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Trade negotiations and climate governance: the EU as a pioneer, but not (yet) a leader

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The negotiation of free trade agreements provides opportunities for improving global climate governance. Contrary to multilateral climate negotiations, which bring together several countries around a relatively integrated issue-area, bilateral and regional trade negotiations involve a limited number of partners, but cover a multitude of different issues, from intellectual property to environmental protection. This context fosters bargaining and the conclusion of new agreements. Some trade agreements even set out stricter and more precise environmental commitments than those found in multilateral environmental agreements. Breakthroughs in environmental diplomacy are not necessarily made where they are most expected.

The detailed analysis of 660 trade agreements concluded since 1947[1] helps to identify some particularly innovative provisions on a series of environmental issues. Yet, the more specific matter of climate change still appears to be underdeveloped. In the recent Trans-Pacific Partnership (TPP, signed in February 2016), the word "climate" is not used a single time in the chapter on the environment, which nevertheless has 26 pages! Will it be the same thing for the Transatlantic Partnership (TTIP), for which negotiations began between the United States and the European Union in June 2013? This *Issue Brief* presents the scope and limitations of EU climate action in trade negotiations.

1. We took the agreements collated by the DESTA project and analysed them according to our own grid (available online at www.trend.ulaval.ca). Each of the 660 trade agreements was read independently by two encoders and their differences were mediated by a third.

KEY MESSAGES

- The European Union is a pioneer in terms of integrating climate issues into trade negotiations. It is the actor that includes the greatest number and range of provisions related climate change in its trade agreements.
- However, the EU model does not seem to be inspiring other actors in the trade system. Despite the recent proliferation of trade agreements and the exponential increase in provisions relating to the environment in these agreements, few countries are taking inspiration from EU standards.
- In order to foster an integrated approach to climate change, it would be useful to reproduce on a broader scale the small number of existing climate provisions, and to innovate based on progress made for other environmental issues.

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THE EUROPEAN UNION AS A PIONEER

The European Union has gradually integrated its climate agenda into its trade negotiations. As early as 1979, the Lomé II Convention, concluded between Europe and the African, Caribbean and Pacific (ACP) countries, promoted renewable energy and energy efficiency. Then, in 1989, even before the publication of the first report of the Intergovernmental Panel on Climate Change (IPCC), the revision of the Lomé Convention was the opportunity to include in it a reference to the greenhouse effect. In the 1990s, certain EU trade agreements reaffirmed the importance of international cooperation on climate change and incorporated increasingly detailed provisions. Some recent EU agreements even require signatories to reaffirm their commitment to implementing the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

Today, all recent EU trade agreements include provisions on climate change. The 40 or so EU trade agreements concluded since the adoption of the UNFCCC in 1992 have 2.2 climate provisions on average. The most recent EU agreements regularly surpass seven climate provisions, with a record of 13 provisions in the 2014 agreement with Moldova[2]. The climate has thus gradually been established as a key element of EU trade negotiations, contributing directly to EU environmental objectives[3].

Through this avant-garde integration of its climate agenda into trade negotiations, the European Union has thus played a pioneering role at the world level. EU agreements were the first of the 660 trade agreements analysed to refer to renewable energy, reducing greenhouse gases and implementing the Kyoto Protocol. Europe's pioneering role appears clearly in Table 1, which shows that the EU is at the origin of seven of the nine agreements that first integrated a category of provisions dealing with an issue relating to climate change.

2. By comparison, trade agreements signed throughout the world since 1992, excluding European agreements, have an average of 0.4 provisions on climate change per agreement.

3. Jinnah, S., Morgera, E. (2013). "Environmental provisions in American and EU free trade agreements: A preliminary comparison and research agenda", *Review of European, Comparative & International Environmental Law,* vol. 22(3), 2013, p. 232.

Table 1. Europe's pioneering role in the adoption of provisions relating to climate change

Provision	First agreement to include it	Year	Extract	Total number of agreements
Assistance in case of natural disasters	Treaty of Rome establishing the EEC	1957	"The following shall be deemed to be compatible with the Common Market: […] (b) aids intended to remedy damage caused by natural calamities or other extraordinary events."	20
Promoting renewable energy	Lomé II (Europe - ACP)	1979	"The Community will assist inter alia, in the […] implementation of alternative energy strategies in programmes and projects that will […] cover inter alia wind, solar, geothermal and hydro-energy sources"	69
Promoting energy efficiency	Lomé II (Europe - ACP)	1979	"The Community will assist inter alia, in the […] production in the ACP States of equipment for the production and distribution of energy as well as the application of energy-saving techniques"	65
Reducing greenhouse gases	Lomé IV (Europe - ACP)	1989	"The Parties recognize the value of exchanging views, using existing consultation mechanisms under this Convention, on major ecological hazards, whether on a planetary scale (such as the greenhouse effect)"	28
Cooperation	Europe and Poland /Hungary	1991	"Cooperation shall centre on: […] global climate change"	33
Ratifying or implementing the UNFCCC	Common Market for Eastern and Southern Africa	1993	"The Member States undertake to co-operate in the management of the environment and agree to: […] accede to the UNCED Agreements relating to the Conventions on climatic change and biodiversity"	6
Ratifying or implementing Kyoto	Europe and Montenegro	2007	"Special attention shall be paid to the ratification and the implementation of the Kyoto Protocol."	13
Adaptation	China and Costa Rica	2010	"[...] promote effective risk management in the agribusiness chains aiming to incorporate measures for adaptation […] of climate change […];"	12
Harmonising legislation	Europe and Ukraine	2014	"Ukraine undertakes to gradually approximate its legislation to […] Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community […]"	2

AN ISOLATED LEADER

EU innovations have not remained isolated experiments, since several subsequent trade agreements have reproduced similar provisions. Unsurprisingly, the European Commission incorporates into its own agreements the provisions from its previous agreements. But EU innovations are also reproduced in agreements concluded between third countries.

Consequently, Europe is represented in a declining share of trade agreements that deal with climate change. In 1995, the European Union was a party to more than 70% of agreements that included a provision on climate change. Today, only 43% of agreements that include at least one provision on climate change are EU agreements.

This distribution unquestionably represents a gain for EU environmental policy. Not only does it reflect Europe's regulatory influence beyond its borders, but it also contributes to achieving its environmental goals.

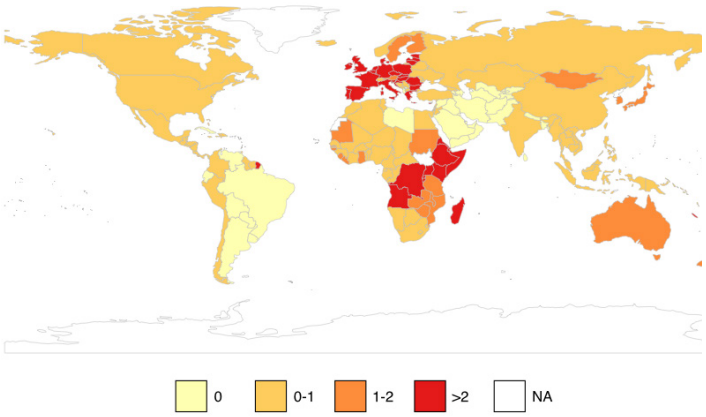
This distribution nevertheless remains limited. The majority of the European Union's partners, having accepted these provisions on climate change, do not subsequently reproduce them with third countries. Moreover, as indicated in Figure 1, around 50 countries, including Russia and Brazil, have not signed a single trade agreement that includes an article on climate change. And while some African countries such as Angola and the Democratic Republic of the Congo seem to include a relatively high average number of provisions on climate change in their trade agreements, this is largely explained by the fact that they have signed fewer agreements than other countries.

Furthermore, the countries that incorporate climate change provisions into their trade agreements are sometimes just paying lip service. The United States include in some of their agreements provisions on renewable energy and energy efficiency, but they generally do not mention climate change and make no reference to the Kyoto Protocol. Some US agreements devote several pages to forest protection and require the implementation of certain environmental agreements, but they remain very cautious on climate change.

Figure 2 presents a chronological mapping of the network of trade agreements that include at least one climate provision[4]. Each dot corresponds to a country or regional group and each linkage shows that these two actors are linked by an agreement that includes at least one climate provision.

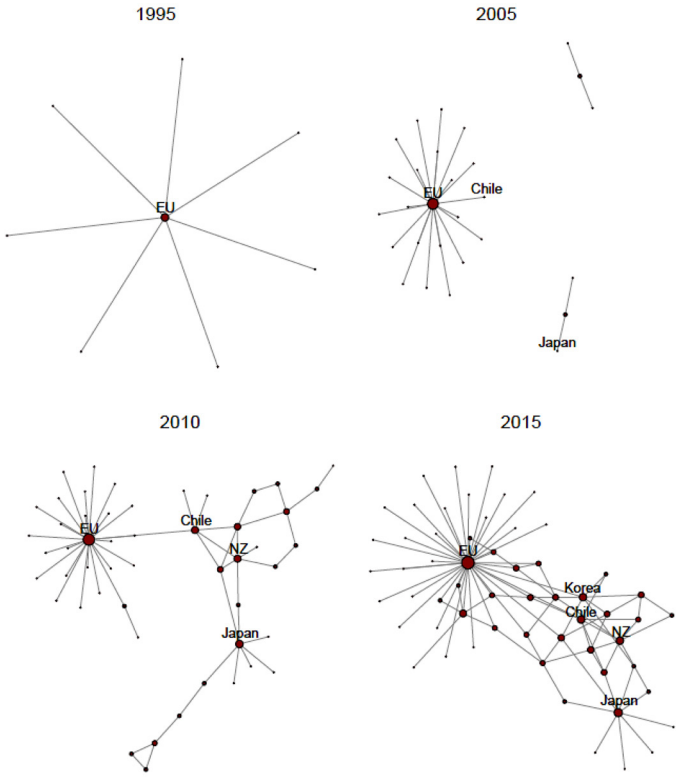
4. To develop these networks, we took into account all categories of provisions mentioned in table 1, excluding those on natural disasters, since these are not necessarily linked to climate change.

Figure 1. Average number of provisions dealing with climate change per agreement, 1992-2015



The European Union's central position clearly emerges from the constellation of agreements that it has established with its partners. We nevertheless see that it is struggling to export its model beyond its immediate partners. We also note that part of the network has developed independently of EU influence. A number of Pacific Basin countries, in particular, have played an important role in the dissemination of climate regulations, and a large number of their respective partners have gone on to reproduce these provisions in their subsequent agreements.

Figure 2. Network of provisions on climate change



CONCLUSION: TOWARDS THE TRANSATLANTIC PARTNERSHIP

The European Union is the driving force behind the inclusion of climate issues in trade negotiations. It is through the EU agreements that most of the new provisions on climate issues have emerged, providing real regulatory innovations. However, the European Union's partners tend not to reproduce these provisions in their own agreements.

A Transatlantic Partnership represents a unique opportunity and challenge in this respect. First, it is generally accepted that this agreement – which is still in negotiation at this point – will set new standards to which the third countries will indirectly conform and based on which future agreements will be assessed. As such, it will be a crucial agreement not only for Europe and the United States, but also for the rest of the world[5]. Second, there is nothing to indicate that this agreement will be particularly innovative in terms of climate change.

The guidelines provided by the Council of the European Union for the negotiation of the Transatlantic Partnership address environmental protection in depth, but say little about the more specific issue of climate change. At most, the Council asserts that the agreement should include provisions to facilitate trade in more energy-efficient goods[6]. The initial European Commission position, articulated in July 2014, proved more ambitious, adding a reference to the UNFCCC[7]. A subsequent position paper, made public in January 2015, went a step further, providing that the parties to the Transatlantic Partnership should commit to implementing the agreement resulting from the Paris Conference[8]. However, these more ambitious positions were removed from the draft text discussed with the United States in October 2015. This draft includes detailed provisions on the protection of endangered species, forests and fishery resources, but says nothing about greenhouse gas emissions. Without prejudice to its chances of short term success, it would be unfortunate, given the systemic importance of a Transatlantic Partnership, if a race to the bottom were to occur and this opportunity were missed by climate diplomacy in the coming years.

5. Meunier, S., Morin, J.-F. (2014). "No agreement is an island: negotiating TTIP in a dense regime complex", in *The Transatlantic Trade and Investment Partnership in a Multipolar World* (edited by J.-F. Morin, T. Novotna, F. Ponjaert and M. Telò). Farnham: Ashgate, 2014.

6. Council of the European Union (2013). *Directives for the Negotiation on the Transaltantic Trade and Investment Partnership between the European Union and the United States of America*, ST 11103/13, 17, June 2013, p. 14

7. European Commission (2013). *Trade and Sustainable Development: Initial EU position paper*, 16, July 2013, p. 2

8. European Commission (2015). *Trade and Sustainable Development: Position Paper*. Tabled for discussion with the US for the negotiating Round of 19-23 May 2014 and made public on 7 January 2015.