Policy Brief 05/2015

Can Environmental Standards in Trade Agreements be and Effective Instrument of EU External Environmental Governance?

Authored by Dr Evgeny Postnikov*
Presented at the Governance Innovation Week, University of Pretoria, 1-5 June 2015

*University of Glasgow (United Kingdom)

Introduction
The European Union (EU) has spearheaded the signing of bilateral preferential trade agreements (PTAs) with multiple countries across the developing world. Theses agreements play an increasingly important role in the EU’s external environmental governance toolkit, as they include provisions requiring trading partners to maintain certain levels of environmental protection, also known as environmental standards. This policy brief aims to provide a holistic assessment of environmental standards in EU PTAs and critically evaluate whether they fulfil their potential as an effective instrument of EU external environmental governance.

The Evolution of the Environmental Standards in EU PTAS
The inclusion of environmental standards in bilateral agreements by actors such as the EU is a result of the failure to address these issues at the multilateral levels though the World Trade Organisation (WTO). The EU-South Africa Trade, Development and Cooperation
Agreement signed in 1999 was the first of its kind to include a separate article on the environment, particularly relating to the use of renewable resources and control of pollution. This agreement represents the EU’s soft approach to environmental standards, as it is not legally binding and does not envision penalties if parties fail to live up to their commitments. Furthermore, these environmental provisions were grouped together with other non-trade areas of cooperation in the trade agreement, effectively de-linking them from the trade chapters of the agreement. Environmental provisions in later agreements followed a similar trajectory. For example, the EU-Chile Association Agreement, signed in 2002.

The EU’s approach towards the inclusion of environmental standards then drastically changed with a new generation of PTAs, after the publication of the European Commission’s communication “Global Europe: Competing in the World” in 2006. The 2010 EU-South Korea Free Trade Agreement was the first PTA signed by the EU in line with this new approach. It contains one legally binding sustainable development chapter. This chapter covers both environmental and labour standards, which are treated on par with other trade-related areas within the main text of the Free Trade Agreement (FTA). The agreement stresses the importance of Multilateral Environmental Agreements, and that parties can retain their domestic level of social regulation but they cannot weaken environmental protection for the sake of gaining an unfair competitive advantage in trade. The FTA envisions a consultative approach towards the implementation of environmental standards, including participation by civil society actors.

The most recent EU PTAs are largely modelled on this sustainable development chapter of the EU-South Korea FTA but have more specific and broader stipulations with regard to the environment and trade. For example, the EU-Colombia FTA contains separate articles on biological diversity, trade in forest products, as well as climate change. The agreement also provides for the establishment of a monitoring body for dispute resolution purposes. Overall, environmental standards in EU PTAs have evolved quite significantly and began to rely on novel institutional mechanisms for public participation and dispute resolution, such as dialogues with civil society, trade and sustainable development committees and government consultations and expert panels. Furthermore, the scope of environmental
standards has broadened to include compliance with Multilateral Environmental Agreements and commit parties to more concrete measures (for example on biological diversity or trade in forest products), also making sustainable development chapters legally binding by including them into the main text of the agreements. Yet, soft enforcement remains constant throughout the old and the new generation of EU PTAs, as the EU continues to eschew sanctions as a way to ensure compliance, and emphasises consultation and dialogue.

The Politics of Environmental Standards

The inclusion and particular design of environmental standards in EU PTAs is a result of complex interplay between preferences and the institutional positions of various actors. The main institutional characteristic of the EU trade policy is that it is completely supranational – authority is delegated by the member states to the European Commission, who is given the negotiation mandate. The Commission, a powerful unelected supranational executive, presides over the multi-level decision-making system of the EU and is far removed from societal interests. The EU’s Council of Ministers (i.e. the EU member states) only takes part in the process of making trade agreements when dealing with new trade issues, resulting in “mixed-agreements”, where member state governments retain veto power on certain trade-related issues.¹

Environmental non-governmental organisations (NGOs) are the main stakeholders of environmental standards representing societal interests. They represent a very diffuse constituency, ranging from actors who oppose trade liberalisation to those who are willing to embrace free trade as long as it is balanced with environmental protection and other societal concerns. These environmental NGOs generally welcome the decision to include environmental clauses but are not fully satisfied with the shape of the environmental standards and largely perceived the EU as “mercantilist” (i.e. focused too much on trade and

export promotion at the expense of the environment). They insist on moving away from viewing trade liberalisation as the sole objective of EU trade policy.²

Traditionally, business interests have been favoured over other civil society actors in EU trade policy-making process. To address the deficiency of civil society representation, in 1998 the Commission created a novel multi-stakeholder institutional mechanism known as Civil Society Dialogue (CSD). However, this plays only a consultative role, and societal actors are not able to directly influence the course of negotiations and are not given access to the negotiation texts. This has largely meant that despite the inclusion in the policy making process, NGOs and other civil society actors have largely failed to influence EU trade policy outcomes.³

The European Parliament is another institution that represents societal interests in the EU, although their role in PTA negotiations has traditionally been negligible. The Treaty of Lisbon expanded the Parliament’s role as co-legislator in the EU, granting it the authority to ratify all EU trade agreements through the consent procedure, alongside the Council of Ministers. The increased power of the European Parliament should have provided interest groups with more influence, which, in turn, should have led to more politicization of the FTAs agenda and stricter environmental standards. Indeed, the scope of social standards in the new EU agreements has broadened. There are new provisions for civil society participation, such as domestic advisory groups with the goal to oversee agreement implementation that could provide new institutional space for governments and civil society actors to speak with each other. However, importantly, the no-sanctions approach remains intact. This apparently has a lot to do with the heterogeneity of the preferences of the different environmental NGOs. Overall, there is lack of agreement amongst the stakeholders about the specifics regarding the inclusion of environmental standards in trade agreements, with a lack of both vertical and horizontal coherence in the EU’s promotion of the social

trade agenda. This is largely a function of disagreements among the Member States over the desirability of certain development goals and different foreign policy priorities.

As a result of the institutional setup described above, however, trade policy executives in the EU are able to exercise a large degree of autonomy when it comes to incorporating environmental standards, with Commission officials being insulated from both interest group pressures and Member States’ control. Hence, it is not surprising that the voice of environmental NGOs lobbying through the Civil Society Dialogue and the European Parliament is not well heard. The European Commission, especially DG Trade, can act as a policy entrepreneur, setting the agenda for PTAs and deciding on the extent of coverage of environmental issues and their enforcement.

The Effectiveness of Environmental Standards in EU PTAs

The new generation of EU PTAs contains more specific and legally binding measures, and have a potential to instigate positive change in environmental regulation in EU trading partners. However the assessment of the implementation of these agreements would be premature, as they have only recently entered into force. A closer examination of the EU-Chile Association Agreement (signed in 2002), however, reveals that little actual progress has been achieved. Discussions tended to focus mostly on the environmental impacts of trade and not the environmental provisions as such. The only positive effect of the inclusion of environmental standards was to change the attitude among some of the Chilean officials, but this did not lead to a substantive policy reform. Potential progress has been hindered by two factors: the lack of organisational capacity of the Chilean civil society, and the lack of administrative capacity of the Chilean government. It is plausible to expect a similar dynamic across EU PTA partners in the developing world, where a recent study found that the effects of EU PTAs environmental standards have been very gradual and dependent on civil society strength.

---


The EU’s approach to environmental standards implementation differs to the US approach, which contains fully enforceable environmental provisions. This includes US partners losing trade preferences or paying a large fine for failing to comply with their commitments. Anecdotal evidence suggests that the US’s approach can be effective in terms of encouraging positive reforms of the environmental regulations and institutions in its trading partners. This presents the EU with a clear example of how environmental provisions could be made more effective in the shorter term. However, it remains unlikely that the Commission will embrace a more coercive approach towards the enforcement of environmental standards in the near future, as it would go against EU trade policy officials’ views about the Union’s international role.

Conclusion

There is a continued commitment by the EU to link trade and the environment through the use of PTAs. Significant progress has been achieved with regards to making environmental standards more legally binding. Yet the EU’s approach remains ‘soft’ when it comes to the enforcement of environmental standards, and lags behind the US PTAs in its effectiveness. The EU can learn several lessons from the US’s experience. First, it would be wise for the EU to further augment its efforts to increase public participation and government engagement in developing countries through the better use of existing mechanisms. Second, the EU should also invest more in monitoring commitments made in the sustainable development chapters of PTAs. Third, more efforts could be made to engage environmental NGOs, and boost transnational links among various environmental groups both within the EU and its trading partners.

This policy brief is based on a presentation given at the Governance Innovation Week 2015 1-5 June for the workshop ‘External Dimensions of European Union Environmental Policy’ funded by the Erasmus+ Programme. Project No. 553076-EPP-1-2014-ZA-EPPJMO-Project.

Centre for the Study of Governance Innovation (GovInn)
Old College House
University of Pretoria,
Private Bag X20
Hatfield - 0028 Pretoria
South Africa
Phone: +27 (0)12-4204178
www.governanceinnovation.org