

TRADE AND CLIMATE CHANGE

Information brief n° 2

CLIMATE CHANGE IN REGIONAL TRADE AGREEMENTS¹

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KEY POINTS

- The inclusion of explicit environmental provisions in regional trade agreements (RTAs) is not a recent phenomenon: 97 per cent of all RTAs notified to the WTO include at least one environmental provision. The most common environmental provisions in RTAs largely mirror the approach followed in WTO agreements with preambular language and/or a general exception related to the environment.
- The number and level of detail of environmental provisions in RTAs has, on average, increased significantly over the years. High-income countries remain, however, the main proponents of detailed environmental provisions in RTAs.
- Although most environmental provisions differ in terms of language, scope and enforceability, they often tend to address relatively similar broad environmental concerns, including the guarantee of a level playing field in terms of environmental policies, the implementation of multilateral environmental agreements, and the promotion of environmental goods and services.
- An increasing number of RTAs address specific environmental issues, including biodiversity, sustainable management of forests and fisheries, and climate change.
- Explicit provisions on climate change are found in an increasing number of RTAs. In comparison with other types of environmental provisions, however, explicit provisions remain less detailed.
- Cooperation on climate change mitigation and adaptation is the most common type of climate change provision in RTAs. Other types of climate change provisions range from recognizing the importance of addressing climate change, including through trade in environmental goods and services, to commitments to develop and adopt climate change policies.
- These explicit provisions on climate change are complemented by other environmental provisions, including provisions that address renewable and alternative energy and the transition to a low-emission economy. Similarly, and unless specified otherwise in the RTA, general environmental provisions, including level playing field commitments, can apply to climate policy.

1. INTRODUCTION

The last 30 years have seen a rapid proliferation of regional trade agreements

Although most environmental provisions differ in terms of language, scope and enforceability, they often tend to address relatively similar broadly environmental concerns. Some provisions, most commonly found in RTAs between developed and developing countries, and in some RTAs between developing countries, refer to the stringency level and enforcement of domestic environmental laws. They may commit parties to setting a high level of environmental protection (found in 17 per cent of notified RTAs), improving their respective level of environmental protection (18 per cent) or, in some cases, adopting environmental laws (4 per cent). A related obligation, referring to the adoption of laws necessary to comply with the parties' obligations under specific multilateral environmental agreements (MEAs), was included in 10 relatively recent RTAs (3 per cent of notified RTAs).

The level playing field of environmental policies is a related but more common issue explicitly addressed in RTAs, initially in the context of investment. An increasing number of RTAs – 31 per cent of notified RTAs – requires the parties to “effectively apply”, “not waive”, “not derogate from” or “not relax” their environmental laws, in order to encourage investment or trade in their territories. In some RTAs, the parties further commit to the effective implementation in their laws and practices of the MEAs to which they are party. For instance, under the RTAs to which the United States is a party with Colombia, the Republic of Korea, Panama and Peru, the parties agreed to adopt, maintain and implement laws to fulfil their obligations under specific MEAs, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and they also committed not to fail to enforce these laws effectively.

Other environmental issues addressed in an increasing number of RTAs include the relationships between trade agreements and MEAs, environmental goods and services, biodiversity and traditional knowledge, patents and plant variety protection, sustainable management of forests and fisheries, trade in forest and fish products, energy and mineral resource management, natural disaster management, corporate social responsibility and climate change. Public participation in policymaking processes, transparency, access to justice and remedies in environmental matters are also found in some RTAs. Besides environmental exception clauses, some RTAs include provisions that foresee other exemptions, exclusions and safeguards, to enable the parties to implement policies to protect the environment without breaching the RTA's obligations. In the area of subsidies, for instance, the Caribbean Community (CARICOM) Agreement provides for a set of non-actionable subsidies that support stated environmental objectives between the parties.

the environment-related provisions described above. However, as discussed below, one important new feature of the most recent EU RTAs is the inclusion of a dedicated chapter on non-tariff barriers to trade and investment in renewable energy generation.

Provisions on climate change can take many forms. Some provisions underscore the importance of addressing climate change, including through trade in environmental goods and services, while others refer to the development and adoption of climate change policies and the United Nations Framework Convention on Climate Change (UNFCCC). The most common type of provisions on climate change, found in 58 RTAs, identify climate change mitigation and adaptation as an area for cooperation.

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Although the inclusion of provisions on climate change in RTAs has accelerated since 2012, it is not a recent phenomenon. The first provision on climate change included in an RTA is to be found in the 1993 Agreement establishing the Common Market for Eastern and Southern Africa (COMESA). The agreement refers to the parties' agreement to accede to the UNFCCC. For many years, RTAs either did not include any provisions on climate change, or included a few cooperation provisions. For instance, the RTA between the European Union and Montenegro (in force since 2008) specifies that the cooperation of the parties in the environmental field shall include special attention paid to the ratification and the implementation of the Kyoto Protocol,⁴ and facilitated support of clean development mechanism⁵ applications.

Some of the first more comprehensive provisions on climate change are found in the 2012 RTA between the European Union, Colombia, Ecuador and Peru.⁶ The RTA reaffirms the parties' commitment to effectively implement the Kyoto Protocol in their laws and practices. In addition, other provisions are found in a specific article on climate change within the agreement's chapter on trade and sustainable development. One of these provisions recognises that climate change is an issue of common and global concern that calls for the widest possible cooperation. The provision further commits the parties to enhancing their efforts regarding climate change, including through the promotion of domestic policies and suitable international initiatives based on the equity principle and in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions.

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In that context, another provision on environmental goods and services commits the parties to promote trade and investment measures that promote and facilitate access, dissemination and the use of the best available technologies for clean energy production and use, and for mitigation of and adaptation to climate change. The provision also specifies that the parties should consider implementing climate change actions, such as facilitating the removal of trade and investment barriers to access to goods, services and technologies that can contribute to mitigation or adaptation, and the innovation, development and deployment of those goods, services and technologies, taking into account the circumstances of developing countries. The RTA also mentions

various possible cooperation areas, including activities related to the reduction of emissions from deforestation and forest degradation, as well as activities related to aspects of the international climate change regime with relevance for trade.

The RTA between Peru and the Republic of Korea, which entered into force in 2011, is one of the few South-South RTAs with detailed provisions on climate change. These provisions, found in a specific article on climate change, commit the parties, under their international commitments, to promote joint measures to limit or reduce the adverse effects of climate change. In addition, each party is required, within its own capacities, to adopt policies and measures on issues such as improving energy efficiency, evaluating vulnerability and adaptation to climate change, and researching, promoting, developing and using new and renewable energy, technologies of carbon dioxide capture, and environmental technologies that do not affect food security or the conservation of biological diversity.

More recently, the RTAs to which the European Union is a party with the Republic of Moldova and Georgia – both in effect since 2016 – have also incorporated different climate change-related provisions found in a specific chapter on climate action and in the chapter on trade and sustainable development. These RTAs commit the parties to developing and strengthening their cooperation to tackle climate change, including in the following areas: climate change mitigation and adaptation; carbon trading; research into and development, demonstration, deployment and diffusion of safe and sustainable low-carbon and adaptation technologies; mainstreaming of climate considerations into sector policies; and awareness-raising, education and training.

In the RTA to which the European Union is a party with the Republic of Moldova, Georgia and Ukraine, another provision commits the European Union's counterparts to gradually approximate specific EU legislation and international instruments in their own legislations, within stipulated timeframes. Specifically, within two years of entry into force of the agreement, the Republic of Moldova, Georgia and Ukraine were to have implemented a number of provisions from the EU directive establishing a scheme for GHG emissions allowance trading within the European Union and for EU regulations on certain fluorinated GHGs and on substances that deplete the ozone layer.

The most recent EU RTAs, such as those with Japan (in force since February 2019), Singapore (in force since November 2019) and Viet Nam (signed in June 2019), build on climate provisions found in previous RTAs and, in some cases, establish more specific commitments. The parties to these agreements reaffirm their commitment to reach the ultimate objective of UNFCCC and agree to implement and cooperate on the implementation of the UNFCCC, the Kyoto Protocol and, more recently, the Paris Agreement.

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ANNEX

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In line with global efforts to reduce greenhouse gas emissions, the Parties share the objective of promoting, developing and increasing the generation of energy from renewable and sustainable non-fossil sources, particularly through facilitating trade and investment. To this effect, the Parties shall cooperate towards removing or reducing tariffs as well as non-tariff barriers, and shall cooperate on fostering regulatory convergence with or towards regional and international standards. (...)

Ar 7.3**1.**

1. This Chapter applies to measures which may affect trade and investment between the Parties related to the generation of energy from renewable and sustainable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases, but not to the products from which energy is generated.

(...)

Ar 7.4

Each Party shall:

(a) refrain from adopting measures providing for local content requirements or any other offset affecting the other Party's products, service suppliers, entrepreneurs or establishments;

(b) refrain from adopting measures requiring the formation of partnerships with local companies, unless such partnerships are deemed necessary for technical reasons and the Party can demonstrate such technical reasons upon request by the other Party;

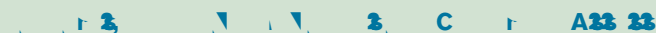
(c) ensure that any rules concerning the authorisation, certification and licensing procedures that are applied, in particular to equipment, plants and associated transmission network infrastructures, are objective, transparent, and non-arbitrary, and do not discriminate against applicants from the other Party;

(d) ensure that administrative charges imposed on or in connection with the:

(i) importation and use of goods originating in the other Party, or affecting the provision of goods by the other Party's suppliers, are subject to Article 2.10 (Fees and Formalities Connected with Importation and Exportation); and

(ii) provision of services by the other Party's suppliers are subject to Article 8.18 (Scope and Definitions), Article 8.19 (Conditions for Licensing and Qualification) and Article 8.20 (Licensing and Qualification Procedures); and

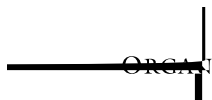
(e) ensure that the terms, conditions and procedures for the connection and access to electricity transmission grids are transparent and do not discriminate against suppliers of the other Party.

Ar 7.5

1. Where international or regional standards exist with respect to products for the generation of energy from renewable and sustainable non-fossil sources, the Parties shall use those standards, or the relevant parts of those standards, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. For the purpose of applying this paragraph, the International Organization for Standardization (hereinafter referred to as 'ISO') and the International Electrotechnical Commission (hereinafter referred to as 'IEC'), in particular, shall be considered relevant international standard-setting bodies. (...)

ENDNOTES

- 1 This is an information note which represents research in progress. The opinions expressed in this paper are those of its authors. They are not intended to represent the positions or opinions of the WTO or its members and are without prejudice to members' rights and obligations under the WTO. Any errors are attributable to the authors. The note was written by Jose-Antonio Monteiro, Svetlana Chobanova and Daniel Ramos.
- 2 José-Antonio Monteiro, "Typology of Environment-related Provisions in Regional Trade Agreements", WTO Working Paper ERSD-2016-13.
- 3 E.g., the EU-Korea Free Trade Agreement and the EU-Colombia and Peru Trade Agreement.
- 4 The Kyoto Protocol commits industrialized countries and economies in transition to limit and reduce GHG emissions in accordance with agreed individual targets. See https://unfccc.int/kyoto_protocol.
- 5 The clean development mechanism is defined per <https://cdm.unfccc.int/about/index.html> as follows: "The CDM allows emission-reduction projects in developing countries to earn certified emission reduction (CER) credits, each equivalent to one tonne of CO₂. These CERs can be traded and sold, and used by industrialized countries to meet a part of their emission reduction targets under the Kyoto Protocol. The mechanism stimulates sustainable development and emission reductions, while giving industrialized countries some flexibility in how they meet their emission reduction targets. The CDM is the main source of income for the UNFCCC Adaptation Fund, which was established to finance adaptation projects and programmes in developing country Parties to the Kyoto Protocol that are particularly vulnerable to the adverse effects of climate change. The Adaptation Fund is financed by a 2% levy on CERs issued by the CDM."
- 6 This RTA has been provisionally in force with Peru since 1 March 2013 and with Colombia since 1 August 2013. On 1 January 2017 Ecuador also joined the agreement.
- 7 A total of 10 EU RTAs, some of which are still under negotiation, include a reference to the UNFCCC (i.e., those with the Andean Community, Australia, Indonesia, Japan, the Republic of Korea, Mercosur, Mexico, New Zealand, Singapore and Viet Nam), and eight of those also include a reference to the Paris Agreement (excluding those with the Andean Community and the Republic of Korea).
- 8 Importantly, the current US Trade Representative Katherine Tai has acknowledged the need to address climate change through trade policy – see "Remarks from Ambassador Katherine Tai on Trade Policy, the Environment and Climate Change" at <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/april/remarks-ambassador-katherine-tai-trade-policy-environment-and-climate-change>.
- 9 See Christophe Bellmann and Colette van der Ven, "Greening regional trade agreements on non-tariff measures through technical barriers to trade and regulatory co-operation", OECD Trade and Environment Working Papers 2020/04.
- 10 Baghdadi, L., Martinez-Zarzoso, I. and Zitouna, H. (2013), "Are RTA Agreements with Environmental Provisions Reducing Emissions?", *Journal of International Economics* 90(2):378-390; and Martinez-Zarzoso, I. and Oueslati, W. (2018), "Do Deep and Comprehensive Regional Trade Agreements Help in Reducing Air Pollution?", *International Environmental Agreements: Politics, Law and Economics* 18(6):743-777.



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