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Research Report

Environmental provisions in trade agreements: promises at the trade and environment interface

Briefing Paper, No. 16/2017

Provided in Cooperation with:

German Institute of Development and Sustainability (IDOS), Bonn

Suggested Citation: Berger, Axel; Brandi, Clara; Bruhn, Dominique (2017) : Environmental provisions in trade agreements: promises at the trade and environment interface, Briefing Paper, No. 16/2017, Deutsches Institut für Entwicklungspolitik (DIE), Bonn

This Version is available at:

<https://hdl.handle.net/10419/199804>

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Environmental Provisions in Trade Agreements: Promises at the Trade and Environment Interface

Summary

Until recently, environmental concerns have played only a marginal role in trade policy. The rulebook of the World Trade Organization (WTO) rarely touches upon environmental concerns and mainly features an exception clause for the protection of the environment (GATT, Art. XX). However, the rising number of modern preferential trade agreements (PTAs) covers an ever-broader array of policy areas, going far beyond the traditional reduction of tariffs by also including environmental provisions. Numerous PTAs negotiated on a bilateral and regional basis have comprehensive “green” components. For example, many PTAs include obligations not to lower environmental standards, the right to regulate for the benefit of the environment, and the commitment to implement multilateral environmental agreements.

The inclusion of environmental provisions can spark controversies. For some, the inclusion of environmental provisions offers untapped potential for actual environmental protection, making these agreements more compatible with environment and climate policies. However, trade critics often see these provisions as mere “fig leaves” that are included in modern PTAs in order to make them less controversial in the eyes of the public and legislators. For other critics, they represent an instrument of “green protectionism” in order to keep cheaper products from developing countries out of the market.

Given the newness of the widespread inclusion of environmental provisions in PTAs and the heated debate that is raging about the nature and effects of trade policies, better data and research is needed to understand and analyse this development.

Firstly, we need to improve our understanding of the specific design of these new rules and the related policy initiatives of PTA signatories. What drives the inclusion of environmental provisions in trade agreements? Which are the most innovative agreements and which the most innovative countries in terms of including environmental provisions in PTAs? Which environmental provisions are diffused more often than others into subsequent PTAs?

Secondly, there is a need to understand the interplay between PTAs and other environmental or climate agreements. To what extent do PTAs with environmental provisions serve the purpose of multilateral environmental agreements (MEAs) or the Paris Agreement on climate change?

Last but not the least: What are the implications of environmental provisions? Does the inclusion of these provisions in PTAs help the contracting parties to implement domestic environmental laws?

The innovative and interactive online tool TREND analytics based on the Trade & Environment Database (TREND), which tracks almost 300 different environmental provisions in the texts of about 630 PTAs, offers new ways of going further and of undertaking research to generate fine-grained information on the interplay between trade and the environment, providing fresh insights into a number of relevant policy discussions. This Briefing Paper summarises recent research results based on TREND, along with providing new insights into these questions and policy discussions at the interface of international trade and the environment.

The environment in trade agreements

While environmental aspects have only been tentatively included in WTO negotiations thus far, by now numerous bilateral and regional trade agreements have comprehensive environmental components. Today, 85 per cent of all PTAs already contain environmental provisions. As Figure 1 shows, each PTA included around 60 different environmental provisions by 2015 on average. Both industrialised as well as developing and emerging economies (Berger, Brandi, Bruhn & Chi, 2016) include them in their PTAs.

Opinions on the motivations for and implications of the increasing inclusion of environmental provisions in PTAs differ. For example, the Trans-Pacific Partnership (TPP) was celebrated for being the “greenest” trade agreement to have ever been concluded and simultaneously condemned for being an ecological disaster hidden under a “green” cover. In order to move beyond such oversimplifications, there is a need to improve our understanding of the intertwined relationship between trade and the environment embedded in modern PTAs as a basis for evidence-based policy-making.

Exploring the trade and environment interface

To better understand the relationship between trade and the environment, we need improved data on the variety of environmental provisions contained in the ever-increasing number of PTAs and we need to make this knowledge available to a broad audience. To fill this gap, the interactive online tool TREND Analytics (www.TRENDanalytics.info) based on the Trade & Environment Database (TREND), introduced by Morin, Dür & Lechner (in press), now offers the possibility to generate new fine-grained information on the interplay between trade and the environment (see Figure 2). Tracking almost 300 different environmental provisions in the texts of around 630 PTAs, TREND provides

fresh insights into research debates and policy discussions at the interface of international trade and the environment:

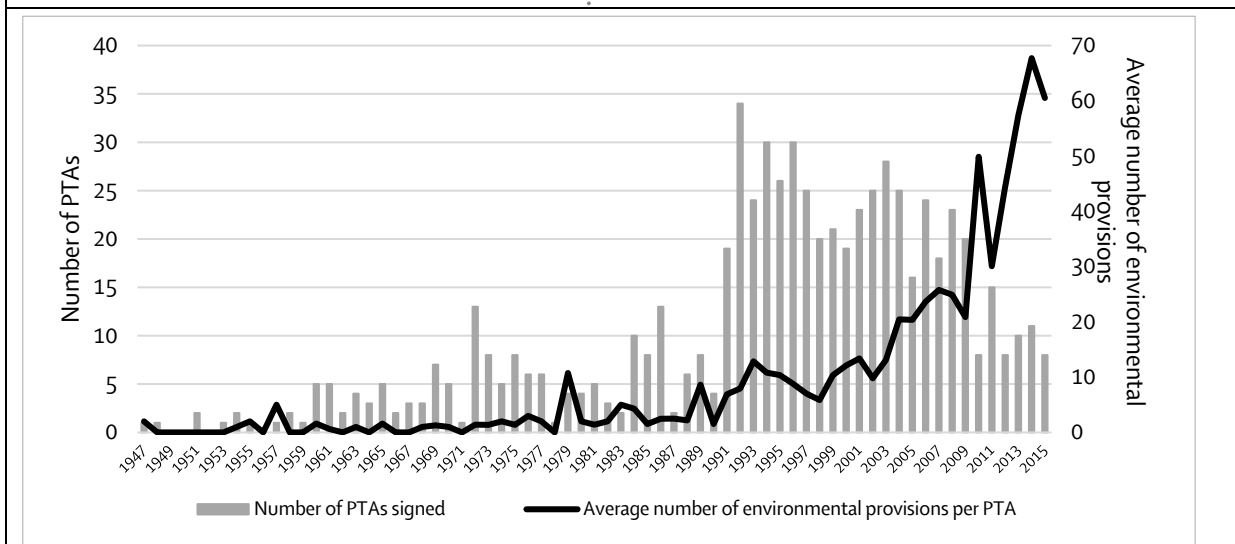
- 1) *Drivers: What drives the inclusion of environmental provisions in trade agreements?*

Empirical evidence in TREND does not support the widespread assumption that environmental provisions primarily serve the purpose of window-dressing, covering up protectionist interests. Instead, there are other drivers that motivate trade negotiators to include environmental provisions in PTAs, in particular electoral pressures in democratic countries from citizens sensitive to environmental concerns as democratic countries are more willing to commit to environmental protection in trade agreements than autocracies (Morin et al., in press).

- 2) *Innovation: What are the most innovative agreements and innovative countries – and why?*

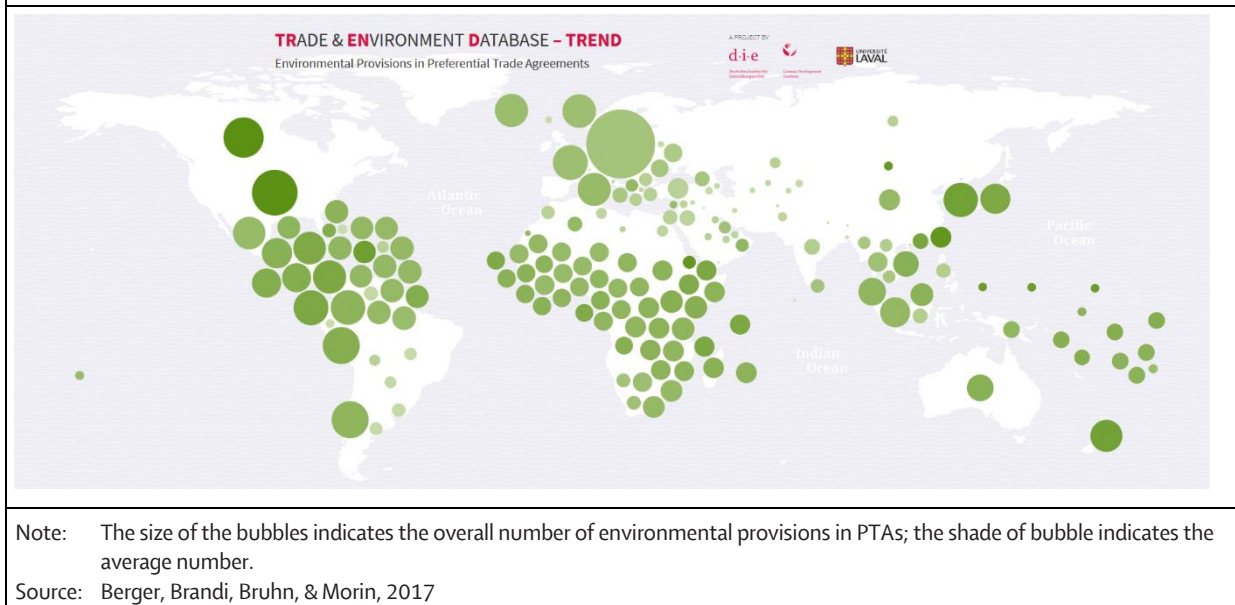
TREND shows that the 1992 North American Free Trade Agreement (NAFTA) and its side agreement, with 48 unprecedented environmental provisions, are by far the most innovative agreements. One reason is that, under the joint pressure exerted by environmental and labour groups, the then US president Bill Clinton decided not to sign NAFTA unless the side agreements on labour and the environment were also concluded. The second most innovative agreement is the 2007 US-Peru Agreement, containing 18 regulatory innovations. Again, domestic politics can also explain this exceptionally high number of environmental provisions. Other highly innovative agreements include the Lomé agreements between the European Union and African, Caribbean and Pacific countries as well as the Single European Act signed in 1986 by the members of the then European Community. The fact that the most innovative agreements were either signed by the United States or the European Union suggests that these

Figure 1: Average number of environmental provisions per agreement



Source: Authors, based on Trade & Environment Database (<http://www.chaire-epi.ulaval.ca/trend>)

Figure 2: TREND analytics



countries share a certain preference for including environmental provisions in PTAs and enjoy a similar bargaining power, conducive to regulatory innovations (Morin, Pauwelyn, & Hollway, 2017).

3) *Diffusion: Which environmental provisions diffuse more often to other PTAs – and why?*

PTA signatories do not reinvent the wheel each time when concluding new agreements. Often countries copy certain environmental provisions or specific legal text from older agreements. However, while some environmental provisions appear in more than 100 PTAs, others only appear once. What explains this peculiar diffusion pattern? Analysis based on TREND data shows that environmental provisions introduced for the first time in cross-regional trade agreements in particular diffuse more successfully than others. Focusing on the specific content of provisions, for instance, provisions that safeguard a country's policy space to regulate environmental issues diffuse more often than other provisions, such as exceptions to liberalisation commitments, exclusions of specific issue areas, as well as the sovereign right to adopt environmental measures ("right to regulate") (Bruhn, Morin, Brandi, & Berger, under review).

4) *Multilateral environmental agreements: Can bilateral trade agreements serve the purpose of MEAs?*

While it is common to oppose trade objectives to environmental concerns, it is equally common to oppose multilateralism to bilateralism. However, as TREND shows, these dichotomies are not inevitable: Bilateral trade agreements can in fact serve the purpose of multilateral environmental agreements. Some trade agreements, for example the PTA between Panama and Peru or Columbia and South Korea, reinforce the global environmental regime on genetic resources (Morin & Gauquelin, 2016).

5) *Multilateralisation: Which environmental provisions in PTAs have the best potential to be multilateralised?*

Once a critical mass of countries has signed up to similar types of environmental provisions, these provisions are on the way to become consensual and may be multilateralised. Incorporating environmental provisions in the WTO rulebook can enhance the contribution of the multilateral trading system to the implementation of the Agenda 2030 for Sustainable Development. TREND shows that there is a clear convergence between the United States and the European Union in the way they address environmental issues in trade negotiations; however, this convergence is far from complete and multiple other approaches have been experimented with elsewhere (Morin & Rochette, 2017).

6) *Trade and climate: How do PTAs address climate change, and how does the Paris Agreement address trade?*

TREND shows that there are several categories of provisions that directly address climate change. The most common climate-related provisions address renewable energy or energy efficiency. The European Union is a pioneer in the integration of trade and climate agendas, having included a reference to the greenhouse effect as early as 1989. Today, all recent EU trade agreements include provisions on climate change. Interestingly, most EU trading partners, having accepted these provisions, do not reproduce them with third countries (Morin & Jinnah, under review).

The Paris Agreement is built on a flexible bottom-up approach, meaning that countries are free to determine their own climate actions in their Nationally Determined Contributions (NDCs). Remarkably, NDCs do not only refer to the mitigation of greenhouse gases but also to a large array of issues beyond. In fact, around 45 per cent of all climate contributions include a direct reference to trade or

trade measures. At the same time, only around 22 per cent include trade measures that are specifically geared towards fostering mitigation (Brandi, 2017). While NDCs thus contain a number of trade-related elements, there is still great potential that could and should be leveraged, for instance in the next cycle of NDC updates.

7) *Implications: What are the effects of including environmental provisions in PTAs?*

One key issue is whether there is a link between a country signing PTAs with many comprehensive environmental provisions and a country introducing more environmental legislation domestically. Research based on TREND suggests a positive relationship between environmental provisions and domestic environmental legislation (Brandi, Bruhn & Morin, mimeo). Additional research is needed on the effects of the inclusion of more or stronger environmental provisions and on the factors that can leverage their potential to foster the green transformation.

Conclusions and the way forward

The TREND database offers new insights into the rapidly evolving development of dealing with a broad range of environmental policy matters in the context of PTAs. TREND is not only helpful to researchers who want to explore new questions related to the determinants, design, interactions and implications of environmental provisions in PTAs; the related data visualisation tool (www.TRENDanalytics.info) also makes this rich source of data available to other stakeholders as well. TREND Analytics, for example, can help to increase the awareness of the potential of regulatory innovations and foster mutual learning among trade negotiators and policymakers. Non-governmental organisation (NGOs) can find a reliable source of information on environmental provisions in PTAs to hold governments accountable. Furthermore, TREND Analytics can help decision-makers promote coherence between international trade and sustainable development.

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Published with financial support from the Federal Ministry for Economic Cooperation and Development (BMZ)

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