***Democratic Social Bargaining in Trade: Preserving Environmental Justice***

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**Abstract**

Regional trade agreements, dominated by the U.S. and EU models for free trade, are not only tools for economic policy. They also are democratic bargaining instruments for various domestic and transnational stakeholders, including environmental and labor groups, effectively insulating certain social policy goals and values from local political volatility. Despite recent executive orders overturning President Biden administration’s environmental justice initiatives, this paper posits that given expansive supply chain networks, regional and bilateral trade agreements ensure that environmental justice strategies are not dead. The pro-business reasons that motivate eliminating environmental justice goals run up against structural aspects of regional and bilateral trade agreements that have had embedded in them various strategies for pursuing environmental justice since the days of the original NAFTA. Regional trade agreements, like the United States Mexico Canada Agreement (USMCA) which was negotiated under the first President Trump administration, have deeply embedded social policy agendas, including environmental justice goals. Likewise, EU trade agreements preserve regional social values, as exhibited in the recently concluded EU-MERCOSUR Association Agreement which contains the Paris Climate Agreement as “an essential element” of the agreement.

Regional and bilateral trade agreements provide opportunities for promoting environmental justice goals primarily in two ways: 1) for their potential to connect the local with the global, and 2) for leveraging local efforts to address environmental justice challenges. As an example, the paper identifies four ways that the USMCA, though not explicitly mentioning environmental justice, furthers environmental justice goals embedded within other principles of environmental protection and sustainability 1) procedurally; 2) structurally and institutionally; 3) substantively within the text; and 4) remedially in the ways that compliance mechanisms may be enforced, primarily through tariffs.

The paper makes three innovative normative contributions to the environmental justice literature and to trade scholarship. First, it examines the ways that Western trade agreements have already incorporated environmental justice strategies through their environmental protection provisions and sustainability principles. Second, it borrows from the social sciences literature on “tele-coupling” to demonstrate the impact of supply chains on biodiversity and its relevance in understanding environmental justice in trade agreements. In doing this, the paper emphasizes that even if nations decide to exit a trade agreement, the expansion of supply chains disaggregates the diffusion of sustainability and environmental justice strategies into supply chains from the neoliberal goals of trade legal frameworks. By including an analysis of supply chain structures for specific commodities like avocados and critical minerals, the paper highlights the interconnections among trade liberalization patterns, supply chain expansion, and environmental justice challenges. The third innovative normative move of this paper is that in demonstrating the ways that environmental justice strategies are woven into sustainability standards of preferential trade agreements, it asserts that these agreements are not only remnants of a neoliberal era in transition, but they also encapsulate social policy values of a region, insulating them from political volatility of any one nation.   They provide relevant normative frameworks for reimagining the relationship of free trade, global supply chains, and shared social policy values. Counter to traditional critiques of neoliberal free trade agreements as ignoring labor and environmental values, this paper provides an optimistic lens towards regional and bilateral trade agreements which, contrary to current internal democratic back-sliding trends, can be seen as important policy instruments for preserving democratically bargained for social policy values.

1. \*Elizabeth Trujillo is the Mary Ann & Lawrence E. Faust Professor of Law and Founding Director, Initiative on Global Law and Policy for the Americas. She can be contacted at eitrujil@central.uh.edu. This paper has benefitted from input provided by colleagues at the the Association of Law, Property, and Society 2024 Annual Meeting, the 2024 USMCA and Sustainable Development Workshop by the Commission for Environmental Cooperation; participants at the 2024 ICON-S Annual Conference; and colleagues participating in *Conversations on Latin American International Law* 2025 workshop at the European University Institute. Thanks to Hari Osofsky, Rebecca Hardin, Rebecca Bratspies, David Wirth, and David Gantz for their comments on earilier drafts. Special thanks to colleagues at the University of Houston Law Center participating in a works-in-progress commenting on this paper, as well as UHLC law library, especially Chris Dykes, for their research assistance. I want to thank my research assistants, UHLC students Evan Bilicek, Olivia Unzueta, Madison Oswald, and Irene Younan, for their helpful research on this paper. [↑](#footnote-ref-1)