

Using trade policy to tackle climate change

The recent forest fires in the Amazon highlight the need for greater measures worldwide to attenuate tensions between resource needs, for example mining or grazing, that cause deforestation. European leaders have called for urgent action, including through trade policy. Policy-makers argue, for instance, for leveraging the negotiated European Union (EU)-Mercosur Trade Agreement to achieve compliance with the Paris Agreement. Since the Paris Agreement is binding only in part and aspirational concerning national emissions targets, there are calls to resort to trade policy instead.

Trade agreements as leverage for change?

During the recent massive Amazon fires, on which Parliament held a [debate](#) in September 2019, [leaders](#) of France and Ireland, as well as a number of civil society [petitions](#), called for the EU-Mercosur Trade Agreement to be **frozen or rejected**, to leverage stronger action to tackle climate and environmental concerns in partner countries. Halting negotiations or [opposing the agreement](#) is seen by some as a tool to elicit compliance with climate commitments, or penalise a trade partner that fails to comply. This is a political course of action, possible in the short term, when the EU has not (yet) made bilateral trade commitments vis-à-vis the trade partner. However, pulling out of a trade agreement at an advanced stage has drawbacks. Late-stage blocking of a trade deal can be seen as bowing to interest group influence (e.g. [agricultural producers](#) in the case of Mercosur), who rally behind public concerns to stop a deal if they expect competition to increase as a result of the agreement. In the case of a regional trade agreement, the condemnation of climate violations by one partner might also unfairly penalise other sectors or countries. Therefore, the [European Commission](#) has called for **rapid adoption** of trade agreements, as this would allow the EU to foster change through constructive political dialogue under the auspices of a deal. The Commission has defended the Mercosur agreement, arguing that deforestation is already happening and that in the long term, once the agreement applies, the EU could in theory invoke specific clauses of the agreement to challenge such misconduct as it includes 'commitments to effectively implement the Paris Agreement', e.g. under the sustainable development provisions.

However, **the current form of trade agreements** does not necessarily lead to an increase in the level of compliance with climate commitments. Firstly, for [mixed agreements](#), such as the [EU-Mercosur Association Agreement](#), provisional application applies to the trade pillar (which is an exclusive EU competence), while the provisions for political dialogue and cooperation can potentially not be applied for many years, pending ratification by Member States. It may take a **long time before the EU can leverage the political dialogue provisions** of the agreement to motivate climate action. Secondly, in EU trade agreements, references to climate commitments, including the Paris Agreement and tackling deforestation, are included in the [Trade and Sustainable Development](#) (TSD) chapters, which are arguably not enforceable in the same way as other parts of the trade deal. The TSD chapter, as well as competition and trade remedies provisions, is exempt from the general [dispute settlement chapter](#). The general dispute settlement mechanism is modelled on that of the World Trade Organization (WTO), and allows, in case of non-compliance, the EU to take punitive economic measures as temporary remedies, e.g. to suspend trade concessions in case of non-compliance with an arbitration ruling. In contrast, **TSD chapters have separate procedures for disputes**, which involve a request for consultation and the creation of a panel of experts. The first case of EU TSD dispute settlement is ongoing under the [EU-South Korea](#) Free Trade Agreement (on labour issues). If the counterpart fails to comply, the panel will deliver a set of recommendations. The [TSD Committee](#) then monitors the situation. While punitive economic measures are not possible, the Commission argues that the consultations focus on finding a mutually acceptable solution and on exerting public pressure, and that this dynamic of political oversight and a risk of reputational damage incentivise the partner country to comply with the recommendations. One explanation for the separate dispute settlement process for

environmental issues is the difficulty of establishing a causal link between economic injury and non-compliance with TSD provisions, which makes it difficult to make a fair estimation of remedies.

WTO rules and the climate waiver

EU trade agreements incorporate the [general exception](#) derived from WTO rules – Article XX of the General Agreement on Tariffs and Trade (GATT). The general exception lays down the conditions under which members **may take trade-restrictive measures** which are 'necessary to protect human, animal or plant life or health', or relating to the exhaustion of natural resources. The measure (e.g. an import restriction or a ban) cannot be applied in a manner that would constitute arbitrary or unjustifiable discrimination between countries where the same conditions prevail, nor can it be a disguised restriction on international trade (Article XX, chapeau). Recent EU trade deals, including the EU-Mercosur provisions on [trade in goods](#), set out that 'environmental measures, such as measures taken to implement multilateral environmental agreements' fall within the general exception. This would suggest that in theory, the EU is not prevented from taking trade-restrictive environmental measures that aim to implement the Paris Agreement. The general exception has been successfully invoked under very specific circumstances and conditions (e.g. [US Shrimp](#)). WTO rules require a strong **causal link between the measure and the environmental objective**. With measures taken to address highly complex phenomena, such as climate change, the causality can be assessed with the passage of time, or by demonstrating that the measure can make a material contribution to the objective, e.g. through a quantitative projection, or qualitative reasoning based on tested and evidenced hypotheses ([Brazil–Retreaded tyres](#)). Under current rules, a trade-restrictive measure to implement a multilateral environmental agreement – such as a [carbon border mechanism](#) – risks being challenged as WTO-incompatible, unless it is deemed to qualify as a border tax adjustment. Due to the growing possibility of a clash between trade rules and climate action, commentators have called for a [climate waiver](#). This could be possible under [Article IX:3](#) of the WTO Agreement, which allows the Ministerial Conference to waive an obligation in 'exceptional circumstances'.

Trade preferences

Certain [developing countries](#) (not Mercosur countries), benefit from tariff preferences under the General Scheme of Preferences (GSP), which is set out in the [GSP Regulation](#). The EU can influence a beneficiary in the protection of forests or sustainable management of natural resources through the 'Special incentive arrangement for sustainable development and good governance' (GSP+). Beneficiaries of GSP+ sign up to all 27 international conventions, including on environment, and commit to their 'effective implementation'. The EU can **withdraw GSP+ preferences** if a country does not respect its 'binding undertakings', however, such as ratification, monitoring of implementation, and reporting (Article 15). The burden of proof lies with the beneficiary. However, under the **general arrangement of GSP** and '**Everything but Arms**', the EU's ability to influence the beneficiary in these areas is limited. Conventions related to the environment, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the United Nations Framework Convention on Climate Change (Part B of Annex VIII of the GSP Regulation) are not included under the provisions for the temporary withdrawal of preferences (Article 19.1). In practice, threats to withdraw preferences have so far been linked to labour or human rights concerns. A review of the current GSP Regulation, due to expire in 2023, should begin in 2020. In a March 2019 [resolution](#), the European Parliament called for the **addition of the Paris Agreement** to the 27 conventions.

The menu of options to elicit climate action from partner countries through trade policy comes with benefits and drawbacks. Outside the trade toolkit, consumer behaviour and corporate social responsibility can help foster climate action in trade partners. The Forest Law Enforcement, Governance and Trade ([FLEGT](#)) Regulation, in combination with the [EU Timber Regulation](#), seek to ensure that only legally harvested timber is imported into the EU. In July 2019, the European Commission's [communication](#) 'Stepping up EU Action to Protect and Restore the World's Forests' proposed further measures. However, implementation of FLEGT is based on voluntary partnership agreements (VPAs), which to date exist with only a few trade partners, and so far only one country, [Indonesia](#), has begun issuing FLEGT licences.

