

Special Article

Challenges Tariffs and non-tariff measures on multinational corporations linked to compliance with human rights standards



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KEYWORDS:

International trade,
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ABSTRACT:

Multinational and transnational corporations operate worldwide, creating a dynamic in which their private interests often do not align with the interests of the countries in which they operate or the communities affected by them. The main problem arises when they affect not only the public interests of the host governments but also the rights of communities and the human rights of their members. There have been some efforts by the United Nations to establish standards or regulations in this area, which have not yet been finalized. However, the important thing is that the issue remains of interest to the international community and experts, who continue to offer solutions to these problems. This paper analyzes the above specifically, and explores tariffs and non-tariff measures as mechanisms for states to regulate these corporations.

PALABRAS CLAVES:

Comercio internacional,
barreras comerciales,
regulaciones
comerciales,
importaciones,
exportaciones.

RESUMEN:

Las corporaciones multinacionales y transnacionales realizan sus operaciones en todo el mundo, y generan una dinámica en la cual sus objetivos de intereses privados muchas veces no se alinean con los intereses de los países en que efectúan sus operaciones o en las comunidades que se ven afectadas por ellas. El problema principal se produce cuando afectan no sólo los intereses públicos de los gobiernos que las reciben, sino los derechos de las comunidades y los derechos humanos de sus integrantes. Existen algunos esfuerzos de las naciones unidas por establecer algunos estándares o regulaciones en esta materia, que aún no se logran concretar. Sin embargo, lo relevante es que el asunto sigue siendo de interés para la comunidad internacional como para los expertos, quienes continúan ofreciendo soluciones a estos problemas. En este paper, se analiza lo anterior y de manera específica, y se exploran los aranceles y las medidas no arancelarias como mecanismos de los Estados para la regulación de dichas corporaciones.

MOTS CLES:

Comerç internacional,
barreres comercials,
regulacions comercials,
importacions,
exportacions.

RESUME:

Les corporacions multinacionals i transnacionals realitzen les seves operacions a tot el món, i generen una dinàmica en què els seus objectius d'interessos privats moltes vegades no s'alineen amb els interessos dels països on efectuen les seves operacions o a les comunitats que s'hi veuen afectades. El principal problema es produeix quan afecten no només els interessos públics dels governs que les reben, sinó els drets de les comunitats i els drets humans dels seus integrants. Hi ha alguns esforços de les nacions unides per establir alguns estàndards o regulacions en aquesta matèria, que encara no s'aconsegueixen concretar. Tot i això, el més rellevant és que l'assumpte continua sent d'interès per a la comunitat internacional com per als experts, que continuen oferint solucions a aquests problemes. En aquest paper, s'analitza l'anterior i de manera específica, i s'exploren els aranzels i les mesures no aranzelàries com a mecanismes dels Estats per a la regulació de les corporacions esmentades.

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1 INTRODUCTION; 2 OVERVIEW OF THE PROBLEM OF TARIFFS AND PARATARIFF MEASURES; 3 MULTINATIONAL AND TRANSNATIONAL CORPORATIONS AND THE PROBLEM OF THE NATIONAL ECONOMY AND HUMAN RIGHTS, ESPECIALLY IN LEAST DEVELOPED COUNTRIES; 4 TARIFF AND NON-TARIFF MEASURES ON MULTINATIONAL AND TRANSNATIONAL COMPANIES; 5 REFERENCES

1 INTRODUCTION

Tariffs, para-tariff (or non-tariff) measures, and regulatory measures in the context of international trade have become common tools used by governments to influence or limit the activities of domestic or foreign businesses, as well as those of other states. Para-tariff or

non-tariff measures can take many forms. They condition, limit, or impede international trade.

As we know, tariffs are traditional border taxes applied to goods moving from one country to another, that is, imports and exports. They can also be applied to cross-border services.

Over time, tariffs have been reduced by unilateral national decisions, bilateral agreements (treaties), or multilateral conventions.

As the decades' passed tariffs have declined, para-tariff or non-tariff measures have taken on greater importance. These measures may be regulatory objectives in accordance with plausible national public policies (measures against worker abuse, measures against environmental damage, measures to protect public health, animal and plant health, etc.). These measures may also have protectionist objectives or may be established as trade barriers (and these are objective limitations on international trade), in which case they are usually called non-tariff barriers.

According to a common opinion among international organizations dedicated to trade issues (WB, FAO, IMF, ITC, OECD, UNCTAD, WTO, Multi Agency Support Team, UNCTAD-MAST), non-tariff measures include:

(a) Technical or science-based measures: sanitary and phytosanitary measures, technical barriers to trade, pre-shipment inspection, and other formalities or procedures, which are essential to achieving public policy objectives, such as protecting human health, ensuring food safety, and safeguarding the environment.

(b) Non-technical measures or traditional trade policy measures: non-automatic licensing, quotas, quantity controls, price controls, financial measures, measures affecting competition, distribution restrictions, subsidies, restrictions on public procurement, intellectual property, rules of origin.

While technical measures focus largely on safety and quality, non-technical measures are more oriented towards controlling trade flows, protecting national industries or maintaining economic stability. (UNCTAD 2025, 3). On the other hand, non-tariff measures can be quantitative or qualitative, both of which are ways of regulating international trade that do not involve import taxes. Quantitative measures limit the quantity of products that can be imported (quotas, import permits, anti-dumping measures, subsidies, etc.), while qualitative measures regulate the quality and characteristics of the product (labeling, health, or environmental regulations; technical and quality standards; or market of origin, etc.). ([UNCTAD, 2019](#)).

These non-tariff measures can be applied at any stage of the production, processing, packaging, storage, transport, marketing, and even to the treatment of discarded products or their waste, i.e., recycling obligations.

Therefore, they can take countless forms (licensing fees, processing fees, or analysis fees of all kinds, or requirements of a diverse nature). All of them result in some form of higher costs, and some constitute direct barriers to international trade.

It is often argued that non-tariff measures generate distortions in the economy, either by reducing trade quantities or by raising the prices of imported products without any economic basis, or by protecting a low-productivity domestic industry.

However, not all of this would be negative in all cases. For example, certain production and marketing conditions can mean an increase in the quality of products and services, and with certifications for this, quality increases and a higher price would be associated with this.

Likewise, the compensatory measures applied as a result of dumping and subsidies should be highlighted, mechanisms that constitute distortions of international trade and unfair practices in this context, causing harm to national economies.

On the other hand, some countries have identified certain behaviors in transnational or multinational corporations that should be subject to public oversight, or that violate public interests regarding access to national markets. Often, the aggressive commercial activity of these companies leads them to engage in behaviors that are not accepted by countries, such as worker exploitation, environmental damage, and unfair trade competition through various means.

This paper seeks to discuss tariff and para-tariff measures as legitimate (or illegitimate) measures adopted by countries in international trade, in relation to the activities of multinational or transnational corporations (both terms used here interchangeably).

To this end, a brief review will be made of countries' activity regarding the application of tariffs, non-tariff measures, and the two aforementioned measures in relation to the commercial activities of transnational and multinational corporations. Both types of companies share the characteristic of operating globally. The difference is that multinationals usually have their headquarters in one country, while transnationals decentralize across several countries, seeking to adapt to local conditions.

2 OVERVIEW OF THE PROBLEM OF TARIFFS AND PARATARIFF MEASURES

Global interest in the issue has been renewed by the current stance of the United States, which has raised tariffs, indicating a lack of loyalty from other countries around the world, either by imposing high tariffs on the United States or restricting the purchase of its products through tariff measures, or by selling below market prices (subsidies) or even violating the intellectual property and industrial property laws of U.S. manufacturers. Likewise, the authorities of that country invoke national security, and to protect their military defense system, pointing out that there can be no dependence on the production of steel and aluminum, ships and icebreakers, etc. Their authorities also raise the need to increase tariffs to benefit American businessmen and industrialists and workers.

In the North American context, Canada and Mexico have also implemented tariff protection measures to protect certain important sectors of their economies, such as dairy and poultry products in the former, and tires and steel in the latter.

In Latin America, Brazil has increasingly resorted to trade remedy measures to support reindustrialization and regularly files antidumping and countervailing cases before the WTO, for example, in relation to steel and chemicals. Argentina also has a long tradition of tariff barriers, including tariffs on imports (automobiles, household appliances, etc.) and exports, measures that have sought to protect domestic industry and its international foreign currency reserves. The objective of both countries is to encourage domestic substitutes.

In the case of North American countries, they have attempted to coordinate their economies through the North American Free Trade Agreement, and in the case of some South American countries, they have coordinated through the Mercosur Treaty as a system of trade barriers with third countries. This is resolved with Europe through the EU-Mercosur Trade Association Agreement. In the case of Chile, the path has been to sign free trade agreements with the largest countries or with the largest regional trading blocs (Berlinski, 2001; Sanguinetti & Sallustro, 2000).

European countries, particularly the European Union, have applied a combination of traditional trade and regulatory measures to influence multinational companies, using tariffs primarily as part of their Common External Tariff or through anti-dumping measures, but have been more active in non-tariff regulatory measures. For example, by establishing strict

environmental standards that impose costs on foreign suppliers, such as the EU Deforestation Regulation (EUDR), passed in 2023, which, under penalty of being subject to sanctions or market exclusion, requires companies trading in agricultural, livestock, and forestry commodities and their derivatives to certify that they have not been subjected to deforestation, thus preventing increased greenhouse gas emissions. Another example is the EU Carbon Border Adjustment Mechanism, planned for 2026, which will impose a price on the carbon content of imported steel, cement, fertilizers, and other energy-intensive products—a kind of pollution tariff.¹

Europe has also regulated the technology sector through the EU Digital Markets Act and the Digital Services Act, which will be in force between 2023 and 2024. These impose strict conditions on the world's major online platforms (particularly those from China and the US) in their relationships with third parties and their market operations. These conditions significantly increase compliance and operating costs (Willige, 2023).

The EU explicitly links tariffs and border adjustments to climate policy and implements safety rules (e.g., a ban on hormone-treated beef or genetically modified crops) to protect consumers and the environment (Nordin & De Catelle, 2024).

In Asia, there is also a tradition of imposing barriers to international trade.

China uses both tariffs and strict regulatory controls, import licensing, and quota systems. This allows it to monitor foreign competition and protect local industry. There are also strong restrictions on the export of certain products, such as rare earths. It also applies anti-dumping measures alleging subsidies or unfair pricing (Baskaran & Schwartz, 2025).

India has also used tariffs to protect traditional industries (such as steel) and new, growing industries, and to attract multinational investment or economic self-sufficiency. Japan applies high tariffs to protect its agricultural sector (Arora & Bhardwaj, 2025).

3 MULTINATIONAL AND TRANSNATIONAL CORPORATIONS AND THE PROBLEM OF THE NATIONAL ECONOMY AND HUMAN RIGHTS, ESPECIALLY IN LEAST DEVELOPED COUNTRIES

The activity of transnational corporations has a very concrete impact on the rights of people in the communities in which they invest and carry out their activities (Ruggie 2013). It is an ethical and business issue, but it is also an issue that involves both National Law and International Law, as has been highlighted by multiple experts (Deva, 2003; Gatto, 2011; Kinley & Chambers 2006; Kinley & Tadaki 2003).

This is a very relevant issue for developing countries, such as those in Latin America (Guerrero, 2021; Mujica, 2011; Amuchastegui, 2018; Berrón, 2016) Africa and Asia. In these countries, transnational or multinational corporations often invest, for example, in the exploitation of natural resources (extractive industries), energy generation (wind, hydroelectric, oil, and gas), the monopolization of natural resources, including water, and so on. This involves large areas of land, with the consequent impact on the environment (Turner, 2021; Ullah & all. 2021; Zarsky, 2021) and negatively impacts many local communities, without prior consultation or social licenses (Barnes, 2019) or sufficient mitigation measures.

This is coupled with public policies that encourage these types of investments (especially due to economic weakness and dependence), and there is insufficient reciprocity from companies given that the political institutions of host countries are often weak, their public agencies often have low technical capacity and are even under the influence of corruption.

¹ See website: https://taxation-customs.ec.europa.eu/index_en

Host countries present regulatory and tax system weaknesses (Masbernat & Ramos-Fuentes, 2023), and inefficiencies in the public and judicial bodies responsible for holding multinational investing companies accountable (Zamora Cabot 2012; Muñoz de Morales, 2020).

All of the above (and, of course, additional factors that are too long to explain) result in a negative impact on the human rights of the inhabitants of the host states of these companies' investments (Gómez Isa, 2006; Gómez Isa, 2000). This has been emphasized for some time (Baez & all., 1999; Campbell, 2006).

This issue has also become a problem of global governance (Backer, 2011; Bartley, 2018; Detomasi, 2007).

This topic has been addressed by experts from various perspectives and by international organizations, including the United Nations, particularly within the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. This group has developed a series of Guiding Principles on Business and Human Rights, which seek to establish appropriate relationships between States and transnational corporations to ensure respect for human rights in local communities. There is also an international effort to achieve the creation of a legally binding international instrument in this field (international convention).

The OECD has also made efforts on this issue in its OECD Guidelines for Multinational Enterprises (Cantú, 2015).

In this context, it is certainly appropriate to focus on the reality of developing countries, particularly in Latin America and Africa, and especially on the exploitation of natural resources by transnational corporations.

As previously indicated, adequate regulation is required of the relationship between multinational corporations and the host states of their investments, with regard to the human rights of the inhabitants of the local communities in whose territories these companies' investments are made. Such regulation cannot be based solely on national law but also on international law, including the participation of competent international organizations in this field.

Some particular conditions that require special attention must be taken into account:

(a) Natural resources are found in diverse parts of the world, and are needed wherever they are found. In some cases, there is insufficient public infrastructure in the areas where natural resources are exploited, and companies must develop it.

(b) Companies that extract natural resources on a massive scale are usually transnational or multinational corporations. These companies utilize all the possibilities of the global economy and finance to develop their businesses (and, if they are very large, possess enormous market power). They take advantage of the complexity of business networks and the multitude of additional businesses generated around basic exploitation, which adds management difficulties for national regulatory and tax administrations (Gómez, Jiménez & Morán, 2015, 12; Oguttu, 2015; Oguttu, 2016).

(c) Many of the countries whose territories contain natural resources are poor or underdeveloped, highly dependent on the wealth generated by those resources, with weak political institutions (susceptible to corruption), and deficient administrative and judicial systems. The economic problems inherent to this type of investment (uncertainties, time required to begin exploitation from the moment of investment, level of investment required and "sunk costs"; volatility of the selling prices of extracted resources; uncertain level of natural resource deposits or reserves and fluctuating income levels; etc.) can be addressed

in various ways that do not undermine the economic sustainability of the host state (e.g., through insurance policies, etc.).

(d) To attract investment from transnational corporations, unlike in wealthy countries ([Agyiri & Ali 2020](#)), poor countries often provide subsidies, very generous tax incentives, offer unequal tax treatment, or lack transparency (OECD, 2007). In general, this increases the economic dependence of poor countries. Transparency, legal certainty, and accountability of administrative decisions, along with adherence to general and equitable rules, are some of the best mechanisms for facilitating investment from new companies and generating stable tax revenues for the State, and not just profits for multinational corporations ([Von Haldenwang, 2011, 3](#)).

(e) For most countries, natural resources are legally considered the inalienable property of the state, and therefore extractive industries are subject to specific regulations ([Von Haldenwang, 2011](#)). The rule of state ownership of these resources is a legal standard for minimum protection of the wealth of middle- and low-income countries that should always be required at the global level, i.e., in all countries of the world. Furthermore, regulations in this field often incorporate the categories of economic rents or windfall rents, which host states should capture, based on two reasons: efficiency and equity ([Shah 2023, 4](#); [von Haldenwang, 2011, 1](#)).

(f) The exploitation of natural resources could generate enormous negative impacts or environmental costs on the natural or social environment in which they are located (even after the closure of the exploitation processes), which States are often unable to mitigate. Therefore, compensatory payments are required for exploiting companies and environmental mitigations that allow for the recovery of degraded natural and human environments. These compensatory payments must be aligned with incentives for environmentally sustainable production methods.

(g) Renewable natural resources are not always renewable, and this also depends on their management, since exploitation or its indirect effects can lead to the complete extinction of a plant or animal species if it is carried beyond sustainable possibilities (Lampert, 2019, p. 1). To solve this problem, an adequate system of legal control is required, and some mechanisms within the tax system can also help. On the other hand, nonrenewable natural resources are finite, and if the country that owns them does not replace them with investments in productive national capital, the loss of wealth over time can be absolute, according to the "Hartwick's rule" ([Von Haldenwang, 2011, p. 1](#)).

(h) All of the above causes developing countries to postpone the rights of communities and the rights of individuals in the face of these investments. This leads to a progressive deterioration of local communities, and if they were poor, they will be subjected to processes of further impoverishment, in addition to the deterioration of their environment, which will result in the need to migrate, in addition to all the social problems associated with poverty and misery.

4 TARIFF AND NON-TARIFF MEASURES ON MULTINATIONAL AND TRANSNATIONAL COMPANIES

As [Muchlinski \(2001\)](#) argues, multinational enterprises should be held responsible for human rights violations, but states should remain the primary perpetrators and establish legal measures to minimize such violations. There is no doubt that States can use the aforementioned tariff and, above all, non-tariff mechanisms as tools to protect human rights.

Human rights are *jus cogens* norms in international law that must be respected and protected by States, not only on a conventional basis but also on the basis of international legal custom ([Cleveland, 2003](#); [Panizzon, 2008](#)).

Panizzon (2008) stated the following regarding this topic: "WTO jurisprudence has addressed so-called 'non-trade' values,³⁶ including, the environment, culture, labour standards and human rights, as exceptions to the principles of free trade. Governments may protect human rights at the expense of free trade, as long as the restriction is justified under the general exceptions of GATT (Article XX) or GATS (Article XIV). Thus, import restrictions on products manufactured or services delivered in violation of human rights may be valid even if they disrespect the GATT obligations to eliminate of tariffs, to refrain from imposing non-tariff barriers and import quotas and the GATS market access commitments".

Thus, it is possible to observe that human rights can be an issue involved in international trade relations ([Bartels, 2002](#)) or in international economic relations (Nadakavukaren Schefer, 2007). It is possible, and non-tariff barriers linked to human rights already exist (not only to international trade or customs law), as they can be linked to respect for international human rights instruments ([Lyons 2015, 31](#)).

At the European level, it would be a question of using international trade mechanisms to promote respect for human rights, because they constitute essential values for Europe ([Máčaj, 2022](#)).

Ribeiro (2009) argues that in this field, there are conflicts of interest between freedom of trade and human rights, which must of course be addressed. There is also an extraterritoriality factor because the importing state is different from the state in which the human rights violations occur, or the state where the headquarters of a multinational corporation that engages in these bad practices is located.

Another conflict is observed between the need to impose non-tariff measures due to potential human rights violations in developing countries, and the need to remove all barriers to allow free trade for those countries, to promote their economic development, and to exclude discriminatory measures.

For the above reasons, there is a need to respect transparency conditions in the application of non-tariff measures, especially if there are Trade Agreements ([Moisé, 2011](#)).

It has been argued that the multilateral international trading system generally supports the fulfillment of obligations to respect human rights (Lim, 2001). Typical human rights, state interests, and international trade issues that could give rise to non-tariff measures include: labor relations; public health; human, plant, and animal health; food safety; the environment, pollution, and ecological balance; protecting national industries and consumers; safeguarding national security; protecting against the loss of national revenue; and so on ([Dommen, 2002](#); [Akinyi, 2019](#)). Of course, within the WTO there is interest in specific rights such as intellectual property, and it would be possible to extend this scope of interest to include the right to development and the right to non-discrimination, as this expert points out, based on the standards established in the UN Charter.

Likewise, it is possible to establish international trade sanctions for human rights abuses ([Lim, 2001](#); [Nadakavukaren Schefer, 2007](#); [Cleveland, 2003](#)).

Returning to the problem of legitimate interests at stake, in the field of international trade, this could also mean the reduction of trade barriers based on respect for human rights, as a consequence of the elimination of discriminatory treatment in international trade relations and the settlement of trade disputes through the rule of international law ([Lim, 2001](#)).

But intellectual property rights can also be contrary to the human rights of significant segments of the world's population, for example, if they create a monopoly of such magnitude that it limits access to medicines. This happens with pharmaceutical multinationals, but something similar also happens with food multinationals. Many of these

corporations are similar in size to or larger than many countries, which must be taken into account in their regulation, as their enormous power can influence government decisions.

Cleveland (2003) has argued in this regard that: "Given that companies are nonstate actors not bound by international law, how can one ensure that they respect international legal norms, including human rights laws? A number of different groups, including big companies themselves, are working on ways in which business can be held accountable to human rights standards."

However, there are ways to harmonize the interests of intellectual property rights owners with those of developing countries. For example, mechanisms can be created to allow these countries to participate in knowledge-generating activities, provide consumers with access to new products, and provide their industries with better opportunities to acquire cutting-edge technologies.

A multitude of possibilities can be seen for justifiably applying certain tariff measures, in order to safeguard human rights and national interests linked to the protection of the population, in particular.

One way forward could be through higher tariffs, which could serve as a punishment for practices that violate human rights, or as a warning against the lack of certification regarding the existence of production processes that respect those rights.

Non-tariff measures constitute an even larger field, encompassing all kinds of concepts and content, given the multiple impacts on human rights of the production processes of multinational and transnational corporations. For example, it would be possible to require control and oversight procedures, scientific and technical inspection, the establishment of all kinds of standards depending on the types of products or services being traded, and certification of production processes that respect the human rights of workers and the communities in which companies or their suppliers are located.

Another possible aspect worth highlighting is the control measures for products that are safe for human, animal, and plant health, given the close relationship between them. In some ways, this could involve applying special treatment to multinational and transnational companies, in terms of tariffs and non-tariff measures, not just in relation to countries. Indeed, these companies are not really interested in locating in a specific country; their goal is to locate in any country that facilitates their activity with the lowest possible cost of compliance with legal regulations. But there is also an opposite side. Wealthy countries should try to reduce tariffs on products from developing countries to promote fairer international trade, and reduce non-tariff measures to only those necessary and appropriate. Conversely, developing countries should be allowed to adopt measures to protect their productive systems (Zubizarreta, 2010).

Finally, all States where multinational or transnational corporations have their headquarters or operations should impose oversight standards or coordinate oversight standards for their activities to ensure compliance with human rights obligations.

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