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HARNESSING REGIONAL TRADE AGREEMENTS AS CATALYSTS FOR CLIMATE – SMART TRADE: THE CASE OF WESTERN BALKANS COUNTRIES

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Abstract: *The concept of climate-smart trade is gaining momentum as trade agreements increasingly incorporate provisions to balance economic growth and environmental conservation. While in the past, environmental and climate issues played a minor role in international trade agreements, recently there has been a growing trend towards incorporating climate-smart provisions, particularly in regional trade agreements (RTAs). These provisions aim to promote sustainable development, pursue international environmental goals, ensure a level playing field, and enhance environmental cooperation. The paper analyzes the emergence of environmental and climate-related provisions in free trade agreements. It attempts to define them, explain how they are incorporated into free trade agreements, and assess the reasons for the increased number of such provisions. The paper then briefly analyses statistical data related to the types of environmental and climate-related provisions contained in FTAs, before going into details of the climate-smart provisions of the regional trade agreements in the Western Balkans.*

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PRIMENA REGIONALNIH TRGOVINSKIH SPORAZUMA KAO KATALIZATORA KLIMATSKI PAMETNE TRGOVINE: SLUČAJ ZEMALJA ZAPADNOG BALKANA

Sažetak: *Koncept klimatski pametne trgovine sve više dobija na značaju kao što i trgovinski sporazumi sve više obuhvataju odredbe kojima se uspostavlja balans između ekonomskog rasta i očuvanja životne sredine. Dok su u prošlosti ekološka i klimatska pitanja igrala sporednu ulogu u međunarodnim trgovinskim sporazumima, u poslednje vreme je očigledan rastući trend uključivanja klimatski pametnih odredbi u regionalne trgovinske sporazume. Cilj ovih odredbi se odnosi na promovisanje održivog razvoja, težnju ka ostvarenju međunarodnih ciljeva zaštite životne sredine, obezbeđivanje ravnopravnih uslova i unapređenje saradnje u oblasti životne sredine. U ovom radu se analizira nivo prisustva ekoloških i klimatskih odredbi u sporazumima o slobodnoj trgovini. Autori se bave definisanjem pomenutih odredbi, objašnjenjem njihove uključenosti u sporazume o slobodnoj trgovini i procenom razloga njihovog porasta. U radu se zatim sažeto analiziraju statistički podaci koji se odnose na vrste odredbi, sadržanih u sporazumima o slobodnoj trgovini, a koje govore o životnoj sredini i klimatskim aspektima, te se zatim detaljno obrađuju klimatski pametne odredbe regionalnih trgovinskih sporazuma u zemljama Zapadnog Balkana.*

Ključne reči: *klimatski pametna trgovina, ekološke odredbe, regionalni trgovinski sporazumi, sporazumi o slobodnoj trgovini, održivi razvoj, Zapadni Balkan*

1. INTRODUCTION

Over the past century, the Earth's climate has undergone significant transformations, leading to rising temperatures, disturbances in weather patterns, and ecological disruptions. Climate change, often referred to as global warming, encompasses a complex interplay of natural and human-induced factors that culminate in long-term alterations to the Earth's climate system. This phenomenon is no longer a distant concern for future generations; its effects are palpable today, affecting ecosystems, economies, and the well-being of billions of people worldwide.

Advancing climate-smart trade necessitates a shift in the discourse surrounding the environment and trade, embracing a forward-looking agenda that safeguards and reinforces ambitious environmental policies, leverages trade to promote green economic transformation, minimizes adverse environmental effects of international trade, sustains resilient and equitable global supply chains, addresses sustainable development concerns in developing countries, aligns national trade policies with environmental objectives, and upholds democratic and transparent trade policymaking processes (Deere Birkbeck, 2021). Nevertheless, a swift, harmonized, and coordinated approach from all countries around the world is currently not possible. The process of the drafting, acceptance, and implementation of the Paris Agreement showed that currently many countries are far from able and willing to accept and implement higher standards for the protection of climate change. In line with the need to act on climate change, and at the same time to promote economic development, there is an emerging trend to include environmental and climate-related provisions in regional trade agreements.

According to the OECD (2023), regional trade agreements can take various forms including Free Trade Agreements (FTAs), Customs Unions (CUs), and Economic Integration Agreements (EIAs). In this paper, both bilateral and plurilateral trade agreements are considered regional trade agreements (RTA). Although there is no uniform definition of what constitutes a climate-related provision in trade agreements, it is understandable that it would have to be a provision that would promote climate change adaptation, mitigation, and resilience-building. Such provisions would be related, but not limited to climate action; greenhouse gas emissions; sustainable energy; environmental goods, services, and technologies; carbon market mechanisms and carbon taxes; and fossil fuel subsidies (ESCAP, UNEP & UNCTAD, 2021).

This research investigates the environmental and climate-related provisions in free trade agreements, with a focus on regional trade agreements in the Western Balkans. The remainder of the paper is structured as follows: Section 2 offers an introduction to the emergence and incorporation of the environmental and climate-related provisions in the FTAs. Section 2 provides an analysis of the statistical data related to the types of environmental and climate-related provisions contained in FTAs and focuses specifically on the climate-smart provisions of the regional trade agreements in the Western Balkans. Section 4 concludes.

2. EMERGENCE OF ENVIRONMENTAL AND CLIMATE-RELATED PROVISIONS IN REGIONAL TRADE AGREEMENTS

Historically, climate-related, and environmental provisions have played only a peripheral role in international trade. In the scope of the WTO, environmental concerns are mainly addressed as an exception clause for the protection of the environment (for example GATT, Article XX). However, statistical data shows that there has been a significant increase in the number of environmental provisions in trade agreements in recent decades. Thorough research conducted by Prof. Jean-Frédéric Morin analyzed more than 660 trade agreements concluded from 1947 up until 2020 which resulted in the most comprehensive original data set on trade and environment (TREND) in terms of both variables coded and agreements covered (TREND Analytics, n.d.).

According to this data, on a global level, the number of environmental provisions contained within the agreements started to increase in the 90s and reached its peak in 2016. As evident from Figure 1, in the period from 1990-2000 more trade agreements were concluded on average per year, but they contained fewer environmental provisions, compared to the period 2010-2018 where the number of environmental provisions drastically increased despite the decrease in the number of trade agreements.

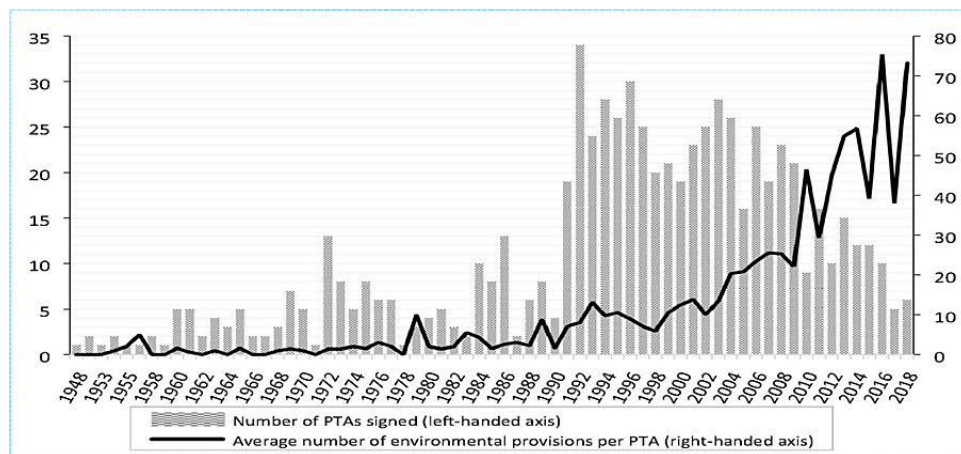


Figure 1. Average number of preferential trade agreements and average number of environmental provisions per year

Note. Brandi, C., Schwab, J., Berger, A., & Morin, J. F. (2020). Do environmental provisions in trade agreements make exports from developing countries greener? *World Development*, 129, 104899.

In addition, research by Morin, Dür & Lechner (2018) conducted a categorization of the environmental provisions in the trade agreements. As evident from Figure 2 the most often used provisions are exception provisions – for the conservation of natural resources and the protection of plants and animals. These so-called “carve-out clauses” or “safeguard clauses”, allow countries to take specific measures to protect the environment, even if those measures might be considered trade-restrictive under normal circumstances.

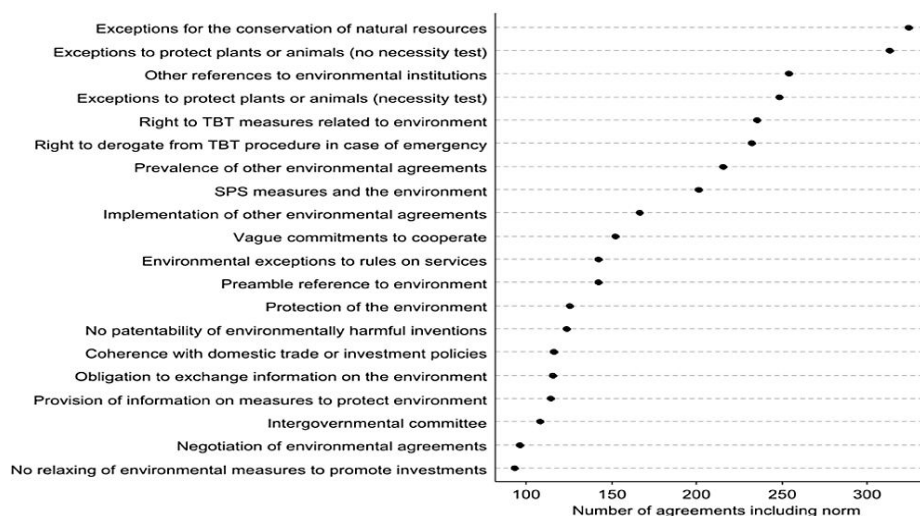


Figure 2. Most widely used environmental provisions in trade agreements

Note. Morin, J. F., Dür, A., & Lechner, L. (2018). Mapping the trade and environment nexus: Insights from a new data set. *Global Environmental Politics*, 18(1), 122-139.

If we further analyze Figure 2, we can note that most environmental provisions are in categories that enable countries to override or bypass free trade provisions in the agreements for environmental protection. In essence, these are provisions that would increase environmental protection, but that would be at the cost of trade facilitation. Similarly, research conducted by the OECD (2023), has indicated that “carving out exceptions” for environmental objectives are the most frequently included environmental provisions and are included in over 80% of all RTAs.

While we emphasized the interconnectivity of climate and environment, we also acknowledge that environmental protection is a much broader concept than climate change. The existing data focuses primarily on environmental provisions,

and as evident climate change is not explicitly referred to. However, this does not mean that these provisions disregard climate change, but rather, the provisions related to climate change are found more broadly, either as references to climate-related Multilateral Environmental Agreements (MEAs), promotion of environmental goods and services, encouraging the phase-out of fossil fuel subsidies, etc. (OECD, 2023). According to the OECD (2023), climate-related provisions are found in at least 212 RTAs out of 775 RTAs signed between 1947 and 2021.

According to WTO Report (2022), explicit provisions on climate change are found in an increasing number of RTAs. In comparison with other types of environmental provisions, however, explicit provisions remain less detailed. According to them, out of 349 RTAs that are notified to the WTO, 64, or roughly 18% include at least one provision referring explicitly to climate change, global warming, reduction of greenhouse gases (GHGs), or creating a low-emission economy.

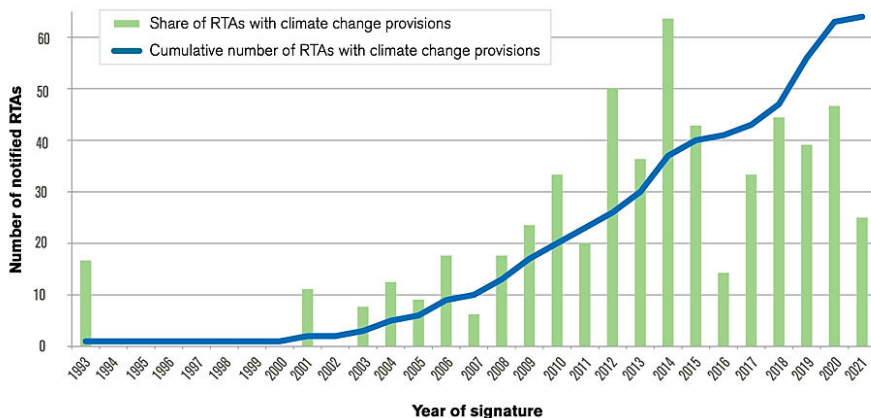


Figure 3. Total number and share of Regional Trade Agreements with climate change provisions

Note. WTO. *World Trade Report 2022: Climate Change and International Trade*. WTO Publications, Switzerland.

As evident from Figure 3, from 2010 onwards there is an increase in the number of climate-related provisions, and the cumulative number of RTAs with climate provisions starts to increase as well.

Climate change provisions in trade agreements can manifest in various ways. Some provisions emphasize the importance of addressing climate change, while others refer to the development and adoption of climate change policies and the

United Nations Framework Convention on Climate Change (UNFCCC). The predominant type of climate change provisions, present in 58 Regional Trade Agreements, involve the identification of climate change mitigation and adaptation as areas for collaborative action (WTO, 2022).

In principle, climate-related provisions can be incorporated into RTAs through some of the following methods:

- **Preamble:** Preambles serve as introductory sections, providing context and expressing broad goals, including commitments to principles like environmental protection. However, if climate-related aspects are confined to the preamble without further materialization in the agreement's text, they remain unenforceable.
- **Specific Articles or Chapters:** RTAs may include specific articles or chapters underscoring signatory countries' commitment to environmental protection, climate change mitigation, and sustainability. These sections can range from brief and general statements to detailed commitments and obligations.
- **Referral to Multilateral Environmental Agreements (MEA):** Instead of directly regulating environmental or climate issues, FTAs often refer to MEAs such as the UNFCCC or the Paris Agreement. While reaffirming commitment to international environmental efforts, the significance of this inclusion diminishes if all RTA members are already part of these agreements, essentially restating existing commitments.

There might be many reasons why nations insist on environmental and climate provisions in regional trade agreements. While developing countries might interpret such provisions as a form of “green protectionism” according to research conducted by Brandi, Schwab, Berger, & Morin (2020) environmental provisions do not substantially limit the exports of developing countries. Accordingly, they do not seem to record a general trade-off between the environmental and the economic implications of including environmental provisions. From a subjective point of view, it is difficult to point out precisely why countries insist on including environmental and climate-related provisions since very often countries (or rather their official representatives) might not be keen on sharing the motives for their conduct. However, from a more objective, or rational point of view, according to the OECD (2023), the general motivations for incorporating environmental and climate-related objectives in RTAs are:

- to contribute to the overarching goal of sustainable development,

- to pursue an international environmental agenda,
- to ensure a level playing field among Parties to the agreement and
- to enhance environmental co-operation.

Regardless of the motives, and methodologies for their inclusion, the incorporation of climate-related provisions in regional trade agreements is a crucial step toward aligning economic interests with environmental sustainability. The increase in their prominence in RTAs in the last decade shows that many countries recognize the intertwined nature of trade and climate challenges and emphasize the need for responsible, low-carbon economic growth.

3. CLIMATE - SMART PROVISIONS IN THE REGIONAL TRADE AGREEMENTS IN THE WESTERN BALKANS

While in geographical terms, the Western Balkans is a broader region, after the accession of Slovenia and Croatia to the European Union, the term Western Balkans is used to collectively refer to the remaining countries that are aspiring to become members of the EU - Albania, Bosnia and Herzegovina, Kosovo (status regulated by the UN Security Council Resolution 1244), Montenegro, North Macedonia, and Serbia. They are often referred to as Western Balkan 6, or WB6 when discussing regional politics, international relations, regional integration, and integration into the EU. The Western Balkans 6 is important in the context of EU enlargement, as these countries are at various stages of the accession process to join the European Union. Parallel to the EU accession process, regional cooperation remains an aspect of their economic development.

It is important to note that aside from Albania, all countries within this group gained independence in the last 30 years after the dissolution of the former Federative Republic of Yugoslavia. Consequently, in terms of the dynamics of concluded RTAs, most agreements were concluded between 2000-2015. The data available on the TREND Analytics platform contains all RTAs concluded by the countries of the WB6 group. However, in the analysis, many of these agreements were excluded, because they were terminated for either of these two reasons:

1. The contracting country became a member of the EU and consequently, the agreement was terminated since the trade relations were subsumed under the Stabilization and Association Act concluded between the WB6 country and the EU.
2. The agreement was concluded between WB6 countries, and after the conclusion of the CEFTA-2006 agreement, the individual RTAs were terminated since the trade relations were subsumed under the CEFTA-2006.

As evident from Figure 4, most RTAs in force were concluded between 2000-2010. Out of 24 RTAs in force 18 were concluded in this period (75%). In line with this, most environmental provisions would be from this period as well (65%). However, it is interesting to note that although only 4 RTAs were concluded after 2010, cumulatively they contain 122 environmental provisions (almost 34 % of the total number of environmental provisions). This indicates that there is a trend for increased inclusion of environmental provisions in the trade agreements of the countries from the region of the Western Balkans.

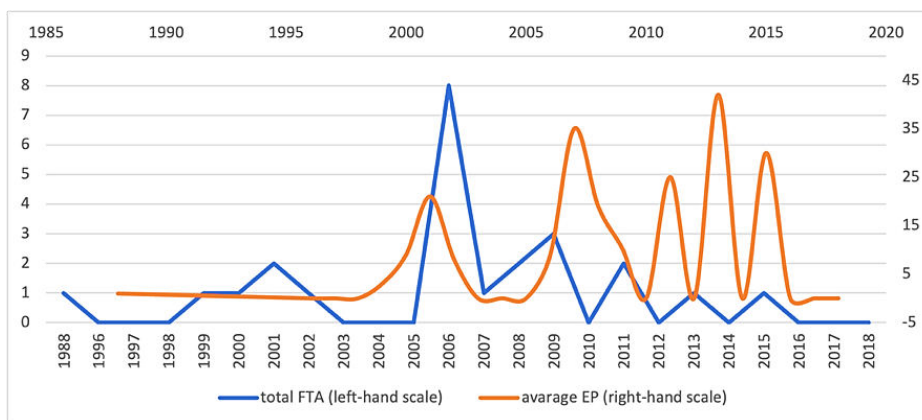


Figure 4. Total number of RTA concluded between 1945-2018, and average number of environmental provisions contained within per year in WB countries

Note. Author's own calculations retrieved from TREND Analytics.

In terms of individual countries, as evident from Table 1, Montenegro and Bosnia and Herzegovina have concluded RTAs with the highest number of environmental provisions (88 and 99, respectively), while Kosovo has the lowest number of environmental provisions (8). Bosnia & Herzegovina and Montenegro also have the highest average number of environmental provisions per RTA (22 and 19,8 respectively), while Kosovo again, has the lowest average (8). At the same time, Bosnia and Herzegovina and Montenegro are the countries that have concluded RTA after 2010, which confirms the positive trend for increased inclusion of environmental provisions.

Table 1

Number of RTAs and environmental provisions concluded in the period 1945-2018

Country	Number of RTAs	Total number of EP	Average number of EP
Albania	4	43	10,75
Bosnia & Herzegovina	4	88	22
Kosovo	1	8	8
Montenegro	5	99	19,8
North Macedonia	5	62	12,4
Republic of Serbia	5	60	12
Total	24	360	14,1

Note. Author's own calculations retrieved from TREND Analytics.

When analyzing the structure of RTAs concluded by the countries of the Western Balkans, it can be concluded that there are two major categories. The first is the CEFTA-2006, a regional free trade agreement among all countries from the Western Balkan 6 group plus Moldova, which is a tool for deeper regional cooperation and integration and at the same time it serves as a preparatory step for the accession to the EU. The second is the individually concluded Stabilization and Association Agreements (SAAs), between separate countries from the WB6 group and the EU as part of their accession process. Finally, there is a third category, comprised of RTAs concluded between a Western Balkans country and third countries such as the countries from the EFTA, or important economic partners such as Turkey and Ukraine. However, CEFTA-2006 and the respective SAAs are the most significant trade agreements that the countries have concluded since the most important trading partners to the countries from the WB6 are either some of the other countries within the WB6 group, or EU member states, and consequently, the largest volume of trade is realized under the provisions of these agreements.

3.1. ENVIRONMENTAL PROVISIONS IN THE CEFTA-2006

As already pointed out CEFTA-2006 is a regional trade agreement concluded among the WB6 countries, with the addition of Moldova. The main text of the agreement is accompanied by two annexes and 6 additional protocols, regulating varying aspects of trade (*CEFTA Legal Documents*, n.d). According to the

TREND database, the CEFTA – 2006 agreement contains 8 environmental provisions, out of which 5 are categorized as regulatory space, 2 as referral to MEAs and 1 is on environmental protection (TREND Analytics, n.d.).

However, when analyzing the integral text of the CEFTA Agreement, it can be concluded that these provisions have only an indirect effect on environmental protection. No explicit provisions exist that refer to environmental agreements, but merely a general clause within the preamble, that the parties have to respect the obligations undertaken by other international agreements, especially the WTO (CEFTA – 2006, Preamble). In the main agreement, neither the term environment nor the term climate are explicitly mentioned. The main agreement merely contains a provision related to exceptions where it is stipulated that, among other areas, the agreement would not preclude restrictions justified on grounds of "the protection of health and life of humans, animals or plants [...] or the conservation of exhaustible natural resources (CEFTA – 2006, Article 17)." Similar provision is contained in Protocol 5 of the Agreement, related to trade in goods, with the only exception that the protection of the environment is explicitly mentioned as a ground for the restriction of import, export, or transit of goods (Protocol 5, Article 29). Finally, Protocol 6, which is related to trade in services, explicitly lists environmental services, which also includes the protection of ambient air and climate, as public utilities that may be subject to public monopolies or exclusive rights granted to private operators (Protocol 6, ANNEX III).

Consequently, even though there are several provisions related to environmental protection within CEFTA-2006, these are far from satisfactory, and cannot be considered sufficient to combat climate change and to protect the environment. As evident, provisions that explicitly refer to environmental protection, do it to allow exceptions.

3.2. ENVIRONMENTAL PROVISIONS IN THE STABILIZATION AND ASSOCIATION ACTS

As already noted, the Stabilization and Association Agreements (SAA) are the most important framework acts, regulating the process of accession to the European Union of the applicant country. While in essence, the SAAs cover a broader scope of issues related to the accession process, a major aspect of the agreement is the trade relations between the EU and the applicant. Consequently, the SAAs are classified as free trade agreements.

As candidates for EU accession, all countries must adopt high standards in terms of environmental and climate protection to be able to meet EU criteria. The EU

recognizes the importance of climate protection and places it very high on its agenda (EU Climate Change, n.d.). Consequently, as evident from Table 2, all the SAAs concluded between the countries from the Western Balkans and the EU contain a larger number of environmental provisions.

Table 2

Date of conclusion of the SAA and Number of EP contained within the agreement

Country	Date of conclusion of the SAA	Number of EP
Albania	2006	17
Bosnia & Herzegovina	2015	30
Kosovo	2015	n/a
Montenegro	2007	35
North Macedonia	2001	36
Republic of Serbia	2008	32

Note. Author's own calculations retrieved from TREND Analytics.

While the SAA is concluded on an individual basis with each aspiring member of the EU, in essence, they all contain the core provisions aimed at promoting the values and principles on which the EU is based. Consequently, while there are minor differences among the SAAs, in principle, most of the content within remains identical for all applicant countries.

Due to the similarities within all SAAs, the EU–North Macedonia SAA is considered. As evident from the TREND database, the structure of the 36 environmental provisions is as follows: 17 for Environmental protection; 8 for coherence; 5 for implementation; 3 are referrals to MEAs; and 1 provision is for each regulatory, development, and level playing field (TREND Analytics, n.d.). Unlike the CEFTA-2006 where environmental protection is only envisaged as a general exception, the North Macedonia – EU SAA contains significantly more provisions on this topic. Title VIII of the SAA, related to cooperation policies, contains several articles where protecting the environment is explicitly referred to. Firstly, in a very broad manner, it is envisaged that policies designed to bring economic and social development to North Macedonia should encompass environmental considerations (EU and North Macedonia SAA, Article 80). Further, industrial cooperation, modernization, and restructuring of the industry in the country should not hinder environmental protection (Article 85). Protection of the environment, as well as the reduction of harmful effects and pollution, is

envisaged in the modernization of the transport and transport-related infrastructure (Article 98). In terms of energy cooperation, Article 99(2) of the SAA explicitly provides that cooperation will particularly include “*the promotion of energy saving, energy efficiency, renewable energy and studying the environmental impact of energy production and consumption*” (Article 99). Finally, the SAA contains a dedicated and extensive provision on environmental and nuclear safety (Article 103).

A recent introduction within the EU aimed at tackling climate change is the introduction of the Carbon Border Adjustment Mechanism (CBAM), which entered into force on 1 October 2023. CBAM's goal is to put a fair price on the carbon emitted during the production of carbon-intensive goods that are entering the EU and to encourage cleaner industrial production in non-EU countries (European Commission, 2023). Initially, it will apply to imports of certain goods whose production is carbon intensive such as cement, iron and steel, aluminum, fertilizers, electricity, and hydrogen. The CBAM aims to ensure the carbon price of imports is equivalent to the carbon price of domestic production, and that the EU's climate objectives are not undermined (European Commission, 2023). Since EU member states are by far the most significant trading partners to the countries from the Western Balkans, the introduction of the CBAM will have a direct impact on the countries from the region. However, it remains to be seen soon how economic operators will adapt to the newly established rules.

4. CONCLUSION

Climate-smart trade is an innovative concept at the intersection of economic progress and environmental protection. While historically, environmental and climate provisions played a peripheral role in international trade, there has been a significant increase in such provisions in regional trade agreements in recent decades. The reasons for incorporating these provisions in trade agreements are diverse, but they generally aim to contribute to sustainable development, pursue international environmental goals, ensure a level playing field among agreement parties, and enhance environmental cooperation. Nevertheless, evaluating their effectiveness poses challenges, primarily stemming from a lack of comprehensive information regarding the specific provisions contained in these agreements, as well as some econometric difficulties arising from the non-random inclusion of such provisions. (Abman, Lundberg & Ruta, 2021).

Western Balkan countries aiming to align with EU criteria have increasingly incorporated environmental and climate-related provisions into their trade agreements. CEFTA-2006 and the respective Stabilization and Association

Agreements (SAAs) are the most significant trade agreements that the countries have concluded and consequently, the largest volume of trade is realized under the provisions of these agreements. Even though there are several provisions related to environmental protection within CEFTA-2006, these provisions are far from satisfactory, and cannot be considered sufficient to combat climate change and environmental aspects. As evident, provisions that explicitly refer to environmental protection, do it to allow exceptions. All the SAAs concluded between the countries from the Western Balkans and the EU contain a larger number of environmental provisions. The first agreement concluded by the EU and North Macedonia contains the largest number of environmental provisions and most of them are for the purpose of environmental protection. This issue becomes even more prominent with the introduction of the Carbon Border Adjustment Mechanism (CBAM) of the EU which might be a real challenge for the Western Balkans economic operators to cope with the newly imposed rules.

In conclusion, climate-smart trade provisions are gaining momentum in regional trade agreements, reflecting a growing commitment to balance economic development with environmental responsibility. The inclusion of these provisions in trade agreements is essential in achieving sustainable development, pursuing international environmental goals, and fostering environmental cooperation. The WB6 countries should make strides towards regulating environmental and climate-specific aspects in their trade agreements, reflecting a shift towards greener and more sustainable trade practices.

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