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The Political Economy Equilibrium of Environmental and Trade Policies in the U.S.

The U.S. has incorporated environmental policies into its all free trade agreements since it negotiated the North American Free Trade Agreement (NAFTA) in the early 1990s. The inclusion of environmental policies represented a major shift in trade policy but the environmental policies have not drastically changed in subsequent trade agreements over the past 25 years despite the continued involvement of environmental constituencies and policymakers. The punctuated equilibrium model provides the analytical framework for understanding the factors that gave rise to the drastic policy shift under NAFTA as well as the subsequent policy stasis, in order to inform future policymaking efforts. Based on this analysis, it appears that environmentalists and policymakers will likely be able to maintain the environmental policy status quo within the trade policy domain but should consider another policy arena for advancing their new environmental policy priorities.

Linda Allen

INTRODUCTION

Ever since the North American Free Trade Agreement (NAFTA) (1993) was negotiated in the early 1990s, it has become a rite of passage for every subsequent U.S. trade agreement to be scrutinized for its potential to adversely affect the environment. This scrutiny typically gives rise to set-piece political negotiations to ensure that some policies are included to address environmental impacts, which in turn facilitate passage of the trade agreement. Successive environmental policies are frequently presented as being stronger or more far-reaching than earlier policies but in reality, the political economy equilibrium and thus content of these policies has not changed much over the past 25 years.

The equilibrium reflects the balancing of political and economic factors that influence the design of the environmental policies. In a world free of politics, trade policies would be designed solely based on economic principles (Friedan 2020).

However, trade policies have variable impacts on society and touch upon other issues not directly related to tariffs, such as environmental regulations or labor rights. The consideration of these non-tariff or distributional issues, in turn, introduces other interest groups and politics into the trade policy domain and influences trade policy outcomes. Starting with NAFTA, trade policies have increasingly been influenced by the politics associated with non-tariff issues, including environmental issues (Audley 1997, Destler and Balint 2000).

As a result, a suite of environmental policies has been developed in conjunction with all U.S. trade agreements since NAFTA. While no two trade agreements have the same exact suite of policies, collectively, the policies have not changed drastically over the years, reflecting a stable political economy equilibrium. Scholars have written extensively about many aspects of the trade and environment policy debate but little attention has focused on the factors that give rise to the equilibrium. This article addresses this gap by examining the actors and interests that influence development of the policies, and in doing so, can inform efforts by policymakers and policy advocates to craft similar policies in future trade agreements or more importantly, to seek alternative policy arenas for advancing their policy priorities.

The punctuated equilibrium model provides the analytical framework for the discussion presented in this article; this model is a well-established policy process model that has been widely used to explain emergence and change or stasis of policies over time, and it is well-suited to examining trade-related environmental policies (Allen 2020). The analysis draws upon qualitative data related negotiation of trade-related environmental policies from archival records, published literature, and interviews and opinion surveys of key stakeholders involved in policy negotiations obtained by Allen (2005, 2018a). Overall, the article is organized as follows: first, an overview of environmental policies for U.S. trade agreements is provided, followed by a discussion of the actors and factors that contributed to the emergence of trade-related environmental policies, followed by discussion of the factors that have contributed to their stability, and lastly the conclusions.

OVERVIEW OF ENVIRONMENTAL POLICIES FOR U.S. TRADE AGREEMENTS

NAFTA was the first trade agreement to explicitly incorporate policies to address the potential negative environmental effects of trade liberalization. When this trade agreement was negotiated in the early 1990s, environmentalists raised concerns over the agreement's potential to reduce levels of environmental protection in all

three NAFTA countries (Audley 1997). In particular, environmentalists claimed that freer trade would create ‘pollution havens’ in Mexico due to its’ lax enforcement of environmental laws and the relocation of dirty industries there to take advantage of lower compliance costs (Allen 2018b). The lax enforcement in Mexico, in turn, would foster a race to the bottom in the U.S. and Canada as they rolled back their enforcement of laws to retain industries (Allen 2018b). Environmentalists also argued that NAFTA would include trade disciplines that could be used to challenge to legitimate domestic environmental regulations and trade measures in multilateral environmental agreements as discriminatory non-tariff barriers to trade, and lastly, that trade liberalization under NAFTA would more generally accelerate the exploitation of natural resources due to liberalization of certain economic sectors and foster a general increase in levels of pollution due to economic growth (Allen 2018b).

To address to these environmental concerns, a suite of environmental policies was crafted for NAFTA, with a few policies included in the trade agreement itself but the majority of policies included in an environmental side agreement to NAFTA. Since NAFTA was negotiated, the U.S. has paired a similar suite of environmental policies with all its free trade agreement.¹ In general, the existing suite of environmental policies for U.S. trade agreements is comprised of a mix of core “legacy” policies from NAFTA, which focused on the range of concerns related to trade liberalization under that agreement, along with a few newer policies focused on issues that transcend specific trade agreements, such as protection of global common pool resources like marine fisheries (see Table 1) (Allen 2014). In general, the salience of the environmental concerns varied somewhat; the most salient concerns were associated with lax enforcement of environmental laws and the associated policies consisted of a requirement for effective enforcement of laws by all trading partners, coupled with various mechanisms to ensure compliance. Substantively, there have been some variations in environmental policies across the trade agreements, however, taken collectively, the substantive content of these policies has not changed significantly over the past 25 years based on detailed reviews (Allen 2018a). The sudden emergence of the environmental policies for U.S. trade agreements and their relatively stability over time is examined further below using the punctuated equilibrium model, a contemporary model of the policymaking process.

¹ As of 2020, the U.S. had negotiated 13 new bilateral and regional free trade agreements since NAFTA as well as renegotiated NAFTA, and all but one agreement has been ratified and entered into force. The agreement that was not ratified is the Trans-Pacific Partnership.

POLICY EMERGENCE

According to the punctuated equilibrium model, the policymaking process is “characterized by long periods of incremental change punctuated by brief periods of major change” (Sabatier 1999, 9). Policies are formulated within issue-specific policy domains or subsystems. Established policy subsystems often foster policy stasis or stability, but can be transformed when actors external to the subsystem redefine the policy issue and force changes within the subsystem, resulting in major policy shifts or “punctuations” (Baumgartner, Jones and Mortensen 2014). The central dynamic at play in the punctuated equilibrium model is the changing definitions of policy issues and agenda setting, which occurs amid the overlap and interaction between the politics of issue-specific policy subsystem(s) and the macro-politics of the Congress and presidency (Baumgartner, Jones and Mortensen 2014). The redefinition of policy issues may generate political support at the macro-level for a drastic policy shift. Once this policy shift occurs, the transformed policy subsystem establishes a new equilibrium and near policy stasis resumes until the policy issues are redefined again and give rise to another major policy shift.

Prior to NAFTA, trade policy in the U.S. had long been crafted by a well-established policy monopoly operating within a stable policy subsystem. This monopoly was comprised of powerful export-oriented producer interest groups (e.g. U.S. Chamber of Commerce) and industries and closely aligned pro-free trade legislators and bureaucrats (e.g., U.S. Trade Representative) (Destler and Balint 2000). The policy image (or public perception) of trade policy established by the policy monopoly was that it contributed to the economic well-being of all of society and for many years this image was not challenged. Environmentalists did not have a formal role in the trade policy subsystem and the trade community did not consider environmental issues explicitly within free trade agreements (Audley 1997, Esty 1993). However, this all changed with NAFTA. Due a convergence of several factors, environmentalists were able to successfully gain access to the trade policy domain and redefine the policy issues within policy subsystem and recast the policy image associated with trade liberalization.

Overall, there were four principle factors that converged during the NAFTA negotiations that allowed the environmentalists to significantly influence trade policy. First, the beneficial view of trade liberalization was already coming under attack by the late 1980s as increased foreign competition lead to de-industrialization and economic devastation in the U.S. (Aaronson 2001). This competition was even more of a concern for trade liberalization with developing countries, such as Mexico, that had lower levels of social safeguards for environmental protection and labor rights (Congressional Research Service 2017). Thus, efforts to redefine policy

issues within the trade policy subsystem were already underway and NAFTA provided fertile ground for pursuing those efforts more aggressively.

Second, the existing environmental degradation along the U.S.-Mexico border provided a highly visible harbinger of what might occur elsewhere in Mexico as trade and investment were further liberalized (Johnson and Beaulieu 1996). This degradation was instrumental in recasting the policy image that NAFTA would lead to worse environmental conditions. Third, the adverse ruling by a GATT arbitral panel in 1991 related to U.S. restrictions on tuna imports from Mexico only reinforced the apocalyptic predictions that trade regime rules would undermine domestic environmental safeguards (Ritchie 1990, Christensen 1991). Lastly, the environmental groups had become adept at successfully advancing their interests in other realms of international economic policy, such as development financing by the multilateral development banks (Rich 1985) and participation in international trade policy was a logical next step.

Against this backdrop, environmentalists established tentative linkages between trade liberalization and levels of environmental protection in the three NAFTA countries. Using these linkages, they effectively recast the policy image of free trade as fostering extensive and dire environmental consequences and reducing quality of life in North America. The new policy image was in sharp contrast to the existing image of free trade benefiting all of society as it fostered economic efficiency. As a result of the policy issue redefinition and image recasting, the environmentalists, comprised of a mixed of border and national-level environmental groups, upset the trade policy monopoly and gained access to the trade policy subsystem in the U.S. along with closely aligned pro-free trade / pro-environment legislators and bureaucrats (e.g., U.S. Environmental Protection Agency), significantly transforming the policy subsystem (Audley 1997). The environmental groups' participation in the policy subsystem ultimately resulted in the inclusion of a suite of environmental policies in NAFTA, a major shift in policy compared to the status quo prior to that trade agreement (Audley 1997). At that time, a new political economy equilibrium was established within the trade policy subsystem that has remained fairly stable, with only incremental changes to the environmental policies over the past 25 years. The main reason for this stability is that the environmentalists have not been able to recast the trade policy image or redefine the policy issues in a manner that substantially changes the status quo.

POLICY STABILITY

Without a doubt, the emergence of environmental policies in the trade policy subsystem during the NAFTA negotiations is attributed to the ability of the environmental groups to effectively redefine trade policy issues and recast the policy image within the subsystem. These actions generated political support from members of the U.S. Congress and President to incorporate environmental policies into NAFTA (Bush 1995, Clinton 1995, Browner 1995, Audley 1997). A convergence of several factors at a particular point in time, as noted above, created a unique window of opportunity for environmentalists to gain access to the trade policy domain and mobilize public opinion and macro-level political support to change the policy status quo. Their ability to mobilize support was so effective that including addressing the environmental concerns became a political imperative for passage of NAFTA (Audley 1997, Mayer 1998, Johnson and Beaulieu 1996).

As it turned out, however, the intense debate and public concern over the environmental impacts of NAFTA was a high-water mark for U.S. trade agreements. Since NAFTA, environmentalists have not been able to replicate that feat and attain a similar level of public mobilization or macro-level political support for any subsequent U.S. trade agreement. As a result, the substantive content of the environmental policies for U.S. trade agreements has remained fairly stable since NAFTA and only incremental policy changes have been made for other trade agreements. In other words, the trade policy subsystem reached a new political economy equilibrium during NAFTA negotiations and it has not changed drastically over the past 25 years. Overall, there are several reasons for the stability of trade policy subsystem, which is likely to remain for the foreseeable future.

First and foremost, the dire predictions of an environmental apocalypse in the NAFTA countries never materialized (Gallagher 2004, Stern 2007, Vaughan 2004). As a result, the political saliency of the environmental concerns diminished within the trade policy subsystem. Second, many of the subsequent U.S. trade agreements have been with countries that either have adequate levels of environmental protection (e.g. Australia, Singapore) or limited competitive advantages (e.g. Bahrain, Jordan, Oman), further diminishing the saliency of the environmental issues. Third, the environmental policies that were developed for NAFTA and other trade agreements have had little impact on improving environmental conditions for trading partners (Tollefson 2002, Dorn 2007, Knox 2010, Environmental Groups Say 2007, Allen 2018a, Allen 2012, USTR Comes Under Fire 2015), which highlights the limitations of using trade policy as a vehicle for achieving broader environmental policy objectives.

Although the saliency for environmental concerns within the trade policy subsystem decreased after NAFTA, environmentalists have remained actively involved in trade policy negotiations and a few of the more recent trade agreements have received some scrutiny within the subsystem. In particular, the regional trade agreement with five Central American countries and the Dominican Republic (DR-CAFTA) (Environmentalists' Letter 2004, Abetti 2008), the regional Trans-Pacific Partnership (TPP, which was negotiated but not adopted by the U.S.) (U.S. Environmental Groups 2010), and the bilateral trade agreement with Peru (Environmental Groups Unlikely 2007, Environmental Groups Laud 2007) have received some level of scrutiny by environmentalists. The most recent trade agreement completed by the U.S. in 2019, the United States-Mexico-Canada Agreement (USMCA), however, received very limited scrutiny when compared to its predecessor, NAFTA (Environmental Groups: USMCA 2018, Laurens, et al. 2019, Gantz 2019, W&M Democrats 2019).

Given the low levels of scrutiny, environmentalists have struggled to drastically redefine trade policy issues within the policy subsystem, much less generate macro-level political support for drastic policy shifts. Nonetheless, the environmental groups have achieved a few policy innovations in these trade agreements, such as the forestry sector governance provisions in the Peru trade agreement (Environmental Groups Laud 2007) and the illegal, unregulated and unreported fishing provisions in the TPP (U.S. TPP Environment Proposal 2011, USTR Touts 2011, Tsangalis 2016, Addressing Conservation Challenges 2013) and the USMCA (Tienharra 2019, Stewart and Noorbaloochi 2019). However, when considering these newer environmental policies within the larger suite of existing policies, these changes have been marginal (see Table 1) (Allen 2018a). The inability of the environmental groups to drastically redefine trade policy issues or reset the policy agenda since NAFTA is most clearly reflected in the recent negotiation of the USMCA.

Given the attention that environmental issues received during negotiation of NAFTA as well as the long-standing criticisms of the limited impact its environmental policies have had, it was anticipated that environmental issues would be front and center during the negotiation of the USMCA (Page 2007, Mach 2008, Environmental Groups: USMCA 2018, Environmental Groups Unlikely 2007, Levin Warns 2009, Labor Unions, Enviro 2014). However, instead of identifying new environmental policy concerns that would redefine the trade policy issues that warrant attention, the environmentalists have often identified the same concerns related to implementation of multi-lateral environmental agreements or

the investor-state dispute settlement process² that have been repeatedly raised for past trade agreements (Environmental Groups: USMCA 2018, Sierra Club 2018b, Sierra Club 2018a). In lieu of presenting dire images of the environmental havoc that would occur due to further trade liberalization, environmentalists advanced nuanced arguments about legal minutiae that clearly failed to mobilize public opinion or macro-level politics.

In addition to the lack of a compelling narrative for redefining policy issues or a radical recasting of the trade policy image compared to status quo, the environmental groups that are actively involved in the trade policy subsystem have evolved (see Tables 2 and 3) and current groups may have less potential to affect policy changes. In general, many of the environmental groups that now participate in trade policy negotiations have in the past been hostile to policy negotiations, such as Sierra Club, Friends of the Earth, or Greenpeace USA, or are new to the trade policy subsystem, or lack strong national-level environmental policy bona fides, such as Food & Water Watch, Hip Hop Caucus, Power Shift Network, or GreenLatinos (Sierra Club 2018b, Sierra Club 2018a). As such, it is not clear that their new policy proposals are even achievable. Even though these environmental groups have attained some marginal policy changes in recent years, their involvement in the trade policy subsystem at this point seems more geared towards preventing policy backsliding rather than radically redefining policy issues or recasting policy images to advance new environmental policies. In light of the weakened position of environmentalists, it is not surprising that the political economy equilibrium for the trade policy subsystem and suite of environmental policies for trade agreements has remained fairly stable and is likely to remain so for the foreseeable future.

CONCLUSIONS

For almost three decades, the U.S. has been at the forefront of incorporating environmental policies into its all free trade agreements to address the potential adverse environmental impacts of trade liberalization (Allen 2018a, Jinnah and Morgera 2013, Van Roozendaal 2009). NAFTA was the first trade agreement to include environmental policies and the emergence of these policies represented a major policy shift within the trade policy domain. Prior to NAFTA, trade policy

² See e.g., environmentalists' comments on Trans-Pacific Partnership, "Solomon specifically pointed out that the bill does not preclude negotiators from including an investor-state dispute settlement (ISDS) mechanism in trade agreements and argued that such provisions can open the door to private corporations suing governments over regulations related to environmental protection. ISDS has been part of U.S. trade policy in every major recent trade agreement."

had been crafted by a relatively small group of pro-free trade advocates within a stable policy subsystem and environmental policy issues had not been explicitly considered within the context of free trade agreements. However, a convergence of events in the early 1990s created a window of opportunity for environmental groups to gain access to the trade policy subsystem and redefine trade policy issues and recast the trade policy image. By doing so, these groups were able to mobilize public opinion and macro-level political support to advance their policy priorities for mitigating the environmental impacts of NAFTA.

This transformation of the trade policy system has allowed environmental groups to continue to participate in the trade policy negotiations and ensure a similar suite of environmental policies is included in all subsequent trade agreements. Over the years, these groups added a few innovative policies, but collectively, the environmental policies associated with trade agreements have not changed drastically. This near policy stasis reflects a new political economy equilibrium within the trade policy subsystem that environmentalists have not been able to change. One of the main reasons why the post-NAFTA equilibrium has been so resistant to change is that many of the environmental concerns raised during NAFTA never materialized, undermining the rationale for many of the original policies. Although these policies have been retained over the years to forestall claims of backsliding, the lack of a credible basis for policies casts a long shadow over subsequent environmental policy negotiations. In addition, the coalition of environmental groups actively involved in the trade policy subsystem has evolved and appears to have a more limited ability to affect policy change.

As such, the existing political economy equilibrium and suite of environmental policies associated with U.S. trade agreements is likely to remain the same for the foreseeable future and the continued participation of environmental groups in the trade policy domain will ensure that this status quo is maintained. However, given their limited ability to advance substantively different policies within the trade policy domain, environmentalists and policymakers should consider looking for a new policy arena to advance their environmental policy priorities. Overall, U.S. trade agreements have more recently been viewed merely as useful vehicles for achieving non-agreement related environmental policy goals that have not been adequately addressed in other venues, reflecting a process of “regime shifting” (Laurens and Morin 2019). Thus, it is perhaps time to shift to a different policy subsystem given the stasis achieved in the trade policy domain.

Table 1: Policies by Substantive Content and Policy Locus*

	Environmental Policy	NAFTA	Other U.S. Trade Agreements	Draft TPP	USMCA
Domestic Regimes	Levels of environmental protection	ESA	FTA	FTA	FTA
	Procedural guarantees, access to proceedings, right to seek remedies	ESA	FTA	FTA	FTA
	Opportunities for public participation	ESA	FTA and ESA	FTA	FTA
	Voluntary mechanisms to enhance environmental performance	-	FTA	FTA	FTA
	Corporate social responsibility	-	-	FTA	FTA
	Non-derogation of environmental laws	FTA	FTA	FTA	FTA
Environmental Cooperation	Environmental cooperation	ESA	FTA and ESA	FTA and ESA	FTA and ESA
	Work plan or program	ESA	ESA	-	ESA
	Periodic or regular meetings	ESA	ESA	FTA	ESA
	Benchmarks or performance indicators	-	ESA	FTA	ESA
	Targeted areas for cooperation	-	FTA and ESA	FTA	FTA
Enforcement of Laws	Effective enforcement domestic environmental laws	ESA	FTA	FTA	FTA
	State-to-state consultation and dispute settlement process	ESA	FTA	FTA	FTA
	Environmental experts in dispute resolution	ESA	FTA	FTA	FTA
	Public submissions on enforcement matters	ESA	FTA	-	FTA and ESA
Other Obligations	Privilege MEA obligations over trade agreement obligations	FTA	FTA	-	FTA
	Enhance mutual supportiveness of FTA and MEA obligations	-	FTA	FTA	-
	Support environmental goals of FTA	ESA	-	-	-
	Evaluate environmental effects of FTA	ESA	-	-	-
	Complete independent reports	ESA	-	-	-
	Develop transboundary environmental assessment protocol	ESA	-	-	-
	Promote trade in environmental goods and services	-	-	FTA	FTA
	Adopt, maintain, and implement laws to fulfill MEA obligations	-	FTA	FTA	FTA
	Forest sector governance	-	FTA	-	-
Illegal, unreported, unregulated fishing, fisheries subsidies, sustainable forestry	-	-	FTA	FTA	

* Policy locus is location of the policy, environmental side agreement (“ESA”) and free trade agreement (“FTA”). Source: (Allen 2018a)

Table 2: Interest Groups for NAFTA Environmental Policy Negotiations

Interest Group	Specific organization
Moderate or accommodating environmental group	National Wildlife Federation World Wildlife Fund Environmental Defense Fund The Nature Conservancy National Audubon Society Defenders of Wildlife Natural Resources Defense Council Pollution Probe Union of Environmental Groups Autonomous Institute for Ecological Research Group of Hundred
Radical or adversarial environmental groups	Greenpeace Public Citizen Sierra Club Friends of the Earth Texas Center for Policy Studies Mexican Action Network on Free Trade Pact of Ecologist Group Border Health and Environmental Network Canadian Environmental Law Association Action Canada Network
Private sector interest groups	U.S. Chamber of Commerce Business Roundtable Border Trade Alliance U.S. Alliance for NAFTA National Foreign Trade Council The U.S. Council of the Mexico-U.S. Business Committee Trade Partnership U.S. Council of International Business The Council of the Americas Emergency Committee for American Trade National Association of Manufacturers American Chamber of Commerce of Mexico Coordinating Organization of Business Agencies of Foreign Trade

Source: (Allen 2005)

Table 3: Interest Groups for Other Trade Agreement Environmental Policy Negotiations

Trade Agreement	Specific organization
DR-CAFTA	Center for International Environmental Law Defenders of Wildlife Earthjustice Friends of the Earth League of Conservation Voters National Environmental Trust Latin America Natural Resources Defense Council National Wildlife Federation Sierra Club U.S. PIRG
TPP	<p>Lead Organizations</p> Defenders of Wildlife Earthjustice Environmental Investigation Agency Friends of the Earth Sierra Club
USMCA	<p>Other Organizations</p> Oceana, Natural Resources Defense Council, Alaska Wilderness League, Clean Water Action, Endangered Species Coalition, Environment America, Environmental Defense Fund, Humane Society International, Humane Society of the United States, League of Conservation Voters, National Audubon Society, National Parks Conservation Association, Native American Rights Fund, Ocean Conservancy, Physicians for Social Responsibility, Population Action International, Population Connection, Rare, The Nature Conservancy, World Wildlife Fund
	<p>Lead Organization</p> Sierra Club
	<p>Other Organizations</p> 350.org, Center for Biological Diversity, Center for International Environmental Law, Earthjustice, Food & Water Watch, Friends of the Earth, Green For All, GreenLatinos, Greenpeace USA, Hip Hop Caucus, League of Conservation Voters, Oil Change International, People’s Action, Power Shift Network, Sunrise Movement

Sources: (Sierra Club 2018a, Addressing Conservation Challenges 2013, U.S. Environmental Groups 2010, Environmentalists’ Letter 2004)

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