

STUDENT NOTE

The Rise of Environmental Provisions in Trade Agreements

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December 2025

Abstract

Modern preferential trade agreements increasingly incorporate environmental and climate provisions, marking a departure from the purely commercial focus of earlier trade regimes. This student note identifies and analyses a “Green Core” framework emerging from recent agreements, particularly the EU–New Zealand FTA and CPTPP, comprising five essential elements: regulatory autonomy paired with non-regression, multilateral environmental agreement implementation, public participation mechanisms, cooperation and capacity building, and targeted liberalisation of environmental goods and services. The note argues that consolidating this Green Core across future PTAs is both practical and necessary, as it prevents competitive deregulation, enhances accountability through standardised transparency mechanisms and aligns trade liberalisation with the UN Sustainable Development Goals. Rather than transforming trade agreements into comprehensive environmental treaties, the Green Core offers a politically feasible baseline that ensures ecological considerations are systematically embedded in trade governance while respecting state sovereignty and promoting green transitions.

Keywords: environmental provisions, trade agreements, Green Core, EU–New Zealand FTA, CPTPP, non-regression, multilateral environmental agreements, sustainable development

I Introduction

This note argues that the inclusion of climate and environmental provisions in modern preferential trade agreements (PTAs) should be consolidated around a defined “Green Core” that is already visible in existing texts. In particular, Chapter 19 of the EU – New Zealand Free Trade Agreement (EU–NZ FTA)¹ and the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)² environmental chapter clearly demonstrate this trend. The “Green Core” consists of: (1) a right to regulate paired with a non-regression clause; (2) commitments to implement multilateral environmental agreements, including the Paris Agreement; (3) public participation and transparency duties; (4) cooperation and capacity building and (5) targeted liberalisation of environmental goods and services.

Consolidation on this core is both practical and reasonable as it aligns trade with climate governance, correlates with increased trade in green goods and lower emissions where domestic regulation is robust and supports economic resilience as well as progress towards the United Nations Sustainable Development Goals (UNSDGs). Finally, this note proposes a concise checklist to guide negotiators and policymakers in embedding these commitments in future PTAs.

II Analysis

A From GATT to Modern PTAs: The Evolution of Environmental Provisions

Historically, the word “environment” was not mentioned in any pages of the General Agreement on Tariffs and Trade (GATT).³ This clearly shows that at the time of

¹ *European Union – New Zealand Free Trade Agreement* (signed 9 July 2023, entered into force 1 May 2024) [EU – NZ FTA].

² *Comprehensive and Progressive Trans-Pacific Partnership* 3337 UNTS 1 (signed 8 March 2018, entered into force 30 December 2018) [CPTPP].

³ Elina Cima “The Exception-Based Model” in *From Exception to Promotion: Re-Thinking the Relationship Between International Trade and Environmental Law* (Brill, 2021) 87 at 105.

drafting GATT, the environment was not being considered and agreements were negotiated with minimal, if any, attention to environmental implications. Not until the Uruguay Round that environmental issues started to receive sustained attention, culminating in the Marrakesh Agreement, in which the preamble explicitly linked trade with sustainable development and environmental protection.⁴ The shift was reinforced at the 1994 Marrakesh Ministerial Decision, where the Decision on Trade and Environment was signed and confirmed that trade liberalisation and environmental protection are complementary goals.

Since then, trade agreements have shifted from solely focusing on tariff reduction and market access to addressing a wide range of policy concerns including climate and environmental protection. This significant shift underscores a deeper understanding and recognition by states that economic development should be aligned closely with environmental sustainability.

The EU–NZ FTA and CPTPP offer comprehensive examples of how climate and environmental commitments have been integrated into modern bilateral and plurilateral trade agreements. Both agreements provide commitments that can be identified as the building blocks of the Green Core. In particular, Chapter 19 of the EU–NZ FTA focuses on trade and sustainable development,⁵ embeds binding commitments of both parties to international labour⁶ and environmental⁷ standards including the Paris Agreement on Climate Change.⁸ By doing that, the agreement reflects EU’s broader strategy of using trade policy as a tool to promote sustainable trade and

⁴ “Early years: emerging environment debate in GATT/WTO” World Trade Organization <www.wto.org>.

⁵ EU–NZ FTA, art 19.1(3)–(5).

⁶ EU–NZ FTA, arts 19.3(3), 19.3(7)

⁷ EU–NZ FTA, arts 19.6(2)–(3)

⁸ EU–NZ FTA, art 19.6(2).

requires partners such as New Zealand to engage for sustainable development.⁹

One of the most important aspects of Chapter 19 is how it balances national regulation with the need to avoid environmental regression. Additionally, the agreement affirms both parties' sovereign rights to implement stronger environmental measures while introducing a non-regression clause that prevents either party from weakening existing protections for competitive advantage.¹⁰ By integrating these elements, the agreement ensures that trade advantages are not compromised while maintaining the flexibility needed for more ambitious climate actions.

The EU–NZ FTA also goes further compared to any earlier agreements by embedding procedural guarantees. Provisions on transparency, public participation as well as stakeholder engagement make sure that wider society plays a key role in implementing the chapter. Additionally, the agreement incorporates commitments to cooperation and capacity building, which allow both parties to share expertise and together promote sustainable trade practices.¹¹ These mechanisms are significantly important as they help transform high-level commitments into actions, ensuring that environmental objectives can be effectively implemented rather than remaining as statements.

Likewise, the CPTPP also includes a detailed chapter that addresses environmental protection, including two key general commitments that underscore mutually supportive trade and environmental policies.¹² It requires members to implement multilateral environmental agreements and prohibits practices such as illegal logging

⁹ European Commission “Sustainable development in EU trade agreements” <www.policy.trade.ec.europa.eu>.

¹⁰ EU–NZ FTA, art 19.4.

¹¹ EU–NZ FTA, arts 19.5 and 19.6.

¹² CPTPP, art 20.3.

and overfishing.¹³ At the same time, it affirms that each party has the right to regulate in pursuit of environmental objectives.¹⁴ This clearly demonstrates the integration of environmental considerations within the structure of major regional trade agreements.

The CPTPP also presents a strong emphasis on transparency and public participation, however more extensively compared to the EU–NZ FTA. Specifically, the CPTPP includes mandatory public consultation periods, structured Domestic Advisory Groups (DAGs) as well as domestic contact points which allow unions and employers to raise concerns.¹⁵ Whereas the EU–NZ FTA approach is more consultative and cooperative rather than proceduralised.¹⁶ Once again, these mechanisms are essential as they enhance the legitimacy of the wider agreement and ensure that environmental commitments are monitored and implemented in an active way.

These environmental provisions vary in different forms such as a dedicated chapter, embedded clauses across other sectors or references to external legal frameworks. A module by Paul Baker¹⁷ indicated that regardless of how it is formed in an agreement, there are some key elements including environmental goals and objectives; right to regulate and non-regression clause; enforcement requirements; compliance with Multilateral Environmental Agreements (MEAs) as well as environmental cooperation and capacity building. Furthermore, some agreements also address the coverage of specific environmental issues; public participation and transparency along with environmental goods and services (EGS) liberalisation.¹⁸ These elements signal a

¹³ CPTPP, arts 20.16 and 20.17.

¹⁴ CPTPP, art 20.3.

¹⁵ CPTPP, arts 20.9 and 20.18.

¹⁶ “New Zealand – EU Free Trade Agreement National Interest Analysis” New Zealand Ministry of Foreign Affairs and Trade <www.mfat.govt.nz>.

¹⁷ Paul Baker “Environmental Provisions in Trade Agreements” <www.unescap.org>.

¹⁸ Above n 17.

clear movement towards embedding sustainability in a more systematic way within PTAs and provide a practical model for future trade policy.

B Defining the Green Core Framework

Collectively, these provisions form a practical framework which can be conceptualised as a “Green Core”. The Green Core consists of five elements that when taken together will provide a baseline for embedding environmental governance into trade law. One of the five components is the acknowledgement that states must maintain the right to regulate paired with a non-regression clause. This ensures that governments can pursue ambitious climate policies without fearing violation of trade commitments, while simultaneously preventing a decline in environmental standards. The emerging principle of non-regression is critical in preserving consistent environmental protections while enabling sovereign policy action in trade contexts.¹⁹ In my view, these provisions serve as a stepping stone for any meaningful environmental chapter, as they directly address the conflict between liberalisation and sovereignty.

As previously mentioned, Chapter 19 of the EU–NZ FTA explicitly affirms that both parties retain the right to regulate for environmental protection and includes a non-regression clause to prevent any lowering of standards to attract trade or investment.²⁰ Similarly, the CPTPP’s environmental chapter also affirms that each party has the right to regulate in pursuit of environmental objectives.²¹

A second component of the “Green Core” is the requirement that participating parties

¹⁹ Andrew D Mitchell and James Munro “An International Law Principle of Non-Regression from Environmental Protections” (2022) 72 *International & Comparative Law Quarterly* at 35–36, 48, 60 and 68.

²⁰ EU–NZ FTA, arts 19.2(1) and 19.2(4)–(5).

²¹ CPTPP, arts 20.3(2), 20.3(5) and 20.3(7).

adhere to their commitments under MEAs, particularly the Paris Agreement.²² This promotes consistency across the international regime and ensures that trade liberalisation does not harm global climate governance. In the EU–NZ FTA, parties agreed to implement all MEAs including the Paris Agreement, the Convention on Biological Diversity as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).²³

Despite some critics labelling MEAs as largely symbolic, there is still evidence suggesting that MEAs play an important role in coordinating international action on environmental issues, including biodiversity and pollution control.²⁴ Embedding these obligations in trade agreements is important given they help strengthen the political and legal perspective of climate commitments and align climate actions with international obligations.

Another element that the Green Core also emphasises is public participation and transparency duties. There has been an increase in requirements for governments to involve civil society and stakeholders in monitoring and implementing environmental provisions in modern PTAs, as clearly seen in both Chapter 19 of the EU–NZ FTA²⁵ and the CPTPP environmental chapter.²⁶ These provisions are not only procedural but also enhance accountability by enabling scrutiny of states' performance. One study noted that the increase in use of MEA-compliance clauses and civil society participation mechanisms reflects how environmental provisions

²² *Paris Agreement* 3156 UNTS 79 (opened for signature 12 December 2015, entered into force 4 November 2016).

²³ EU–NZ FTA, art 19.7.

²⁴ “How Multilateral Environmental Agreements can help mend the planet” United Nations Environment Programme <www.unep.org>.

²⁵ See EU–NZ FTA, arts 19.14, 19.15(3), 19.15(4) and 19.16.

²⁶ See CPTPP, arts 20.7(1), 20.7(3), 20.8(1)–(2), 20.9(1)–(2) and 20.19.

are on a positive shift from symbolic aspirations to enforceable expectations.²⁷ By broadening the range of actors involved in trade governance, I see this shift as a critical innovation for the global trading system.

The fourth element of the Green Core is cooperation and capacity building. As environmental challenges are transnational, PTAs provide a forum for participating parties to exchange expertise, pursue joint initiatives and cooperate in implementing commitments. This is extremely important for developing countries, which usually face resource constraints in meeting ambitious environmental standards. For instance, articles 19.5 and 19.6 of the EU–NZ FTA concern technical cooperation and capacity-building programmes, which allow both the EU and New Zealand to share knowledge and foster sustainable trade practices.²⁸

The Organisation for Economic Co-operation and Development (OECD)²⁹ observes that without cooperation, technical assistance and shared resources, environmental provisions – particularly those tied to trade obligations – risk remaining symbolic or even becoming barriers rather than drivers of sustainable trade. Embedding cooperation and capacity-building mechanisms will make PTAs more equitable, ensuring that sustainable trade benefits are accessible across different levels of development.

Finally, the Green Core includes targeted liberalisation of environmental goods and services. PTAs can directly promote green transitions by reducing trade barriers to trade in clean energy technologies and sustainable agricultural goods and services.³⁰

²⁷ Clara Brandi and Jean-Frédéric Morin “Trade and the Environment: Drivers and Effects of Environmental Provisions in Trade Agreements” in *Cambridge Elements in Earth System Governance* (Cambridge University Press, United Kingdom, 2023).

²⁸ EU–NZ FTA, arts 19.5 and 19.6.

²⁹ Christophe Bellmann and Alena Bulatnikova “Incorporating Environmental Provisions in Regional Trade Agreements in Chapters and Articles Dealing with Trade in Services” OECD Trade and Environment Working Papers <www.oecd.org>.

³⁰ Jun Ma “Regional Green Trade Bloc to Fight Both Climate Change and Protectionism” Forum

The EU–NZ FTA removes tariffs on a number of green goods and at the same time establishes an annex which details environmental goods and services that can be liberalised.³¹ The WTO suggests that eliminating trade barriers on environmental goods and services can accelerate the diffusion of low-emission technologies.³² This element is arguably valuable as it demonstrates that trade itself is not only a potential threat to environmental goals but also a vehicle for achieving them.

These five elements together build a coherent framework that is both robust and politically feasible. The framework does not transform PTAs into comprehensive environmental treaties but ensures that trade agreements systematically consider ecological impacts.

C The Strategic Case for Consolidation

Consolidating the Green Core across PTAs ensures legal coherence, mitigates competitive deregulation, enhances legitimacy and accountability and aligns trade with global development goals.³³ When non-regression clauses or commitments to MEAs are included only in selected agreements, businesses or firms may relocate production to countries with weaker standards, which undermines both environmental outcomes and fair competition. Therefore, consistently embedding these commitments ensures that trade liberalisation does not weaken environmental protections.³⁴

Additionally, consolidation enhances legitimacy and accountability. Through standardised mechanisms for transparency, participation and stakeholder engagement,

on Trade, Environment and the SDGs <www.tessforum.org>.

³¹ EU–NZ FTA, Annex 19.

³² “Trade and Climate Change – Information Brief no.4” World Trade Organization <www.wto.org>.

³³ “Regulatory Policies in OECD Countries – From Interventionism to Regulatory Framework” Organisation for Economic Co-operation and Development <www.oecd.org>.

³⁴ Mitchell and others, above n 19.

as seen in the EU–NZ FTA³⁵ and CPTPP,³⁶ civil society gains the ability to track implementation and hold states accountable. This approach strengthens the credibility of environmental provisions and helps transform them from statements to meaningful commitments.

Lastly, a consolidated Green Core also aligns trade with global climate and development goals. Trade agreements which support clean energy, biodiversity protection and resource efficiency are likely to contribute directly to SDG 12 – Responsible Consumption and Production, which promotes resource efficiency, recycling and sustainable consumption.³⁷ This also aligns with SDG 13 – Climate Action, which aims to boost access to clean-energy technology and reduce emissions,³⁸ and SDG 15 – Life on Land, which protects biodiversity and ensures sustainable land and forest practices.³⁹

III Conclusion

The rise of environmental provisions in trade agreements reflects a significant shift in how states view the purpose of PTAs. As highlighted in the case studies of the EU–NZ FTA and the CPTPP, the Green Core begins to crystallise, anchored in regulatory autonomy, non-regression, participatory mechanisms, cooperation and targeted liberalisation in green goods and services. These elements together create a pragmatic yet meaningful framework that ensures states consider ecological factors when pursuing their trade goals. While trade liberalisation has historically posed a risk to environmental protection, the Green Core framework offers a constructive

³⁵ EU–NZ FTA, art 19.15.

³⁶ CPTPP, art 20.19.

³⁷ “Goal 12: Responsible Consumption and Production” The Global Goals <www.globalgoals.org>.

³⁸ “Goal 13: Climate Action” The Global Goals <www.globalgoals.org>.

³⁹ “Goal 15: Life on Land” The Global Goals <www.globalgoals.org>.

pathway. Consolidating this framework will provide legal coherence, mitigate competitive deregulation, enhance legitimacy and accountability and align trade with global development goals. From my perspective, I see the Green Core as a necessary balance: it avoids imposing unrealistic obligations while still delivering politically viable and binding commitments.