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Rule and Norm Transfer in the Global Environmental Architecture: From the EU to the Rest of the World?

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Abstract

Much of the literature on the institutional aspects of global environmental politics stresses the multi-level character of, for instance, the global climate regime, even if there is no consensus whether sub-global environmental co-operation serves as a building block or a stumbling block to achieving important mitigation and adaptation goals. While there is, therefore, much concern about horizontal and vertical institutional interactions within global environmental politics, there is a shortage of empirical studies that analyse the linkages between different levels of agency, and, for instance, how norms spread and impact at the various localities. For this reason, this paper looks at one specific important actor in global environmental politics, the European Union, and study how, as a self-proclaimed global leader in GEP, it attempts to project its 'environmental vision' onto regions and states outside its immediate neighbourhood. Assuming that the ambition of the European Union is to transfer its own rules and norms, this paper paves the way to a comparative study of whether and in which way the EU aspires to take influence and how successful it is in doing so. For this purpose, I will test and develop further the analytical models with the help of which EU rule transfer to the countries of Central and Eastern Europe has been explained across a range of different policy fields. In specific, it looks at the use of Preferential Trade Agreements and the inclusion of environmental standards, as well as the variance in these standards, to determine some of key factors which explain the choice of format and channel of 'norm projection'.

Introduction

The European Union (EU) is frequently portrayed as a leader in global environmental governance. This is not only a vision projected upon it by others, but also an image that the EU and its members themselves pursue in their environmental activities. This has, only recently, been made clear once more in its – even if unsubstantiated – decision to make a major financial contribution to enablement of developing countries to combat climate change.¹ Among scholars, this phenomenon is also an ongoing topic of debate. Questions about the institutional preconditions, as well as the actual effect of EU as an actor in GEP is discussed. The particular interest of this study is how the EU *de facto* is using its economic power to project its ‘environmental vision’ across the globe. This requires, first, a further specification of what this vision entails and, second, and this is the focus of this paper, the type of mechanisms and channels chosen for this type of projection.

While the EU ‘transfer of rules or norms’ has frequently been studied with regard to its immediate neighbourhood and, more specifically, with regard to Central and Eastern European Countries with a prospect of membership in the EU, this study aims to analyze the mechanism of EU “projection” beyond Europe. ‘Europeanization’ in the European neighbourhood is thus very interesting, yet its mechanisms that, above all, build on the promise of membership do initially not seem applicable to other states and actors and thus are unlikely to tell us the whole story of whether and if so how the EU attempts to influence important players in global environmental politics and climate change policies in particular, such as India and China. Yet, other channels are available at this level. The EU has, for instance, used its economic or trading power to achieve non-trade-related goals by including conditionalities linked to human rights, good governance and the rule of law into preferential trade and development aid agreements with countries of the “Global South”. Further, most economic agreements involving at least one OECD member nowadays include some form of environmental provision, ranging from dealing with environmental issues in the form of exception clauses, for instance, within the EU-Chile Free Trade Agreement to the inclusion of Sustainability Impact Assessments in the

¹ <http://www.eubusiness.com/news-eu/summit-climate.17n/> (5 November 2009).

ACP-EC-Partnership Agreement ('The Cotonou Agreement') – and it seems probably that such agreements are used for a deliberate transfer of rules from one partner to the other.

The question that this research project thus seeks to answer is whether or not the EU uses preferential trade agreements for transferring environmental rules and norms to other players, and specify and explain the mechanisms by which this happens. Later in the paper it will be shown that the EU indeed seeks the inclusion of environmental standards in PTA and, more importantly, that there is variance among these standards. This variation is of specific interest as this indicates that this inclusion is the outcome of deliberate decision-making and negotiations rather than a “standard procedure”. The key dependent variable in this research design is thus the variance in strength and flexibility of environmental conditions in PTAs between the EU and developing countries and countries in transition. This will be embedded in a discussion of leadership and governance by conditionality.

This will also allow making use of the different theoretical toolkits, such as ‘governance by conditionality’, as far as they are applicable beyond the European neighbourhood. This will be discussed more explicitly below in the next section. A central argument in this paper is that while the EU is likely to be the initiator of the norm transfer process, this form of transfer cannot be only regarded as a one-way street. The way in which the process of ‘transfer’ manifests itself is thus not only dependent on the EU and its values or interests but also those of the ‘partner states’. In other words, the projection of ideas or rules is understood to be a ‘non-linear’ or ‘social process’ that happens within a context in which, for instance, counter-proposals are possible – as opposed to the linear vision on projection or persuasion where only one actors actually becomes active (Payne 2001: 42).

The next section of this paper will, first, review some of the literature on EU leadership in global environmental politics and specify how this paper complements this existing body of scholarship. Second, as said above, some of the existing theoretical frameworks that could be applied are discussed. Third, the explanatory framework used in this study will

be presented a short overview will be given over some of the important mechanisms and channels the EU is currently using for rule transfer in environmental as well as some initial empirical insights about a few examples of trade agreements.

EU Leadership in global environmental politics

Even if the EU is not a state, it is a very powerful international actor. Its 27 member states combine to an approximate population of 500 million, a quarter of the world's GNP, 40 per cent of merchandise export, the largest provider of development aid and so forth. Yet, at the same time, scholars and politicians alike still struggle with a classification of the EU's role in global governance for example. Some claim that the 'Union looks and acts like an empire' (Zielonka 2008: 475). Other designations used are 'civilian power', 'normative power', 'superpower' and many others (Manners 2002; Scheipers and Sicurelle 2007). An important aspect of this is the explicit desire expressed by heads of state and, for instance, officials of the EU Commission to take on a leadership role in certain issue areas, among the more prominent are climate change and global environmental politics in general (Börzel and Risse 2009b; Schreurs and Tiberghien 2007; Vogler and Stephan 2007).²

Indeed, finding empirical evidence for the EU's ambition to be such a global across a broad range of policy fields is not difficult – it sees itself as a pioneer, for instance, in regional integration, but also, and more specifically, environmental and climate policies and, at least at a rhetorical level, is not shy to announce its ambition to project its own benchmarks onto the rest of the world. An example is, for instance, an announcement by EU Commissioner for the Environment, Dimas, that a global response to climate change 'needs European leadership' (Dimas 2007).

² Other countries have made a leadership claim in global environmental politics and the accompanying literature has deduced above all domestic motives for the ambition of governments to play an important role in environmental governance (Jänicke 2006: 13). Jänicke has collected a number of statements of governments, such as Norway, Finland, Sweden, Netherlands, South Korea, the UK and Germany, all claiming to play a leading role in all or some aspects of global environmental politics (Jänicke 2006: 14).

In the scholarly literature, several points have been made why the EU is regarded as a leader in environmental politics (Grant and Papdakis 2004), such as the fact that some of the EU member states have been ‘pioneers’ in ‘ecological modernization’ (Netherlands, Germany, Sweden, Denmark, Austria), (Andersen and Liefferink 1997, Jahn 1998, Hajer 1995), its Environmental Action Programme, its participation as signatory to 30 binding international environmental treaties, and its active role in including legally binding emission standards into the Kyoto Protocol (Börzel and Risse 2009b: 11; Jachtenfuchs 1996; Scheipers and Sicurelle 2007; Schreurs 2004). It has used various tools to actually put its leadership rhetoric into practice, for instance, by offering ‘carrots’ to the other developed countries announcing that it would increase its cut of CO² emissions from 20 to 30 per cent ‘should other developed countries agree to take action within the framework of an international agreement’ (Environment News Service 2007: 19; Presidency of the European Council 2007: 19; cited in: Schreurs and Tiberghien 2007: 19). An example of the effectiveness is that even in the face of US resistance, the Kyoto Protocol was ratified – many argue, with the help of EU concessions to Russia with regard to its pending membership in the World Trade Organization.

The EU as a whole has further created policies that might encourage similar decision-making elsewhere, for instance, its commitment to increase the level of renewable energy to 20 percent and, above all, its carbon emission trading system, the ETS (Directive (2003/87/EC)). The European Commission moreover introduced the European Climate Change Programme in October 2005, which the Commissioner for the Environment, Stavros Dimas introduced with the following words: ‘This is not just leadership for the sake of leadership, or because we think we can fight climate change on our own – we clearly can’t. The EU’s commitment and success has been an inspiration to our global partners. Without it, it is certain that the Kyoto Protocol would not have entered into force’ (Dimas 2005, quoted in:; Schreurs and Tiberghien 2007: 22).

These specific points also fit in with the available general definitions of EU leadership in the relevant literature. Schreurs and Tiberghien define EU as ‘international agenda setter in relationship to climate change mitigation’ (Schreurs and Tiberghien 2007: 19) and as

‘innovator of ideas’ and policies that go beyond what other major players do.³ Börzel and Risse argue that the EU export ideas, ‘which build upon the foundations of the European Union’ and seeks to ‘persuade state actors to adopt this model through processes of arguing and persuasion in institutionalized patterns of political dialogue and cooperation’ (Börzel and Risse 2009a: 5; also see: Diez 2005; Manners 2002; Manners and Whitman 2003; Youngs 2001). Thus, the EU ‘projects its internal solutions to its external environment’ (Börzel and Risse 2009a: 22; also see: Lavenex 2008; Lavenex 2004).

Other research has dealt with the reasons for *why* the EU has taken on and sustained a leadership position in the climate regime in the face of seemingly enormous international and domestic obstacles (Oberthür 2009; Schreurs and Tiberghien 2007).⁴ Schreurs and Tiberghien, for instance, suggest that EU leadership in climate change is ‘the result of a dynamic process of competitive multi-level reinforcement among the different EU political poles within a context of decentralized governance. EU leadership has depended upon the actions and commitments of a group of pioneering states and the leadership roles played by the European Parliament (EP) and especially the European Commission. This upward cycle of reinforcing leadership within a quasi-federal system has been triggered by and been dependent upon strong public support and normative commitment’ (2007: 22). This evaluation and its inherent emphasis of domestic factors are fairly common in its substance.

It is also typical in its ‘EU-centeredness’, as it describes the EU leadership ambition as unique, whereas most actors in the international realm feel that their internal problems-

³ A frequently cited example is the insistence on the precautionary principle, which is largely accredited to the EU (Hechter and Opp 2001; Lightfoot and Burchell 200; Manners 2002).

⁴ Schreurs and Tiberghien, for instance, suggest that EU leadership in climate change is “the result of a dynamic process of competitive multi-level reinforcement among the different EU political poles within a context of decentralized governance. EU leadership has depended upon the actions and commitments of a group of pioneering states and the leadership roles played by the European Parliament (EP) and especially the European Commission. This upward cycle of reinforcing leadership within a quasi-federal system has been triggered by and been dependent upon strong public support and normative commitment’ (2007: 22). This evaluation is fairly common in its substance, also in that it, for instance, neglects external factors, such as a demand for leadership in the international system, and the need for international followers, for the EU to recognize the opportunity to rise into a leading position in the first place.

solving policies is something other states should do, too.⁵ Furthermore, leadership is clearly incomplete, if not inexistent, without ‘followers’, a point, which is frequently neglected in studies of the normative power of the European Union. Even literature that explicitly refers to ‘leadership’, such as Grubb and Gupta’s book on *Climate Change and European Leadership* (2000), with a few exceptions, omits a more thorough conceptualization of ‘followership’ despite the acknowledgement that leadership is also a function of self- and others’ perceptions.⁶ Instead, a ‘supply-side’ focus has prevailed within analytical frameworks that are specifically tailored to the study of the European Union. Indeed, also the literature on the EU as a ‘global’, ‘civilian’, ‘normative’ or ‘transformative’ power very much focuses on the ‘sender’ side, or, in other words, the internal, or institutional reasons of why the EU is or attempts to play a ‘special role’ in global governance (Bretherton and Vogler 2006; Vogler 2005).⁷ Diez finds, for instance, that ‘to the extent that normative power is used as an analytical category to distinguish a particular kind of actor (such as “Europe”), it relies on the possibility to trace empirically the impact of norms in contrast to other possible factors. However, as we will see, a lot of the discussion about “normative power Europe” does not really examine the *de facto* impact of EU policy (and therefore whether it *has* normative power in the relational sense), but on whether it *acts* as a normative power (and therefore whether it is a specific type of actor that employs particular means) (Diez 2006: 616). The term ‘normative’ further often creates the impression that normative power ‘cannot exist alongside other forms of power’, which is clearly not the case.

The main relevant finding for the research conducted here is that literature discussing the EU leadership role exists in many facets, albeit it focuses almost exclusively on the

⁵ In the literature on ‘domestic analogies’, indeed, the argument is made that ‘polities prefer to have an international environment that is ordered according to their own principles and procedures. The substantive goals – as well as the instruments – thus mirror the fundamental principles of the EU (...)’ (Peters and Wagner 2005). This can also be turned to the negative, by describing it as ‘unreflexive behaviour mirroring the deeply engrained belief that Europe’s history is a lesson for everybody. Put briefly, (it) is informed, at least partially, by the idea that “our size fits all”’ (Bicci 2006) (287)

⁶ This neglect of the followers is, however, not only a problem of leadership debates in environmental politics but also occurs in more general research on leadership and hegemony in International Relations.

⁷ Sweeping statements like this obviously are never entirely true and there are surely exceptions to this general rule. Any suggestions are very welcome.

motivation, capacity and aspirations of the EU itself, without paying much attention either to the actors that are supposed to be led, or to the mechanism by which this followership is being created and, even more so, whether or not it has succeeded in creating followership among those that it intends to lead. In this project, the inclusion of environmental provisions into bilateral trade agreements is treated as one possible specification of this (strategic) interaction.

EU leadership and conditionality

The second block literature that is relevant here deals broadly with ‘governance by conditionality’ that studies how rules or norms are transferred deliberately, for instance, through the inclusion of rules and standards into international (trade) agreements. Some have discussed the in specific how the EU uses its international role as economic and trading power to achieve policy goals in other issue areas (Meunier and Nicolaidis 2006; Meunier 2005). Trade agreements, both bilaterally and ‘region-to-region’, indeed increasingly include arrangements in ‘trade-related areas’, such as services, investment, and intellectual property. The EU has been an important driver of this development, and the EU ‘offers access to their large market of goods in exchange for access to service markets in LDCs, their acceptance of rules governing investment and intellectual property rights and their improvement of human rights’ (Baccini 2008: 4; Hafner-Burton 2005; OECD 2007). In particular the latter element shows that political conditionality has become an important issue in trade negotiations between the EU and the Global South. Political conditionality implies a European demand for good governance, transparency, accountability or other conditions related to expectations for policy development and execution in the realm of democracy, rule of law, human rights and environment, for example. Among the factors that both parties in such a trade negotiations thus have to consider is the that ‘positive and negative forms of conditionality discount assured benefits for future required action with the threat of disciplinary sanctions in case specific policy guidelines are broken’ (Baccini 2008: 4).⁸ Researching this topic is further

⁸ Obviously, these specific relations with third countries of the developing world have developed over time. Generally, three generations of agreements are identified. The agreements of the 1970s tended to deal with cooperation almost exclusively in the form of development aid. The second generation agreements of the 1980s began to include trade provisions; and the third

interesting if we take into account extensive scholarship conducted on how ‘EU role as an external trade actor and a promoter of environmental protection values has led to internal conflict, often resolved in favour of the trade interests’ (cf. Bretherton and Vogler 2000; Zito 2005). The apparent prevalence of economic calculations in this process has also led to a focus on economic explanations for the inclusion of conditionality into trade agreements (Anderson and Blackhurst 1992; Vailland and Ons 2002). The literature generally points at the effects of the commercial importance of trade partners and the existing level of external protection between third countries and the EU. Political explanations have been offered with the help of both quantitative and qualitative studies, in which domestic and other institutional factors have been deduced that are likely to affect the inclusion of environmental or other conditions into trade agreements, for example voters’ preferences in both countries, the number of veto players, but also international regulatory competition (Drezner 2005; Vogel 1995). A recent and important contribution is Baccini’s (2008) quantitative study, for instance, on the impact of political and economic transparency in developing countries on the EU’s choice of trading partners and on the flexibility of trade agreements (Baccini 2008). He also includes the consideration of costs and benefits by the developing countries into his explanatory model and thus alleviates some of the statism and ‘one-sidedness’ of the prevalent debate. This effect is enhanced, second, by his focus on variance in the level of conditionality (in his words ‘flexibility terms’) and the attempt to provide some explanation for this variance. What, however, is frequently absent from studies of conditionality, in particular when approached through quantitative methods, is a more explicit consideration of factors such as the social context, power differentials at different levels and issues resulting from a conflict of interest between the trading partners.⁹

generation agreements of the 1990s linked trade provision “with what one Council official called” according to Szymanski and Smith (2005: 175) “evolutive clauses to cover additional matters, such as political dialogue, democracy and human rights”.

⁹ Some of these issues are linked to the fact that much of this literature is at least partially based on the expanding research on policy diffusion.⁹ Scholars in this field are interested in how rules and norms are transferred between actors and levels, and how ‘policy choices of one country are influenced by the policy choices of other countries’. Typical mechanisms are learning, competition, common norms, taken-for-grantedness and symbolic imitation, overall focusing on the cognitive level and focuses on communication and (subtle) influence processes. While at least in some definitions, ‘all conceivable definitions of channels of influence, reaching from

Some of these issues are taken up in qualitative case studies. Zielonka, for instance, has argued that the EU has the clear ambition to ‘spread its norms and extends its powers in various parts of the world’ (Zielonka 2008: 471). He makes a forceful argument about the EU as trying to ‘impose domestic constraints’ on other actors through various forms of economic and political domination, including using its ‘power through trade’ (Meunier and Nicolaidis 2006: 906, Meunier 2005). This has been most successful in its immediate neighbourhood, where its political and economic leverage is highest, yet, the EU has also attempted to use access to its markets in order to ‘obtain not only economic but also political concessions from commercial partners’. Yet, as in many studies of EU leadership or power, not much detail is offered into the mechanisms used or the effectiveness in actually creating influence or followership – rather a more philosophical argument is made about the motivation and, underlying, the moral foundation of this leadership position.

An exception is the way in which rule transfer and the impact of the EU in its neighbourhood in particular have been studied with regard to countries, especially in Central and Eastern Europe, that have a concrete future membership prospect (e.g. Andonova 2005; Bicci 2006; Lavenex 2008; Lavenex 2004; Magen 2004; Schimmelfennig and Sedelmeier 2004, 2005; Sedelmeier 2006). Different models of how EU rules are transferred and the conditions that determine the speed and effectiveness of this process have been determined. While Schimmelfennig and Sedelmeier, for instance, differentiate between the external incentive model, the social learning model, and the lesson-drawing model (Schimmelfennig and Sedelmeier 2004), others such as Börzel and Risse look at different ‘mechanisms’ of diffusion, and enlist coercion, manipulation of utility calculations, socialization, persuasion and emulation (Börzel and Risse 2009b: 9). While labels thus differ across studies and authors, there is considerable overlap between the different conceptualizations of the mechanisms and process of rule transfer (Schimmelfennig 2007). Almost all of the approaches see a principle division between

voluntary adoption ... to imposition of policies on other countries’ (Knill 2005: 766), the actual mechanisms that are researched often focus more on voluntary policy transfer and deliberate and quasi-hierarchical processes are mechanisms have not received much attention in this field (Bauer et al. 2007; Elkins and Simmons 2005; Heichel et al. 2005; Tews 2004).

different logics of social action, or the rationality of actors (logic of consequences, logic of appropriateness¹⁰). Schimmelfennig further argues that most studies about the transfers of rules and norms from Europe to its neighbourhood distinguish between direct and indirect pathways of norm transfer, as well as between intergovernmental and transnational mechanism (Figure 1).

Figure 1: Mechanism of EU impact

	<i>Intergovernmental</i>		<i>Transnational</i>	
	<i>Direct</i>	<i>Indirect</i>	<i>Direct</i>	<i>Indirect</i>
<i>Logic of consequences</i>	(1) Conditionality Intergovernmental incentives Compulsory impact Compliance	(2) Lesson-drawing Communication	(3) Domestic empowerment Transnational incentives Connective impact Competition	(4) Societal lesson-drawing
<i>Logic of appropriateness</i>	(5) Socialization Intergovernmental social learning Constructive impact Communication	(6) Imitation Lesson-drawing Enabling impact	(7) Transnational socialization Transnational social learning	(8) Societal imitation Enabling impact

Source: Schimmelfennig (2007: 7).

While being comparatively well developed both at the empirical and theoretical level, certain aspects that are of relevance to this research have so far seem to have received less attention in this literature. First, it is unclear how rule transfer without the effective promise of EU membership works, so that the work of these scholars is not necessarily transferable to EU global relations. The central difference between studying the existence and impact of EU leadership in its European Neighbourhood and ‘beyond Europe’ (Schimmelfennig 2007: 4) is, clearly, that outside the areas comprising states with

¹⁰ Examples: (Diez 2005; Manners 2002; Manners and Whitman 2003) This implies, for instance, that EU is assumed to have the collective causal belief that ‘ideas of regionalism beyond its borders ... are considered as the best ways to ensure (regional) security, stability and prosperity at the EU’s borders and beyond’ (Börzel and Risse 2009a; also see: Magen 2004). The logic of consequences is most visible in approaches that emphasize the role of the EU’s economic power and the regulatory competition it is engaged with, even with its major trading partners.

plausible membership prospects, conditionality, which has been shown to be among the most effective mechanisms of rule transfer (Schimmelfennig and Sedelmeier 2004: 662), seems a much less viable mechanisms to get others to follow EU policy prescriptions. For instance, power relations between the actors are necessarily a lot more diffuse, even if relations between the EU as global economic power, for instance, or as one of the main donors of development, and its partners, particularly in the Global South, should still be classified as asymmetric. It is thus questionable, whether the EU can still and does still adopt a ‘bargaining strategy of reinforcement by reward’ or ‘external incentive model’ that Schimmelfennig and Sedelmeier have identified for its interactions with the CEECs. No high expectations for ‘followership’ beyond Europe are, by implication, raised, as the ‘impact of EU in the candidate countries has mainly resulted from the external incentives of accession conditionality’ (Schimmelfennig 2007: 8). Similar findings about the power of the credible promise of membership have been presented in Diez et al. and others that also ‘generally expect the potential impact of the EU to be higher in states with good prospects for membership than in “unlikely members”’ (Busch et al. 2005; Diez et al. 2006; Schimmelfennig 2007: 8).

Second, studies on the subject halt at the identification of the presence of certain mechanisms or instruments in an empirical description of EU policies towards third parties (see for example Börzel and Risse 2009a). Yet, as Börzel and Risse conclude, ‘we know very little as to the effects of these attempts at diffusion which often meet with resistance and contestation on the ground’. This means, for instance, that it is unclear whether and how the mechanisms with which an actor attempts to socialize and persuade other work to the advantage of the sender or the receiver (Börzel and Risse 2009b: 11).¹¹ As further described below, this paper instead aims to emphasize the ‘non-linearity’ of rule transfer, and focuses on the inclusion of the social context of rule transfer (or leadership). While thus most of the existing literature focuses on the identification of mechanisms, the effects of resistance and contestation as well as the ability of partner states to engage in

¹¹ Another weakness is that this transfer of policies and norms is generally regarded to have positive benefits, especially if the source of the respective policy is the EU. The negative impacts of diffusion receive little attention. Some exceptions: (Christiansen et al. 2000; Hurt 2003; Schimmelfennig 2007)

this activities are often overlooked and, at least this is assumed as a starting point of this research, too little understood. The aim of this research is to expand on the issues, to include, for example, the partners ability to accept, reject and contest EU suggestions about the inclusion of environmental standards, depending on their inherent ability to formulate and express their own interests in this regard, as well as the social context of this interaction, among others with regard to international rules and socialization that affect both actors.

In the following sections, the research interest of this paper is described in more detail; some working hypotheses, as well as the proposed methodology are described as well as some preliminary findings about the actual variance of environmental standards in PTAs between the EU and developing countries.

Research Design: Trade Agreements, Green Conditionality and Variance

The research interest of this paper is the analysis of the use of trade agreements for environmental purposes. It builds on the assumption that, while most agreements nowadays include environmental standards, there is a variance in these standards, for instance with regard to the strength and the flexibility of environmental conditions. It is argued that an explanation of this variance will tell us more about the motivation of the EU itself, but also about the ability and capacity of developing country partners to challenge and contest and, possibly, influence the contents of preferential trade agreements concluded with the EU. The research thus focuses on the conditions and factors that impact on when what type of mechanisms or standards prevails. It focuses on the recipients in the sense that we specifically look at their potential contribution to the process of setting up certain channels of how their environmental policies can be influenced; or, in other word, when they accept, initiate, and refuse standards. It also emphasizes the social context in which these interactions take place.¹²

¹² The research is thus also related to questions of institutional design and shares some assumptions with the literature on the rational design of international institutions, in its focus on outcomes (rather than the actual process of designing) and its assumptions that state actors deliberately design institutions in a way that serves their own interests. Some of the dependent and independent variables identified in this literature are also of relevance here, such as “flexibility” as part of the DV “institutional design” and “asymmetry of actors” and “distribution

By doing so, the existing literature is complemented in several ways. First, the use of green standards or green conditionality in trade and other agreements in general has so far received much less attention in comparison, for instance, to economic conditionality or conditionality to achieve good governance. This is despite the actually frequent occurrence of this phenomenon as well as its relevance with regard to contemporary developments in global environmental governance. Second, the variance in depth and scope of environmental or other provisions has been so far not systemically analysed, despite, for instance the recognition by the Organisation of Economic Cooperation and Development (OECD) that the ‘scope and depth of environmental provisions in PTAs varies significantly’ (OECD 2007: 8). Third, much attention has been paid to the apparent leaders, whether the EU or the US or other, and less so to the potential followers and their contributions to these processes.

The main dependent variable of the study is thus the ‘variation in standards’. Standards – hard and soft - in trade agreements are used by the EU in situations to ‘engineer convergence without joining’ (Meunier and Nicolaidis 2006: 913), or, in other words, to get other states to conform to some of its own understandings of good (environmental and other) governance without having the considerable incentive of future membership at hand. The web of bilateral preferential agreement that the EU has built up has been described as unprecedented, and is characterised in particular by asymmetric rights of market access, at least for industrial products, and the EU’s use of this asymmetry as a ‘bargaining chip to obtain changes in the domestic arena’ of the respective trading partners (Meunier and Nicolaidis 2006: 907). Preferential trade agreements are used in this way as they coordinate ‘mutually beneficial rules of market access’ and ‘limit defection through threats or acts to disrupt exchange with violating members’ (Hafner-Burton 2005: 605). They therefore offer to both partners, in theory, but, in our study, mainly the EU, some degree of external economic incentives to get others, for instance, to improve their environmental regulation.

problems” as part of the IVs (Koremenos et al. 2001). These linkages need to be further developed in future versions of the research.

Variance in these standards is particularly relevant when we look at the EU as a trading partner for the Global South, as unlike the US, the EU has not ‘model FTA to form the basis of negotiations with all partners’ (Woolcock 2007: 2). There is thus, on the one hand, a variance in the type of agreements that the EU concludes with its partners, ranging from Association Agreements with states in South Eastern Europe and the Western Balkans and the EuroMed Partners, Economic Partnership Agreements with the ACP states, and plentiful bilateral free trade agreements, for instance, with South Africa, Chile and Mexico. On the other hand, and as said above, standards vary in terms of the ‘strictness’ from soft to hard. **Soft** standards imply that agreement benefits are unconditional on member states’ action; for instance, terminology such as ‘affirming’, ‘recognizing’, ‘declaring’ member states commitments to principles of multilateral environmental agreements in the preamble are indicative of such standards. No coercion is thus used; instead, these standards work ‘as a set of principled ideas legitimating appropriate and accepted behaviour among a community of states’ (Hafner-Burton 2005: 606). **Hard** standards, in contrast, mean that the benefits of the agreement are conditional on member states’ conformity with standards set. An ‘enforceable incentive structure’ is thus provided which turns policy change into a ‘side payment for market gains’ (Hafner-Burton 2005: 606).

The EU uses standards and conditionalities in almost all PTAs with developing countries. The underlying rationale found in some of the existing literature for both EU and its less developed partner countries to enter into these types of agreements have been summarized by Baccini (2008). On the part of the EU, he focuses on its **interest in promoting ‘its rules** with the partner country dictating a hegemonic harmonization of regulatory policies’ (Baldwin 2000, Lawrence 1995), which, among other purposes, serves to gather **bargaining power vis-à-vis the US** at the multilateral level; the strengthening of the **international competitiveness of its industries** by exporting its own standards; and the **stabilization of unsettled neighbours** and the encouragement of regional stability through good governance and integration (Maur 2005: 1578). The developing countries, instead, pursue PTAs with conditionality as it enhances their ‘**policy credibility**’ and provides them with a signal device for its own commitment to

certain regulations that it otherwise would not have. This can have positive effects on investment and the provision of financial support and technical assistance. These benefits are, however, counteracted by **adjustment costs** that arise from the implementation of new policies and regulatory frameworks (Baccini 2008).

Looking to the literature on ‘governance by conditionality’ several similar, but also additional factors that potentially could explain presence and variation in environmental standards emerge, in particular, the **cost-benefit calculations** of partner countries on the one hand, and, **the effects of socialization and persuasion**, on the other hand. The decisive factors in the model that Baccini has developed for the explanation of the flexibility in PTAs with regard to “exceptional circumstances” that allow a developing country to temporarily deviate from the rules and regulations of the agreement, in contrast, are domestic factors of the respective developing country, above all its ‘economic and political transparency’. The level of transparency in turn impacts on the EU to effectively monitor, first, whether the partner country sticks by the rules of the agreement, and, second, whether any potential ‘exceptional circumstances’ are indeed present that would allow the partner country to deviate from the PTA. More general literature on trade strategies from economics and political economy give further hints, looking at the **domestic economic interests**, as well as the **market size** of the target country and its relevance for imports and exports by the EU. In sum, the available factors can largely be classified as either (domestic) political or economic drivers of the initial inclusion of conditionality as well as its variance across cases.

While Baccini has shown that these factors are of relevance in the design of political conditionality in general, this research focuses on factors that are more specific to the evaluation of the use of environmental standards. The argument is made that ‘environmental regulation’ in specific is (also) dependent on some other, issue-specific factors that have not been considered sufficiently in the available literature. From the environmental leadership literature, we can nevertheless deduce a focus on explanatory factors at the EU internal level, with particular focus on the ‘normative ambitions’ to provide guidance to other actors with regard to adopting sound environmental regulation.

This means, however, that environmental norms would be included for all countries at a fairly similar level, an assumption, which could be easily falsified by finding actual variation in the presence and levels of standards included in trade agreements.

Another potential explanatory factor (that needs to be further developed in future research) is placed at the international level. Over the past decades, several ‘mega-conferences’ on the environment have taken place, several environment protocols and treaties, such as the Montreal Protocol, the Basel Convention, the Kyoto Protocol have been negotiated with quasi-universal participation. The socialization effects of these events in global environmental governance should probably not be underestimated and, as such, the **simultaneity of ‘important’ events in global environmental governance** with the negotiation of a PTA is thus a factor that will be taken into account here.¹³ This factor can be assessed with the help of literature and methodological tools prevalent in the study of the impact of international institutions.¹⁴

Second, and again on the specific variance of environmental standards, an important factor that has not necessarily been developed very much in the literature on Global Environmental Politics is each countries’ **‘environmental power’**, which consists of, for instance, its endowment with (potentially vulnerable) natural resources, its vulnerability to environmental catastrophes and its ability to veto environmental agreements at the regional or global level. An important aspect of this and a potential way of measuring is to look at the subtractability and excludability of certain environmental goods, which means that either one specific actor may have the ability to destroy a certain resources despite others’ will to protect it, or that a resources is excludable, as it is prevalent in only one territory, which gives influence and power to the state that can exclude others from their resource (DeSombre 2007: 19f.). The effects of these power differentials are arguably particularly important outside the EU’s immediate neighbourhood as in absence

¹³ Similar in Holland (2003:10) who discusses the impact of the global consensus on poverty, the environment and women’s development in particular’ on the EU’s relation with the developing world.

¹⁴ This section needs to be expanded.

of the very potent threat of ‘not being allowed to join the EU’, sanctions or threats within a singular PTA are probably not as virulent for each of the partners states.

Some empirical ramifications

While parts of this research at a later stage will be conducted with the help of a quantitative analysis, in particular to deal with the multiplicity of potential explanatory factors, this paper will present some initial steps of some of the in-depth case studies that will be conducted to illuminate the impact of the two ‘environmental’ variables outlined above. The method to do so is, in all likelihood, process-tracing. The case studies will begin with the initiation of trade negotiations and trace the different steps in the negotiations until an agreement has been either signed or discarded. The cases for these studies still have to be carefully selected. In the meantime, I will, in this last section, present in this last section some examples for the actual use of green standards in some selected PTAs as well as some statements by the EU Commission in how it is using trade agreements to achieve goals beyond commerce. Many trade agreements recently concluded by OECD countries (and some by non-OECD countries) include environmental provisions in the body of the agreement. The majority of these agreements include a reference to the environment in the Preamble. In addition, a number of agreements contain environmental considerations in provisions on investment, government procurement, dispute settlement, and environmental exceptions to trade disciplines. Some contain a detailed chapter on the environment and/or a chapter on sanitary and phytosanitary measures (SPS). This similarly applies to the EU and its PTAs with non-OECD countries.

Among the more recent agreements is the EU-Caricom Economic Partnership, signed on 15 October 2008, which includes environmental provisions in the preamble as well as throughout the agreement in, for instance, the Chapters on Technical Barriers to Trade, on Trade-related issues as well as a separate section ‘Environment’ per se. Negotiations aimed at concluding wide-ranging bi-regional Association Agreements (including a Free

Trade Agreement) between the EU and the Andean Community¹⁵ as well as between the EU and Central-America have been under way since mid-2007, with sustainable development and environmental issues constituting an important part of the talks.

Many RTAs, especially the more recent ones, explicitly mention the commitment of the partners to promote sustainable development (which implies the integration of environmental, economic, and social policies), and most of them also specifically refer to the environment. Although such statements are often included in the preamble rather than the main treaty text, they are relevant for interpreting the text of the agreement in which they appear and they set the tone for how the Parties may treat situations where environment and trade interact. Indeed, the majority of agreements signed by the European Union contain references to sustainable development and environmental protection (OECD 2007: 14).

Another, less recent example, are the Lome Conventions that have been concluded between the EU and the so-called ACP states. The third Lome Convention sought to 'promote and expedite the economic, cultural and social development of the ACP states and consolidate and diversify relations in a spirit of solidarity and mutual trust' (Article 1). Further, some new emphasis on thematic issues such as climate, environment and health (Holland 2003: 41) as well as social and cultural cooperation have been made, yet, the most 'significant change was the application of conditionality, something that the ACP had previously resisted. As a successor to the Lome Conventions, in 2000, the EU and the ACP have adopted the Cotonou Agreement. Under the Cotonou Agreement, the parties agreed to negotiate a separate set of individual bilateral treaties between the EU and the participating ACP countries. Those individual arrangements will provide specific rights and obligations tailored to each ACP region in Economic Partnership Agreements (EPA).

¹⁵ These negotiations have broken down in the second half of 2008. Since then, a new negotiating format has been put in place 'offering a thematic and geographical split of these negotiations: continued regional negotiations with the Andean Community as a whole on political dialogue and cooperation (an update of the 2003 Agreement referred to above) and "multi-party" trade negotiations with as many Andean Community countries as willing to embark upon ambitious and comprehensive trade negotiations compatible with World Trade Organization'. http://ec.europa.eu/external_relations/andean/index_en.htm (accessed on 11 September 2009).

Another source for finding out more about the EU's motivation on 'integrating environment into development cooperation' and trade, probably in the qualitative phase of this research, is a series of EU Commission publications and Council decisions on this issue, such as the 2009 Council Conclusion on integrating environment in development cooperation at 2953rd Environment Council meeting in Luxembourg on 25 June 2009.

The EU has now set up a new and ambitious approach to sustainable development in the new FTAs envisaged in the Global Europe communication. The new approach involves a distinct sustainable development chapter in each trade agreement with substantive commitments on environmental and social issues. The sustainable development chapters will include a commitment to core labour standards, decent work and relevant MEAs. Provisions for cooperation on relevant sustainable development issues will also be included. Each of these trade negotiations will be accompanied by Sustainability Impact Assessments (SIA). The aim is to examine the impacts on sustainable development arising from new FTAs and bring them to the attention of negotiators and all interested parties in order to ensure that their conclusions and recommendations are included in the negotiation process (Commission of the European Communities 2007: 65). Another example is, for instance, the Commission Staff Working Paper on 'Integrating the Environment into EC Economic and Development Co-operation', which has been published in April 2001 already, which describes the bottom line of EU assumptions about the role of environment in development and trade:

'The Commission and the Council have established the reduction, and eventually, eradication of poverty as main objective of Community development policy. This objective entails support for sustainable economic and social and environmental development. A healthy environment is fundamental to the quality of life of current and future generations. Poor environmental quality undermines the developing countries' efforts to alleviate poverty and it will further jeopardize future prospects for sustainable

economic and social development' (Commission of the European Communities 2001).¹⁶ The paper further draws the following conclusion: 'Trade has by far the largest direct impact on the economic development of most developing countries. Therefore any measure to reduce potential negative and enhance positive impacts of trade on economic, social and environmental sustainability can make a significant difference to sustainable development, provided that the overall context is favourable'.

Even if selected in a non-random way, these few examples give an indication that there are some important factors to consider when it comes to attempts by the European Union to transfer some of its own rules and ideas about environmental protection onto its non-OECD trading partners. I expect that the aim to find some robust explanatory factors for this variance will, however, not only shed light on this particular phenomenon, but hopefully allow to make some more general statements about the way in which the EU attempts to influence others, what its motivations are to do so, how others react to its assumed leadership position and the role of trade agreements in environmental protection in general.

¹⁶ Treaty of Amsterdam, Article 6: commitment to integrate environmental concerns into all Community policy areas; Art. 177: sustainable development as an objective of development co-operation.

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