information on the INDC for Clarification Purposes Only, pp. 3-4). Farms pursuing a reforestation program or developing an integrated cropland-livestock-forestry system and, thus, likely to contribute to the achievement of the objectives set out in the Brazilian Nationally Determined Contribution could thus be eligible to obtain the ‘Paris Carbon Footprint Label’ for their products (e.g. meat).

The particular novelty of this paper lies in its proposal that compliance with the terms of the ‘Paris Carbon Footprint Label’ would be enforced by the inclusion of obligations to this effect in the international contracts within global supply chains. These obligations would, in turn, be made subject to the existing (or, where necessary, new) provisions providing for dispute settlement in the form of international commercial arbitration. In practical terms, UNCITRAL could contribute to the establishment of the proposed labeling system by drafting a model clause on the enforcement of the ‘Paris Carbon Footprint Label’. As to the factual question whether an activity in the life cycle of the products complies with the standards noted above, the proposal is relying on the assessment of relevant state actors, and in particular private monitoring bodies.

The advantages of a labelling model, with private contractual enforcement, are many. First, this is a pragmatic way to ensure that transnational activities comply with norms. It also allows for variance in those norms on an already agreed international basis. There is in addition an incentive for all actors in a global value chains (or a competing global value chain) to ensure that others in the chain remain in compliance with these norms (otherwise all suffer from the loss of eligibility for a label). Finally, this system is also consistent with WTO law, and would remain consistent even if it were enshrined in national law (cf *US – Tuna II*, WT/DS381/AB/R).

The paper proposes that monitoring of compliance with such national implementing laws is to be performed by a self-regulating body along the lines of the International Fair Trade Labelling Association.