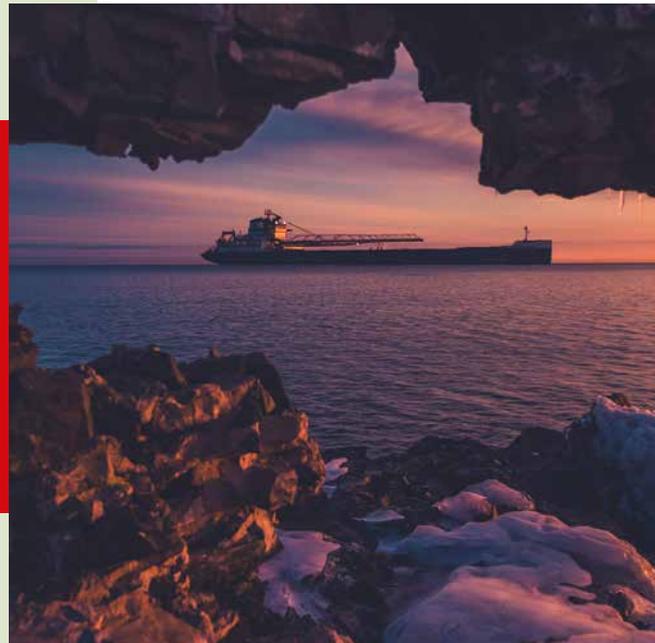


Proposals for anchoring climate and environmental protection in EU trade agreements



Introduction

Could Free Trade Agreements contribute to strengthening environmental protections and mitigating climate change? Past trade agreements have neither helped to combat climate change nor reduced the environmental impact of trade, but have actually contributed to a worsening of the situation. This has led to a considerable amount of scepticism as to whether trade agreements are ever likely to strengthen environmental protection.

Whether setting limitations on environmental protection measures, trade disputes relating to the support for renewable energies, or investor-state claims against environmental regulations, again and again stringent trade commitments win out against 'softer' environmental rules. Sustainable development provisions in Free Trade Agreements (FTAs) have failed to produce results. In fact, their vague and unenforceable aspirations are a stark symbol of the imbalance between economic interests and environmental protections in EU FTAs.

Yet, stronger regulation of trans-boundary economic activity is imperative: up to 33% of global CO₂ emissions, 30% of global greenhouse gas (GHG) emissions, 68% of global raw material extractions, and 30% of global biodiversity loss are embodied in international

In this factsheet we summarise the main points of the report "Anchoring climate and environmental protection in EU trade agreements: Exemplary elements". This short factsheet sets out in brief the main arguments of the full report. For more detailed argumentation we recommend reading the full version, where you can also access the complete bibliography:

<https://power-shift.de/anchoring-climate-and-environmental-protection-in-eu-trade-agreements/>

trade. FTAs could be important mitigators of these impacts. However, this would require a radical shift in the parameters of EU trade policy. Agreements should be assessed on the merits of their contribution to reducing trade's environmental and climate footprint, rather than their potential for a further liberalisation of international trade.

Ideally, tackling issues of environmental protection through trade rules should be done in multilateral fora. However, prospects of fundamental reforms of the multilateral trade regime, for example at the World Trade Organisation (WTO), are very slim at this point. International trade rules – especially those of the European Union – are increasingly being set in bilateral negotiations, and it is these trade

rules that the sixteen proposals developed here address. They acknowledge the status quo of current trade politics – their starting point is existing trade law, agreements and WTO rules – and they show how more sustainable trading partnerships could be facilitated through bilateral trade agreements.

The proposals are an example of how international agreements could lead to a stronger environmental regulation of trade relationships. Yet, it was not possible to comprehensively cover all aspects of the intersection between trade and climate policy, so some issues such as deforestation and international transport emissions are not discussed here. Likewise, suggestions for strengthening and reinforcing social justice measures and workers' rights, as important as these issues are, could also not be included within the scope of the study. The proposals do attempt to address questions of global justice and take into account the experiences and interests of the Global South, as far as the chosen framework allows. It goes without saying that an environmentally- and climate-compatible future means that the fundamental logic of our growth- and export-oriented economies must be reformed, but such questions could not be addressed in this report.

The proposals presented here are exemplary for what could be implemented in the current circumstances. But they must be seen as interlinked. For example, tackling 'emissions embodied in imports' must be combined with actions fulfilling the principle of Common But Differentiated Responsibility. Otherwise, 'green trade' can easily become a fig leaf for protectionist policies towards countries of the Global South.

The proposals are organised into three categories: (I) Improving institutional frameworks that govern FTAs, (II) strengthening climate protection in trade agreements and (III) expanding policy space for domestic environmental policies.

I. Improving institutional frameworks

1. Democratic participation

Robust democratic participation must be established and institutionalised throughout the entire FTA formation, from drafting mandates and the negotiation of the texts, to assessing impacts and opening existing agreements for review on a regular basis. An open-ended consultation with both civil society and Parliaments must be the basis for negotiating mandates. Releasing drafts and consolidated texts throughout the negotiations is necessary in order to allow for a meaningful public debate. In this way the most damaging effects of trade rules that are determined by a few powerful economic actors can be exposed and remedied.

2. Integrate environmental policy principles

The principles and objectives underpinning EU environmental policy must be incorporated in FTAs as core elements. These include the precautionary principle, the principle that environmental damage should, as a priority, be rectified at source, and the 'polluter pays' principle. These are present in the European Treaties, but are referred to inconsistently in FTAs or are not included at all. Thus, they do not provide guidance for the interpretation of trade agreements. In addition, the principle of Common But Differentiated Responsibilities (CBDR) should guide the implementation and interpretation of the FTA in order to consider different starting conditions in the Global North and South.

3. Specify and enforce environmental provisions

Trade agreements must contain clear and specific environmental protection provisions – as opposed to merely aspirational declarations. Only by including clearly defined obligations is it possible to examine whether they are being followed. These provisions must be subject to the same dispute settlement mechanism as the rest of the agreement and must therefore be enforceable with trade policy instruments.

4. Increase engagement of civil society

To effectively fulfil their role as independent monitors of trade agreements, civil society must be given unambiguous rights. For example, the agreement must include detailed

institutional provisions on Domestic Advisory Groups. Relevant documents must be made available within reasonable time frames to allow for scrutiny. In case of a breach of environmental provisions, a robust third-party complaint mechanism available to civil society organisations is crucial for their effective enforcement.

II. Strengthening climate protection in trade agreements

5. Supremacy of Multilateral Environmental Agreements

Trade agreements must strengthen, and not hinder, the implementation of Multilateral Environmental Agreements. Therefore a supremacy clause is important in order to ensure that the implementation of environmental agreements prevails over trade obligations in case of conflict. Climate response measures need to be protected against legal challenges. A panel of environmental experts should decide in case conflicts between environmental and trade agreements arise.

6. Mitigate impacts of climate policies

Climate response measures that adversely impact countries of the Global South must be mitigated in accordance with the principle of Common But Differentiated Responsibilities. For this, trade agreements can set the foundation by ensuring appropriate technical assistance and capacity building commitments are included.

7. Product differentiation based on embodied Greenhouse Gases

Trade agreements must specifically protect the right of states to differentiate products and services based on their embodied carbon or Greenhouse Gas (GHG) emissions. This means expressly permitting FTA Parties to condition market access on process and production methods (PPM)-based grounds, adopting technical regulations and standards, and committing Parties to support developing common methodologies of calculating GHG emissions associated with the entire life cycle of products.

8. Commitments to carbon pricing

FTA Parties must commit to first raising domestic carbon prices in line with the High Level Commission on Carbon Prices' recommendations before imposing Border Carbon

Adjustments. Producers in countries of the Global South should not be unfairly impacted. Therefore procedures and exemptions to ensure that BCAs are applied equitably and in accordance with the principle of CBDR must be adopted.

9. Enabling the transfer of renewable technologies

Trade agreements should facilitate, and not hinder, the transfer of climate-related technologies. Parties should, therefore, be permitted to use compulsory licencing in order to overcome Intellectual Property Rights barriers to the transfer of climate-related technology. Trade agreements should also explicitly allow the use of local content requirements to promote rapid transfer of cleaner technologies, encourage local economic development and increase the uptake of renewable energy technologies.

10. Phasing out fossil fuel subsidies

Trade agreements should include commitments to phase out fossil fuel subsidies. There should be a requirement for Parties to identify and notify fossil fuel subsidies. Based on that, they should establish a time-bound phase-out of fossil fuel subsidies, combined with specific social policies to mitigate negative impacts on the poor.

11. Review environmental impact of countervailing duties

The environmental impact of antidumping and countervailing duties must be reviewed. Such duties have increased the cost of renewable energy sources. Trading partners should carry out a public interest test, with an emphasis on environmental and climate considerations, prior to adopting measures to protect domestic producers.

III. Expanding policy space for domestic environmental policies

12. Use public services for environmental protection

The provision of public services must not be restricted by privatisation clauses in FTAs. Public services can be an effective tool for implementing climate policies. They must not be hemmed in by trade agreements. FTAs should ensure that public procurement is excluded from liberalisation commitments, and instead guided by strict sustainability criteria.

13. Strengthening farmers' rights

Parties must commit to signing and implementing the International Treaty on Plant Genetic Resources for Food and Agriculture in order to protect small farmers' rights. This would allow farmers to save and reuse seeds and increase their ability to grow species adapted to local conditions, as well as maintaining the knowledge, innovations and practices of indigenous and local communities. Furthermore, patent applicants must be required to disclose the origins of genetic resources.

14. Commitments to corporate due diligence and justice

In order to hold globally operating companies accountable for human rights violations and pollution, trade agreements should require the adoption of domestic human rights and environmental due diligence legislation. When corporations violate their due diligence obligations, Parties must provide access to judicial remedies for victims of harm in the home countries of these corporations. Trade agreements should also contain obligations to adopt legislation that guarantees supply chain traceability and transparency.

15. No inclusion of investor privileges

Far-reaching investor privileges which are enforceable through investor-state dispute settlement (ISDS) threaten environmental protection policies. They must be excluded from FTAs. In trade agreements, Parties should instead commit to supporting reform of investment protection, such as a multilateral instrument withdrawing consent to ISDS.

16. Exceptions clauses to protect public policy objectives

General Exceptions provisions which allow the Parties to deviate from the agreement must apply to the entire FTA. These Exceptions must include environmental protection as well as other public policy objectives. In addition, they must clarify the Parties' right to both determine and implement these objectives.

Imprint

Publisher:

PowerShift – Verein für eine ökologisch-solidarische Energie- & Weltwirtschaft e.V.

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Co-Publisher:

Attac Deutschland

Bund für Umwelt und Naturschutz e.V. – BUND

Forum Umwelt und Entwicklung

NaturFreunde Deutschlands e.V.

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Nelly Grotefendt, Lia Polotzek

Translation: Anna Schüler

Layout & Typesetting: Tilla Balzer | buk.design

Berlin, December 2020

This project was funded by the Federal Environment Agency and the Federal

Ministry for the Environment, Nature

Conservation and Nuclear Safety.

The funding is provided by resolution of the German Bundestag.

The responsibility for the content of this publication lies with the author.

