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# Defensive issue linkage: exploring the origins of environmental content in trade agreements

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## ABSTRACT

The political linkages between trade and environmental policy have rapidly increased since 1990. In this paper, I suggest a novel mechanism behind this phenomenon – ‘defensive issue linkage.’ As the scope of trade law expanded, it increasingly touched upon domestic and international environmental policies. As a result, environmental groups mobilized to seek carve-outs that preserve their traditional policy space. However, their opposition also led to the increased inclusion of proactive clauses that further the linkage between trade and the environment as policymakers strove to bolster ratifying coalitions. Using qualitative evidence from the US, EU, and Malaysia, I show that environmental groups mobilize in reaction to the expanding scope of trade policies and explore how this influences trade agreement content. A quantitative analysis of preferential trade agreements concluded between 1989 and 2016 then shows that general patterns of environmental clause inclusion are consistent with the channel of ‘defensive issue linkage.’

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## 1. Introduction

Issue linkage is a well-documented and prominent phenomenon in international relations. It describes a situation in which two policy issues become linked for substantive or strategic reasons. One example of continuously increasing linkage is trade policy and the environment: When the World Trade Organization (WTO) was formed in 1995, countries agreed to institute a Committee on the Environment. Many hoped that a ‘Green Round,’ placing environmental issues at the center of negotiations, would soon

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follow. In 1993, the North American Free Trade Agreement (NAFTA) became the first international preferential trade agreement with a substantial environmental side agreement. Since then, environmental clauses have spread across treaty partners and continuously increased their breadth and strictness. Most recently, the US government was forced to improve the environmental provisions in the new NAFTA, or USMCA, before House Democrats agreed to vote in its favor. Further, recent multi-regional deals, such as the Transatlantic Trade and Investment Partnership (TTIP), the Comprehensive Economic and Trade Agreement (CETA), and the Transpacific Partnership (TPP), saw forceful protest waves in which environmental organizations played a key role.

Existing work tends to characterize the emergence of trade-environment linkages as either a strategy of environmentally minded countries to spread environmentalism abroad through trade policy or as a form of veiled protectionism. In this paper, I propose an alternative channel: 'defensive issue linkage.' As the economic chapters in trade policy increased in breadth and depth, new provisions started encroaching on environmental policies that were traditionally separate from the trade regime. Actors in the environmental policy space perceived this as a threat and thus began to mobilize around trade. A key demand by these actors was to carve out policy space for environmental measures and to maintain the prevalence of traditional channels of environmental policy, such as Multilateral Environmental Agreements (MEAs). However, their demands to limit the scope of trade agreements often went further than negotiators were willing to accept. Instead, policymakers 'defended' agreements against new opposition by introducing additional proactive environmental measures as part of trade agreements. While many environmental NGOs remain skeptical of such measures, such proactive provisions help placate left-leaning policymakers and the environmentally-minded public who become alerted by NGOs' mobilization. Thus, ironically, environmental NGOs' opposition to the interference of trade agreements in environmental policy helped further the linkage between the two policy areas.

After outlining the previous literature and describing the 'defensive issue linkage' mechanism in more detail, the paper provides qualitative evidence that highlights the reasons for and consequences of environmental NGO mobilization around trade, as well as regression analyses that show that the variation in the content of preferential trade agreements is consistent with the idea of 'defensive issue linkage.'

This paper makes several contributions to the literature. First, it demonstrates the importance of environmental NGOs in influencing trade agreement content beyond individual case studies. Second, it shows how the substantive expansion of one issue area into another can beget more substantive and tactical issue linkage by mobilizing new interest groups.

Previous authors have identified the importance of policy carve-outs in trade agreements. I show that all environmental content, including more proactive clauses, can arise due to interest groups' demands for policy sovereignty.

## 2. Prior explanations for issue linkage between trade and environment

The linkage between trade and the environment is an example of the broader phenomenon of issue linkage in international relations. Haas (1980) distinguishes between substantive linkage, which occurs when knowledge and ideas evolve so that actors recognize issues as logically connected, and tactical issue linkage, which occurs when issues that are not intellectually connected are negotiated together. Such tactical linkage can be used to 'gain additional bargaining leverage by making one's behavior on a given issue contingent on others' actions toward other issues' (Axelrod and Keohane 1985, p. 239), or what Oye (1993) terms 'extortion linkage.'

Some accounts of the linkage between trade and the environment portray it as tactical. Powerful countries may utilize trade policy to push for better environmental performance abroad by making liberalization contingent on protecting the environment. Some have argued that economically powerful trade partners, particularly the US and the EU, frequently use access to their large domestic markets to encourage change in third countries' domestic and international behavior (Meunier and Nicolaïdis 2006, Ahnliid 2012, Aggarwal 2013, Jinnah and Lindsay 2016, Poletti and Sicurelli 2016). Trade policy may be attractive for tactical linkages because trade agreements often contain stricter sanctions than environmental agreements. As the literature on the emergence of regime complexes has argued, countries may create new regimes if they are dissatisfied with the rules of existing institutions (Faude and Fuß 2020).

Other explanations portray the linkage between trade and the environment as substantive, resulting from the realization that trade and the environment are logically linked. This logical linkage arises from spillovers of trade to the environment, and vice versa: Trade integration may have direct positive or negative effects on the environment (e.g. Antweiler *et al.* 2001, Frankel and Rose 2005), and environmental regulations can impact the international competitiveness of traded goods (e.g. Lechner 2016). Johnson and Urpelainen (2012) argue that such negative spillovers from one regime to another can foster regime integration. Further, as trade agreements' economic rules expand, they increasingly include clauses that affect environmental policymaking. The linkage between trade and the environment becomes a case of regime complexity, defined as the 'international political dynamics that emerge from the interaction among multiple overlapping institutions' (Gómez-Mera 2021). Scholars in international relations have

long known that regimes can ‘impinge on each other in significant ways’ (Young 1996, p. 20) as they increase in depth and thus become increasingly intertwined.

In the context of intertwined regimes, it is important to distinguish between two types of environmental provisions in trade agreements. Blümer *et al.* (2020) introduce the distinction between ‘defensive’ and ‘offensive’ provisions. ‘defensive’ provisions ‘focus on protecting governments’ policy space for adopting environmental regulations,’ while ‘offensive’ provisions ‘prescribe specific environmental policies’ (Blümer *et al.* 2020, p. 868). The former is, in a sense, the opposite of issue linkage. It is an attempt to safeguard environmental policy from the interference of trade policy. For example, some agreements contain clauses that exempt environmental measures from challenge through investor-state dispute settlement (ISDS). Others uphold the legal prevalence of existing MEAs or explicitly reinforce members’ right to adopt more stringent standards than international ones. ‘offensive’ clauses, which, for example, mandate countries to continually improve their environmental regulations or to ratify specific MEAs, are cases of issue linkage. Blümer *et al.* (2020) show that ‘defensive’ provisions are more frequently adopted and argue that this is due to a ‘general interest in defensive provisions’ (p.872) that preserve regulatory space, especially in countries with strong domestic environmental performance. However, the authors do not detail the likely interest group dynamics behind this general interest in preserving regulatory space.

Prior studies focusing on interest groups have identified business interests and veiled protectionism as important drivers of environmental content in trade policy. Business groups can be interested in preserving high environmental standards at home and exporting stricter environmental standards abroad. Companies in import-competing industries in countries with high environmental standards should want to keep environmental barriers as high as possible to reduce foreign competition. Exporters should want to proactively export stricter environmental norms to level the playing field for their exports if they cannot lobby for lower environmental standards at home. Further, while Lechner (2016) argues that import-dependent companies and vertically integrated multinationals should be skeptical of trade barriers created by environmental regulations, large, productive multinationals can also better absorb the fixed costs of stricter regulation (Gulotty 2020) and may thus favor spreading strict environmental rules through trade agreements.

Empirical evidence generally supports the logic of environmental provisions as veiled protectionism. Kono (2006) shows that democracies use less transparent non-tariff barriers to ‘optimally obfuscate’ protectionism. Postnikov and Bastiaens (2020) find that countries with majoritarian systems are more likely to include enforceable environmental and labor

provisions and attribute this to the mobilization of protectionist interests. Morin *et al.* (2018) show that the number of environmental clauses is higher in PTAs when import competition is high. Similarly, Lechner (2016) demonstrates that more import competition relative to exports and import dependency is positively associated with environmental protection in trade agreements.

Veiled protectionism and the role of economic interests also point to the potential role of compliance cost in moderating countries' willingness to accept environmental provisions. Morin *et al.* (2018) find that governments with better environmental performance, and thus lower cost of compliance with environmental regulations, include more environmental provisions in their trade agreements. Similarly, Milewicz *et al.* (2018) find that countries are more likely to include environmental provisions if they have included similar provisions in previous agreements.

While business interests and the costs of provisions have always been influential in shaping trade policy, environmental NGOs only began mobilizing around trade in the early 1990s. In theory, environmental NGOs should favor both spreading stricter environmental norms abroad through trade and preserving the rights of their home governments to impose strict environmental regulations and participate in effective MEAs. While some studies recognize that a sense of threat to domestic and international environmental policy can be more motivating than opportunities (e.g. Dür and De Bièvre 2007), to my knowledge, no study has systematically tested which set of interests is most likely to underly environmental NGO mobilization around trade.

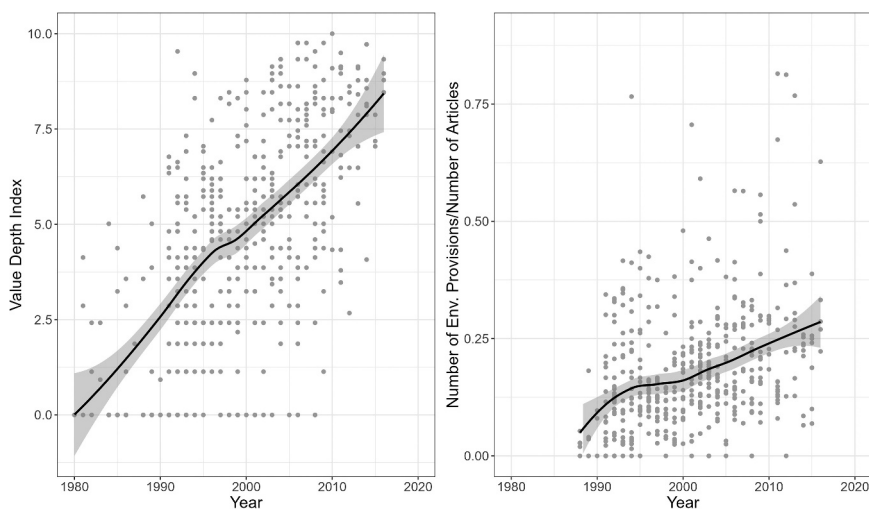
To my knowledge, there is also no study that goes beyond individual cases (e.g. Aggarwal 2013, Johnson 2015) to test whether environmental NGOs influence trade policy. Dür and De Bièvre (2007), who focus on the case of the EU, argue that civil society organizations enjoy access to trade policy-makers but are not influential due to their diffuse interests. I challenge this account and argue that while environmental NGOs are often unsuccessful in achieving their primary demands, their presence and mobilization impact the content of trade agreements.

### 3. Theory of “defensive issue linkage”

The form of issue linkage this paper introduces is characterized by reactivity to the expanding scope of an issue area: As the scope of trade policy expands, it begins to touch upon an increasing number of previously unrelated domestic and international policies, including environmental policies. Fearing that trade policy's new instruments may interfere with policies created through the traditional channels of environmental policy, environmental groups begin to pay increased attention to trade policy.

This mechanism may be understood as a sub-category of what Hass (1980) calls ‘substantive’ issue linkage. New logical connections between trade and environmental policy have emerged as trade policy expanded in scope and thus increasingly clashed with environmental policy. Since the 1990s, the scope of trade policy has increased significantly at the multilateral level with the conclusion of the Uruguay Round and in the content of preferential trade agreements (PTAs). To take the example of PTAs, Figure 1 plots all agreements concluded since 1980 and their economic depth, measured by the Depth data set in the ‘Design of Trade Agreements’ project (Dür *et al.* 2014). The new economic provisions in deep preferential trade agreements include rules that govern product regulations, investment provisions, public procurement rules, and stricter intellectual property rights guidelines, all of which can clash with domestic or international environmental policies. Expanding economic provisions in trade policy thus create concerns for environmental groups that had previously not paid much attention to trade policy.

These environmental groups should largely be suspicious of the expansion of trade policy into environmental policy. Since environmental groups’ long-running expertise and political ties are not focused on trade policy, they will be at a substantial lobbying disadvantage compared to interest groups that



**Figure 1.** Increase in economic depth and importance of environmental provisions in PTAs. Note: The left figure shows the economic depth measure of preferential trade agreements over time. Agreement Depth Measure is taken from Dür *et al.*’s depth RASCH index, rescaled to range from 0 to 10. The right figure presents the number of environmental provisions scaled by the number of articles in the agreements. The fitted lines are LOESS trend lines. The Count of Environmental Provisions was computed using the TREND dataset.

have traditionally been active in trade. Further, linking environmental policy to trade instruments introduces new interest groups and decision-makers with motives beyond environmental protection. It opens environmental policy up for influence by economic lobby groups at home and in trading partners, decision-making by economic and trade ministries, and review by trade lawyers (Johnson 2015). The notion that environmental groups should primarily regard the emerging linkage between trade and the environment as a threat aligns with the psychological concept of ‘loss aversion,’ where individuals care more about preserving the status quo than potential gains (e.g. Kahneman and Tversky 1984).

Given the suspicion and sense of threat that drives initial mobilization, environmental groups should primarily seek to prevent the expansion of trade policy. At the least, this may come in the form of the ‘defensive’ provisions described by Blümer *et al.* (2020) that provide carve-outs and exceptions to preserve their traditional policy space. However, such carve-outs often give insufficient reassurance to environmental groups, leading them to lobby for excluding entire chapters or even seeking to block agreements altogether.

Whether policymakers react to these demands depends on environmental groups’ political influence. Unlike previous authors (e.g. Dür and De Bièvre 2007, Lechner 2016), I argue that newly mobilized environmental NGOs can be influential. Although civil society groups often lack financial resources, they have a unique ability to influence public opinion and mobilize voters around an issue through ‘outside lobbying,’ which in turn impacts policymakers who need to please their constituents (Kollman 1998, Wouters and Walgrave 2017). Further, environmental groups often provide crucial information to policymakers, which helps shape their understanding of complex issues (Austen-Smith 1993, De Figueiredo 2002).

When mobilized environmental groups influence public opinion and lawmakers’ thinking, policymakers who want to conclude trade agreements need to adjust the agreements’ content to preserve a ratifying coalition. They can try to placate environmental groups by limiting the scope of the agreements they object to. However, if groups demand the exclusion of entire chapters or the discontinuation of entire agreements, this may not be a preferred strategy. Instead, it will, in many cases, be sufficient to placate enough skeptical lawmakers and members of the public. Next to ‘defensive’ provisions, placating the public and policymakers can come in the form of what Blümer *et al.* (2020) call ‘offensive’ clauses designed to enhance environmental performance abroad. Prior survey evidence suggests that the general public cares about the environmental effects of international trade (Bechtel *et al.* 2012, Rudolph *et al.* 2022) and that the public’s support for trade agreements increases with the inclusion of environmental clauses (Bernauer and Nguyen 2015, Perlman and van Lieshout 2019). Similarly,

lawmakers concerned about the environment and thus sympathetic to environmental groups' arguments may be persuaded by the inclusion of offensive environmental clauses.

It follows that both kinds of clauses – 'defensive' and 'offensive' – can result from the mobilization of new interest groups due to a sense of threat. Somewhat ironically, objections by newly mobilized civil society groups against the expanding scope of trade policy may ultimately lead to a further expansion of trade policy and closer linkage to environmental issues. This may not satisfy the demands of environmental NGOs themselves but helps preserve the ratifying coalition in the face of new opposition.

To summarize, the 'defensive issue linkage' mechanism involves two forms of 'defense.' First, the expansion of an issue area mobilizes new interest groups that seek to 'defend' their traditional policy area against a perceived threat of interference. Second, policymakers who support agreements in the expanding policy area defend these agreements against the newly mobilized opposition by introducing defensive *and* offensive clauses into agreements. The channel of defensive issue linkage describes the reasons for and consequences of the new mobilization of previously uninvolved interest groups in reaction to issue expansion. This complements other well-studied linkage channels that may derive from the interests of other actors, such as business groups.

The idea of defensive issue linkage leads to several observable implications. First, the initial mobilization of environmental groups should coincide with a broadening of trade agreements' economic scope. Groups should cite the threat emanating from trade policy as a primary concern. Second, environmental groups should have an impact on trade policies. Yet, if, as I argue, environmental groups mobilize in response to the threat of expanding economic policies, this impact should only be apparent in the case of agreements with high economic depth. The following sections test these observable implications.

#### **4. Qualitative evidence on NGO mobilization and "defensive issue linkage"**

This section traces both environmental groups' stated reasons for mobilization and their effect on trade policy in three periods of unusually high mobilization. The three cases highlight environmental NGO action on trade agreements between two treaty partners of similar size and levels of development (EU in TTIP and CETA) and cases of North-South agreements from the perspective of the more developed nation (US in NAFTA) and of the less developed nation (Malaysia in the TPP). They thus illuminate the commonalities among environmental groups' motivations across various

negotiation contexts but also shed light on the conditions under which their mobilization matters.

#### 4.1. Early mobilization of environmental groups in the US

A clear link between trade and environmental policy emerged in the early 1990s when the parties to NAFTA agreed to the first environmental side agreement in a PTA, the North American Agreement on Environmental Cooperation (NAAEC). At the same time, environmental groups in developed countries, including the US, were putting intense pressure on their administrations regarding the multilateral Uruguay Round negotiations.

Studies of this period agree that environmental groups' sudden attention to trade was spurred by a combination of worries over the environmental effects of NAFTA (Esty 1994, p. 27, Fletcher 1999) and outrage over controversial rulings on environmental cases at the multilateral GATT, which seemed to limit the US' ability to impose environmental protections (Esty 1994, Vogel 2012, Aggarwal 2013). Such concerns were exacerbated by the contents of the Uruguay Round negotiations, which aimed at establishing a more enforceable dispute settlement mechanism and introducing new agreements, such as the Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phyto-Sanitary (SPS) Measures.

US environmentalists' demands at the multilateral level mainly consisted of preventing the GATT from encroaching on domestic and international environmental policy. For example, a letter addressed to the Senate Finance Committee, formulated by 14 major environmental groups, stated that the groups rejected the rules proposed under the Uruguay Round due to their 'intrusion into the right of state and federal governments to set appropriate environment, health, safety, conservation and animal welfare standards (Audley, 1993).'

Regarding NAFTA, two of the main concerns voiced by environmental groups included a potential 'race to the bottom' in environmental regulation and the possibility that Mexico may challenge US environmental standards through claims of protectionism (Moreno *et al.* 1998). Thus, even though there were some demands for 'offensive' provisions, such as sanctions against poor environmental performance, by environmental groups (Cameron and Tomlin 2000, p. 189), a sense of threat to environmental policymaking was still one of the primary motivations for NGO activism.

Prior studies agree that environmental groups successfully influenced US negotiation strategies for the Uruguay Round and NAFTA (e.g. Mayer 1998, Aggarwal 2013, Johnson 2015). For example, despite business groups' vehement opposition, a sense of Congress resolution was passed, mandating that the President 'should seek (...) to address environmental issues (...) in the Uruguay Round. However, multilaterally, the US had little success in

pushing through environmental demands, given the strong opposition of developing countries (Goldstein and Toenshoff 2022).

Environmental groups' demands bore more fruit in NAFTA. The Bush administration included unprecedented numbers of environmental clauses during initial negotiations. Among them were many provisions that sought to preserve domestic sovereignty and MEA prevalence. However, these 'defensive' clauses were insufficient to placate environmental groups. Facing continued opposition, Bill Clinton negotiated the NAAEC before NAFTA was ratified. The eventual agreement went beyond just safeguarding domestic measures. It established a Commission for Environmental Cooperation, mandated the enforcement of environmental standards, and established a dispute settlement mechanism for environmental clauses (Fletcher 1999).

This side agreement, paired with NAFTA's original environmental provisions, was enough to neutralize environmental opposition by splitting the environmental community (Antweiler *et al.* 2001, p. 199). While many important environmental groups remained opposed to the agreement, sufficient numbers of Congresspeople were persuaded by the changes to ratify the agreement. Further, while environmental groups have remained skeptical of the NAAEC's potential to improve environmental conditions in Mexico, according to Blair (2008, p. 694), the side agreement 'continues to be useful to advocates [...] who seek to reassure the concerned public.'

#### 4.2. Recent NGO mobilization in Europe

The second case looks at recent political mobilization within the environmental community in the European context. It draws on expert interviews conducted in Brussels, Berlin, and London in 2019. In total, seven staff members of environmental NGOs, two members of the European Parliament, five staff members of the European Parliament, and one staff member of a member of the German Bundestag were interviewed.

During interviews, staff members of environmental groups were asked about their general conception of international trade policy. All of them clearly stated that trade was primarily a threat. When pressed on the merits of sustainability chapters and environmental provisions, a common response was, 'We don't really believe that the EU trade policy at the moment can really help in terms of environment.' Even examples from the US, which has agreements with stringent dispute settlement, did not inspire optimism. Speaking about US agreements, an environmental lobbyist stated, 'To date, there hasn't been an environmental organization that has really been saying, ah, this is great, and we've used it, and it's been successful.'

All environmental groups I spoke to expressed serious concerns about specific clauses of modern trade agreements, particularly rules around

regulatory cooperation and ISDS. This worry was especially prevalent in the context of TTIP, an economically deep agreement between the EU and the US, for which negotiations started in 2013. The agreement sparked mass protests across Europe, with environmental groups acting as central players. Many groups increased their level of trade mobilization in response to TTIP. One large international NGO told me that they increased their staff working on trade policy in Brussels from one person to four people at the height of the anti-TTIP protests. Another trade expert I interviewed was hired by a prominent environmental organization in 2015 to cover TTIP negotiations.

What made TTIP stand out to environmental groups? One key feature of TTIP was that most economic gains were to arise from harmonizing standards rather than tariff cuts. Given the perceived power of large US corporations, this led to concerns over the EU's potential loss of sovereignty. One environmental group summarized their worries as follows:

What they want is to make sure that for them the right people are involved in the regulatory process at the right time. (...) Basically, a privileged lobbying position (...) to influence the regulatory process and also to make sure that the rules that are adopted in a certain country do not go against let's say business interests.

The undue influence of foreign businesses and loss of sovereignty were also the main points cited in opposition to ISDS, where interview participants invoked the possible 'deterrent effect' due to costly lawsuits.

Legislators interviewed confirmed that these concerns by environmental groups had impacted their work on trade policy. Left-wing and green Members of the European Parliament (MEPs) voiced the same reservations over ISDS and regulatory cooperation. They stated that environmental groups were valuable sources of information and helped bring the environment onto the parliamentary agenda by raising public attention. One Member of the European Parliament stated that:

I find their lobbying on these topics quite effective. Because they have (...) highly skilled professionals, a clear line of thinking, they have people doing the nitty-gritty work of drawing up amendments (...) people who are doing the advocacy in the public.

Environmental groups stated they had an excellent connection with parliamentarians in the EU Parliament's International Trade Committee. Further, while some bemoaned the seeming lack of interest within the European Commission, a former civil servant at DG Trade claimed that environmental NGOs had 'pretty good access.'

While TTIP was put on ice after the election of Donald Trump in 2016, CETA was eventually signed and ratified by the EU Parliament. To get to this point, the EU and Canada had to replace ISDS with an alternative form of dispute settlement. In addition, CETA contains an extensive chapter on the

environment and another chapter on sustainable development with both defensive and offensive clauses.

Ultimately, these provisions did not persuade Europe's most prominent environmental NGOs, which opposed the agreement to the end, as did green-party politicians in the EU Parliament. However, the environmental provisions were enough to ensure the support of over half of the parliament's center-left politicians. In interviews, these politicians and their staffers expressed that while they had been alerted by civil society organizations to potential environmental drawbacks of the agreement, environmental clauses had been a core reason for their eventual vote in favor of the agreement. Some expressed that adding environmental clauses was all the EU could and should do concerning trade and the environment.

#### **4.3. NGO mobilization around the TPP in Malaysia**

While the previous two cases focused on powerful advanced industrialized economies, this third case draws on unusually high civil society mobilization around trade policy in an emerging economy – Malaysia. It draws on published material by Malaysian civil society organizations and original interview evidence from another researcher who conducted fieldwork in Malaysia in 2018.

In Malaysia, the first time civil society organizations mobilized around a trade agreement was in 2013, in the context of Malaysia joining negotiations for the TPP. When Malaysia joined negotiations, 52 NGOs, including environmental groups, banded together to oppose the PTA in a coalition named 'Badan Bertindak Bantah TPPA' – Malay for 'Objection Action Body TPPA.'

What led to this opposition? According to interviews with Bantah activists and documents the coalition published, the primary concern for participating NGOs were chapters of the agreement that went beyond tariff reductions. In joint statements and open letters, Bantah TPPA named 'national sovereignty and policy space' the first point of contention. As part of this, ISDS was heavily criticized as 'providing ways for multinational corporations to trample over national legal systems' (Badan Bertindak Bantah TPPA 2023c). Other aspects of the agreement that featured heavily in Bantah's criticism were government procurement and intellectual property rights protections.

Even though the TPP was projected to have some positive effects on environmental protection in Malaysia (Institute of Strategic and International Studies Malaysia 2015), the coalition of civil society groups was largely dismissive of the 'offensive' environmental clauses in the TPP environmental chapter. For example, in an open letter to Malaysian Cabinet Ministers, the coalition states:

The potential contained in the Environment Chapter to raise the standards of environment protection and promotion in Malaysia would be overridden by provisions contained in other chapters of the TPPA. (Badan Bertindak Bantah TPPA 2023a)

In a document accompanying a round table in which Bantah TPPA outlined its ‘red lines,’ the group even demanded that there should be no environmental chapter because environmental concerns should always override commercial interests (Badan Bertindak Bantah TPPA 2023b). Thus, the group was not persuaded by the TPP’s potential to improve environmental conditions.

Bantah TPPA’s demands also went far beyond introducing ‘defensive’ clauses in the TPP text. Instead, the group demanded that there should be no chapters on investment, government procurement, intellectual property rights, or competition (Badan Bertindak Bantah TPPA 2023b). Thus, specific defensive clauses alone would likely not have satisfied civil society opposition.

In reaction to civil society mobilization and public protests, the government scrambled to organize town hall meetings. Officials in the Ministry of Investment, Trade and Industry (MITI) insisted that they tried to incorporate concerns raised at these meetings into their negotiation stance. However, civil society groups complained that there was no official follow-up.

This lack of follow-up may result from Malaysian negotiators’ perceived lack of power to change the agreement text. Policy officials interviewed during another researcher’s fieldwork stated that negotiators had limited room for maneuver in the negotiations and were constrained in deciding which policy areas to prioritize. Thus, negotiators likely did not feel able to placate NGOs or members of the public whom their campaign had mobilized through sweeping changes in the agreement’s content.

Overall, the three case studies reveal similar motivations for the mobilization of environmental NGOs in very different contexts. In all three cases, a sense of threat due to the potential interference of expanding trade law in environmental policymaking was a primary driver of NGO activity. In NAFTA and CETA, this mobilization coincided with an increase in the environmental content of trade agreements, which did not persuade key environmental NGOs but placated sufficient numbers of moderate politicians to ensure ratification. Further, as the cases of the US at the GATT and Malaysia in TPP demonstrate, the influence of environmental NGOs on agreement content is contingent on a country’s power to demand changes during negotiations.

## 5. Regression analysis

Following this qualitative evidence on NGO influence and motivation, in this section, I systematically test whether broader patterns across all preferential

trade agreements support the idea of defensive issue linkage. If, as I argue, environmental groups can influence agreement content, the presence of environmental groups should be positively associated with environmental content in trade agreements. However, if, as the case studies suggest, environmental groups mobilize in response to the threat of expanding economic policies, this association should be moderated by the economic depth of an agreement. In contrast, if environmental groups are skeptical of the merits of opportunistic issue linkage, the association between their presence and environmental agreement content should not be moderated by differences in treaty partners' environmental performance.

### 5.1. Data and model specification

The regression analysis spans all preferential trade agreements concluded between 1989 and 2016 (452 in total). Analyses are provided at the agreement level. For country-specific variables, I consider the characteristics of the country with the highest GDP. This reflects that, as highlighted in the case studies, larger markets hold more power to request changes in PTA texts. Alternative specifications, shown in the online appendix, use GDP-weighted averages across treaty partners for country-level variables and produce substantively equivalent results.

The primary outcome variable – the relative prominence of environmental clauses in preferential trade agreements – is constructed by dividing the number of environmental provisions (as coded by Morin *et al.* 2018) by the number of articles in a trade agreement.<sup>1</sup> Testing for the *relative* prominence of environmental provisions alleviates some concerns that agreement depth and the number of environmental provisions may be driven by the same unobserved variables that affect the length of an agreement, such as the effort expended when writing an agreement, or the bureaucratic capacity of the treaty partners.

To measure the strength of environmental civil society, I rely on data from the Yearbook of International Organizations. A simple measure for environmental civil society within a country is constructed by summing the number of environmental organization headquarters. Since the strength of civil society is potentially endogenous to trade policy, I use data from 1987, which predates the rise in environmental provisions. As the resulting index is very skewed, I use the natural logarithm.

An agreement's economic depth is measured using the depth index provided by Dür *et al.* (2014). It is constructed using a latent trait analysis approach called the Rasch model. This index captures 48 binary variables that pertain to components of 'deep' trade agreements such as services liberalization, investment measures, and standards. Crucially, the 48 components refer only to economic and not environmental aspects of trade

agreements. This measure should be treated with some caution: Since the agreement text, and thus market access depth, is usually finalized *after* environmental civil society groups have lobbied on agreement content, it is a post-treatment variable. NAFTA provides a powerful example of continued environmental lobbying after market access provisions were set in stone and the consequent writing of an environmental chapter. However, this convenient sequencing of events is the exception rather than the rule. Thus, while the co-existence of deep market access provisions and environmental clauses is suggestive, it should not be interpreted as causal evidence.

To capture environmental performance, I draw on Yale University's Environmental Performance Index (EPI) (Hsu and Zomer 2016). I include the EPI of the largest treaty partner (by GDP) and the difference between the largest treaty partners' EPI and the lowest EPI among all treaty partners. EPI levels approximate a country's cost of compliance with environmental regulations, while the difference in EPI proxies the potential for the agreement to be leveraged to improve environmental conditions in smaller treaty partners.

To account for the possible channel of veiled protectionism, I further include controls for the volume of import competition and exports in the year before an agreement's signature. Here, I rely on data from the BACI dataset and Comtrade. My measure for import competition follows the approach by Kucik (2012), which acknowledges that countries may be more worried about inter-industry trade and weighs observations accordingly.<sup>2</sup>

Several additional controls are included in the regression models: First, I control for the (logged) GDP per capita of the biggest treaty partner, the (logged) GDP per capita of the other treaty members, and the (logged) distance between treaty members. Second, a democracy variable is included to account for the fact that the strength and impact of civil society should vary with a country's level of democracy. To measure democracy, I rely on the Varieties of Democracy data set's electoral democracy index. This index is based on a country's freedom of association, clean elections, freedom of expression, elected officials, and suffrage. It thus captures the kind of institutions conducive to civil society lobbying. Third, many environmental clauses are path-dependent: countries often copy and paste prior agreement texts, and similar clauses in prior agreements lower the cost of adopting environmental measures. Thus, I include a moving average, reflecting the mean number of environmental clauses a country included in its trade agreements in the ten years preceding an agreement's signature. Lastly, all models include year-fixed effects and dummy variables that capture whether the US or the EU were among the treaty partners. Standard errors are clustered at the level of the biggest agreement partner.

**Table 1.** Summary statistics data.

|                             | mean  | sd     | min   | max    |
|-----------------------------|-------|--------|-------|--------|
| Democracy                   | 0.67  | 0.25   | 0.02  | 0.94   |
| EPI                         | 54.24 | 10.24  | 29.10 | 78.00  |
| EPI Difference              | 6.16  | 8.31   | 0.00  | 43.20  |
| Prior Environmental Clauses | 15.54 | 16.26  | 0.00  | 100.00 |
| Economic Depth              | 4.99  | 2.59   | 0.00  | 10.00  |
| Count Env. Headq.           | 61.27 | 135.55 | 1.00  | 439.00 |
| Log Count Env. Headq.       | 1.80  | 2.03   | 0.00  | 6.08   |
| Log GDP PC                  | 8.79  | 1.40   | 5.28  | 11.32  |
| Log GDP PC Others           | 7.96  | 1.47   | 3.15  | 11.32  |
| Log Exports                 | -6.32 | 2.88   | -6.91 | 11.81  |
| Log Import Competition      | -6.32 | 2.83   | -6.91 | 14.63  |
| Log Distance                | 7.66  | 1.08   | 4.39  | 9.89   |
| EU                          | 0.11  | 0.31   | 0.00  | 1.00   |
| USA                         | 0.03  | 0.18   | 0.00  | 1.00   |
| Number Env. Provisions      | 18.56 | 25.60  | 0.00  | 137.00 |
| Fraction Env. Provisions    | 0.18  | 0.14   | 0.00  | 1.04   |

The first regression model includes all variables of interest and controls. To test whether an agreement's economic depth moderates the association with environmental civil society, a second model then interacts the economic depth of an agreement with the measure of environmental groups' presence. A third model interacts the difference in EPI levels with the measure for environmental groups to test whether the potential for improving environmental conditions abroad increases the association between civil society presence and environmental agreement content.

For ease of interpretation, all results shown in the main body of this paper are calculated using ordinary least squares regressions. As the outcome variable is censored at 0, I also estimate the same regressions using a Tobit model. Tobit regression models produce estimates with the same magnitude, sign, and significance as the OLS results. Results for the Tobit model are shown in Online Appendix A.4.

Table 1 presents summary statistics for all variables included in the main regression specifications. Figure 1 plots the economic depth variable and the fraction of environmental provisions in agreements over time. Both variables increase substantially during the period of observation.

## 5.2. Regression results

Regression results are presented in Table 2. As is apparent, the association between the presence of environmental groups and the relative importance of environmental clauses is positive and statistically significant, albeit only at  $p < 0.1$ . A one percent increase in the count of environmental headquarters within a country is associated with a rise in the fraction of environmental provisions over the total number of articles by 0.022. This coefficient size is not trivial, given that the mean fraction found in the data is only 0.18.

**Table 2.** OLS results using environmental NGO headquarter counts from 1987.

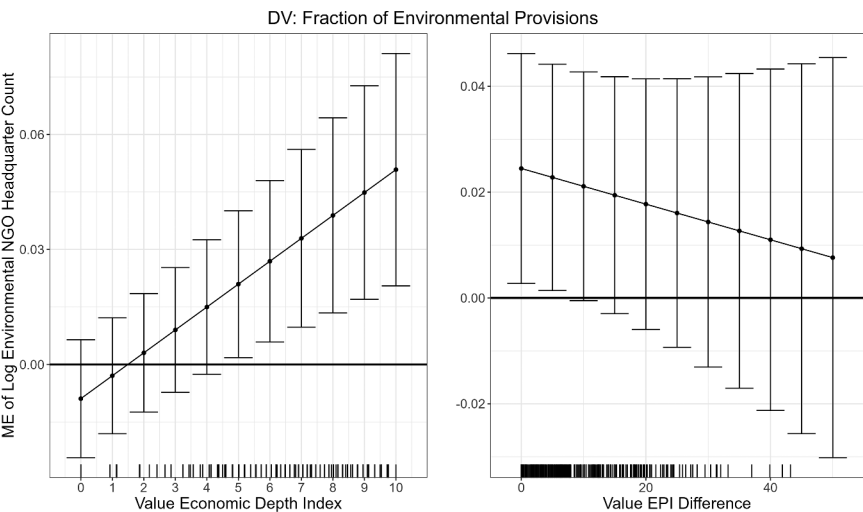
|                                                         | Fraction of Clauses |                       |                     |
|---------------------------------------------------------|---------------------|-----------------------|---------------------|
|                                                         | (1)                 | (2)                   | (3)                 |
| (Intercept)                                             | 0.0888<br>(0.0763)  | 0.1493+<br>(0.0807)   | 0.0865<br>(0.0785)  |
| EPI                                                     | -0.0002<br>(0.0009) | -0.0002<br>(0.0008)   | -0.0004<br>(0.0010) |
| EPI Difference                                          | 0.0021*<br>(0.0008) | 0.0014<br>(0.0010)    | 0.0031+<br>(0.0016) |
| Economic Depth Index                                    | 0.0115*<br>(0.0056) | 0.0006<br>(0.0040)    | 0.0117*<br>(0.0057) |
| Log Environmental NGO Headquarters                      | 0.0220*<br>(0.0106) | -0.0089<br>(0.0079)   | 0.0245*<br>(0.0111) |
| Log GDP/Capita                                          | -0.0078<br>(0.0067) | -0.0066<br>(0.0071)   | -0.0076<br>(0.0068) |
| Log GDP/Capita Trade Partners                           | 0.0021<br>(0.0032)  | 0.0020<br>(0.0033)    | 0.0019<br>(0.0031)  |
| Log Import Competition                                  | 0.0028<br>(0.0022)  | 0.0028<br>(0.0021)    | 0.0029<br>(0.0023)  |
| Log Exports                                             | 0.0041<br>(0.0045)  | 0.0041<br>(0.0044)    | 0.0039<br>(0.0043)  |
| Log Distance                                            | -0.0042<br>(0.0070) | -0.0055<br>(0.0072)   | -0.0042<br>(0.0069) |
| Democracy                                               | 0.0134<br>(0.0226)  | 0.0240<br>(0.0225)    | 0.0158<br>(0.0239)  |
| Prior Env. Clauses                                      | 0.0006<br>(0.0009)  | 0.0006<br>(0.0008)    | 0.0006<br>(0.0009)  |
| Economic Depth Index:Log Environmental NGO Headquarters |                     | 0.0060***<br>(0.0015) |                     |
| EPI Difference:Log Environmental NGO Headquarters       |                     |                       | -0.0003<br>(0.0004) |
| Num.Obs.                                                | 452                 | 452                   | 452                 |
| AIC                                                     | 136.0               | 122.6                 | 133.3               |
| BIC                                                     | 1826.7              | 1809.2                | 1820.0              |
| Year Fixed Effects                                      | Yes                 | Yes                   | Yes                 |
| EU and US Fixed Effects                                 | Yes                 | Yes                   | Yes                 |
| Observations                                            | 452                 | 452                   | 452                 |

Note: All Standard Errors Clustered at Level of Biggest Treaty Partner.

+p < 0.1, \*p < 0.05, \*\*p < 0.01, \*\*\*p < 0.001.

In addition, economic depth and the difference in EPI levels are also positively and statistically significantly associated with an increase in the relative importance of environmental clauses. I find no statistical evidence that import competition is associated with an increase in the relative prominence of environmental content.

Figure 2 presents marginal effect plots of the estimated relationship between environmental groups and environmental agreement content in models two and three. The left-hand graph illustrates the strong moderating effect of economic depth: The association between environmental groups and environmental trade agreement content only becomes statistically different from zero when agreement depth is above average. In contrast, environmental groups' correlation with environmental provisions does not appear to be moderated significantly by the difference in EPI between treaty partners. Thus, the positive coefficient for EPI



**Figure 2.** Marginal effect of environmental groups, moderated by Economic Depth and EPI difference.

Note: This figure shows the estimated marginal effects of the log count of environmental headquarters in model 2, where it is interacted with agreement depth, in the left panel and model 3, where it is interacted with the difference in EPI between countries, in the right panel. Standard errors are clustered at the level of the largest agreement partner. Rug plots at the bottom show the distribution of economic depth and the EPI in the data.

Difference is likely driven by the demands of other interest groups beyond environmental groups. Taken together, these results align with the theoretical expectations of defensive issue linkage that environmental groups become active primarily when they perceive trade policy as a threat.

The positive association between environmental agreement content and environmental groups' presence is not solely driven by 'defensive' clauses that seek to preserve sovereignty in environmental policymaking. As shown in Online Appendix A.6, results are primarily driven by the inclusion of new 'offensive' provisions. This aligns with the theoretical argument that policymakers can react to civil society opposition by introducing more proactive clauses to preserve ratifying coalitions, even if this does not placate environmental groups.

**5.3. Robustness checks**

Robustness checks confirm that these results are not merely an artifact of the regression specification. First, I repeat all analyses using an alternative dependent variable: The number of new environmental provisions that had not previously been included in any of the largest agreement partner's PTAs. Results for this

alternative dependent variable are presented in Online Appendix Table A.5.1 and Figure A.5.1 and confirm the main findings.

Second, I repeat all analyses using measures of change in depth and environmental agreement content for the largest treaty partner and include two-way fixed effects for the largest treaty partner and year. While these specifications cannot show the baseline effect of environmental NGOs' presence, they improve the plausibility of a causal interpretation and confirm the primary analyses' other conclusions, as shown in Table A.5.2.

In addition, I use alternative measures for core independent variables. First, I use the number of signed multilateral environmental agreements and the number of domestic environmental policies up until the year before the trade agreement, as captured by the FAOLEX database, to measure treaty partners' environmental performance. Second, I re-code the measure for environmental NGO strength by counting the number of meetings hosted by environmental NGOs within the country during the year before a trade agreement was concluded, as captured by the YIO. This measure proxies the level of activity of environmental NGOs. The results are robust to using these alternative measures, as shown in Online Appendix Tables A.5.3, A.5.4, and A.5.5.

To ensure that the results are not driven by a spurious correlation with veiled protectionism, I also repeat the primary analyses with added interaction terms between the import competition variable and economic depth, as well as EPI difference. The conclusions of the primary analysis are robust to this specification, as shown in Table A.5.6.

Further, I briefly examine how the core independent variables are associated with the strictness of environmental clauses using Postnikov and Bastiaens's (2020) measure of whether an agreement's labor and environmental provisions contain sanctions for non-compliance. While this measure is coarse, I find patterns similar to the other dependent variables, as shown in Online Appendix Table A.5.8.

## 6. Conclusion

This paper has proposed an alternative mechanism through which issue linkage between two topics in international relations may arise: defensive issue linkage. This channel is not a substitute but a complement to existing theories on the origins of issue linkage. It builds on the insight that interest groups mobilize around a new topic due to a perception of threat and loss aversion rather than a perception of opportunity. As the scope of agreements in one issue area, such as trade policy, expands, it may interfere with previously unrelated areas, such as environmental policy. Actors operating in the latter mobilize and focus on trade policy to preserve policy space. While these groups primarily seek to limit the scope of the expanding policy regime, this mobilization of new interest groups can, counterintuitively,

further the political linkage between two issues: Policymakers may introduce more provisions that promote goals in the previously unrelated policy area to preserve a ratifying coalition in the face of newly mobilized opposition.

This paper has built on qualitative and quantitative evidence to illustrate the plausible existence of ‘defensive issue linkage.’ The cases of early mobilization in the US and more recent environmental NGO activity in Europe and Malaysia have shown that environmental groups tend to mobilize when the scope of trade policy increases. In line with expectations, groups cite fears of trade policy interfering with and hindering environmental policy as their primary motivation for mobilization. The qualitative evidence also shows that environmentalists’ lobbying activities can impact policymakers. A systematic quantitative analysis of PTA content and civil society strength has revealed a robust, positive relationship between the presence of environmental groups and the relative importance of environmental provisions in trade agreements. This relationship is moderated by the depth of economic provisions within a trade agreement, which can be considered a measure of the potential threat emanating from an agreement. While PTAs present a more ready case for such quantitative analysis, similar dynamics likely play out at the multilateral level of GATT/WTO negotiations (Goldstein and Toenshoff 2022).

The linkage mechanism highlighted here likely generalizes to other areas of issue linkage in international relations. The environment is not the only issue an expanded trade policy increasingly affects. Future work could, therefore, investigate the potential presence of defensive issue linkage between trade policy and other issues, such as security policy and human and labor rights. Further, defensive issue linkage may be present in cases outside of trade policy. For example, the expanding scope of international climate policy may ‘defensively’ mobilize new interest groups that previously did not part-take in climate policy-making. Future work should thus investigate defensive linkage dynamics in other areas.

## Notes

1. Some articles contain more than one environmental provision. Thus, it is theoretically possible for this ratio to be above 1. Two agreements (Jordan-US 2000 and EC Switzerland Bilaterals I 1999) contain more environmental provisions than articles. The US-Jordan 2000 agreement is such a stark outlier that it is excluded from the analysis of this paper.
2. See Online Appendix for details on the calculation of this measure.

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## Data availability statement

The data that support the findings of this study are openly available on OSF at <https://doi.org/10.17605/OSF.IO/YGBSE>.

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