

Do Trade Deals Encourage Environmental Cooperation?

Summary

Trade agreements have mixed effects on the environment. On the one hand, trade generates additional pollution by raising production levels. Trade rules can also restrict the capacity of governments to adopt environmental regulations. On the other hand, trade agreements can favour the diffusion of green technologies, make production more efficient and foster environmental cooperation. Whether the overall effect is positive or negative partly depends on the content of the trade agreement itself. Recent studies have found that trade agreements with detailed environmental provisions, in contrast to agreements without such provisions, are associated with reduced levels of CO₂ emission and suspended particulate matter (Baghdadi et al., 2013; Zhou, 2017). It remains unclear, however, which specific provisions have a positive environmental impact and how they are actually implemented.

This briefing paper discusses how provisions on environmental cooperation in trade agreements can contribute to better environmental outcomes. It is frequently assumed that the more enforceable environmental commitments are, the more likely governments are to take action to protect the environment (Jinnah & Lindsay, 2016). This assumption leads several experts to argue in favour of strong sanction-based mechanisms of dispute settlement in order to ensure the implementation of trade agreements' environmental provisions. Nevertheless, there is evidence to suggest that softer provisions can result in increased environmental cooperation, which can in turn favour domestic environmental protection (Yoo & Kim, 2016; Bastiaens & Postnikov, 2017). The European Union privileges this more cooperative approach in its trade agreements, and a recent European non-paper (2018) stresses that a sanction-based approach is a disincentive for ambitious environmental commitments and can result in a political backlash.

To shed light on this debate, this paper examines the design and the implementation of cooperative environmental provisions of trade agreements. Our analysis is based on three main data sources. First, we make use of the TRade & ENvironment Dataset (TREND) which provides information on 285 types of environmental provisions included in 688 trade agreements signed since 1947 (Morin et al., 2018; see also www.TRENDanalytics.info for an online visualisation tool for the data). Second, we draw on official documents to better understand how these provisions are implemented domestically. Third, we fill the gaps using information provided by 12 interviewees who work for 7 different governments.

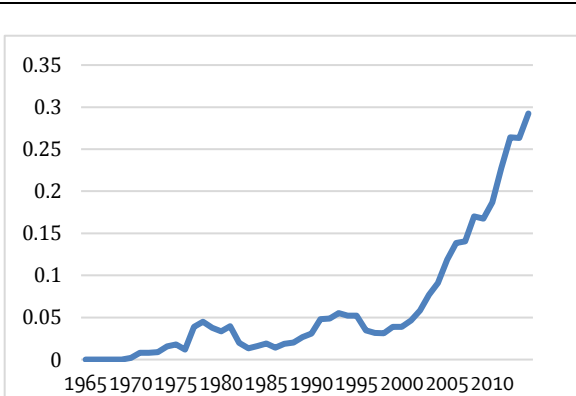
This briefing paper is organised in four parts. We first provide an overview of some general trends in treaty design. In sections 2 to 4, we then take a closer look at selected types of provisions that prove particularly relevant due to their prevalence: (a) general commitments to cooperate on environmental issues; (b) clauses creating international environmental institutions; (c) provisions on technical and financial assistance from one party to another. We find that both the implementation of these provisions and their contribution to environmental protection vary depending on the degree of legal precision, the budgeting of financial resources and governments' political commitment. Based on these findings, we suggest that trade negotiators should i) lay out precise clauses with specific targets and clear time frames, (ii) specify in the trade agreement where the funding for cooperation activities will be sourced and (iii) create forums where civil society actors can engage in a dialogue with policy-makers on the implementation of trade agreements.

Frequent but heterogeneous clauses

Trade agreements can include a wide variety of clauses related to environmental cooperation. For the purpose of this briefing paper, we define clauses related to environmental cooperation as those that call for interactions between governmental authorities once the agreement has come into effect. These include provisions on scientific cooperation, exchange of information, harmonisation of domestic regulations, technical assistance, creation of joint organisations as well as cooperation on specific environmental issues, such as hazardous waste, endangered species or desertification.

Trade agreements include a varying number of such cooperative clauses. To facilitate the comparison of these trade agreements, we have created the Environmental Cooperation Index. This index ranges from 0 (if the agreement does not include any clauses on environmental cooperation) to 1 (if the agreements includes all possible environmental cooperation clauses).

Figure 1: Evolution of the Environmental Cooperation Index (2-year moving average)



Source: Authors' elaboration based on Morin et al. (2018)

Note: The Environmental Cooperation Index is based on seven weighted categories of provisions that add up to a maximum of 16.6 points. The categories and their respective maximum values are the following: cooperation on enforcement (0.5), scientific cooperation (2), information exchange (0.6), harmonisation (2.5), vague commitments to cooperate (0.5), assistance (3.5) and joint institutions (7). Five of the seven categories are themselves composite indices of more specific sub-categories of provisions. For example, to obtain the maximum score of 7 for joint institutions, the trade agreement must provide for the creation of various types of institutions, including an international secretariat, a governmental committee, a civil society forum and a scientific research centre. Weights were attributed to each category based on the number of distinct commitments it covers and the extent of the legal obligations these commitments involve.

Figure 1 shows the evolution of the Environmental Cooperation Index's average score. It clearly shows that the average number of clauses related to environmental cooperation has increased sharply since the early 2000s. The most frequent clauses are those related to the exchange of information (26 per cent of all trade agreements since 1947), unspecified cooperation on environmental issues (23

per cent) and scientific cooperation in the field of the environment (18 per cent).

Despite this clear trend, significant variations remain among recent trade agreements. Countries have different preferences in terms of the cooperative clauses they like to see included in their trade agreements. As Figure 2 illustrates, the US is more likely than the EU to create joint organisations for environmental cooperation, while the EU is more likely than the US to call for regulatory harmonisation. Yet, on average, the US and the EU include more provisions on environmental cooperation in their trade agreements than other countries. This finding is consistent with the recurring observations in the literature that the EU and the US are two global leaders when it comes to the integration of environmental provisions in trade agreements (Morin & Rochette, 2017)

Commitments to cooperate on environmental issues

Trade agreements frequently include vague and soft commitments to cooperate on environmental issues. For example, the 2012 agreement between the EU and Central American countries provides that "parties agree to cooperate in order to protect and improve the quality of the environment at local, regional and global levels with a view to achieving sustainable development" (Art. 50(1)). Out of 688 trade agreements, 155 contain similarly vague commitments. These provisions appear twice as frequently in intercontinental agreements compared to agreements involving parties from the same region.

A variety of reasons explains why governments include vague commitment to cooperate in their trade agreements: (1) An unspecified commitment presents the smallest common denominator to all parties of an agreement; (2) parties want to preserve flexibility in the course of implementation, for instance, when none of them has strong experience in a given field or when future circumstances are unpredictable; (3) vague commitments are used as preliminary clauses for more specific obligations included in the same agreement; (4) vague environment-related commitments can contribute to the creation of common objectives between trade partners.

These provisions can be implemented in a variety of ways, as they do not give concrete action-triggering instructions. Several interviewees highlighted that concrete cooperation outcomes are determined by available resources. The availability of financial, logistic and human resources shapes the extent to which environment-related cooperation takes place. Under scarce financial resources, cooperation on environmental issues often lags behind cooperation on more highly valued trade issues. For example, the Caribbean implementation unit, created in 2008 to facilitate the implementation of the trade agreement between the EU and the Caribbean community, operates under financial constraints and decided to give economic integration higher priority over setting environmental standards. Since financial resource pooling remains insufficient for several trade agreements, especially in developing countries, vague

commitments to cooperate on environmental issues are often left unimplemented. Precise legal clauses, especially including specific deadlines and targets, should be more conducive to triggering actual implementation.

The creation of joint institutions

When it comes to environment-related cooperation, setting up international institutions acts as a promising foundation for successful efforts. We have identified 13 trade agreements that create a permanent intergovernmental organisation with competences in the field of environmental cooperation. The most well-known example probably is the Commission for Environmental Cooperation created by the environmental side agreement of the 1992 North American Free Trade Agreement.

Many other trade agreements – 112 to be precise – provide for the establishment of more modest environmental institutions, such as international research centres, funding mechanisms, inter-ministerial committees and civil society forums. The 2011 agreement between the EU and Korea, for example, establishes a Committee on Trade and Sustainable Development where senior officials from both parties meet regularly (art. 13.12). Since the agreement's provisional application started in 2011, this Committee has met roughly once per year, for a total of five times. Such meetings often serve to touch base on the implementation of environmental provisions from a more practical standpoint and help to define more specific priorities and actions for cooperation.

Some stakeholders argue that these institutional mechanisms do not provide sufficiently visible responses to environmental problems. Our interviews with government representatives reveal that the effectiveness of these joint institutions can be limited by a variety of factors. In several cases, actors that are supposed to cooperate through these joint institutions – be they researchers, civil society actors or bureaucrats – are not sufficiently self-organised or supported by their government to fully take advantage of these opportunities. In other cases, the institutional design is

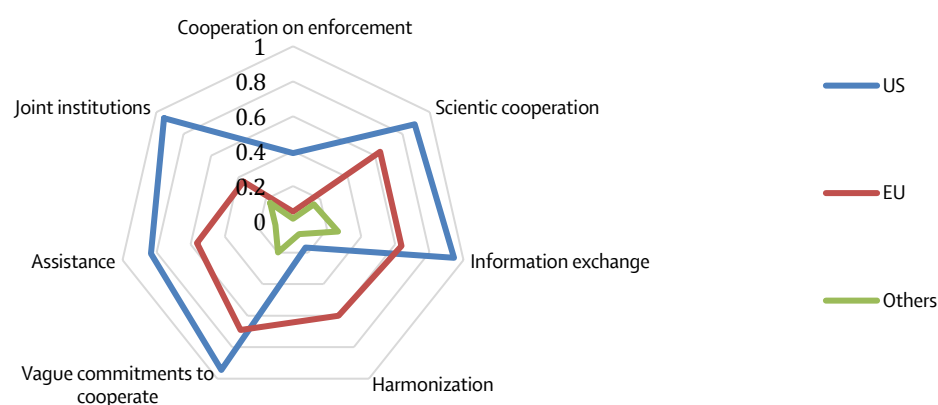
not sufficiently focused on environmental matters, and more traditional trade issues come to dominate the agenda.

In extreme cases, institutions provided for in trade agreements have never even been set up, either because of a general lack of interest or because other existing institutions were deemed more appropriate for the task. This is, for instance, the case for a fund on sustainable issues that was meant to be established as part of the CARIFORUM-EU trade agreement and which eventually was replaced by the European Development Fund

The provision of technical assistance

Environmental commitments are bound to remain ineffective, if parties lack the capacities to implement them. Given that not all countries enter trade agreements at the same stage of development, several trade agreements require that economically stronger partners assist their partner countries in their efforts towards environmental protection. For example, the 2006 US-Peru agreement includes detailed commitments on the technologies, equipment and training that the US must provide to Peru in the areas of forest conservation and the protection of endangered species. Out of the 688 trade agreements examined, 13 per cent include provisions on technical assistance and capacity building, and 5 per cent also include financial or technology transfer commitments. Although most EU agreements include clauses on capacity building, it appears that their implementation often takes a different form than that described in the agreement, both in terms of the tools used and the environmental issues targeted. Interviewees have explained that trade agreements often constitute a single element of the EU's broader strategy towards another country or region. As such, while technical cooperation does take place, it is often realised through other EU instruments. For example, European assistance towards Caribbean countries is primarily tackled through the 2012 Joint Caribbean-EU Partnership Strategy and the 2015-2019 Five Year Strategic Plan for the Caribbean Community, which allocate EUR 61.5 million to

Figure 2: Comparing trade agreements on selected environmental cooperation clauses (1990-2016)



Source: Authors' elaboration based on data from Morin et al. 2018

environmental assistance, rather than through the EU-Caribbean trade agreement.

US agreements have also given rise to comprehensive assistance programmes. The US regularly defines a work programme with its trade partners and provides assistance through various means, including training in resource management and environmental enforcement, campaigns for public awareness, transfer of environmentally friendly technologies, assistance in the creation of protected areas and legal advice on new environmental laws. Measures such as the establishment of wastewater laboratories in Central America or the development of an electronic system for tracking timber in Peru have been implemented as a result.

Conclusion

The jury is still out as to which specific treaty provisions are the most likely to favour environmental protection. This briefing paper suggests that, under certain circumstances, provisions favouring post-ratification cooperation can make a positive contribution to environmental protection.

Some countries are considering moving towards a sanction-based approach to environmental commitments. Recent US trade agreements already link the implementation of their environmental commitments to the agreements' regular mechanism for settling trade disputes. Yet, while a hard and assertive sanction-based approach might prove to be necessary under some circumstances (Jinnah & Lindsay, 2016), it should not replace a softer cooperative approach. Both approaches can co-exist within the framework of the same trade agreement and complement each other to catalyse important implementation improvements.

To increase the impact of cooperative arrangements, trade negotiators are advised to (i) lay out precise clauses with specific targets and clear time frames, (ii) provide the source of funding for cooperation activities in the trade agreement and (iii) create forums where civil society actors can engage in a dialogue with policy-makers on the implementation of trade agreements. These measures are likely to increase the implementation of commitments to cooperate on environmental issues.

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Jean-Frédéric Morin

Associate Professor
Laval University

Vera Chaudhuri

Evaluation Manager
Particip

Mathilde Gauquelin

PhD Candidate
Laval University and Ghent University

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