

The Brazilian Federal Government's Role in the Prioritization of EU Foreign Direct Investment and its Environmental Agenda*

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As a result of Foreign Direct Investment (FDI) from the European Union (EU), the environmental governance structure in Brazil has been challenged, bringing to light a legal ambiguity in the ecological obligations between the EU and Brazil. The article hypothesizes that this legal ambiguity is caused by the complex political and legal system that characterizes the Brazilian governance structure. How does the Brazilian federal government, in its role as policymaker, balance its EU trade agenda? Can it be affirmed that the federal government's capacity as policymaker affects the political convergence between Brazil and the EU? This review will explain the mechanisms in the EU legal framework and its institutions regarding trade and the environment in the strategic relationship between the EU and Brazil. It will further analyze the decision-making process of the federal government as it relates to FDI and environmental policy in Brazil. The research design is based on an analysis of the EU legal framework, of Brazilian neoliberal economic strategy and domestic environmental policy, in order to demonstrate the convergence of political discourses from 2000 to 2013. The data indicates that the EU legal framework and the Brazilian domestic environmental policy put pressure on the federal government to take on the role of facilitator. The findings confirm the literature on the EU legal framework and its manipulation of Brazilian environmental policies. This review expands on these findings inasmuch as the Brazilian federal government allows for a convergence of policies and relationships around environmental obligations in trade thereby creating a stopgap for institutions to act toward environmental regulations.

Keywords: European Union; Brazil; institutional overlapping; Foreign Direct Investment; environmental policy.

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The future of trade agreements will depend on the ability of state actors to regulate environmental obligations and levels of policy protection that adhere to ecological standards while facing political discourses from actors trying to influence environmental policy in favor of economic and political demands (LEBESSIS and PATERSON, 2001). This divisive political relationship among state actors forces a transnational political agenda on the Brazilian federal government with the intent to legitimize the policy-making process related to FDI (HOOGHE and MARKS, 2003; 2009).

The Brazilian federal government faces a conflict in maintaining a balance between environmental and economic policies which has been well documented in the literature (DESPOSATO and SCHEINER, 2008; EATON and DICKOVICK, 2004; SAMUELS, 2003). The research that follows examines the state's role as a centralizing force in negotiating trade agreements and the expansion of its administrative jurisdiction in implementing trade and environmental policy (McGARITY, 1991; ORTS, 1993; POSNER, 1998; SCHUCK, 1992). The current debate in multilevel governance on jurisdictional levels and administrative overlapping demonstrates the need to better understand the national government's role in negotiating trade deals while adhering to environmental obligations (HOOGHE and MARKS, 2003; 2009).

This article contributes to the current literature by analyzing the Brazilian federal government's interaction with the EU regarding the political convergence of both entities in ecological standards over trade agreements (EESC, 2004). It goes further, by addressing how the Brazilian federal government, in its role as policymaker, balances its EU trade agenda with its environmental agenda. This article will show that bilateral trade talks are in favor of the EU and Brazil is under pressure to conform to EU standards. This becomes evident in the European Commission's proposal dated 30 of May 2007 (EUROPEAN COMMISSION, 2007a); it discusses the formation of a strategic relationship between the EU and Brazil that focuses on the common agenda by agreeing to reinforce economic and trade relations, human rights standards, and achieving the Millennium Development Goals (EUROPEAN COMMISSION, 2007b).

While environmental and investment policies create administrative agendas that focus on a centralized legal structure, the discourse on administrative policy demonstrates the conflict between various forms of government (Economist, 2004). Administrative policy is present in legal interpretations of Forest Code legislation by state and non-state actors regarding laws as related to property rights, utility of natural resources, and regulatory implementation (McGARITY, 1991; ORTS, 1993; SCHUCK, 1992). Furthermore, administrative policy demonstrates the multi-layering of public policy in institutional relationships and, thereby, furthers the understanding of policy impact on the legal expansion of institutional structures. Hence, the internal and external interaction amongst institutional actors is the result of policy and regulatory outcomes.

This study aims to shed light on the convergence of political discourse between the EU

and Brazil regarding environmental obligations and the power exerted by this discourse on the prioritization of FDI. Furthermore, its goal is to understand the EU political agenda in approaching Brazil in its economic growth strategy and environmental protection policy.

The analytical approach of this study is based on “Islands of Persuasion and Discourse” (DEITELHOFF, 2009) and stresses the foreign policy relationship between the EU and Brazil, which aims to strategically pursue economic interests in favor of environmental obligations. Furthermore, in analyzing the engagement between the EU and Brazil, this study applies a discourse analysis approach that focuses on relations between FDI and the environment. More specifically, this study examines the perceptions and narratives of the EU and Brazil regarding the strategic relationship that prioritizes FDI and regulates environmental protection policy.

This article focuses on two main questions: 01. how does the Brazilian federal government, in its role as policymaker, attempt to balance its EU trade agenda; 02. can it be affirmed that the federal government’s capacity as policymaker affects the political convergence between Brazil and the EU? In answering these questions, and to demonstrate the dynamics between the EU and Brazil, this article relies on two sources of data: the examination of secondary sources and the paper trail pertaining to European Union and Brazilian documents.

This review will explain the mechanisms in the EU legal framework and EU institutions regarding trade and the environment in the strategic relationship between the EU and Brazil. It will further analyze the decision-making process of the EU in the identification of the relationship between FDI and EU environmental policy as it relates to Brazil. It will then show the EU’s institutional structural power agenda toward legally binding rules by examining the EU neoliberal economic strategy and its influence on Brazil’s environmental agenda. The impact of the Brazilian environmental policy on natural resources will be described as a result of pressures from neoliberal policies and the demand to create legally binding frameworks. Finally, it will analyze how the EU legal framework, the EU neoliberal economic strategy in Brazil, and Brazilian domestic environmental policy force the federal government to take on the facilitator role.

The Brazilian federal government’s role in a multilevel governance structure

Local public interest sets the political agenda to pressure the Brazilian federal government on policy interests. This creates political and economic constraints on the ability of the federal government to extract financial and natural resources from the local economy. As a result, the federal government allows for a convergence of policies and relationships around environmental obligations in trade, thereby creating a stopgap for institutions to act toward environmental regulations.

Roberts et al. (2003) argue that, with the exception of environmental standards that provide a competitive advantage to the EU, there has been little political will from domes-

tic economic actors in the form of global environmental investment. For this reason, Brazil seeks a convergent relationship with the EU to strengthen multilevel governance strategies regarding trade and the environment. The EU's economic agenda is created by institutional policy clusters that define trade and environmental policy in a neoliberal trade strategy (EUROPEAN COMMISSION, 1995a, 1995b; ECLAC, 2000)¹. This practice contradicts the EU's pro-environmental agenda of promoting sustainable development and conservation of natural resources. Due to this agenda, the international community puts pressure on the government to perform its role as facilitator through the creation of global ecological standards. For this reason, the legitimacy of trade policy implementation on the domestic level follows the neoliberal economic strategy in environmental policy that favors EU interests. Therefore, the priority of ecological obligations is based on an economic agenda despite a pro-environmental discourse by the international community. As a result, the differentiation of institutional policy clusters creates a pluralistic policy environment around a variety of priorities².

In this article, I argue that the implementation of environmental obligations in Brazil as spelled out in FDI is based on the politicization of global environmental implications for Brazil and the subsequent political will from both the EU and Brazil. The EU defines environmental obligations within FDI as the environmental effects of FDI-based technology development and diffusion, the impact of environmental standards on investment decisions by firms, and the environmental effects of international competition for FDI (OECD, 2013). In the past, the EU has amended an environmental clause spelled out in Preferential Trade Agreements (PTAs) by identifying the mitigation process for ecological damages (STEEL et al., 2003) and initiating the implementation of cleaner and more energy-efficient technologies (OECD, 2013). However, the ecological impact on environmental degradation from multinationals is not clarified within the EU FDI framework. In its trade agreements, the EU addresses the objective of monitoring FDI and the environment through industry, location and a multinational level of performance. These criteria create a vague and flexible objective which can be altered to suit a specific trade relationship. Hence, the objective set forth by the EU promotes a neutral stance on environmental objectives in host countries.

The author agrees that the negotiation of trade deals between the EU and Brazil provides the EU with a political venue to promote its ecological standards and free trade ideology. The author also recognizes the importance of the regulatory policy position of EU institutions towards a domestic environmental discourse in Brazil. However, while cur-

¹See Molyneux (1999). Given the implementation of neoliberal policies in the EU domestic market, the subsequent diversification of the market has forced its prevailing commercial policy to create barriers to trade and regulation. In turn, this has resulted in conflicting trade interests, creating an EU trade policy with an ambiguous trade system in a multilevel governance structure.

²See Youngs and Pishchikova (2013). EU institutions are not well coordinated, which leads to fragmentation and allows competing institutions to pressure for political and policy change. In the transatlantic community, the EU supports universal international norms so as to be able to maintain legitimacy and sovereignty with states that are negotiating partners.

rent literature focuses on the implementation of EU environmental obligations toward Brazil, it does not identify EU sanctioning of trade over ecological degradation (FEARN-SIDE, 2005). Furthermore, the inability of EU institutions to act toward a single multinational environmental impact creates even less legitimacy in the implementation of ecological regulation. As a result, the position of the EU regarding the impact of institutional entities on multinational environmental policies is a reactive sequence of historical policy perspectives (KLOM, 2003) leading to political stagnation. For this reason, the EU forces policy networks to engage the Brazilian state in legitimizing the process of implementation of environmental policy regulation between the EU and Brazil.

This discourse on environmental policy results in institutional power for the EU and allows it to maintain competencies and to fill the gap between normative demand and institutional relationships in Brazil's environmental governance framework (HOOGHE and MARKS, 2003, 2009; EUROPEAN PARLIAMENT, 1999). The examination of the Brazilian pluralistic policy in regards to environmental obligations demonstrates administrative overlapping in EU and Brazilian public policy in the competition for legislative relevance. In this context, the role of Brazil's governmental structure becomes evident inasmuch as regional governments dictate policy discourse based on EU recommendations which, in turn, causes the state to take on the traditional role as a centralizing force (DESPOSATO and SCHEINER, 2008; EATON and DICKOVICK, 2004; SAMUELS, 2003). Hence, the development of a political legislative agenda is based on two competing ideas, the idea of a centralized policy-based structure and the idea of decentralization of administrative competencies.

Non-Governmental Organizations (NGOs) and International Organizations (IOs) claim that environmental obligations in Multilateral Investment Agreements (MIAs) constitute a one-sided approach in favor of the host country but not the donor country (STEEL et al., 2003). Furthermore, the environmental obligations of investor countries are only vaguely described in the EU Guidelines for Multinational Enterprises. This places the topic of ecological standards above the topic of trade in bilateral trade talks in favor of the EU. In addition, by utilizing EU Treaty law, Member States (MS) are granted dual competencies, thereby creating a pluralistic political space and leading the Brazilian national government to conform to EU ecological standards. In addition, European negotiators are given an advantage in the policy making process through the development of political and economic barriers implemented through regulations and sanctions (EUROPEAN COMMISSION, 2007a). Consequently, the EU has the power to frame ideological discussions on ecological standards through the mobilization of political and economic standards in IOs and non-state actors. The density of MS with their ability to influence Brazil through official EU diplomatic channels and unofficial correspondents creates a "Single Voice" that utilizes numerous communication pathways (MEUNIER and NICOLAÏDIS, 2006).

The outcome is a political environment that relies on trade concessions which, in turn,

contribute to environmental policy stagnation (DAVIS and BERMEIO, 2009). This provides multinational corporations with the strategic advantage to focus on bilateral agreements where environmental obligations are not strictly enforced by regulatory institutions. As a result, a neoliberal decentralization policy allows multinationals a political advantage by focusing on regions or municipalities that favor their agenda. At the same time, Brazilian constitutions leave the responsibility of implementing environmental obligations to the federated states. Nevertheless, the collaboration between the EU and Brazil demonstrates an indirect relationship with FDI due to indirect influence of foreign multinationals on Brazilian domestic policy. This allows the EU not to take action even if environmental obligations stress the importance of a commitment against deforestation. At the same time, institutional inaction as a result of environmental sanctions makes it possible for the EU to create environmental commitments without upholding Brazil on ecological obligations. This has placed the responsibility on the Brazilian federal and local governments to reform their environmental policies.

The impact of the EU legal framework and the World Trade Organization (WTO) on Brazil's environmental policies

The political involvement of the EU in international institutions (e.g. the WTO) makes for a complex political relationship which can either place limitations on institutional actors or create an environment of cooperation (DOWNS et al., 1998). These possible effects may either decrease or increase the influence of the EU on international actors depending on how the international system recognizes the status of the EU (EMERSON et al., 2009). Hence, the EU is not a sum of its parts but its own entity with separate domestic and international competencies (VAN SCHAIK, 2013). As such, the EU develops functional relationships with member states and third countries based on mutual cooperation through the EU "acquis communautaire"³. Koch (2009) and Coleman (1990) state that the capability to act in the EU 'acquis communautaire' allows for autonomy in organizational structures which will expand control over governance within institutional parties and highlights the regulatory powers and mechanisms of the EU in trade and environmental affairs.

A functional approach to protect European interests and create a legitimate legal process that is recognized internationally has been illustrated through the benefits of operating under a "Single Voice" (GROENLEER and VAN SCHAIK, 2007). At the same time, EU member states continue to develop a political structure that focuses on norms and formal rules regarding institutional growth of power in Europe (MAK and VAN TATENHOVE, 2006; STACEY and RITTBERGER, 2003). In short, member states prefer a weak EU Commission to protect their sovereignty and to sustain an individual economic advantage. For EU insti-

³Brazil is a member of the Union of South American Nations (UNASUR), the WTO and the Cairns Group with the aim to liberalize global trade and to uphold binding international agreements that have been promoted and implemented by the EU.

tutions to grow and expand on the international level, it is necessary for the Commission to pressure state and non-state actors within Europe for greater regulatory and negotiating competencies.

Billiet (2006) states that EU policy is understated in the legal dimension set forth by institutional actors. For the EU to participate in international environmental negotiations, the treaty law defines the legal structure of the EU, its recognition by international partners and its competencies to create binding agreements. For negotiations between host countries, the EU has created a legal foundation within the Treaty on the Functioning of the European Union (TFEU) to act externally in international environmental legislation. Lenaerts, Bray and Van Nuffel (2011) point out that the EU has a substantive legal basis to act in external environmental negotiations which is illustrated in Articles 191 and 192 in the TFEU. Furthermore, these articles of the TFEU define the dynamics of the inter-institutional relationships between actors. Within the Treaty, institutional powers to negotiate international environmental matters are implemented by the EU Council and Commission. International environmental policy is a competency of trade policy which creates legal uncertainty in the internal decision-making process due to the objective of economic growth and environmental law (DAMRO, 2007; ZIMMERMAN, 2007). Furthermore, international environmental policy creates a legal framework within trade policy which allows both the EU and its member states to make decisions. Checks and balances in the EU structural framework require institutions to act.

The EU views the Latin American economic agenda as left-leaning and, therefore, hindering the EU neoliberal policy agenda (ÁLVAREZ, 2007; EUROPEAN COMMISSION, 2007b, 2007c). To implement neoliberal strategies, the EU stresses the importance of a regional “counterpart” agenda focusing on institutionalization and, through this, creating a coherent trade relationship between the EU and Mercosur custom unions based on political, economic, cultural, and regional dimensions (AGGARWAL and RAVENHILL, 2001). The literature characterizes the institutional relationship between the EU and Mercosur as pure interregional, hybrid interregional, or transregional connections between state actors based on policy outcome (AGGARWAL and FOGARTY, 2004)⁴. As a result, the EU aims to create an institutional structural power relationship and a network where core values are implemented (HAGGARD and SIMMONS, 1987; KEOHANE, 1984) by creating relationships around institutional and ideological structures which, in turn, form stronger legally binding rules.

⁴See Treib, Bähr, and Falkner (2011). The EU has legalized and institutionalized a uniform foreign policy with the intent to create and identify trans-governmental networks. Thus, the EU has developed a legal framework with political and policy relationships and operational mechanisms in international institutional settings. The EU foreign policy strategy is to engage Brazil in a mixture of pure interregional, hybrid interregional and transregional connections. In this study, each categorization involves a different level of integration where pure interregional connection focuses on the regional trading bloc of Mercosur; hybrid focuses on the regional trading bloc of Mercosur and individual countries like Brazil, and transregional on the greater Latin American region.

The EU trade strategy toward Brazil is characterized by the implementation of policy instruments in a regionalized “Southern Cone” while, historically, EU foreign policy has defined Latin American countries as one political and economic cluster (BHAGWATI and PANAGARIYA, 1996; SANDHOLTZ et al., 1992). This is evident in the EU strategy that defines Brazil as an interlocutor and that develops and implements policies in the region based on the EU-Brazil political bilateral dialogue (EUROPEAN COMMISSION, 2007b, 2009). At the same time, it has been the goal of EU foreign policy throughout Latin America to support the institutionalization of a customs union trade relationship with Mercosur (FAUST, 2004). In parallel, the inability to further the integration process of the Mercosur customs union forces the EU to further strengthen the strategic relationship with Brazil.

These institutionalized regional relationships are either “closed” and non-competitive or “open” and competitive (AGGARWAL and FOGARTY, 2004). Hence, globalized economic policy has incorporated economic instruments (e.g. barriers to trade) in Mercosur through neoliberalism and has, thereby, shifted regional relationships toward “open regionalism” (AGGARWAL and FOGARTY, 2004). Furthermore, a political environment based on supranational institutional relationships has developed through “open regionalism” (VERDIER and BREEN, 2001). In addition, the EU has emphasized a strategy of integration, based solely on strengthening supranational institutionalization for further compatibility between both trading blocs (AGGARWAL and FOGARTY, 2004; EUROPEAN COMMISSION, 2007a).

The interaction between the EU and Brazilian institutions creates a power relationship as a result of neoliberal policies and regulatory fragmentation due to foreign policy intervention (SIMMONS and OUDRAAT, 2001). The aim of institutional trade and political policy integration is to address the asymmetry of development. “Interregionalism” is defined, according to AGGARWAL (2001), as the development of intergovernmental relationships across regions. Furthermore, institutional relationships that develop between custom unions and free trade areas are labeled as “pure interregional” relationships (AGGARWAL, 2001). For example, the EU’s intergovernmental relationship with Mercosur shows the characteristics of “pure interregionalism” through institutional integration. The aim of “interregionalism” is to create a cooperative environment that is based on voluntary negotiations and mutual agreements in a legal commerce framework across regions (AGGARWAL and FOGARTY, 2004)⁵.

The implementation of economic and political instruments faces a competitive environment within WTO negotiations and structural powers (e.g. the United States and emerging economies)(KLOM, 2003). This environment has pressured for the consolidation of

⁵See Verdier and Breen (2001). Theoretical discussions among domestic and international policy networks in the Brazil-EU relationship are created between interest groups and governments based on a framework of strength and stability. The key factor in analyzing strength and stability in networks is the propensity of trade policy in a given sector. This creates a framework to identify the policy relationship between the EU and Brazil and interest groups that govern specific institutions, leading to policy diffusion from the international community into national political discourse as a result.

trade and development policies on the EU level. Hence, to strengthen the legal basis of the EU Development Policy (EuroAid), the Commission has created the Asian and Latin America (ALA) regulatory policy (AGGARWAL, 2001; HOLDEN, 2009). The financial instruments in the ALA target a developmental agenda focusing on the poor and at risk regions of emerging economies. The ALA regulation aims to increase structural power by incorporating the following objectives: promotion of democracy and the rule of law; sustainable development; the integration of emerging economies into the global economy; the strengthening of political relationships; and environmental protection (HOLDEN, 2009).

The EU institutional strategic relationship with Brazil

In its decision-making process, it is the aim of the EU to negotiate policy differences between member states and citizens. Due to a broad range of competencies and institutional actors, the EU is represented in international organizations through a coherent procedural process (GEHRING et al., 2013). Its representation and negotiation competencies depend on the status granted by each individual international organization. In the area of trade and the environment, status and competencies held by the EU are fragmented across the United Nations (UN), WTO, CITES and regional trading blocs. In creating a presence within international institutions, the ability of the EU to implement political action in the multi-level governance structure is based on organizational legislative resources (VAN ROMPUY, 2010). According to Jupille et al. (2013), non-EU member states participating in international organizations have recognized the legitimacy of political resources available to the EU. Throughout the international sphere, the EU plays the role of formal or informal actor in negotiations depending on the status granted to it by international organizations. The ambiguity surrounding the EU as an informal actor creates difficulty in assessing its overall relationship with international organizations (GROENLEER and VAN SCHAİK, 2007). As a foundation for the relationship between the EU and the WTO, the WTO fully recognizes the EU as a relevant actor within the governance structure and the EU has acquired control of all political resources that are of relevance within the organization (JACKSON, 1992; ROSE, 2002; WOOLCOCK, 2005). In addition, Youngs (2011) illustrates the political power of the EU by pointing to the competencies in trade of agricultural products with third countries (EUROPEAN COMMISSION, 2007a).

Within the EU, member states are no longer able to commit themselves to trade obligations (EECKHOUT, 2004). This has placed the EU and Brazil at the negotiating table of the WTO Doha Round without interference from member states. To illustrate its political success with the WTO, the EU had already been recognized as a relevant actor before the GATT system. As such, the EU has been acting on behalf of member states in response to WTO dispute settlements (HOFFMEISTER, 2007). The evolutionary process of the EU within the WTO illustrates the political leverage that the EU has been able to acquire through the Single Market. Even though the EU has political leverage in CITES, the Union does not have

formal membership due to stagnation of the Gaborone Amendment which has not yet been ratified. The EU gains its political leverage from the abolishment of internal borders and acquired sole competencies on trade (REEVE, 2002; SAND, 1997). Furthermore, the internal formalities of the EU have created a situation where the EU has been called upon by CITES to participate as an informal member. Sand (1997) and Reeve (2002) state that this is demonstrated through Council Regulation (EC) No. 338/97 which enacts sanctions against third parties that do not involve the EU in the implementation and enforcement of obligations.

The influence of the four bureaucratic actors — Council, Parliament, EU Commission, and European Court of Justice (ECJ) — on trade and commercial policies within EU institutions depends on their employment of resources, collective actions, and institutional relationships within the EU bureaucracy (AGGARWAL, 2001). Among EU institutions, there are two strategic outcomes in commercial policy developments within intra-EU institutional relationships: either 01. one institution dictates the legislative process of trade policy; or 02. the development of complex dynamics shares authority between two or more institutions (BARNETT and FINNEMORE, 1999; MARCH and OLSEN, 1998; POWELL and DIMAGGIO, 1991, 1983). To influence these outcomes, the Commission and Council are the deciding forces regarding trade policy developments. Furthermore, the Commission's role in international trade policy is defined as that of the lead negotiator between sectors and countries involved in negotiations, with an expansionary agenda in policies such as development, aid, and the environment. This role of the Commission creates a conflict of power and influence within the intra-commission policy areas among Directors General (e.g. of Trade, of Development, of Aid, etc.). The Council aims to regulate the Commission's authority over trade by incorporating the agendas of Member States into intra-EU trade negotiations. Furthermore, the Parliament acts as a regulatory agency through the development and implementation of legislation while the ECJ deliberates on trade policy disputes among state and non-state actors.

The EU's economic agenda is created by institutional policy clusters that define trade and environmental policy in a neoliberal economic strategy (EUROPEAN COMMISSION, 2007b; 2009). Such practice contradicts the EU's pro-environmental agenda of promoting sustainable development and conservation of natural resources. Due to the inability of the EU to force the Brazilian federal government to conform to environmental policies, the international community pressures the government to perform its role as facilitator through the creation of global ecological legislation. This pressure makes the legitimacy of policy implementation on the domestic level questionable due to the neoliberal economic strategy in environmental policy that favors political interests. Therefore, the priority of ecological obligations is still based on an economic agenda even though there has been a change through the international pro-environmental agenda. As a result, the differentiation of institutional policy clusters creates a pluralistic policy environment around a variety of

priorities. The process of policy-making between policy areas based on similar agendas creates national priorities and legal ambiguity in the implementation of regulation. State and non-state actors emphasized these imbalances between economic liberalization and environmental policy regulation. As a result, the Brazilian federal government is forced to act as facilitator in order to develop domestic economic and environmental legislation around international policy discourse. Due to the priority of economic liberalization over environmental obligation, the Brazilian state implements a functional approach in adopting international norms as a strategy and a tool to maintain the legitimacy of domestic and international actors.

The growth of FDI has stimulated a discourse between the EU and Brazil concerning environmental impacts and ecological degradation in both donor and host countries. Hence, critics argue that the difference in standards between developed countries and developing ones produces a regulatory environment that creates “pollution havens” for foreign multinationals (BARNES and BARNES, 2000). Furthermore, the competition among foreign multinationals to access these “pollution havens” leads to a “race to the bottom” affecting the environmental standards of the EU. In contrast, neoliberals (PERKINS and NEUMAYER, 2009; TEWS et al., 2003) argue that FDI has positive implications in the implementation of environmental policy due to access for foreign multinationals to newer and cleaner technical practices. However, NGOs and IOs claim that environmental obligations in Multilateral Investment Agreements (MIAs) constitute a one-sided approach which specifies the rights of the host country but not of the donor country (STEEL et al., 2003). Furthermore, environmental obligations of investor countries are only vaguely described in the EU Guidelines for Multinational Enterprises. As a result, neoliberals define liberalization through economic rather than environmental reforms and pass over the responsibility of environmental regulatory practices to institutions in Brazil.

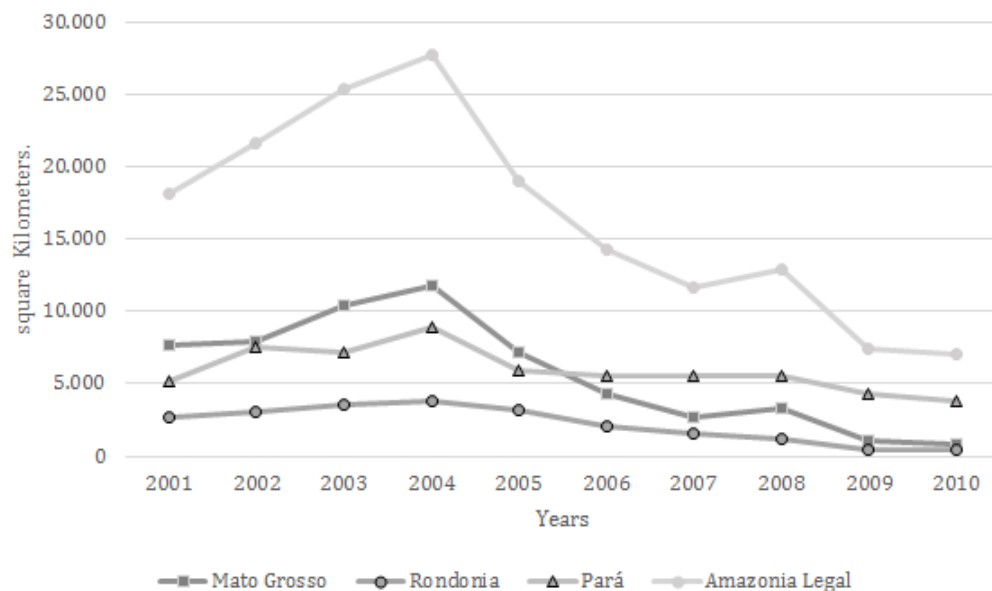
The impact of EU trade and FDI on Brazil’s government role as facilitator in domestic environmental policy

To offset EU FDI, the Brazilian federal government’s role is to facilitate domestic environmental policy. At the same time, the diversity of the Brazilian federated states hinders the federal government in carrying out its role due to its dependency on state agencies in the Amazon and their lack of coordination and policy implementation. As a result of FDI from international actors in local Brazilian governments rich in natural resources, the federal government takes on the role of facilitator providing a stopgap in a multilevel governance structure. However, as shown in Figure 01, the federal government’s ability to implement environmental policy is fragmented throughout the federated states.

To mitigate the impact of EU trade and FDI on the Brazilian environment, the facilitator role of the federal government as a policy manager bridges a gap for further development and expansion of economic and environmental policies. This allows actors in institutional

policy clusters to have a voice and strengthen multilateral legislative strategies by making political demands for environmental obligations. Furthermore, the creation of a balance in the development of policy provides non-state actors and civil society the opportunity to contribute to policy development which makes them a legitimizing democratic force in the intergovernmental process of the policy framework. As a result, the role of the facilitator gains significance in balancing input from bureaucratic experts and civil society in the policy-making process. At the same time, the balancing of a pluralistic political environment in the policy framework makes it important to create legally binding economic and environmental agreements. Due to the legitimization of PTAs and FDI in the political discourse and economic development, the facilitator fills a regulatory gap by stimulating multilateral environmental action to implement regulatory policy in territorial spaces.

Figure 1: Deforestation and the effects of government policies in the Brazilian Amazon



Source: Prepared by CASTELO (2015) from PRODES/INPE, 2001.

To protect Brazilian territorial spaces, in 2000 the Brazilian federal government shifted the agenda for forest protection regulations from a decentralized to a centralized economic policy and passed Law N° 9985/2000 of the Brazilian Constitution. This law restricts private property rights and creates Permanent Preservation areas (APPs) with the aim of increasing protected forest cover to 50 percent in some specific regions (BANERJEE et al., 2009). At the same time, the military regime implemented an Import Substitution Industrialization (ISI) economic policy to utilize natural resources in an effort to supplement metal and mineral industries and to ensure industrial sustainability (Law N° 5.106) (KENGGEN, 2001). To incentivize this practice, this law also granted state-subsidized credit and tax exemptions for forest plantations. To the contrary and as a follow-up to this law, the Brazilian government enacted the Brazilian Institute for Forestry Development (IBDF, Decree N° 289) which mandates administrative incentives for multinationals to enforce nat-

ural conservation practices (CHADWICK, 2000; VIANA, 2004). At the same time, public land is passed into private ownership in two ways that make enforcement of conservation practices challenging: through sealed tenders to large private owners and through the sale of small parcels to government sponsored settlements (FEARNSIDE, 1993).

In 2006, under President Luiz Inácio Lula da Silva, the government passed Brazil's first Forest Management legislation (PFML Law 11.284). Banerjee et al. (2009) state that, "Key principles of the law are the promotion of forest-based development, research, conservation, and the creation of the necessary conditions to stimulate long-term investment in forest management and conservation (Art. 02). The law mandates the establishment of national, state, and municipal forests and forest concessions. In the case of forests occupied or used by local communities, extractive reserves and sustainable development reserves have been created". To address illegal deforestation, the Brazilian government has developed the action plan for the "Prevention and Control of Deforestation in the Legal Amazon"⁶. Government documents from the year 2007 from the regions of Rondônia state that, "Between October 2003 and 2006, 221 law enforcement operations were conducted, resulting in the seizure of 814,000 m² of wood; 800 million reais in fines were issued; and 186 people were imprisoned, 63 of whom were public servants" (BANERJEE et al., 2009). Despite the rise in government regulations and imposed fines, deforestation policies have not had a substantial effect on hindering illegal deforestation (HIRAKURI, 2003; TONI, 2006). According to Brito and Barreto (2012), deforestation only fell from 47 to 43 percent between 2001 and 2004. This has led President Lula's administration to develop a forest management plan to address the legal land dispute process between public and private land. As part of this plan, the National Institute for Colonization and Agrarian Reforms (INCRA) has created a model of environmental protection on public land through forest conservation and regulation (BANERJEE et al., 2009). Within the forest management plan, deforestation on private lands has been addressed through the development of a state property registry (ONDRO et al., 1995). This registry has been designated to approve the rezoning of public lands for forestry use which has allowed for the registry system to consolidate abandoned properties and to standardize the land legalization process.

The Brazilian Constitution addresses the treatment of forest resources as a division of jurisdiction between state and federal governments (BANERJEE et al., 2009). During the creation of the Forest Code, the jurisdiction of forest resources was transferred to the federal government allowing for states to develop complementary legislation (VIANA, 2004). The transfer of jurisdiction was incorporated in the 1967 and 1969 Brazilian Constitutions. As a result, in Article 30, Sections I and II, municipalities have the authority to lobby on the

⁶The Brazilian federal government's legal definition of the Amazon aims to restrict the use of certain areas of land for official use, which in turn creates ambiguity in how the government will distribute autonomy between regional governments and non-state actors.

local level, which limits their legislative power to a supplementary role (VIANA, 2004). In addition, Chapter VI of the 1967/1969 Brazilian Constitutions describes the protection of the ecological environment implemented by the state and the public sphere. Furthermore, the basic framework of the Forest Code has created legal restrictions on percentage of deforestation, public and private forest concession contracts, and the sale of right to harvest timber on public land (Article 23). However, the legal requirements of Article 23 have been largely ineffective due to the government's economic growth strategy based on natural resources in Brazil.

The national interest imposed on municipalities has led to a land distribution imbalance and, as a result, the Brazilian Agency of Agrarian Reform (INCRA) brought legal action against the military government regimes of the 1980s (FEARNSIDE, 1993). Wolford (2005) illustrates that, at the same time, social pressures from the Landless Social Movement (MST) started the process for diversification of landholding. However, agrarian reform regarding land distribution in Brazil has created little change in the existing policy framework (PACHECO, 2009). The aim of the agrarian reform has been to distribute public land invaded by large private landholdings and to formulate property rights based on a thriving agrarian system rather than granting small landowners a greater right to deforestation. Brazilian state land reforms consist of redistributed land reform, land registration, and post-totalitarian land distribution (SIKOR and MÜLLER, 2009). The land distribution policy agenda is to reverse the concentration of land that is held by a few powerful elites (ALSTON et al., 2000). At the same time, land reform has created a speculative economic environment that has produced pressures from private and public interests to convert land to cattle pastures due to low maintenance costs (MARGULIS, 2004).

According to Azevedo (2007) of Serviço Florestal Brasileiro (SFB), Brazil has lacked regulatory mechanisms to implement forest management on public land since 2006. Changes in environmental legal mechanisms occur when the industrial land is not deemed economically or environmentally sustainable (YOUNG, 2005). To ensure a sustainable and environmental forestry economy, the Brazilian government has created a policy that has expanded protective forest areas and has incentivized the development of forest management (RYLANDS and BRANDON, 2005). Even with the evolution of the Forest Code since its initiation in 1939 and the evolution of regulatory institutions, the national government mandate has been a pro-resource based economic growth model (AHRENS, 2003). During the military government of the 1970s, the Forest Code evolved to support a substitution industrialization economy by nationalizing the natural resource economy. To create a legal sub-authority in Brazil, the military regime imposed greater restrictions on private property rights in Permanent Preservation Areas (PPA) by increasing the legal reserve requirements in specific areas by 50 percent (FEARNSIDE, 2005). In addition, the PPA law developed legal categories for biological, economic, scientific, and cultural distinctions to build a legal dominance over land usage in regions with abundant natural resources.

The aim of the standardization of land rights is to create a balance of power toward conservation rights (SIQUEIRA and NOGUEIRA, 2004). However, the literature shows that the standardization of land rights has produced a system that is overextended due to the number of land right requests submitted by industries of the private sector (SIQUEIRA and NOGUEIRA, 2004). This has led to pressure from the forestry lobby to force the government into reforming the forest management plan system. For example, “On January 25, 2005, loggers responded to the crisis by initiating a blockade of the BR-163 Cuiabá-Santarém highway at Novo Progresso, paralyzing southwestern Pará for 11 days” (BANERJEE et al., 2009). As a result, Congress was forced to “fast track” legislation addressing the grievances of the forestry lobby.

Conclusion

The article analyzes the role of the Brazilian federal government as a policymaker in balancing its trade agenda with the EU environmental agenda. The Brazilian federal government allows for a convergence of policies and relationships around environmental obligations in trade and, thereby, creates a stopgap for regional and international institutions to act toward environmental regulations. As a result, the interaction between state and non-state actors within the political structure regarding environmental obligations and trade demonstrates a complex and multi-structure environment. The analysis finds that the federal government’s capacity to affect the political convergence between Brazil and the EU causes a change in its role from policymaker to policy manager.

The Brazilian Constitutions leave federated states with the responsibility of implementing environmental obligations. In this context, the collaboration between the EU and the Brazilian federated states demonstrates an indirect influence of foreign multinationals on Brazilian domestic policy due to FDI. This allows the EU to not take action despite the importance of a commitment against deforestation as addressed in environmental obligations. At the same time, institutional inaction regarding trade as a result of environmental sanctions causes the EU to create environmental commitments without forcing Brazil to uphold its ecological obligations. This has put pressure on the Brazilian government to reform its environmental policies.

Natural resources in Brazil create a sustainable economic relationship between trade and development. Environmental literature draws a direct correlation between trade and ecological impact. Moreover, studies illustrate an institutional “path dependency” of Brazil toward its natural resources (SAMUELS, 2003). Contrary to political rhetoric, this leads to a policy structure with a neoliberal economic and trade agenda as its primary policy which creates a policy gap in the implementation of environmental obligations.

The outcome is a political environment that relies on trade concessions which, in turn, create environmental policy stagnation (DAVIS and BERMEIO, 2009). This allows multinational corporations the strategic advantage of focusing on bilateral agreements where

environmental obligations are not strictly enforced by regulatory institutions. As a result, neoliberal decentralization policy allows multinationals to create a further political advantage by focusing on regions or municipalities that favor their agenda.

The lack of implementation of policy reforms in Brazil has led to stagnation in further improvements toward conservation of natural resources. This policy stagnation creates a governmental institutional landscape that allows for political discourse but does not create a clear consensus on the importance of environmental conservation. While state actors develop an economic policy that favors a neoliberal trade agenda, non-state actors (NGOs and Civil Society) pressure for an agenda set by public interest (environmental, human rights, economic, etc). This, in turn, creates a pluralistic and stagnated policy agenda which is subject to a slow-moving legitimation process. As a result, the Brazilian federal government initiates policy strategies to create policy change.

This article concludes that the lack of a political consensus between the EU and Brazil is responsible for a conflict between the economic and environmental agenda towards sustainable growth in trade. This conflict results in an objective where economic growth has priority over environmental obligations and causes a contradiction in the EU relationship with Brazil. Moreover, the political interaction between Brazil and the EU legal framework and the constraints of the Brazilian federal government in implementing trade and environmental policies are subject to contradicting rules and political agendas depending on their jurisdictional base in the multilevel governance structure.

The new trend in Political Science and International Relations is to focus on the dynamics that connect actors around a single policy field rather than on a state-centric approach. Due to a gap in the literature to address this new trend, there is a need to expand on the study of the structural relationship between multinational companies and state actors regarding policy agendas in the developing world.

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