

Multilateral Trade Arrangements and Climate Provisions

Strengthening Standards in Sectoral Agreements

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Introduction

Since the founding of the General Agreement on Tariffs and Trade (GATT) in 1947, environmental concerns have occupied a key role in trade considerations. The preamble to the [Marrakesh Agreement](#), which established the World Trade Organization (WTO), further underscores the importance of environmental considerations in trade, stipulating that trade should allow for the “optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.” Though initially limited in scope, environmental provisions were first included in the original GATT in 1947. GATT’s Article XX explicitly recognized the right of trading parties to annul certain trade commitments in the interest of protecting human, animal, plant life, public health, or exhaustive natural resources—so long as these conservation measures were not disguised protectionism. GATT’s concern for environmental protection was reaffirmed by several GATT dispute resolution panel findings (see below). Domestic trade and environment policies have also evolved parallel to this multilateral bid to ensure the compatibility of trade rules with a healthy environment. These range from weak anti-pollution clauses to next-generation climate and environment chapters in comprehensive free trade agreements (FTAs) such as the United States-Mexico-Canada Agreement ([USMCA](#)) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership ([CPTPP](#)).

Panel decisions have repeatedly reaffirmed the use of trade as a tool for environmental protection. Early Article XX environmental disputes, such as *United States—Prohibition of Imports of Tuna and Tuna Products from Canada* (1982), focused on trade measures taken under the guise of environmental protection. In each

case, GATT panels affirmed the difference between good faith environmental protections and protectionist efforts. In its first case dealing directly with a good faith environment-related trade action, *United States—Restrictions on Imports of Tuna* (1991), the GATT panel affirmed that the United States could bar fish imports from Mexico and other countries if they did not meet U.S. “dolphin-safe” product standards. While this panel report was not adopted, it highlighted how GATT rules applied to environmental policies. The last GATT-era environmental dispute, *United States—Taxes on automobiles* (1994), further clarified the applicability of trade law to environmental protection. U.S. automobile emissions standards were not found to violate GATT, even though other U.S. tax policies were found to be in violation. Moreover, the panel strongly suggested that new fleet averaging emissions standards would be permitted under Article XX, signaling flexibility regarding domestic environmental standards.

When GATT’s successor, the WTO, was formed as a result of the Uruguay Round of negotiations, environmental protections were expanded further. Included in the preamble was, for example, the stated objective of “[sustainable development](#).” New provisions were included that recognized members’ rights to protect human, animal, plant life, or health via sanitary and phytosanitary measures, also affirmed in the General Agreement on Services. The WTO also established its [Committee on Trade and Environment](#) (CTE), which works broadly at the intersection of trade and climate policy. The WTO’s focus on climate issues has grown over time, with Doha Round negotiations including an environmental component and recent [statements](#) by Director General Ngozi Okonjo-Iweala highlighting the need for the organization to do more on climate. Overall, WTO jurisprudence on the nexus of trade and environment has confirmed that while governments have latitude to protect the environment, rules do [limit](#) their authority. In other words, members must demonstrate that a less trade-restrictive alternative was not viable in order to justify their measures. This has resulted in countries exploring alternate fora to incorporate stronger environment and climate-related provisions.

Parallel to this evolution of trade and climate policy, newer approaches to using trade as a tool to accelerate climate change mitigation have also evolved. The Biden administration has made climate change mitigation a hallmark of its agenda, included as a core component of trade policy. In her first major speech as the U.S. trade representative, Ambassador Katherine Tai [affirmed](#) that trade should be leveraged as a tool to combat climate change, noting that “[t]he goal is to ensure that we and our trading partners are engaged in fair competition that does not suppress environmental protection.” Far from a new policy idea, the Biden administration is adopting—at least rhetorically—what other countries have long succeeded in doing, which is to include robust and actionable climate measures in trade arrangements. However, with the Biden administration unlikely to pursue a comprehensive trade agreement, the administration has instead opted for a series of other diplomatic arrangements, namely the U.S.-EU Trade and Technology Council ([TTC](#)), the U.S.-EU [green steel deal](#), and the Indo-Pacific Economic Framework ([IPEF](#)). This paper uses the term “sectoral agreements” to refer to a spectrum of trade and economic initiatives with varying degrees of focus, size, and enforcement tools. These alternative approaches to economic and trade engagement beg fundamental questions about the ability of non-FTAs to meaningfully raise standards, create new market access for environmental goods and services, and facilitate development while also pursuing decarbonization.

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This paper assesses sectoral standards bodies, evaluates environmental provisions in trade agreements, and explores opportunities for addressing climate concerns in newer trade arrangements, such as the recent announcement to negotiate a deal on green steel and aluminum between the European Union and the United States. As this paper seeks to demonstrate, binding agreements with clear enforcement mechanisms are best suited for ensuring that parties meet their climate change obligations as outlined in various bilateral or multilateral agreements. There are currently 354 regional trade agreements (RTAs) in force. Some of the most comprehensive agreements to include climate provisions are the Comprehensive and Economic Trade Agreement (CETA) between the European Union and Canada, the CPTPP among 11 parties, and the USMCA. However, since concluding agreements that are both binding and have clear enforcement capabilities are not always possible or politically desirable, pursuing a mixed approach—one based on best practices from a diverse set of trade architectures—may be the most viable approach that produces the most tangible outcomes. This paper evaluates climate provisions in trade architectures and makes recommendations for including climate provisions, including sectoral standards, in trade arrangements in a way that encourages increased multilateral collaboration in a WTO-compliant manner.

Multilateral Agreements and Standards Bodies

A multilateral environmental agreement (MEA) is a broad term used to describe agreements, deals, and conventions made by three or more parties on matters related to the environment. Topics covered range from the marine environment and atmospheric policies to hazardous waste and nuclear safety. The United Nations plays a pivotal role in driving environmental action. The United Nations currently hosts 11 MEAs and 6 Regional Seas Conventions. While there are over 250 MEAs in force currently, about 15 of them include provisions to control trade aimed at preventing damage to the environment. These MEAs include the Montreal Protocol to protect the ozone layer and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The main types of trade provisions within MEAs include trade bans, use of export and import licenses, notification, and labeling requirements. The WTO Secretariat maintains a matrix on trade-related measures in select MEAs. This provides insights into the level of integration between countries that are members to both the WTO and multiple MEAs. For instance, the annex in the latest 2021 version of the matrix shows that 161 WTO members are also part of the United Nations Framework Convention on Climate Change (UNFCCC) and Montreal Protocol and that 159 WTO members are part of the Paris Agreement.

One such MEA is the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Disposal (the “Basel Convention”), signed in 1989. The United Nations Environment Program (UNEP) adopted the Basel Convention as a first attempt to establish an agreement on global standards for hazardous waste, including the trade and disposal of toxic waste. The convention established a “soft law” procedure whereby enforcement relies on countries to establish their own compliance measures. Stricter domestic regulations, driven in part by enhanced international standards, have led to heightened trade enforcement. Indonesia, for example, has returned nearly hundreds of shipping containers of waste, and investigated thousands more, to the United States, Britain, France, Germany, and Australia, because imports were tainted with toxic chemicals, and civil society groups demanded that the government enhance compliance with the Basel Convention. Indonesia has also increased its border controls to address imports of toxic and dangerous materials. As Indonesia illustrates, the Basel Convention provides standards and tools for countries to tackle the problem, but it remains the task of member states to create and enforce their own treaty implementation tools. Despite the fact the United States has not ratified the agreement, the Basel Convention has influenced other members to institute new policies. While the Basel Convention is a step in the right direction, particularly in terms of coordination among signatories, that

member states are left to implement elements of the convention on their own reduces its overall efficacy, which may serve as a warning for countries as they begin discussing the formation of a multilateral “climate club.”

In addition to MEAs, standards bodies can play a role in helping countries establish baseline criteria for emissions mitigation. The International Maritime Organization (IMO) is the UN agency responsible for setting standards for the safety, security, and environmental performance of international shipping, an industry that accounts for roughly 3 percent of global carbon emissions. Under its environmental remit, for example, the IMO has created energy efficiency standards for ship designs and has also established standards for controlling maritime pollution by mandating that oil tankers have double hulls to prevent spillage. In 2020, the IMO established a compulsory limit for the sulfur oxide content used in the bunker fuel oil that ships use for propulsion, reducing levels from 3.5 percent mass to 0.50 percent. The IMO also participated in the 2015 Paris Climate Change Conference to establish its role as the international body governing a carbon-intensive industry. However, the IMO’s strengths are limited due to the decentralized nature of the maritime environment and convoluted shipping registry system, combined with the United Nation’s lack of enforcement mechanisms. While the sulfur oxide limit standard has largely been successful, the IMO has been found to delay and water down climate regulations, as well as neglect countries affected by oil spills. Its delegates often speak on behalf of their appointers’ governments and have a financial stake in the commercial shipping and commodity industries, which slows progress and reduces the organization’s credibility.

Another international standards body is the International Civil Aviation Organization (ICAO). ICAO is a specialized UN agency dedicated to supporting the diplomacy and cooperation in air transport conceived during the 1944 Chicago Convention. ICAO convenes panels, task forces, conferences, and seminars to determine recommendations for governments to collectively establish new international standards and implement best practices for global civil aviation. For environmental protection, ICAO has the Committee on Aviation Environmental Protection (CAEP), which helps the council create new policies based on ICAO’s Standard and Recommended Practices (SARPs) to reduce aircraft noise, local emissions, and greenhouse gas (GHG) emissions and the sector’s overall impact on climate change. Like the IMO, ICAO is limited in the ways it can protect the environment. For one, aviation is an industry for which alternative, sustainable fuels are still being developed. ICAO standards are thus set very low. For instance, its “top down” equal application of provisions for emissions mitigation measures (CORSIA) is a “lowest common denominator” standard, ultimately rendering it inadequate to meet the aviation industry’s contribution to the 2015 Paris Agreement. The Centre for Aviation notes that ICAO “remains entrenched in the architecture of a now seventy-seven-year-old treaty, and some of its traditional activities have been retained despite new global realities.” The organization’s lack of enforcement mechanisms further undermines the effectiveness of its standards, which are instead set by individual countries.

Another standards issuing body is the International Organization for Standardization (ISO). ISO is the world’s largest independent, nongovernmental body with representatives from 165 countries. It convenes experts to develop consensus-based and market-relevant international standards in a wide range of sectors, including information technology, mechanical engineering, transport, and more recently, climate. The ISO has set more than 20,000 standards for various industries, including manufactured products, food safety, and agriculture. To address climate change, ISO established the 1406x standard set to help companies and organizations manage GHG emissions from their projects and products. Although the 1406x standards are voluntary, many governments have included the ISO standards in their GHG emissions trading schemes, notably the European Union with its Emissions Trading System (EU ETS). ISO

has also published a standard for sustainable finance and standards for green debt instruments. Gaining the [14001 certification](#) for environmental management systems helps organizations with their operating efficiency and public perception, but doing so is expensive, as the ISO charges a fee for the process. The body has also come under scrutiny for its funding structure, which allows for private sector contributions, leading to claims that the standards body is not always unbiased in its determinations.

As private and public sectors alike begin implementing new policies at the nexus of climate and trade, it is important to assess existing environmental agreements, trade agreements that address climate and the environment, and standards established by multilateral organizations to determine best practices when it comes to using trade as a tool for combating climate change. The clear limitations of MEAs, conventions, and standards issuing bodies are that they are voluntary and often non-binding. Furthermore, standards bodies are often compromised by their funders, which in the case of the IMO includes countries that are heavily dependent on the export of fossil fuels, thereby reducing the overall credibility of the organization and the standards it seeks to establish.

EU Approach to Climate and Trade

The European Union leverages trade tools to support the implementation of international environmental rules and increase environmental standards. The European Union has been including labor and environmental standards in its FTAs through the Trade and Sustainable Development (TSD) chapter since the EU-South Korea FTA in 2011. The European Union has consistently included TSD chapters and other climate-related provisions in subsequent trade agreements. According to the European Commission, by including TSD provisions in FTAs, the European Union [seeks](#) to “maximise the leverage of increased trade and investment on issues like decent work, environmental protection, or the fight against climate change in order to achieve effective and sustainable policy change.”

In a major revision of its approach to trade policy, the European Commission in 2015 published its “[Trade for All](#)” communication putting values such as high social and environmental standards at the center of its trade policy. The 2015 announcement was followed by a “[non-paper](#)” in 2018 on “Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements.”¹ The paper proposed strengthening provisions related to climate change, increasing the scope of civil society contributions, and enhancing resources to support the TSD chapter implementation. Parties can potentially commit to promoting business opportunities for clean technology, facilitating trade and investment in renewable energy, promoting international standards for goods, services, and technologies that are environment-friendly, and other such measures. This non-paper represented a significant step forward in the European Union’s integration of climate policy into its foreign trade doctrine.

The explicit recognition of climate as an element of trade policy has resulted in the European Union negotiating what are arguably the world’s most robust climate provisions in trade agreements, however unlikely the partners involved. A recent [study](#) on climate action through FTAs comprehensively scrutinizes the FTAs notified to the WTO that were in force as of 2020. The study details the presence of 14 climate-related provisions across 69 FTAs that contain at least one such provision. These 14 provisions include line items such as carbon trading and market instruments, promotion of renewable energy development,

¹ A non-paper is an informal document that seeks to encourage discussions among relevant stakeholders on a contentious procedural or policy issue.

and direct mention of the UNFCCC Paris Accords.² This study identifies EU-Armenia FTA (12), EU-Georgia FTA (11), EU-Moldova FTA, and EU-Ukraine FTA (10 each) with the highest number of climate-related provisions. The highest ranking U.S. FTA is the USMCA, which scores only two of fourteen points.

EU-ARMENIA COMPREHENSIVE AND ENHANCED PARTNERSHIP AGREEMENT

The **Comprehensive and Enhanced Partnership Agreement** (CEPA) between the European Union and Armenia formally entered into force on March 1, 2021, and is arguably the strongest FTA in existence when it comes to the inclusion of climate and environment provisions. The agreement aims to improve trade between the two countries by **enhancing the regulatory environment** for businesses in areas such as services, capital movement, government procurement, intellectual property rights, and sustainable development. The agreement is very **ambitious** in relation to energy efficiency, the environment, and climate change. The reference to environment and climate change begins in the preamble in which parties acknowledge respect for principles of sustainable development, environmental needs, and climate change. In the preamble, the parties also commit to ensuring environmental protection through transboundary cooperation and the implementation of international agreements, clearly stating the objective of the agreement.

Chapter 3 of the CEPA is dedicated to “Environment” and focuses on developing and strengthening cooperation on environmental issues. Article 46 identifies the areas in which the parties “shall” cooperate with the aim of preserving and protecting the quality of the environment and human health in the areas of environmental governance, air quality, waste management, industrial pollution, among others. CEPA, like other EU FTAs, also includes language regarding the cooperation for development of a national environmental strategy (covered in Article 48 in CEPA). Such strategy includes planned institutional reforms for implementation of environmental legislation, procedures for decisionmaking and integration of environment into other policy areas, and development of sector-specific strategies on air quality, waste management, and industrial pollution.

Chapter 4, entitled “Climate action,” puts “cooperation” at the center of the obligations of the parties. Parties envision cooperation at the domestic, regional, and international levels with respect to climate change mitigation, leveraging market and nonmarket mechanisms to address climate change, and pursuing increased research and development of low-carbon technologies. Article 53 specifically references the UNFCCC and Paris Agreement of 2015 and obligates the parties to implement joint activities at the regional and international levels. Work under this chapter is overseen by the Partnership Committee, which is comprised of senior officials from both parties. Furthermore, the annex to this chapter comprises a wide set of measures requiring the Republic of Armenia to gradually modify its legislation and regulations to complement the corresponding EU legislation within the stipulated timeframes. For instance, these include measures relating to establishing a scheme for GHG emissions allowance trading, mechanisms for monitoring and reporting greenhouse gas emissions, and depletion of the ozone layer.

Chapter 9 of the agreement addresses trade and sustainable development. In line with EU policy, the three interdependent pillars of sustainable development are identified as economic development, social

² The 14 provisions are: 1) Generalised Only Climate-Relevant Interactions between Energy Policies and the Environment. 2) Carbon Trading and Market Instruments. 3) Promotion of Trade and/or FDI in Climate-Relevant Goods and Services. 4) Promotion of Renewable Energy Development. 5) Promotion of Energy Efficiency Technologies. 6. Reduction in GHG Emissions. 7. Climate Change Adaptation. 8. Co-Operation on Climate Change. 9. Harmonization of Legislations Related to Climate Change. 10. Other Norms on Climate Change. 11. Environmental Standards on Vehicle Emissions. 12. Ratification, Implementation or References Generally of UNFCCC Accords. 13. Ratification, Implementation, Prevalence or References Generally of Kyoto Protocol. 13. Implementation or References Generally of the Paris Climate Agreement. See: Christopher M. Dent, “Trade, Climate and Energy: A New Study on Climate Action through Free Trade Agreements,” *Energies* 14, Issue 14 (2021): 4363, https://research.edgehill.ac.uk/ws/portalfiles/portal/45826954/Trade_Climate_and_Energy_CM_Dent_Energies_journal_July_2021.pdf.

development, and environmental protection. Both labor and environment-related provisions are contained in this chapter. With respect to the latter, the parties commit to consult and coordinate on trade-related environmental issues and reaffirm their commitment to international environmental agreements including the Paris Agreement of 2015. Article 275 contains a non-discrimination obligation by providing that measures taken to implement multilateral environmental agreements should not be applied in a manner that would constitute unjustifiable discrimination or disguised restriction to trade.

Worthy of note are provisions specifically related to biological diversity (Article 277), sustainable management of forests and trade in forest products (Article 278), trade and sustainable management of living marine resources (Article 279), and transparency (Article 282). Article 284 is a detailed provision listing the areas where parties recognize the importance of working together on trade and sustainable development. These include trade-related aspects of multilateral environmental agreements, current and future international climate change regimes, sustainable fishing practices, and other climate change mitigation tools. Finally, Article 285 deals with dispute settlement and provides that measures to be implemented would be discussed by the parties after an arbitration panel has delivered its report. However, strict compliance applicable to other disputes and remedies in case of non-compliance are not available for disputes under the TSD chapter.

The EU-Armenia CEPA illustrates a comprehensive approach to addressing environmental concerns in trade agreements. At the core of these obligations spread across three chapters is the requirement to “cooperate” on various aspects of environment and climate change measures. A unique feature of this agreement is a particular chapter dedicated to climate action, which, as noted above, envisions cooperation on climate change mitigation at several levels and requires Armenia to gradually modify its domestic climate policies to complement corresponding EU laws. This highlights the importance of the issue to the European Union and its priority in addressing this pressing concern in its trade agreements. The agreement also sets out a timeframe for Armenia to undertake certain domestic legislative changes in this area. While the agreement falls short of hard obligations, in the nature of direct binding obligation, on the measures that parties need to take in relation to their environmental commitments, it provides a detailed framework for further cooperation and consultation on a wide set of measures.

Interestingly, the EU-Armenia CEPA does not contain a reference to a Domestic Advisory Group. Historically, chapters on TSD provide for the establishment of a Domestic Advisory Group, which enables civil society participation in monitoring the commitments made in the chapter. This means that the participation of civil society in the implementation of environmental provisions in the EU-Armenia CEPA is significantly reduced.

EU-GEORGIA ASSOCIATION AGREEMENT

In 2014, the European Union and Georgia signed an Association Agreement, the integral part of which is the [Deep and Comprehensive Free Trade Area](#) (DCFTA). The agreement entered into force on July 1, 2016. Similar to the EU-Armenia CEPA, the preamble of the agreement references principles of sustainability, environmental protection, and climate change mitigation. Chapter 3 on “Environment” emphasizes strengthening cooperation between the parties on environmental issues. Further similarity to the EU-Armenia CEPA can be seen in Article 302, which contains a list of areas such as environmental governance, air quality, and waste management, where the parties “shall” cooperate, and Article 304 which envisages the development of a National Environment Action Plan for Georgia.

Chapter 4 of the DCFTA addresses “climate action” and identifies where the parties aim to cooperate in mitigating and adapting to climate change. This chapter also addresses the exchange of information and

implementation of joint research activities. Article 312 obligates Georgia to align its legislation to the European Union in accordance with the framework established in the annex to the agreement.

Chapter 13 of the agreement is dedicated to “Trade and Sustainable Development.” In conformity with the standard format of this chapter across various EU FTAs, this chapter reinforces the commitment to pursue sustainable development. The parties commit to consult and cooperate on trade-related environmental measures and reaffirm their commitment to reaching the objectives of the UNFCCC and Kyoto Protocol under Article 230. This provision also contains a commitment to cooperate on future international climate change frameworks under the UNFCCC.

The rest of the chapter contains provisions on biological diversity (Article 232), such as sustainable management of forests and trade in forest produce (Article 233) and trade in fish products (Article 234). Additionally, the parties commit to upholding agreed-upon levels of protection through an obligation to ensure that the parties do not fail to effectively enforce their domestic environmental or labor laws in exchange for environmentally harmful trade or investment. To oversee the implementation of this chapter, an institutional framework through the establishment of the Trade and Sustainable Development Sub-Committee is provided under Article 240. This is complemented by a Joint Civil Society Dialogue Forum (Article 241) to promote a balanced representation of all relevant stakeholders. Any disputes arising under the TSD chapter may be resolved through government consultations (Article 242) followed by the establishment of a Panel of Experts to resolve the matter.

The parties have agreed to a [Work Plan 2021–23](#) on environment and climate. The priority areas identified under the Work Plan include illegal wildlife trade, sustainable forest management, and effective implementation of the UNFCCC Paris Agreement by revising the Nationally Determined Contributions, submitting annual implementation reports, and starting the implementation of Georgia’s 2030 Climate Change Strategy and Action Plan ([CSAP](#)). It also lists the types of activity to be undertaken to effectuate compliance, as well as the expected results and implementation timeframes. The agreement reinforces the EU approach toward sustainable development and cooperation in protecting the environment and combating climate change.

EU-UKRAINE ASSOCIATION AGREEMENT AND EU-MOLDOVA ASSOCIATION AGREEMENT

The DCFTA between the European Union and Ukraine is part of a broader [Association Agreement](#) and has been made provisionally applicable since January 2016. The EU-Moldova DCFTA has a similar structure wherein it forms an integral part of an Association [Agreement](#) and has been in effect since July 2016. The EU-Ukraine agreement begins with reference to environmental protection, sustainable development, and the green economy in the preamble. Chapter 6 on “Environment,” similar to chapters previously discussed, focuses on “cooperation” between the parties and the gradual alignment of Ukrainian legislation to EU law and policy on the environment. However, unlike the other agreement, a separate chapter on “Climate action” is not included in this agreement.

Similar to the EU-Georgia DCFTA, Chapter 13 addresses “Trade and sustainable development.” In Article 293, “Parties reaffirm that trade should promote sustainable development in all its dimensions” by striving to promote trade in environmental goods, services, and technology. The civil society institutions, monitoring mechanisms, and dispute settlement provisions are similar in structure to the EU-Georgia Agreement. In 2019, the Trade and Sustainable Development Sub-Committee released a [joint statement](#) addressing issues such as reforming Ukraine’s forest management system based on principles of sustainable resource management, adoption of energy labeling legislation, and other sustainability policies.

The EU-Moldova agreement begins with reference to the sustainable development in the preamble. Chapter 16 on “Environment” is premised on “cooperation” between the parties. This is followed by chapter 17 on “Climate action,” wherein parties commit to cooperate at the domestic, regional, and international levels on mitigation and adaptation to climate change and the development and implementation of an overall climate strategy, among other similar provisions. Chapter 13 on “Trade and sustainable development” is structured like previously discussed agreements. The EU-Ukraine and EU-Moldova agreements were concluded prior to the ones with Georgia and Armenia but contained similarly robust climate and environmental provisions.

Christopher Dent **observes** that there is a “strikingly similar and wide pattern of climate-relevant provision types across all four [Georgia, Moldova, Ukraine, and Armenia] agreements.” In his view, EU FTAs with these four countries have a similar pattern on norm influence. The European Union has used these FTAs to “normalize stronger climate action policies” and compelled them to adopt measures similar to EU directives on environmental regulation to gain the benefits of associate EU membership. Overall, the European Union’s approach to the TSD chapters is based on **three pillars**: commitments to a range of multilateral environmental agreements and International Labor Organization (ILO) conventions, involvement of civil society organizations in implementation, and a specialized dispute settlement mechanism. The major features of EU FTAs are their references to the core MEAs and the focus on “cooperation” to engage in ongoing processes, including the exchange of information in the environment and climate space. The level of cooperation envisaged differs between agreements and provisions through the usage of language such as “may” and “shall.”

A **comparative analysis** of TSD provisions indicates that all EU FTAs commit to effectively implement MEAs, with a specific reference to addressing climate change.³ They also contain provisions on regulatory cooperation between the parties in the form of exchange of information, ratification, or implementation of MEAs, among others. Another feature consistent across FTAs is the obligation not to derogate from domestic environmental law to lower the level of protection to encourage trade and investment. The dispute settlement mechanism applicable to TSD provisions is separate from the usual dispute settlement procedures under the FTA. Following a report by the panel of experts, parties may be required to make best efforts to accommodate those recommendations or discuss measures toward implementation. Importantly, among the agreements examined above, the mechanism does not provide for any **sanctions** for violation. Excluding sustainable development from the traditional state-to-state dispute settlement mechanism may ultimately weaken the provisions. Recently, however, the European Union pursued a complaint against South Korea’s violation of labor standards, where the panel of experts found that South Korea had failed to adjust its labor laws to comply with the principle of freedom of association and take steps toward ratification of fundamental ILO conventions. This indicates that dispute settlement mechanisms under the TSD chapters of EU FTAs can be useful in exacting policy change.

The European Union’s approach to trade and sustainable development provides an important starting point to ensure coherence and effectiveness across countries in relation to national measures aimed at environmental protection. The European Commission conducted a **review** of its TSD chapters in FTAs to strengthen the scope of commitments, implementation and enforcement, as well as exploring the possibility of sanctions for non-compliance. Such reform has the potential to link the European Union’s

3 The FTAs that were examined in this London School of Economics and Political Science Study on ‘Identification of Best Practices to Support the TSD Review,’ include EU-South Korea FTA, EU-Colombia/Peru/Ecuador Trade Agreement, EU-Central America Association Agreement, EU-Ukraine Association Agreement, EU-Georgia Association Agreement, EU-Moldova Association Agreement, EU-Canada CETA, EU-Japan EPA, EU-Singapore FTA, EU-Vietnam FTA, and EU-UK Trade and Cooperation Agreement.

FTA policy with its [Green Deal](#) objectives, creating a considerably closer relationship between foreign trade policy and domestic climate reforms. For instance, responses to [public consultation](#) on the review suggests that discussions on sustainability in FTAs will potentially include addressing carbon border adjustment mechanisms (CBAMs) and improving supply chains with a special focus on implementation of labor and environmental commitments.

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U.S. Approach to Climate and Free Trade Agreements

Parallel to the international evolution of trade and climate policy, U.S. FTAs have also evolved. The United States [currently](#) has 14 FTAs with 20 countries. The earliest U.S. FTAs, such as [the United States-Israel Free Trade Agreement](#) (1985), did not include dedicated environmental chapters, although agreements of this era did affirm GATT Article XX exceptions. It initially seemed that the North American Free Trade Agreement (NAFTA) would be no different, having been built upon the prior [United States-Canada Free Trade Agreement](#) (1988) that similarly did not include environmental provisions.

Growing congressional pressure to address environmental disputes with Canada and Mexico during NAFTA negotiations led the George H.W. Bush administration to launch several new actions. The Office of the United States Trade Representative (USTR) launched an environmental impact assessment that found that NAFTA would improve environmental conditions in Mexico. Language was [included](#) in the agreement to “promote sustainable development,” “strengthen the development and enforcement of environmental laws and regulations,” and carry out the agreement “in a manner consistent with environmental protection and conservation.” [Articles 904 and 906](#) encouraged the United States, Mexico, and Canada to cooperate in raising and harmonizing environmental standards while discouraging their weakening. [Article 1114](#) also prevented parties from relaxing environmental regulations to boost investment. Other provisions created a new dispute settlement procedure for adjudicating environmental disputes beyond GATT’s lower standards.

Even with this novel environmental language in NAFTA, the incoming Clinton administration pursued additional changes since it had committed itself during the campaign to strengthen environmental and labor provisions. The USTR negotiated supplemental side agreements with Canada and Mexico that would form the [North American Agreement on Environmental Cooperation](#) (NAAEC). The side agreements established the Commission for Environmental Cooperation (CEC), an intergovernmental organization to support environmental policy alignment between the United States, Canada, and Mexico. While [analysis](#) of CEC actions shows that conservation actions have been effective, broader enforcement and convening actions were ineffective in driving progress at the nexus of trade and climate.

Although the NAFTA [text](#) did not formally include any environmental language, it is largely regarded as having been the first U.S. FTA to include trade-related environmental provisions, albeit introduced in a side agreement. To date, the most environmentally progressive FTA the United States has signed is NAFTA’s successor, the USMCA. According to the Dent study on climate-related provisions in FTAs discussed above, the USMCA ranks the highest (with a score of 4 out of 14 identified climate-relevant

provision types in FTAs) among all other U.S. FTAs. The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) receives the same score as the USMCA.

Trade Promotion Authority (TPA) is the authority conferred on the executive branch by Congress that allows the president to initiate trade negotiations under expedited procedures. When the TPA was renewed in 2002, the inclusion of environmental provisions in FTAs was listed as one of the negotiating objectives. These **requirements** were vague, with the overarching **direction** that a party shall not fail to effectively enforce domestic or regional environmental laws in a manner that affects trade. TPA also limited the maximum penalty on environmental disputes to \$15 million. TPA-2015 strengthened the trade negotiating objectives by mandating adherence to seven MEAs focused primarily on anti-pollution and biodiversity. While it made environmental obligations subject to the common dispute settlement procedure, it specifically prohibited negotiations on climate change obligations in FTAs. The 2015 version of the TPA expired on July 1, 2021, and renewal is not expected soon. This means that trade agreements cannot benefit from expedited procedures in Congress.

As noted above, of contemporary U.S. FTAs, the agreement with the most robust environmental protections is the USMCA. However, the USMCA itself is essentially a blueprint of the Trans-Pacific Partnership (TPP), an agreement painstakingly negotiated by the Obama administration. Negotiations on the TPP, a proposed free-trade agreement among Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States, were originally concluded in 2016. This agreement provided a means to strengthen economic ties between the countries and promote trade by creating regulatory frameworks for the countries to conduct trade. Covering approximately 40 percent of global trade, it would have represented a historic enhancement of digital rules, environmental protections, and labor standards. However, on his third day in office, then-President Trump issued an **executive order** withdrawing the United States from the TPP, significantly weakening U.S. economic influence in the region. Following U.S. withdrawal, countries across the region continued to pursue an agreement, which has since become the **CPTPP**.

The CPTPP represents a newer iteration of TPP, but it was initially the TPP that established the contemporary baseline for raising standards across myriad sectors, including environmental provisions. **Chapter 20** of the TPP is dedicated to environmental provisions. It aims to protect the environment and human life and health by seeking protection of wild flora and fauna, the control of hazardous chemicals, and the regulation of pollutants and contaminants. The objectives codified are intended to promote mutually supportive trade and environmental policies.

Article 12 of the chapter on environment recognizes the importance of coordinated efforts from the parties to protect the environment. While the majority of the provision is concerned with central government laws, sub-section 9 states that if a sub-central level of government is not enforcing the environmental law, another party can request a dialogue with the first party. This provides another opportunity for the parties to exercise accountability to enhance environmental cooperation. Article 13 of the chapter covers “Trade and Biodiversity” and reinforces the role of sustainable practices in trade to prevent negative effects on biodiversity.

Article 16 covers “Marine Capture Fisheries,” and Article 17 covers “Conservation and Trade.” Both articles provide a comprehensive approach to how signatories should promote best practices to prevent negative externalities on flora and fauna. Article 16 specifically targets subsidies that negatively affect fish stock, calling for existing subsidies to meet agreement standards and to prevent the implementation of new, harmful subsidies. Regarding fisheries, the agreement highlights the importance of measures such as

monitoring, data collecting, and creating systems designed to prevent overfishing. This includes reducing the bycatch of non-target species in commercial fishing practices as well as promoting the recovery of overfished species. Article 17 on “Conservation and Trade” provides protection against the illegal trade of wild flora and fauna. This is one of the only articles within the environment chapter of the TPP that directly cites an external environmental convention, in this case, the CITES, stating that each party to the TPP must adopt and implement the laws and regulations to comply with their obligations toward the convention. The TPP’s original environment chapter was carried over to CPTPP, which today contains largely the same standards for trade and the environment.

UNITED STATES-MEXICO CANADA AGREEMENT

After the United States pulled out of the TPP, it sought to renegotiate NAFTA, culminating in the USMCA, which went into force in July 2020. A comparison of the language of these agreement’s environmental chapters underscores how the TPP, in many ways, laid the foundation for the ensuing the USMCA. The USMCA’s chapter on environment, [chapter 24](#), updates previous environmental language from NAFTA. The USMCA environment chapter borrows language from other FTAs, but it most heavily leans on language from the TPP. The USMCA states that “a healthy environment is an integral element of sustainable development and recognize the contribution that trade makes to sustainable development.” Both the CPTPP and USMCA address ship pollution, conservation of wild flora and fauna, marine capture fisheries, and protection of the ozone layer. Like other FTAs, the USMCA explicitly refers to the importance of sustainability in international trade and commerce.

The USMCA largely incorporated 2015 TPA’s negotiating objectives on the enforcement of MEAs. Article 24.8 on multilateral agreements reinforces the commitments regarding these issues by referring to several external multilateral agreements such as CITES, the Montreal Protocol on Substances that Deplete the Ozone Layer, the International Convention for the Prevention of Pollution from Ships (MARPOL), and the Convention for the Establishment of an Inter-American Tropical Tuna Commission.⁴ These provisions mirror the environmental provisions laid out in the TPP.

As the more contemporary document, the USMCA includes more thorough language on environmental issues that are impacted by trade. Article 24.⁴ of the USMCA codifies the rule to “Enforcement of Environmental Law.” This article reinforces the idea that failure to effectively enforce environmental laws through a sustained course of action or inaction that affects trade or investment between the parties could be subject to dispute settlement. However, the article clearly concludes that while each party is responsible for enacting and following its own environmental law, the provisions in this chapter should not be misconstrued as empowering other parties to undertake environmental law enforcement activities in the territory of another party, reinforcing each party’s sovereignty over domestic environmental regulation.

Articles 24.27 through 24.31 provide guidelines on enforcement matters. These articles delineate how parties can submit issues, carry out consultations on different levels, and resolve disputes. This delineation provides clear mechanisms for the parties to work together to remove barriers to trade while upholding their environmental commitments. The USMCA also provides more detailed guidelines if there is a dispute regarding environmental law and trade between parties and describes mechanisms for parties to cooperate

⁴ CITES is a multilateral treaty aimed at protecting endangered flora and fauna, put into force in 1975. The Montreal Protocol on Substances that Deplete the Ozone Layer entered into force in 1989, and its aim is to phase out production of different substances that harm the ozone layer (CFCs, HCFCs, and HFCs). The International Convention for the Prevention of Pollution from Ships provides regulations on preventing and reducing ship pollution from accidents or normal operations. The Convention for the Establishment of an Inter-American Tropical Tuna Commission covers the conservation and sustainable use of tuna and other marine resources in the Eastern Pacific.

and address disputes. This includes procedures to submit a file on enforcement matters, keeping factual records and cooperation, and senior level and ministerial consultations.

Numerous environmental disputes have been filed under NAFTA's chapter 11 investor-state arbitration mechanism by all parties. The first came in 1997, when Metalclad, an American waste management firm, alleged that Mexican state governments interfered with the development of a hazardous waste landfill, a violation of chapter 11's investment provisions. The NAFTA tribunal [awarded](#) \$16.7 million to the investor, finding that the Mexican state governments had indirectly expropriated Metalclad's operations. More recently, in *Clayton and Bilcon of Delaware Inc v. Government of Canada*, American investors prevailed again when the NAFTA tribunal [granted](#) them \$101 million after alleging that the Canadian government interfered with Clayton and Bilcon's plans to expand a quarry and build a marine terminal, a breach of fair and equitable treatment.

Another major NAFTA dispute, which is still pending, is *Lone Pine Resources Inc. v. Government of Canada*, which was [filed](#) in 2013. In this dispute, the claimant alleges that Quebec revoked Lone Pine's permits to mine for gas and oil resources under the St. Lawrence River in a case that amounted to indirect expropriation. Investment disputes have sometimes resulted in environmentally deleterious outcomes, such as siding with Metalclad over the Mexican government in the hazardous waste case. The USMCA provides additional flexibility to the parties when it comes to designing and enforcing environmental policies. Article 14.16 [states](#) that the chapter should not be construed as preventing a party from implementing measures it deems "sensitive to environmental, health, safety, or other regulatory objectives."

In February 2022, USTR requested the first-ever [consultations](#) under the environment chapter of the USMCA with Mexico. The consultations concern Mexico's failure to protect a critically endangered species, the vaquita marina, and to prevent illegal fishing and trafficking of totoaba fish. Only 10 [vaquita](#), the world's smallest porpoise, remain. If this issue is not resolved at the consultations stage, the United States has the authority to request the establishment of a panel as per the USMCA dispute resolution guidelines for environmental issues.

The USMCA consists of fewer parties and is notably narrower in its coverage of environmental and climate issues compared to EU FTAs. The USMCA is also more limited in its guidance on how the parties should proceed in establishing trade policies, environmental law and enforcement, and cooperation to achieve environmental goals. Furthermore, other foreign partners, in particular the European Union, have negotiated and concluded FTAs that are far more consequential for climate change mitigation than the USMCA, begging numerous questions about the U.S. approach to environmental and climate standards in FTAs.

Ambassador Katherine Tai has [said](#) that the USMCA contains "the most comprehensive environmental standards of any U.S. trade agreement." She has praised the agreement for its inclusion of strong rules to address wildlife trafficking, illegal logging and fishing, fisheries subsidies, marine litter, and air and water pollution. She also recognized, however, that "[t]he most glaring omission is the failure to explicitly acknowledge climate change." However, not only does the USMCA fail to mention climate change directly, but it also falls short in that it does not attempt to build a bridge between USMCA environmental provisions and broader multilateral goals, such as those outlined in the Paris Agreement or G20 joint communique on climate objectives.

ANALYSIS: EU AND U.S. APPROACHES TO ENVIRONMENT IN FREE TRADE AGREEMENTS

U.S. and EU approaches to environment in FTAs differ in a few key ways. First and foremost, EU agreements directly mention climate change. Not only do the agreements create a context that seeks to

inform and raise standards for environmental policy with foreign partners, but the agreements also include [provisions](#) on ratification and effective implementation of multilateral environmental agreements such as the Paris Agreement. EU agreements also seek to enhance collaboration on climate policy and strategies at various levels of government. This contrasts with the U.S. approach to trade and the environment. Notably absent from the USMCA is any direct mention of climate change.

The U.S. agreements explicitly recognize the sovereign right of each country to establish its own level of protection in environmental regulation. While the European Union also recognizes the sovereign right to establish and regulate their own domestic environmental laws, it uses Association Agreements (AAs) to exact policy change among partners. AAs are binding bilateral frameworks with third countries that seek to encourage the adoption of EU standards and regulations with partner countries. AAs represent an intensification of relations over cooperation agreements and explicitly seek to strengthen bilateral economic relations, including through the liberalization of trade. AAs can also be used as a basis for eventual accession into the European Union. The European Union leverages these agreements to establish the level of environmental protection that other parties are required to achieve. For example, [chapter 6](#) of the Association Agreement with Ukraine states that joint EU-Ukraine cooperation will involve objectives of “development of an overall strategy on environment, covering planned institutional reforms (with timetables),” as well as “promotion of integration of environment into other policy areas,” and the development and adoption of “a policy on climate change.” These deep agreements also include provisions for the other country to adopt policies that are similar to those of the European Union, including the adoption of frameworks to establish a domestic emissions trading system within an agreed-upon timeline.

Notably absent from the USMCA is any direct mention of climate change.

Another key difference between the EU and U.S. approaches is the use of sanctions-based enforcement in the United States and [soft-power](#) leverage in the European Union. As demonstrated in USMCA, the United States treats trade and environmental disputes as other commercial disputes, meaning they may be subject to sanctions for non-compliance. However, there have been no such environmental decisions to date, and it remains to be seen whether the United States would pursue economic sanctions in the event of a favorable decision in the vaquita dispute against Mexico.

[EU FTAs](#), on the other hand, require the parties to make their best efforts to enhance compliance following a dispute and make concerted efforts to implement changes following panel recommendations. Consequently, provisions on trade remedies or sanctions are absent from EU FTAs examined in this paper. For example, a recent labor dispute under the TSD chapter of the EU-South Korea agreement, discussed above, underscores this point. Despite the non-binding nature of a panel decision, South Korea has taken steps to [ratify](#) three ILO conventions, codifying labor protections under domestic law and thereby also enhancing compliance with the EU FTA.

Another key difference between the EU and U.S. approaches is the use of sanctions-based enforcement in the United States and soft-power leverage in the European Union.

While the panel decision on labor rights compliance in the EU-South Korea FTA was non-binding, the agreement build on trade facilitation for European and Korean firms, underscoring that a trade

arrangement, coupled with market access, can generate changes in foreign markets that a less traditional agreement may struggle to achieve. Overall, the EU approach leverages market access as an incentive to elevate environmental standards with trading partners. As the United States develops the architecture of its current and future trade arrangements, it should keep in mind the EU strategy that is both trade and environment enhancing.

Sectoral Agreements and Newer Approaches to Trade and Environment

For the Biden administration, trade policy **centers** around protecting workers' rights, promoting environmental justice, helping small businesses, combatting corruption, and advancing the role of women in the economy, among other objectives. The administration also prioritizes **domestic** economic growth and investment above concluding new trade agreements and expanding market access for American firms abroad. As a result, even agreements that align closely with the administration's agenda, such as renegotiating the **Environmental Goods Agreement**, are unlikely to see fresh negotiations under this administration. Furthermore, the **lapse** of TPA in July 2021 stripped the executive branch of the authority to submit FTA legislation to Congress under expedited procedures.

Foregoing traditional trade deals puts the administration in a position of having to effectuate policy change from non-traditional pillars. While the exact details of ongoing initiatives are still under development, the Biden administration's approach to multilateral economic frameworks underscores a desire for rhetorical progress on decarbonization, while restraining market forces that would accelerate climate change mitigation. For example, working to liberalize the trade of environmental goods and services could benefit foreign partners and U.S. firms alike by growing domestic manufacturing and services, while accelerating the adoption of climate change mitigation tools abroad. Failure to promote free trade in goods and services with a direct climate impact contradicts the administration's climate goals. It also establishes the United States as an outlier among foreign partners at the WTO which are already working to advance the climate and trade agenda in crucial areas, such as the Friends of Fossil Fuel Subsidy Reform (**FFFSR**) plurilateral or the Agreement on Climate Change, Trade and Sustainability (**ACCTS**). Given the speed and intensity of the climate crisis, failing to promote the free trade of environmental goods and services is akin to restraining forces that may help mitigate climate change. Initial shortcomings of the below economic arrangements also shed light on the potential effectiveness of a "climate club," as well as which foreign partners may be suited to enter into a joint environmental endeavor with the United States.

While the exact details of ongoing initiatives are still under development, the Biden administration's approach to multilateral economic frameworks underscores a desire for rhetorical progress on decarbonization, while restraining market forces that would accelerate climate change mitigation.

TRADE AND TECHNOLOGY COUNCIL AND ENVIRONMENT

The United States and European Union are promoting cooperation through the establishment of the TTC. The **Inaugural Joint Statement** following the first meeting of the TTC in Pittsburgh, Pennsylvania, underscores transatlantic efforts to reinvigorate cooperation on trade-related environmental climate policies and measures. The TTC consists of 10 working groups to address a range of topics such as technology standards, secure supply chains, and export controls. **Working group 2** is dedicated to "Climate

and Clean Tech” and is tasked with identifying opportunities in transatlantic trade and investment in green technologies. Working Group 10 on “Global Trade Challenges” is also relevant to climate concerns since it is tasked with conducting further consultations on trade and environment issues and mitigating overcapacity and nonmarket economic practices.

While the structure of the TTC is creative, it is at risk of several setbacks. First, it is the only major new transatlantic initiative that currently has momentum. As such, it risks becoming overlaid with other policy objectives, slowing down, or even halting progress on environmental issues. Second, although the parties could conclude binding agreements if they so desired, the primary purpose of the TTC is to serve as a forum for collaboration, meaning agreements are not likely to be binding. The TTC will therefore not play a central role in enforcement or dispute settlement, while deliberations over matters of major economic consequence, such as Privacy Shield, will remain within the remit of the U.S. Commerce Department and European Union’s Directorate-General for Trade.

GLOBAL ARRANGEMENT ON SUSTAINABLE STEEL AND ALUMINUM

A sectoral transatlantic effort under development is the Global Arrangement on Sustainable Steel and Aluminum, **announced** in October 2021. The deal, concluded between the United States and European Union, contains two main components. First, it somewhat softens the effects of the Trump era tariffs and replaces them with tariff rate quotas (TRQs), offering partial relief to European exporters. Second, the deal seeks to establish a carbon-based sectoral **agreement** on steel and aluminum by 2024. The first of its kind, the arrangement would prioritize decarbonizing the aluminum and steel industries, which together **account** for over 10 percent of global emissions. The second part of this arrangement has dual **priorities**: to fight climate change by making goods produced with a higher carbon footprint less competitive and to protect local industries from Chinese overcapacity, while combating carbon leakage. The Biden administration has argued that the agreement will directly benefit firms with low-carbon production that have struggled with competition against cheaper and more carbon-intensive aluminum and steel.

Ambassador Tai’s **statement** on the deal echoed the sentiment of encouraging like-minded economies to commit to market-based principles and address carbon intensity of these industries, saying “the deal is a significant win on one of President Biden’s top priorities [—] fighting climate change.” Commerce Secretary Gina M. Raimondo addressed “cleaner” production and **noted** that “[t]he lack of environmental standards in places like China is part of what drives down their costs, and it’s a major contributor to climate change. Today’s deal begins to address those challenges.”

A **joint statement** from October 31, 2021, provides additional details on the trade measures that may be undertaken during these negotiations. Among the six actions listed, four of them pertain to domestic policies, while two pertain to WTO rules. Per the joint statement, those two are: “(i) restrict market access for non-participants that do not meet conditions of market orientation and that contribute to non-market excess capacity, through application of appropriate measures including trade defence instruments; (ii) restrict market access for non-participants that do not meet standards for low-carbon intensity” [emphasis added]. A technical working group has been proposed to “confer on methodologies for calculating steel and aluminum carbon-intensity and share relevant data.” This communique thus appears to **intertwine** concerns of unfair trade practices with issues of carbon intensity and dirtier steel and aluminum production in third countries.

The primary trade tools to effectuate the parties’ goals of combating both climate change and unfair trade practices are trade remedy measures such as antidumping, countervailing, and safeguard duties to address the excess capacity of steel and aluminum, primarily in China. For instance, the European Union’s new

antidumping methodology introduces the **concept** of “significant distortions” for imports from countries where the economy is distorted by state interference and raises questions on **conformity** with WTO law. It also remains to be seen whether the agreement will produce tangible standards for what constitutes “green” steel and aluminum and to what degree the agreement either complies with or challenges existing WTO rules. The potential integration of environmental standards in trade remedy investigations is also likely to raise concerns under WTO rules which are mainly focused on price determinations.

Restricting market access from those countries that do not meet the standards for low-carbon intensity could potentially be drafted as a technical regulation. Such measures may fall under the ambit of the WTO **Agreement on Technical Barriers to Trade**. Technical regulations and standards usually set out the specific **characteristics** of a product either in terms of the product’s process and production method or physical attributes. Legally, the distinction between “technical regulations” and “standards” is that compliance with technical regulations is mandatory. Technical standards may pertain to environmental regulation of a country, such as ensuring that products and services produced in global supply chains meet environmental protection goals. Given the objective of this arrangement to restrict market access to carbon-intensive steel and aluminum products, it could potentially be designed as a technical regulation, although it remains unlikely that countries would reach such an agreement.

Nevertheless, joint efforts in defining the standards would result in enhanced regulatory compatibility and could further reduce compliance costs. However, if a defined standard is more trade-restrictive than necessary, it may be challenged as causing unnecessary **obstacles** to trade or by violating most favored nation (MFN). In the context of this arrangement, it means that if the standards for determining carbon intensity are so high that they *de facto* discriminate against certain countries, they may be challenged.

By keeping the option open for other countries that meet the standards to join the carbon-based sectoral arrangement, the United States and European Union aim to multilateralize their environmental standards for the steel and aluminum industries. However, it is unclear whether the parties **consulted** with other countries on how they might collaborate on similar discussions in other fora, such as the **Organization for Economic Cooperation and Development** and **Global Forum on Steel Excess Capacity**. The resulting standards of the technical working group should ensure that the sectoral arrangement does not cross the fine line between environmental protection and trade protectionism. However, since details of the agreements have yet to emerge, it remains unclear to what degree the agreements would either conflict with or abide by WTO rules.

Following a similar structure, the United States and United Kingdom **announced** in March 2022 the conclusion of a bilateral deal that also seeks to address overcapacity and decarbonization. The parties have **agreed** to confer on entering into discussions on the global steel and aluminum arrangements by sharing publicly available data on non-market excess capacity and conferring on methodologies for calculating carbon intensity. The parties have also agreed to hold discussions on “market-distorting influence or ownership in their respective steel and aluminum industries” upon request of either government.

Furthermore, the recent conclusion of a similar U.S. **deal with Japan** signals that the United States is attempting to leverage its deal with the European Union to encourage other countries to adopt stricter climate standards in heavy industry, as well as implement stricter policies to combat nonmarket practices. The deal reached between the United States and Japan also centered on TRQs, but Japan was not ultimately invited to join the ongoing EU-U.S. negotiations due to the carbon **intensity** of Japan’s steel and the higher degree of domestic support received by Japanese manufacturers. Japan has agreed to implement appropriate trade remedy measures **domestically** to establish a more market-oriented condition for steel

within six months. The two countries have also agreed to share public information and best practices on how to detect fraud, evasion, and circumvention of duties. Other countries may eventually be invited to join the U.S.-EU agreement once progress has been made on determining decarbonization standards and policies to address overcapacity.

An agreement, however tentative, among major trading partners in the fight against cheap, carbon-intensive steel and aluminum production would be an encouraging sign of collaboration rather than mutual recrimination and could potentially invite a virtuous circle of trade-related climate mitigation actions among other likeminded partners. However, pursuing these arrangements risks weakening the integrity of the WTO, the core purpose of which is to mediate disputes and agreements like these. If these green steel deals prove duplicative or ineffective, the juice may not be worth the squeeze. As with many evolving issues at the nexus of trade and climate, the devil is in the details, and it remains to be seen to what degree these arrangements either comply with or challenge existing trade rules.

INDO-PACIFIC ECONOMIC FRAMEWORK AND ENVIRONMENT

In October 2021, the Biden administration announced its intention to develop an [Indo-Pacific Economic Framework](#) (IPEF), which it slowly sought to build out since then. The IPEF will consist of four primary policy pillars: 1) supply chain resiliency; 2) clean energy, decarbonization, and infrastructure; 3) taxation and anti-corruption; and 4) fair and resilient trade. The first three will fall under the remit of the U.S. Department of Commerce, while USTR will head the fair and resilient trade component, which itself will include seven sub-areas, one of which covers the environment and climate.

The administration has [stated](#) that the IPEF would not constitute a traditional free trade agreement, referring to it instead as an “administrative arrangement” that will in some ways mirror the structure of the EU-U.S. TTC. Its objectives of decarbonization and green infrastructure also echo elements of the [Build Back Better World](#) (B3W) initiative announced at the G7 summit in June 2021. As currently envisioned, the White House Indo-Pacific strategy will serve as an umbrella under which separate negotiations on specific policy pillars will be conducted. Following public concerns about the relative weakness of the IPEF compared with an enforceable agreement such as the CPTPP, Deputy USTR Sarah Bianchi [clarified](#) that the United States is seeking “high standard binding commitments,” particularly regarding labor, the environment, digital economy, and competition, although as of February 2022, details for the administration’s Indo-Pacific “action plan” remain scarce.

The need to think more concretely about what the United States can offer in these new frameworks and arrangements is underscored by current environmental pursuits in Vietnam. In 2020, the Vietnamese legislature passed a law establishing a [mandate](#) for the country’s Ministry of Natural Resources and Environment (MONROE) and for the Ministry of Finance to establish a domestic emissions trading scheme (ETS). The [ETS](#) would help emitters acquire carbon offsets, and a carbon pricing mechanism would complement other tools, such as a national GHG inventory, monitoring, and reporting system.

Policy differences between the European Union and the United States underscore how a lack of domestic leadership on climate change and environmental policy will continue to restrain U.S. credibility at the nexus of trade and climate. Carbon pricing generated [\\$53 billion](#) in revenue from 2020 to 2021, representing a 17 percent increase in revenue in one year. This increase in revenue is largely accounted for by the uptick in prices in the EU allowances program and the launch of China’s domestic emissions trading system. Leveraging multilateral credibility at the nexus of trade and climate will be made more difficult if those U.S. goals are not coupled with the pursuit of a robust climate strategy at the domestic level. While politics in the United States currently restrained what it can accomplish domestically, it can leverage the

pursuit of new trade arrangements to encourage the adoption of more stringent climate policies abroad, learning from existing EU FTAs and AAs.

Policy differences between the European Union and the United States underscore how a lack of domestic leadership on climate change and environmental policy will continue to restrain U.S. credibility at the nexus of trade and climate.

Building on the domestic policy goal of accelerated action toward decarbonization, the IPEF also aims to strengthen cooperation on developing new technologies and investment strategies that advance environmental sustainability. Acknowledging the catastrophic impacts of the climate crisis in the Indo-Pacific region, the United States plans to mobilize [resources](#) toward renewable energy investments in the region. The precise pathway through which this deal would accomplish climate objectives remains murky, particularly since a non-FTA, coupled with the administration's refusal to seek market access for U.S. firms in the region, would likely lack a strong enforcement mechanism. As [CSIS](#) has argued, joining the CPTPP would be a far superior option for long-term U.S. geopolitical and economic interests.

The United States' approach to trade policy under the Biden administration has attracted criticism, namely for its lack of clear strategy and the administration's refusal thus far to negotiate or join FTAs. However, the continued emphasis on addressing environmental concerns in tandem with trade policy represents an important departure from previous administrations. Assistant USTR (AUSTR) for Environment and Natural Resources Kelly Milton has [indicated](#) that the administration intends to "incorporate provisions directly related to improving climate ambition of our trading partners" in future agreements, albeit likely in non-traditional, non-FTA trade architecture. Commenting on the global sustainable steel arrangement between the United States and European Union, she observed it is intended "to discourage trade in high-carbon steel and aluminum that contributes to global non-market excess capacity and ensure that domestic policies support reducing emissions in those carbon-intensive sectors." The discussion on the carbon-based sectoral arrangement, as well as the statement by the AUSTR, suggest that the United States may be using decarbonization primarily as a cover to combat nonmarket excess capacity. This approach could also be used in other non-traditional trade arrangements, including a climate club.

Recommendations

U.S. efforts to effectuate environmental change among foreign partners through frameworks such as the IPEF and green steel deals entail certain risks as well as potential benefits. Pursuing these arrangements instead of formal trade agreements allows the Biden administration to bypass congressional consent, thereby avoiding a potentially tricky domestic political debate that would put intense pressure on the administration during midterm elections and beyond. These structures also allow the administration to dictate who joins which pillars of various agreements—for example, excluding Japan from the EU-U.S. green steel deal or working with Singapore on digital standards in the IPEF. This approach provides the administration with leeway to focus on specific priorities in target countries, for example, trade facilitation in Malaysia, while seeking a new deal on data flows with Vietnam. The drawbacks are that without enforceability mechanisms as a stick and market access and funding as incentives, obtaining concessions from international partners will be difficult, thereby increasing the likelihood these agreements will not produce significant change. For example, it is difficult to envision Indonesia agreeing to next-generation decarbonization policies without receiving something in return from the United States. Overall, the

high risk of failure puts a burden on the administration to determine the best path forward for elevating standards, growing the global economy, and enhancing global cooperation with a more limited set of tools. As the administration contemplates what tools are available to effectuate change at the nexus of trade and climate, it should consider the following suggestions.

1. Direct mention of climate change
2. Enforce environmental obligations in unilateral preference programs
3. Codify future engagement in WTO environmental plurilaterals
4. Establish and meet standards to decarbonize trade itself
5. Traditional frameworks with tangible benefits
6. Climate club considerations

First and foremost, all future U.S. FTAs or other trade and economic arrangements should make direct mention of climate change and should seek to bolster existing and future multilateral commitments, such as the Paris Agreement. Including direct mentions of climate change will enshrine in U.S. law the belief that climate change is real, regardless of domestic political changes, and will signal to foreign partners the U.S. commitment to combating it. Furthermore, including climate change language will help promote convergence between environmental and climate considerations. The WTO database [shows](#) that as of February 2022 the bulk of climate-related measures are concentrated in energy—both its conservation and the deployment of new renewable energy. Climate change mitigation, on the other hand, accounts for a relatively small portion of commitments, meaning there is ample room for international partners to collaborate more closely on protecting carbon sinks, investing in new technology, protecting biodiversity, and pursuing policies that directly reduce harmful emissions, including methane. In addition to formalizing the recognition of climate change in trade commitments, the United States should seek to include provisions that go beyond energy and environmental measures. U.S. FTAs have historically prioritized environmental concerns such as pollution and deforestation, resulting in climate and environmental policy evolving within distinct silos. Including more comprehensive climate change language in trade arrangements would represent a more holistic and meaningful policy toward environmental protection and emissions reduction.

Including direct mentions of climate change will enshrine in U.S. law the belief that climate change is real, regardless of domestic political changes, and will signal to foreign partners the U.S. commitment to combating it.

Second, outside of executive agreements, the United States has a number of unilateral trade [preference programs](#), such as the Generalized System of Preference (GSP) program and African Growth and Opportunity Act, which provide non-reciprocal, enhanced market access to certain developing and least-developed countries. The GSP program is perhaps the most expansive. It has expired but is being considered for reauthorization by the U.S. Congress. The various proposals being examined incorporate provisions on adherence to environmental law and regulations as one of the [eligibility criteria](#) for qualifying under the program. This could be further strengthened to include specific references to climate

change commitments under various international frameworks as a condition for preferential access to United States' markets. To ensure that such obligations are not overly burdensome but encourage climate action, the United States could include language that is already a priority for countries to meet, such as meeting the Nationally Determined Contributions under the Paris Agreement. Other provisions could stipulate transparency in carbon accounting and carbon offset markets with capacity-building and input from U.S. agencies such as the State Department or Department of Energy.

Third, the United States should reaffirm its leadership in the WTO by immediately joining ongoing environmental initiatives, such as the Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (IDP), [deforestation](#) dialogues, the ACCTS, and other plurilateral discussions. In addition to joining the discussions, the United States should encourage, either via traditional or non-traditional frameworks, foreign partners to participate in the dialogues. Wherever possible, the United States should seek to codify in trade arrangements the obligation to engage in these multilateral environmental discussions within the WTO system, for example, by stipulating that IPEF partners join TESSD talks or the IDP, should the United States ultimately join.

Fourth, the United States should pursue policies that decarbonize trade itself. The United States can start by including existing sustainability standards in all future agreements, whether a sectoral agreement on steel or a comprehensive regional trade agreement. The United States can lean on existing standards, such as IMO and ICAO standards, to inform U.S. policy, realizing that these standards are often inadequate and should serve as a baseline upon which to build more stringent sustainability standards. Including sectoral sustainability standards in trade agreements would help ensure that shipping and air freight maximize decarbonization efforts wherever possible, thereby minimizing the climate impact of trade. In addition to including sustainability standards in international agreements, the United States should invest in new technologies domestically that promote more sustainable international commerce, such as increasing battery storage capacity and unlocking the potential of green hydrogen so that goods traded are less carbon intensive.

Finally, the United States should pursue its climate and trade objectives through traditional means that contain binding provisions and market access for U.S. firms. The United States is not likely to obtain commitments from other countries unless it has something to offer, which starts with market access. In other words, the United States needs to offer tangible benefits to enlist other countries in the fight against climate change and be willing to undertake significant domestic policy changes that would fundamentally reshape markets and in some cases create entirely new ones. It is difficult to envision, for example, that Indonesia would make significant concessions on palm oil plantations or coal exports to China if it did not receive significant revenue replacements that would sustain employment.

These benefits of FTAs would enhance U.S. commitments at the nexus of trade and climate. Furthermore, traditional FTAs require the consent of the U.S. Congress, which has the advantage of making the agreement more concrete at both the domestic and international levels. Although comments from Deputy USTR Bianchi indicate the Biden administration will pursue an agreement that is both high-standard and binding in the Indo-Pacific, details remain scarce on which trade tools the administration would employ to achieve adherence to standards and compliance with its provisions. If the United States is unwilling to pursue market access and trade liberalization of goods and services through traditional means, it should seek to engage in knowledge-sharing and capacity-building where possible. This could include leveraging and expanding the State Department's [Clean Energy Demand Initiative](#), which facilitates business among the U.S. private sector and foreign markets, for example, by enabling corporate procurement of renewable energy.

As it pursues new types of international arrangements, the United States maintains the option of joining a climate club. A climate club would “reconceptualize” climate agreements by conferring certain benefits, such as tariff reductions, to members of the club who meet decarbonization criteria while excluding non-members with less ambitious climate goals. The idea of a climate club was initially introduced by Nobel Prize winner William Nordhaus and has gained currency amid mounting dissatisfaction with UNFCCC processes and the slow nature of the WTO to adapt to current climate issues. However, it remains uncertain which policy gaps a club would fill and whether or not a club would conflict with or duplicate existing mandates of other international organizations. The size and structure of a club also remain unclear, including which countries would be able to participate and what form the governance structure would take. Perhaps most significantly, a climate club could be duplicative and relatively slow in an era that requires targeted and swift action. Building governance structures and solidifying—let alone enforcing—voluntary commitments takes time and has thus far eluded the international community, as the Paris Agreement’s nationally determined commitments demonstrate. The complexity and time intensiveness of the IPEF also underscores how difficult it could be to create policy convergence among international partners on issues that cut across the international political economy. Overall, as Falkner, Nasiritousi, and Reischl argue, “climate clubs face an international legitimacy deficit. Any club proposal needs to consider how to add to, and not distract from, the multilateral climate regime.”

Nevertheless, if climate clubs, even relatively limited ones that resemble the green steel deal, can entice third countries to adopt deeper decarbonization policies, they may be worth pursuing. A climate club could succeed if its foundation is underpinned by a common methodology for measuring embedded emissions of goods and services. The EU-U.S. announcement to negotiate a green steel deal underscores the tension between creating a club of decarbonized industries and its potential to disrupt broader international cooperation. However, it also highlights the potential of climate clubs to incentivize third countries to accelerate decarbonization by promising favorable tariff treatment in exchange for enhanced decarbonization policies. If the United States chooses to pursue a climate club, or potentially serve as an architect of one, it should complement UNFCCC objectives, prioritize international cooperation, and strive for immediate outcomes.

Conclusion

As it builds out its climate and trade strategy, the United States should take into account progress being made abroad. FTAs have long included chapters on the environment, recognizing the relationship between trade and sustainable development. The EU approach demonstrates the importance of using FTAs to address sustainable development, as indicated in language contained in its TSD chapters, which reflects the EU domestic Green Deal agenda. This underscores the European Union’s simultaneous pursuit of stronger domestic and international climate change mitigation policies.

As noted above, the U.S. approach to climate and the environment is less ambitious than the EU approach because it has historically not sought to require climate change policies in other countries, such as the near-term adoption of domestic ETS. By undertaking targeted changes to strengthen environmental standards, the USMCA, like the U.S.-negotiated TPP, shows promise and signals a move in the right direction. However, facing a plethora of domestic constraints, the Biden administration has instead pursued alternative trade and economic architectures, creating an opportunity for new environmental and climate considerations to be included in these new trade arrangements. Any such climate provisions should be as forward-looking as possible.

Outside of FTAs and sectoral agreements, initiatives to use trade as a tool to combat climate change are also growing within the WTO. Under the leadership of [WTO director-general](#) Ngozi Okonjo-Iweala, the WTO has prioritized climate as an important aspect of the international trading system. Director-General Okonjo-Iweala recently highlighted the role of the organization and trade in addressing climate action, including carbon emissions reduction, conservation of forests, and climate adaptation and finance. In February 2022, she highlighted in a [speech](#) that trade is more of a solution to climate change than it is a problem, saying that a better alternative to protectionism “lies in better trade [–] a fairer and more equitable globalization, one that brings marginalized people and countries into the economic mainstream, while helping us decouple human well-being from environmental impact.”

This statement complements the various discussions on trade and environment currently underway at the WTO. Despite the promise of ongoing initiatives to usher in a new generation of climate and trade policy in Geneva, the United States has been actively participating in only some of the initiatives, while forgoing other efforts such as those to reduce plastics pollution or scale back harmful fossil fuel subsidies. While the Biden administration is in many ways constrained by domestic politics in what it will be able to achieve on climate change policy, leveraging new trade arrangements and joining ongoing multilateral efforts at the nexus of trade and climate is a first step toward more meaningful commitments at the bilateral and multilateral levels.

If the United States wants to assert itself as a standard-setter within the global economy, it should advance environmental standards and rules via traditional trade frameworks in a way that simultaneously enhances environmental protections, increases market access, and decarbonizes supply chains. While the administration will have a difficult time selling its decarbonization agenda abroad if it cannot make simultaneous progress at home, pursuing the above recommendations will lend credibility to the U.S. commitment to trade as well as global efforts to combat climate change. ■

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