Europe and the World: A law review

UCLPRESS

Special issue: *Economic and Non-economic Values and Objectives in the EU's International Trade: Actors and Processes in Resolving Normative Tensions*

Article

# Paradigms in the trade–climate nexus: 'liberal environmentalism', the Environmental Goods Agreement and the role of the EU

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**How to Cite**: M. Musch, F. De Ville, 'Paradigms in the trade–climate nexus: 'liberal environmentalism', the Environmental Goods Agreement and the role of the EU' [2019] 3(*1*): 4. *Europe and the World: A law review* [13]. DOI: https://doi.org/10.14324/111.444.ewlj.2019.11.

Submission date: 1 August 2018; Acceptance date: 8 January 2019; Publication date: 26 June 2019

**Peer review:**
This article has been peer reviewed through the journal's standard double blind peer-review, where both the reviewers and authors are anonymised during review.



## Abstract

What explains the evolution of negotiations on liberalising environmentally friendly goods and services over the past 15 years and the EU's position on these? In December 2016 negotiators did not succeed in their goal of concluding an Environmental Goods Agreement (EGA) in Geneva. This was considered by many participants and observers as a missed opportunity for a win-win for the global economy and the environment. Protectionist wrangling over which products should be on a list for speedy liberalisation was seen as the main reason why the negotiations (temporarily) failed. However, we show that the environmental objectives of these negotiations had already gradually been pushed to the back by commercial objectives. While there had been attempts in early phases of the negotiations to make the environmental effects of goods primordial, in the end a commercial logic prevailed. We point to the importance of the paradigm of 'liberal environmentalism', which makes it difficult to promote trade-conditioning measures in an already commercially biased policy subsystem. We focus particularly on the EU as one of the key actors in the EGA negotiations. Through a number of interviews with

European policy-makers and civil society representatives, and desk research of negotiating documents and secondary literature, we find evidence of the prevalence of liberal environmentalist thinking, the dominance of trade actors in the policy subsystem and difficulties for environmental actors to penetrate these negotiations. We conclude that trying to reconcile trade and environmental objectives in a synergetic ('win-win') manner does not make a successful conclusion necessarily easier.

**Keywords:** EU trade policy; Environmental Goods Agreement; liberal environmentalism; climate action

## 1. Introduction

In the past 25 years, the international trade agenda has evolved remarkably. The conclusion of the Uruguay Round (1986–94) of global trade negotiations further reduced traditional quantitative trade barriers (tariffs and quota), making them less significant, and brought new issues such as services and intellectual property rights into the remit of the newly established World Trade Organization (WTO). Following the contentious Tuna-Dolphin dispute under the General Agreement on Tariffs and Trade in 1991 and the supplementary pacts to the North American Free Trade Agreement (NAFTA) on labour (the North American Agreement on Labor Cooperation) and the environment (the North American Agreement on Environmental Cooperation) negotiated in 1993, the environment became one of the key 'non-trade concerns' on the international trade agenda. Subsequently, the Marrakesh Agreement establishing the WTO referred in its preamble to sustainable development as one of the objectives of the international trade regime. This evolution of the trade *agenda* increasingly affected the *politics* of trade. New objectives, actors and norms have penetrated and thereby changed trade politics.

Since then, academic work on 'trade and . . . ' issues has proliferated. This expanding literature has been diverse both in terms of disciplinary perspectives and the types of 'non-trade issues' that have been studied. Legal scholars have mainly analysed the compatibility of using trade policy for non-trade concerns with WTO rules.[1] Economists have primarily tried to calculate the (positive, negative or neutral) effects of trade liberalisation on non-trade objectives, and vice versa.[2] Political scientists have mostly tried to describe how the proliferation of non-trade issues changes the politics of trade policy.[3] All of these groups of academics have focused on environmental, social and foreign policy issues, among others.

In this article, we look at the politics of one particular entity, namely the European Union (EU), with regard to one particular non-trade objective: climate protection. We analyse the issue mainly from a political science perspective. The EU is an important actor in 'trade and . . . ' politics. Arguably, it used access to its market very early on to pursue non-trade goals, such as the development of – and upholding a special relationship with – the former colonies of its Member States. Shortly after the establishment of NAFTA and the WTO, the EU also adapted its Generalised System of Preferences in order to convince developing countries to respect international labour and environmental norms in return for better access to the EU market (so-called 'GSP plus'). The EU has been seen as the main driver of a new multilateral trade round, with a specific focus on development (the 'Doha Development Round') and environmental protection as one of the objectives (see below).

More specifically, we will analyse the EU's role in the negotiations on an Environmental Goods Agreement (EGA) that has its roots in this Doha Development Agenda. In recent years, this agreement has been identified by policy-makers as the key contribution that the international trading system could make to mitigate climate change, and as a prime example that trade liberalisation and climate protection can go hand in hand. Nonetheless, these negotiations failed in late 2016. In this article, we discuss the evolution of these negotiations, with a specific focus on the role of the EU, in order to understand why they have not come to a successful conclusion. In doing so, we point at the importance of a particular way of thinking about desirable policies in the trade–climate nexus that pushed negotiations in a certain 'synergetic' direction, but apparently without necessarily making finding consensus easier.

The next section will discuss why we should adapt our traditional political science models to explain trade policy decisions that involve non-trade objectives. We argue that in 'nexus politics' paradigms that offer a particular understanding of how policy areas interact, and what the problems to be addressed and desirable solutions are, should be of central importance to our explanations. Here, we

[1] E.g. Robert Howse, 'The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate' (2002) 27 Columbia Journal of Environmental Law 491; Olivier De Schutter, *Trade in the Service of Sustainable Development: Linking Trade to Labour Rights and Environmental Standards* (Hart Publishing 2015).

[2] E.g. Jagdish Bhagwati, 'Trade Liberalisation and "Fair Trade" Demands: Addressing the Environmental and Labour Standards Issues' (1995) 18 The World Economy 745; Matthew A. Cole, 'Trade, the Pollution Haven Hypothesis and the Environmental Kuznets Curve: Examining the Linkages' (2004) 48 Ecological Economics 71.

[3] E.g. Alasdair Young and John Peterson, 'The EU and the New Trade Politics' (2006) 13 JEPP 795. On how the SPS and TBT agreements affect regulatory politics, see Ferdi De Ville, 'European Union Regulatory Politics in the Shadow of the WTO: WTO Rules as Frame of Reference and Rhetorical Device' (2012) 19 Journal of European Public Policy 700.

also extensively introduce the 'liberal environmentalism' paradigm that has become central in thinking about the trade–climate nexus. The third section offers our empirical analysis of the EGA negotiations, and the role of the EU in particular. In the final section, we summarise our findings and discuss their relevance for policies and analyses in the trade–climate nexus.

## 2. Politics in the trade–climate nexus: a focus on the 'liberal environmentalism' paradigm

With the emergence of a 'new trade agenda', political scientists are also confronted with the question of whether they should adapt their explanatory models to understand and explain (EU) trade policy. Influenced by political economy analyses of US trade policies, accounts that focus on producer groups have until now been prevalent as other groups in society, such as consumers or environmentalists, are supposed to be too diffuse to organise themselves for mobilisation. In such 'interest group' accounts, trade policy is supposed to be the outcome of a societal conflict between exporters (promoting liberalisation to gain access to new markets) and import-competing firms (advocating protectionism to avoid loss of domestic market shares), leading governments to adopt certain (more or less liberal or protectionist) positions.[4] In the EU's peculiar institutional architecture, this liberal, interest group-oriented model has been complemented by an institutionalist 'principal-agent approach' focused on the dynamics between Member States (which take joint positions on trade policy in the Council of the European Union) as principals and the European Commission (which is the sole negotiator for the EU in trade policy) as the agent.[5] In that way, the 'EU trade politics' literature has developed a model linking societal actors through EU-specific decision-making processes to trade policy outcomes. Norms and ideas have been less central to the political science literature on EU trade policy, except for some constructivist analyses that highlight the neoliberal consensus underpinning the policy domain.[6]

Can this model, originally developed in the US to explain 'traditional' trade policy (i.e. focused on removing quantitative restrictions) simply be transposed to the new trade agenda with the inclusion of non-trade objectives? The answer could be positive if we would see these non-trade objectives as just another form of non-tariff protectionism over which exporting and import-competing firms will collide as they do over tariffs or quota. But there are good theoretical and empirical reasons not to do so. Non-trade objectives can be assumed to bring new actors and non-commercial objectives and norms to the trade arena, changing the politics of trade agreements, as recently shown in the politicised EU-US Transatlantic Trade and Investment Partnership (TTIP) and EU-Canada Comprehensive Economic and Trade Agreement (CETA) negotiations.[7] Trade politics can no longer be considered the exclusive terrain of trade officials and producer groups. In the 'new trade politics', non-governmental organisations (NGOs) and political actors promoting non-trade causes can be assumed to enter the trade arena. Their interest in this domain can be awakened by the (perceived) negative consequences of trade flows or policies. Such an initial defensive response could, after they have gained expertise in the subject matter, evolve into offensive claims to use trade policy to promote non-trade objectives. NGOs and political non-trade actors can hence become influential actors in trade politics by providing expertise, diffuse norms or conditional legitimacy to governments or opposition parties.

To understand this change to twenty-first-century trade politics, we propose a 'discursive institutionalist' perspective[8] and will apply it to the trade–climate nexus. This approach assumes that interests are always mediated by ideas and institutions. The objectives that actors pursue and their beliefs

[4] E.g. Andreas Dür, 'Bringing Economic Interests Back into the Study of EU Trade Policy-Making' (2008) 10 British Journal of Politics & International Relations 27.

[5] E.g. Andreas Dür and Manfred Elsig, 'Principals, Agents, and the European Union's Foreign Economic Policies' (2011) 18 Journal of European Public Policy 323.

[6] E.g. Gabriel Siles-Brügge, 'The Power of Economic Ideas: A Constructivist Political Economy of EU Trade Policy' (2013) 9 Journal of Contemporary European Research 598; Ferdi De Ville and Jan Orbie, 'The European Commission's Neoliberal Trade Discourse Since the Crisis: Legitimizing Continuity through Subtle Discursive Change' (2014) 16 British Journal of Politics & International Relations 149.

[7] Ferdi De Ville and Gabriel Siles-Brügge, 'Why TTIP is a Game-Changer and Its Critics Have a Point' (2016) 24 Journal of European Public Policy 1491; Alasdair R. Young, *The New Politics of Trade: Lessons from TTIP* (Agenda Publishing 2017).

[8] Vivien A. Schmidt, 'Discursive Institutionalism: The Explanatory Power of Ideas and Discourse' (2008) 11 Annual Review of Political Science 303.

about how these objectives can be achieved depend on the ideas they hold, which are seen not as static but as dynamically amendable through discursive intercourse. Institutions, finally, not only influence which actors have standing over certain decisions and the rules of the game for taking decisions, but also provide 'meaning contexts' in which certain ideas are more acceptable than others. We argue that paradigms are particularly important in 'nexus politics'. Here, actors from different backgrounds, with diverging goals and ideas about how to realise these, come together to find joint solutions. A paradigm that offers a particular view on how different policy areas interact, if accepted by policy-makers, can help overcome differences. While paradigms have inclusionary effects in aligning actors around a common problem definition, they also have exclusionary consequences in making certain policy understandings and solutions unthinkable. Finally, the 'forum' in which nexus politics is executed will also affect who gets access to decisions and which paradigms, or decision-making 'logics', prevail.

Based on the work of Steven Bernstein, we argue that in recent decades policy-makers in the trade–climate nexus have converged around a certain 'liberal environmentalist' understanding of this nexus, and that this has very much influenced the evolution of the EGA negotiations. We will introduce this paradigm extensively below. While his analysis focused on negotiations in the 'economy–ecology' nexus held within international environmental policy forums, we will argue that the fact that the EGA negotiations took place within the WTO served to reinforce the *liberal* leg of this paradigm. Bernstein has analysed how the thinking on the economy–ecology nexus has evolved over the past 50 years. He has come to the conclusion that over time, a paradigm of 'liberal environmentalism' has become dominant. This can be defined as a paradigm that believes in the possibilities of compromises between environmental and economic objectives, by drawing on economic solutions that fit the existing economic structures to address environmental problems.[9] In the case of international environmental negotiations, his influential analysis shows that the dominant paradigms on the relationship between the global economy, development and the environment have shifted from 'environmental protection' (in the 1970s) over 'managed sustainable growth' (in the 1980s) to 'liberal environmentalism' (increasingly dominant since the 1990s).

This shift is of an evolutionary rather than a revolutionary nature. Elements of 'liberal environmentalism' were already present in 'environmental protection', which is the first norm complex Bernstein identifies based on the analysis of the United Nations Conference on the Human Environment (UNCHE) in Stockholm in 1972. The Stockholm conference's recommendations already stated that environmental policies should not hamper development. However, there was a consensus that environmental protection requires substantial transfers of financial aid, technology, and scientific information to developing countries.[10] Contrary to the Declaration's principles, a follow-up study on the implementation of Stockholm stated that developing countries did not receive significant additional financial resources to help them deal with environmental problems. This reinforced their perception of the economy–ecology–development relationship as a choice *between* environmental protection and economic growth.[11] During this episode, command-and-control methods of environmental protection were favoured over market allocation. However, soon after Stockholm, the North started focusing on methods of internalising environmental costs with minimum disruption to markets, while the South still sought a reform of the international economic system, which it felt relied too heavily on the market to the detriment of the poor.[12] In the North, increased attention to environmental concerns led to increased efforts to find a fit between liberal economic norms and environmental protection. As early as 1972, the Organisation for Economic Co-operation and Development (OECD) had developed the 'polluter pays principle' (PPP) as a means to avoid environmental regulations that would interfere with free market

[9] Steven Bernstein, *The Compromise of Liberal Environmentalism* (Colombia University Press 2001).

[10] UNCHE Declaration principles 9 and 20: scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

[11] Bernstein (n 9) 43–9.

[12] Bernstein (n 9) 50.

mechanisms.[13] This started a trend to incorporate environmental costs rather than to regulate[14] (via command-and-control measures) to counter environmental degradation.[15] The EU picked up the principle in its first Environmental Action Plan (1973–6), and since 1987 it has also been enshrined in its Treaties.

Overall, the Stockholm conference lacked a unifying theme to forge consensus between North and South. The introduction of 'sustainable development' in the subsequent decade brought about a solution to this problem. The 'emptiness' of the concept[16] and the vagueness it casts upon the respective responsibilities of actors involved allowed it to gain widespread support.[17] It was able to build a bridge between the two camps that had emerged,[18] with the North aiming for pollution abatement and the South being concerned about development and distributional justice. In 1987 the World Commission on Environment and Development (WCED) published the 'Brundlandt Report'. Here, 'sustainable development' was defined in terms of 'managed sustainable growth'.[19] Traditional Keynesian recipes were now infused with environmental considerations. More precisely, domestic economic policies, as well as the policies of international economic organisations, were expected to take environmental concerns into account. This was not supposed to mean a halt to growth or to the expansion of international trade, but selective interventions were to be allowed both to protect the environment and to help developing countries benefit more from the liberal economic order. This norm complex, a liberal-Keynesian definition of sustainable development, hence promoted managed free trade and international and domestic policies to help developing countries grow in an environmentally friendly way, inter alia through international financial assistance and the easing of property rights to facilitate technology transfer. In this way, Brundlandt provided a transition from Stockholm to Rio (which would promote a more neoliberal definition of sustainable development). It made clear that environmental and developmental goals could rest on the same normative foundation of economic growth and established common responsibilities of the North and the South in furthering 'managed sustainable growth' through sound management and assistance from the North and domestic reform in the South.

Eventually, the ambiguous concept of sustainable development would be filled in a more *neo*liberal way at the 'Earth Summit' in Rio in 1992, with what Bernstein calls the 'liberal environmentalism' paradigm or norm complex.[20] The Earth Summit came right at the time when the Washington Consensus had risen to prominence in the most important international organisations. Even the United Nations Conference on Trade and Development (UNCTAD) had begun to recognise the value of domestic macroeconomic, trade and investment policies along Washington Consensus lines. At Rio, '[n]ot only was the compatibility of growth and environmental protection cemented in international discourse, but economic instruments and market-based solutions were already perceived to be the mechanisms best able to achieve this synthesis'.[21] No longer were managed trade, technology transfer, and assistance seen as ways to reconcile development with environmental protection. From here onwards, unconstrained free markets in and of themselves were seen as the solution. In consequence, the burden would be shifted more towards developing countries, which had to pursue export-led growth through domestic liberalisation, which would lead not only to income growth, but also to more environmentally friendly development.

[13] As the main function of PPP the OECD recommendation specifies: 'The allocation of costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and *to avoid distortions in international trade and investment*. The polluter should bear the expense of carrying out the measures decided by public authorities *to ensure that the environment is in an acceptable state*' OECD 1972, emphases added.

[14] Admittedly, PPP in practice often took the form of direct regulations based on standards, permits and so on, which impose costs of meeting those standards on the polluter. Even in such cases, however, PPP relies on proper pricing (Bernstein (n 9) 51). See also EU Commission interpretation (2012): 'Market based instruments are well suited to improve internalization of environmental costs, but command and control law is still of high relevance in particular to implement the preventive aspects of PPP.'

[15] Bernstein (n 9) 50–1.

[16] see e.g. Susan, Baker, 'Sustainable Development as Symbolic Commitment: Declaratory Politics and the Seductive Appeal of Ecological Modernisation in the European Union' (2007) 16(2) Environmental Politics 297–317.

[17] Bernstein (n 9) 50.

[18] Bernstein (n 9) 50.

[19] Bernstein (n 9) 66.

[20] Bernstein (n 9) 70.

[21] Bernstein (n 9) 73.

In the Rio Declaration, the right to development is recognised together with the prohibition on using environmental measures in a way that unjustifiably restricts trade (thereby adopting a principle from the international trade system). No longer are selective interventions invoked to reconcile trade and the environment, nor is technology transfer through financial assistance and the easing of property rights seen as necessary. Instead, it is assumed that market mechanisms will deliver technology transfer.

To sum up, the most important changes between the prevailing paradigms in international environmental negotiations are: where initially, it was recognised that developed and developing countries differed in terms of responsibilities, sources and solutions to environmental problems, eventually this was formulated as 'common but differentiated responsibility'; where first command-and-control-like interventions in the international economy were seen as necessary, finally free trade and environmental protection were seen not only as compatible, but even as synergetic, with the former automatically leading to the latter; and finally, whereas earlier it was thought that environmental protection requires substantial technology transfer and financial assistance towards developing countries, eventually it was argued that technology transfer could best be left to market mechanisms.

Others, like Zelli, Gupta and Van Asselt,[22] have also recognised the importance of this paradigm in the trade–environment nexus. In the case of climate change, they characterise this market-friendly approach with a focus on efficiency gains from technological innovation, the diffusion of climate-friendly goods through trade, and the promotion of emissions trading over traditional regulation. This view on the trade–environment nexus thus claims synergistic aspects among trade and environment, while sidelining conflicting ones. Policy-wise this is reflected not only in the rejection of certain regulatory proposals (such as in the case of the US and developing countries, largely pushing for more market-liberal approaches), but also in a process of self-censorship (such as in the case of the EU, failing to establish more trade-restrictive climate protection measures such as border tax adjustments).

Critics point to the implicit consequences of the focus on win-win scenarios in trade–climate interactions. In the context of sustainability initiatives in agricultural trade governance, Jennifer Clapp draws attention to the fact that the norm of trade liberalisation ultimately shapes sustainability initiatives and thereby constrains their transformative potential. The dominant narrative within the trade sphere prescribes liberalisation as the necessary policy response to achieve more sustainable outcomes, to the detriment of a more integrated system overhaul.[23] On this note, Lucy Ford highlights that while EU trade policy is now addressing sustainability questions, contradictions between current economic growth and sustainability challenges are muted.[24] Another branch of literature critiques the lack of meaning attached to sustainability initiatives. Methmann has criticised 'climate protection' as an empty signifier. While put forward as an important policy goal, existing activities are rephrased in terms of climate protection rather than changed.[25]

In the next section, we trace the impact of liberal environmentalism in the negotiations on liberalising environmentally friendly goods, and particularly how they have informed the EU's role.

## 3. The EU's role in the Environmental Goods Agreement negotiations

### *3.1. A brief history of EGA*

The 2001 Doha Development Agenda mandate called for 'the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services'.[26] While the negotiations on

[22] Zelli Fariborz, Aarti Gupta and Harro Van Asselt, 'Institutional Interactions at the Crossroads of Trade and Environment: The Dominance of Liberal Environmentalism?' (2013) 19 Global Governance: A Review of Multilateralism and International Organizations 105.

[23] Jennifer Clapp, 'Trade and the Sustainability Challenge for Global Food Governance' (2016) International Studies Association Annual Meetings in Atlanta, GA. March.

[24] Lucy Ford, 'EU Trade Governance and Policy: A Critical Perspective' (2013) 9(4) Journal of Contemporary European Research 578–96.

[25] Chris Paul Methmann, '"Climate Protection" as Empty Signifier: A Discourse Theoretical Perspective on Climate Mainstreaming in World Politics' (2010) 39(2) Millennium 345–372.

[26] World Trade Organization, 'Doha WTO Ministerial Declaration' (WT/MIN(01)/DEC/1 of 20 November 2001) paragraph 31 iii.

environmental goods and services were expected to be a likely candidate for early conclusion, these expectations failed to materialise. Both in terms of conceptualisation and interests at stake, this area proved to be more contentious than initially anticipated. The Committee on Trade and Environment in Special Session (CTESS) was mandated to clarify the concept of environmental goods, which turned out to be a rather difficult task. Talks quickly became bogged down in attempts to decide on the approach that would guide the liberalisation of environmental goods. Several formats have been proposed: the 'criterion approach' involved developing criteria or a definition of environmental goods; the 'project approach' proposed eliminating tariffs on products used in environmental projects; the 'list approach' simply put forward a list of proposed environmental goods, grouped under categories previously suggested by the OECD and the Asia-Pacific Economic Cooperation (APEC).[27] Against this stalemate at the WTO, in September 2012 APEC members put forward a product list based on individual nominations for which they would lower tariff rates to 5 per cent or less by the end of 2015. The initiative was inspired by the plurilateral, sectoral liberalisation format of the Information Technology Agreement (ITA). The political commitment voiced by APEC leaders could not be considered ambitious as they only addressed tariffs (hence leaving out non-tariff barriers and services, as was envisioned before) that, in addition, were already low.[28] Moreover, the list was limited to only those specific goods that could be readily distinguished by customs agents and focused on the end use of products. Issues related to 'like products', products defined by particular process or production methods (PPMs) or life-cycle impacts, were not addressed. Efforts to define or evaluate environmental goods on the basis of environmental criteria were put aside. Focusing on these issues would have involved a more ecologically centred approach, which requires the development of a definition of what exactly 'environmentally friendly' entails, and a methodology based on environmental impact. The list approach that was eventually chosen essentially leaves the selection of goods to commercial negotiation dynamics familiar to trade negotiators. In its turn, the APEC agreement laid the foundation for the EGA negotiations, which would take the form of a stand-alone plurilateral agreement, after the failure of the multilateral, 'single undertaking' Doha Round. In July 2014 the EU, together with 13 other WTO members,[29] launched negotiations on the EGA. Building on the APEC initiative, the first stage of the talks would focus on removing tariffs on a broad list of environmental goods. As was the case for the APEC list, average applied most-favoured nation (MFN) tariffs for proposed goods were already very low. In part, this is due to the political economy of tariff submissions in trade negotiations: countries always avoid putting up products on which they have tariff peaks, concentrating instead on goods in which they have a comparative advantage.[30] In December 2016 negotiations collapsed, as parties failed to reach a consensus on a product list. One of the emblematic issues was the 'bicycle debacle': China insisted on including bicycles on the product list in the EGA negotiations, which was considered as a red line by the EU.[31] The EGA conclusion was scheduled before the end of the Obama administration, a deadline that only gained in importance after the 2016 US presidential election result. Timelines had been shifting as parties could not agree on a compromise that encompassed their commercial interests sufficiently. In the final days of the negotiations China came up with a revised product list, which was interpreted by a Directorate General (DG) Trade official as 'an elegant way to stop the process, but appear to be proactive'.[32] Ironically, the 'pragmatic' decision

[27] 'India's Project Approach Causes Stir at Environmental Goods Talks' (*Biores*, 24 June 2004) <https://www.ictsd.org/bridges-news/biores/news/indias-project-approach-causes-stir-at-environmental-goods-talks> accessed 19 October 2017.

[28] Only 20 per cent of tariff lines were above 5 per cent and the average applied tariffs across members was less than 3 per cent. See Jaime De Melo, 'How Much Will the Davos Initiative Help Reduce Trade Barriers in "Green Goods?"' (2014) 3(4) The Brookings Institution 1 <www.brookings.edu/opinions/how-much-will-the-davos-initiative-help-reduce-trade-barriers-in-green-goods/> accessed 4 February 2019.

[29] Original parties to the negotiations were Australia, Canada, China, Costa Rica, the European Union, Hong Kong (China), Japan, Korea, Norway, New Zealand, Singapore, Switzerland, Chinese Taipei and the United States. Since then, Iceland, Israel and Turkey have also become parties to the negotiations.

[30] De Melo (n 28) 1–3.

[31] Bicycles currently face a 14 per cent tariff rate at the EU border. See Iana Dreyer, 'Environmental Goods Agreement – Why Talks Faltered' (*Borderlex*, 6 December 2016) <http://www.borderlex.eu/environmental-goods-agreement-talks-faltered/> accessed 19 October 2017.

[32] Interview DG Trade, Brussels, 16 December 2016.

to refrain from trying to define what 'environmentally friendly' means resulted in highly politicised negotiations, with political wrangling over rival commercial interests taking the upper hand. In sum, the level of ambition has narrowed down significantly since the Doha Ministerial Declaration more than 15 years ago. The multilateral comprehensive initiative stalled and negotiations resumed in a plurilateral configuration focused on tariff reduction only. The list approach, with implicit focus on the end use of products, has put aside efforts to define or evaluate environmental goods on the basis of environmental (rather than commercial) criteria. In addition to that, a range of issues have either moved to the margins of the agenda or disappeared from it altogether. Some of these items were demands made by the EU and other industrialised countries (such as the inclusion of environmental services and Non-Tariff Barriers (NTBs)); others (such as technology transfer and capacity-building) were demands voiced by developing countries. The EU has been pushing to include both services and NTBs, but was only able to insert some language on a work plan that pledged to discuss these topics in more detail, having once established the product list. During the last negotiating round, parties failed to reach agreement on the latter. The current US administration has yet to take a position on the EGA, while China is holding on to 'unrealistic demands', according to EU officials.[33]

### *3.2. A liberal environmental approach*

The brief reconstruction of the EGA negotiations allows us to demonstrate how negotiators have worked from a liberal environmentalism perspective from the very beginning, and how this paradigm has guided the further evolution of the talks. In the Doha Declaration, the WTO parties agreed to try to put the trade regime at the service of global environmental objectives through 'the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services'.[34] This shows that the drafters of the Doha Development Agenda opted for an approach to the trade–environment nexus that is in line with free trade. But as we will show, specific choices that have been made during the negotiations also accord with the liberal environmentalist paradigm. Furthermore, the EU acquiesced in this evolution and was eventually implicated in the failure of the talks as it held on to economic interests. In the remainder of this section, we discuss how 'managed trade' elements have disappeared from the negotiations, how explicit technology transfer gave way to market-based distribution of clean technology, and how special treatment of developing countries gave way to co-responsibility. Our analysis shows how the penetration of new ideas into the trade domain bumped against the dominant framework of liberal environmentalism, especially as trade actors were in the driving seat.

#### 3.2.1. Abandoning 'managed trade' solutions

As discussed before, a crucial question in the negotiations was how to identify goods and services for accelerated liberalisation. In the EU's first draft submission to the WTO, the goal was set to find a common definition of environmental goods. Although a concrete definition was not formulated, the document identified guiding principles for the selection of environmental goods. Reference was made to both developmental (Millennium Development Goals, MDGs) and environmental (Multilateral Environmental Agreements, MEAs) objectives, and sustainable modes of production and consumption. In 2005 the EU proposed to select environmental goods based on a life-cycle assessment and environmental labelling. These trade-conditioning elements were cited as 'basic parameters in the approach'.[35] Shortly afterwards, however, the Commission reframed its approach in looser terms: 'Whereas the impacts of production should be taken into account when selecting products as environmental goods, it is not our intention to rely exclusively on these parameters to describe them.'[36]

However, this track was subsequently quickly abandoned as trade actors took control. DG Trade framed a life-cycle assessment on the EGA product list as an unfeasible endeavour. However, a relatively

[33] Interview DG Trade, Brussels 16 December 2016.

[34] Doha WTO Ministerial Declaration 2001, paragraph 31(iii), WT/MIN(01)/DEC/1, 20 November 2001.

[35] European Commission, DG Trade, 'Civil Society Dialogue, Ad hoc Meeting, Summary report DDA: ENVIRONMENTAL GOODS', 2 February 2005.

[36] WTO Committee on Trade and Environment special session, 'Market access for environmental goods. Communication from the European Communities', 17 February 2005.

small NGO (the Brussels-based organisation 'Transport and Environment') did manage to assess the life-cycle impacts of the EGA product lists.[37] Moreover, DG Environment has indicated that a pilot on environmental footprinting[38] could address the issue of life-cycle impacts in the absence of a definition of green goods to ensure their environmental credibility, but to no avail so far.[39] We see that within the EU, the trade policy subsystem (the collective of actors active in the trade policy domain) is more sceptical vis-à-vis approaches to marrying environmental and trade objectives when they have the effect of restricting, conditioning or managing trade. Also outside the EU, several WTO Member States took a stance against environmental conditionality in the EGA negotiations. Trade liberalisation was subsequently framed as the 'win-win-win' solution for trade, development and the environment. Negotiations on how to compose a list of goods for accelerated liberalisation proceeded in a mercantilist dynamic familiar to the trade policy subsystem.

### 3.2.2. Technology transfer left to market mechanisms

Indeed, over time, negotiators also turned their backs on earlier commitments to include specific provisions in a trade and environment agreement to ensure that this will particularly benefit developing countries, arguing that market dynamics will guarantee that liberalising environmental goods is automatically in their interest. In the beginning, it was stressed that the selection of products should benefit both industrialised and developing countries and that these should be complemented by explicit technology transfer commitments. Later, the argument was made that developing countries will benefit from EGA as the market will 'transfer' technology automatically by making environmentally friendly goods cheaper. This interpretation of technology transfer differs from earlier calls of developing countries in the multilateral process, stating that they were net importers of environmental goods and that the negotiations should address their objectives by improving technology transfer and supporting the competitiveness of their domestic industries. The need for adequate consideration of technology transfer, technical assistance and capacity-building was specifically underlined by India, stating that a project approach had multiple advantages over the list approach, including in addressing those issues. The proposal also linked financial aid and licensing restrictions to the projects. This coincides more with the norm complex of environmental protection as coined by Bernstein (see above), as it requires substantial transfers of technology and resources to developing countries. It argues that for developing countries liberalisation is not enough and should be linked to other channels such as investment, licensing of intellectual property rights, government procurement, MEAs and development cooperation.[40] The recent approach taken in the EGA negotiations, however, coincides with the paradigm of liberal environmentalism, in which transfers are left primarily to market mechanisms. The logic is that EGA would boost production opportunities for developing countries (by attracting foreign companies). Whereas in the beginning it was also recognised that the product lists should contain sufficient products in which developing countries already have a comparative advantage (for example organic agricultural products, fibres and dyes) now the 'trickle-down effect' of a market approach is accentuated.

The EU's position on the use of interventionist policies to stimulate the uptake of environmental goods such as Local Content Requirements (LCRs) is another example of the consistency with liberal environmentalist norms that might hamper the development of domestic environmental goods industries in developing countries. LCRs are laws, regulations or governmental measures that condition support on the use of a certain percentage of local inputs. They are often justified on the basis of supporting local

[37] Transport & Environment, 'Briefing: Environmental Goods Agreement' (16 September 2015) https://www.transportenvironment.org/sites/te/files/publications/2015%2009%20TE_EGA%20briefing%20note_FINAL.PDF, accessed 4 February 2019.

[38] The pilot project has been concluded and the Commission is still evaluating how the environmental footprinting methodologies can be applied to existing and future policies. No specific decision was taken on introducing a life-cycle assessment on the product list of the EGA. Interview, DG Environment official.

[39] European Commission, DG Environment, 'EGA Stakeholders Event Promoting EU Environmental Objectives Through Trade', 3 June 2015.

[40] Alexey Vikhlyaev, 'Environmental Goods and Services: Defining Negotiations or Negotiating Definitions' (2004) 38 Journal of World Trade 116.

employment, private sector development and the protection of infant industry. Governments may want to put these sorts of policies in place as they can be politically important to create coalitions for climate policy, through green job creation and production opportunities.[41] This type of local prioritisation can be a violation of national treatment principles because it discriminates against foreign products[42] and has triggered several trade disputes, particularly in the field of renewable energy industries. The EU and several other countries have already taken action against these kinds of measures, for example in the case of Ontario's feed-in programme and India's Jawaharlal Nehru National Solar Mission. Nonetheless, LCRs have been utilised extensively by China, India, Brazil and South Africa (the 'BICS'), and also by EU Member States (Italy and Spain) and individual US states.[43] The European Commission has aimed to address LCRs through EGA and considers this a priority among non-tariff barriers to trade that work against free trade in green goods. The EU's list of non-tariff barriers to be addressed also features government procurement rules and subsidies.

We can conclude that in the process of narrowing down the EGA agenda, explicit technology transfer has disappeared from the negotiating table. Instead, it is assumed that trade liberalisation in itself will lead to the distribution of environmentally friendly technologies to developing countries. The take-up of green technology is not the only responsibility that has shifted towards the side of developing countries throughout the negotiations.

#### 3.2.3. Responsibility of developing countries

The position of developing countries has been relegated in general in the course of the negotiations, in addition to the specific issue of technology transfer discussed above. At the beginning of the Doha Round, the interests of developing countries were placed, at least rhetorically, at centre stage, as the name Doha *Development* Round demonstrates. However, after multilateral efforts to reach an agreement as part of a comprehensive Doha package were abandoned in 2014, very few developing countries have been involved in the plurilateral EGA negotiations.[44]

Not only are they thereby sidelined in the discussion on an EGA and is it hence less likely that their concerns will be integrated in an eventual deal; it has also been foreseen that a sufficient share of developing countries will have to participate in liberalisation commitments themselves to be able to profit from any deal. A so-called 'critical mass threshold' stipulates that WTO Member States representing at least 90 per cent of world trade in environmental goods should participate in the agreement before the concessions agreed are extended to non-participating countries on an MFN basis. In practice, this compels larger developing countries such as China and India to make concessions themselves in the EGA deal.

#### 3.2.4. The marginalisation of non-trade actors and ideas

The EGA format has brought new actors and ideas into the trade policy arena. The question remains whether this has substantially altered the dynamics of these negotiations in comparison to 'traditional' commercial trade talks? In the case of the EU, DG Trade has assumed the lead in the EGA file. Official environmental actors, such as DG Environment and DG Climate, have been formally included in the policy process yet their role has been limited to an advisory function, mainly through consultations organised by DG Trade in preparation for negotiating rounds. In some instances DG Environment has been part of the EGA negotiating team yet their role was not proactive and was limited to reacting to products on lists that could be environmentally harmful. In general, they offer technical expertise and only 'intervene on the political level when things are heading in the wrong direction'.[45] Overall, cooperation

[41] Timothy Meyer, 'How Local Discrimination Can Promote Global Public Goods' (2015) 95 Boston University Law Review 1937.

[42] Kevin Gallagher, '*Trade in the Balance: Reconciling Trade and Climate Policy: Report of the Working Group on Trade, Investment, and Climate Policy*' (2016) 9–10.

[43] John A Mathews, 'Trade Policy, Climate Change and the Greening of Business' (2015) 69 Australian Journal of International Affairs 610.

[44] Mark Wu, 'Why Developing Countries Won't Negotiate: The Case of the WTO Environmental Goods Agreement' (2014) 6 Trade, Law and Development 93.

[45] Interview DG Environment, Brussels 2 December 2016.

between DG Trade and DG Environment has not resulted in policy controversies as both appear to operate in the same ideational framework that places economic norms at centre stage. The win-win approach, embedded in a green growth strategy that is shared by all DGs involved, has been said to effectively prevent intra-institutional conflict. Commercial sensitivities have not led to tensions as other DGs did not question 'the need to take into consideration how the selection of goods affects the economy'.[46] For example, not including bicycles on the product list was not opposed by DG Environment as there is a general consensus that it is not only environmental impacts that are important. In relation to the environmental footprinting pilot, DG Environment has also indicated that both for them and DG Trade, the most important concern is that measures have no trade-restrictive effects.[47] Hence, the lead role of DG Trade has been important, but the liberal environmentalism paradigm is prevalent in other DGs as well.

Other actors, such as environmental NGOs, have found it difficult to penetrate these negotiations. Overall, EGA has received little attention as it was not considered a priority among green NGOs. It is considered as both a highly technical file and 'a drop in the ocean' in terms of possible meaningful environmental outcomes.[48] In terms of access, Transport & Environment criticised the fact that 'negotiators have invited several industry representatives to discuss the list of environmental products, however non-industry experts have not been afforded such privilege'.[49] This criticism of trade negotiation dynamics that follow the business-as-usual scenario was channelled in demands for an independent assessment board to ensure the environmental credibility of the EGA product list.[50]

## 4. Conclusions

Trade politics has been changing in recent decades with the increasing importance of non-tariff measures. Trade politics has both 'deepened', with new areas beyond tariffs and quota coming into the purview of liberalisation, and widened, with issues external to the commercial sphere being put on the trade agenda. The EU has been an important actor in this 'trade and . . . ' sphere. In this article, we have discussed the evolution of one particular initiative in this area, the EGA, with a particular focus on the role of the EU.

Debates about how the global economy could help support environmental protection have a long history. In this article we have discussed how paradigms on the interplay between economy, ecology and development have shifted. From a norm complex that saw interventions in the market as sometimes inevitable, and environmentally friendly growth of developing countries as requiring assistance and explicit technology transfer from the North, the dominant paradigm shifted to a neoliberal interpretation of 'sustainable development', or 'liberal environmentalism'. Here, growth and environmental protection were seen as not only reconcilable, but even synergetic. Environmental protection was considered as a common responsibility of North and South; both would have to ensure that the market mechanism was able to spread technological innovation, raise income growth, and in its wake raise the level of environmental protection worldwide.

Empirically, we have shown how the negotiations on an EGA conform to the dominant liberal environmentalism paradigm. The choice in the WTO Ministerial Declaration of 2001 to pursue the environmental contribution of the Doha Development Round by eliminating trade barriers to goods and services, rather than alternative avenues (such as eliminating fossil fuel subsidies or introducing an 'environmental clause' in the WTO) in itself is in line with liberal environmentalism's emphasis on free markets. On top of this, the evolution of the EGA negotiations corresponds to liberal environmentalism's core characteristics. One of the main issues in the negotiations has been how to decide on which goods (and services) should qualify for accelerated liberalisation. While a criteria-based approach, especially if it took into account life-cycle analyses of the climate impact of products, would have been more in line with the environmental objectives of the talks, it could mean that some products from some countries

[46] Interview DG Environment, Brussels 26 October 2017.

[47] The pilot – if applied in future policies – will result in a voluntary initiative aiming to facilitate trade in environmentally credible goods. Interview DG Environment, Brussels 2 December 2016.

[48] Interview Transport & Environment, Brussels 16 November 2016.

[49] Interview Transport & Environment, Brussels 16 November 2016.

[50] Transport & Environment, 'Briefing: Environmental Goods Agreement' (2015).

would be qualified as less- or non-environmentally friendly. Trade liberalisation would hence be organised in an explicitly conditional way. This could become a basis for PPMs-based trade measures in the future. Instead, negotiators decided to opt for the traditional methodology for trade liberalisation within the world trade system, whereby participating states would, through a demand-and-offer approach, agree on a product list of environmental goods. Thereby, only the end-use environmental impact would be considered. We have shown that the trade policy subsystem is more sceptical vis-à-vis combining environmental and trade objectives when they have the effect of restricting, conditioning or managing trade. The eventual breakdown of the talks shows unsurprisingly that commercial considerations have played a decisive role.

Besides the focus on trade barrier elimination and the approach to decide on how goods would be selected as 'environmentally friendly', the handling of technology transfer and developing countries more generally has been in line with liberal environmentalism as well. While developing countries asked for explicit financial assistance and technology transfer (for example by easing intellectual property rights), this theme disappeared from the negotiating table as it was assumed that trade liberalisation as such would guarantee technology transfer.

We have argued that the first explicit negotiations to put international trade policies at the service of climate protection have evolved increasingly in a 'trade first' direction. It seems that by holding these negotiations in a trade forum – the WTO – a commercial logic was always likely to predominate as this puts trade actors in the driving seat. This has been helped by the documented proliferation of a 'liberal environmentalism' paradigm on the desired reconciliation of environmental and economic policies. In this policy subsystem and under this dominant paradigm, we also found that it has been difficult for environmental NGOs to penetrate these negotiations. Finally, an interesting lesson to be drawn is that trying to reconcile trade and environmental objectives in a synergetic ('win-win-win') manner does not make a successful conclusion necessarily easier. When trade negotiators and a commercial rationale rule supreme, narrow-minded commercial interests can still preclude a consensus. In the EGA negotiations, we witnessed indeed how talks evolved in a 'least common denominator' direction, only to eventually fail over which products to liberalise.

**Funding**

MM scholarship funded by the Research Foundation Flanders (FWO).

**Declarations and conflict of interests**

The authors declare no conflict of interest linked to this article.