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Sustainable Development in EU Trade Policy and its Impact on Environmental Governance - The Case of Georgia

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Executive Summary

- ▶ Sustainable Development has become an overarching objective of EU internal and external policies taking into account shifts in the world trade system. EU developed unique model of promoting sustainable development globally through trade policy and its impact is illustrated by case of Georgia.
- ▶ This policy brief analyses the impact of EU-Georgia Agreement on the environmental governance, looking at the changes brought about in terms of legal and policy framework, institutional development and strategic planning. While observing the notable progress, it pinpoints the challenges of implementation that should be paid close attention to for further improvements.

Sustainable development is the idea that human societies must live and meet their needs without compromising the ability of future generations to meet their own needs. The "official" definition of sustainable development was developed for the first time in the Brundtland Report in 1987. Over a decade, Sustainable Development has become an important part of EU policies internally and externally. Treaty of Lisbon (2007) brought EU trade policy under the same EU external action heading as other elements of EU external policy. Trade policy is henceforth to be conducted within the 'context of the framework of principles and objectives of the EU's external action', such as democracy, rule of law, human rights and sustainable development (Article 207(1)).

After failure of the Doha Round of Negotiations in WTO, EU promoted bilateral and regional trade

arrangements and incorporated sustainable development agenda in the new generation of trade agreements. It paved the path to increased tendency for using trade policy as an instrument of other policy objectives pursued by the EU under external action, such as foreign policy, environmental and development policy. It was further reinforced by a new trade policy "Trade for All" (2016), which was launched soon after the adoption of the Sustainable Development Agenda 2030 by the United Nations.

The Association Agreement between the European Union and Georgia was signed on 27 June 2014, and has subsequently been ratified by Georgia, the European Union and all 28 EU member states. The economic content of the Agreement entered in force provisionally since 1 September 2014, its definitive and complete entry into force took place on 1 July 2016. One prominent part of the Agreement is Deep







and Comprehensive Free Trade Area (DCFTA), which is following the trend of new generation of EU trade agreements.

While the impact of the sustainable development chapters in the majority of new trade agreements (CETA, EU-South Korea, EU-Vietnam, EU-Singapure) is questioned and arguably criticized by number of scholars (because of their non-binding character), EU-Georgian AA/DCFTA clearly demonstrates notable impact on the governance of the various sectors covered by the agreement, and particularly on the environmental governance.

In this policy brief, we will explore the evolution of the sustainable development objectives in the EU trade policy and assess its impact on the governance of environmental sector on the case of Georgia. We argue that agreement brought about significant changes in the environmental governance and had important impact of its institutional, legislative and strategic development. While looking at the contributing factors of success, challenges of implementation are also explored and conclusions made to further consideration.

Evolution of Sustainable Development in EU Trade Policy

Sustainable Development as a concept was introduced in the 1987 Brundtland Report, Our Common Future at the 1992 UN Conference on Environment and Development (UNCED), also known as the Earth Summit. For the first time, the Brundtland Report presented the idea of integrating economic, environmental and social needs in the long-term development objectives. Already in 1997 sustainable development became a fundamental objective of the EU when it was included in the Treaty of Amsterdam (1997) as an overarching objective of EU policies. At the Gothenburg Summit in June 2001, EU leaders launched the first EU Sustainable Development Strategy based on a proposal from the Since Commission. then, championing in using trade policy in advancing sustainable development objectives international fora.

EU introduced incentive-based approach through its Generalized System of Preferences (GSP+), encouraging countries to implement their commitments to international conventions. EU was leading the process in the frames of WTO in the negotiations of Environmental Goods Agreement (EGA) and mainstreaming the concept of sustainable development in all other negotiations as well. Moreover, EU enshrined Sustainable Development in

its constitutional treaties, among the guiding principle for EU internal and external policies.

Treaty of Lisbon (Article 205) states that the Union's external action shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union; These include general aims such as support for democracy, rule of law and human rights as well as the slightly more specific aims of sustainable economic, social and environmental development, the integration of all countries into the world economy, the progressive improvement of the environment and sustainable management of global resources and good global governance. (S. Woolcock, 2010)

Another important milestone was launching of the new trade policy "Trade for all", soon after the introduction of UN Sustainable Development Agenda 2030. EU committed to economic growth, which goes hand in hand with social justice, respect for human rights, high labour and environmental standards, and health and safety protection. This applies to external as well as internal policies, and so also includes trade and investment policy. The EU has been leading in integrating sustainable development objectives into trade policy and making trade an effective tool to promote sustainable development worldwide. (European Commission, 2016).

While WTO fall short to accommodate sustainable development in substantive rule-making, EU promoted bilateral and regional trade arrangements. Since 2006 EU introduced separate chapter on Trade and Sustainable Development in the new generation of free trade agreements. Such agreements were concluded with South Korea, Canada, Vietnam, Singapore and others. As the analysis of the most recent agreements shows, further shift is occurring in the nature of trade agreements, which are slowly becomina vehicles for the advancement environmental goals (E. Cima, 2018). Although some scholars argue that chapters on Trade Sustainable Development demonstrate effectiveness due to their non-binding nature and are limited to predominantly aspirational language with no strong obligations and enforcement mechanisms. Let's have a closer look at the case of Georgia, which illustrates the evidence of notable impact of the EU-Georgian Agreement on environmental governance.

EU-Georgia AA/DCFTA and Sustainable Development Agenda

As part of European Neighborhood Policy (ENP), and response to the democratic reforms held in the



Sustainable Development in EU Trade Policy and its Impact on Environmental Governance - The Case of Georgia © Nana Kurashvili GGPB Nº8/2020 Eastern Europe and Caucasus in the beginning of 2000s, EU launched additional instrument for cooperation - Eastern Partnership, offering to open negotiations towards a DCFTA with Ukraine, Moldova and Georgia. This was a part of the wider range of policies and technical assistance, with the overall aim of EU to build and consolidate healthy democracies, pursue sustainable economic growth and manage cross-border links with its neighbors.

EU – Georgia Association Agreement (AA) was signed on June 27, 2014, including the Deep and Comprehensive Free Trade Area (DCFTA). AA aims to bring Georgia closer to the EU legal norms and facilitate its economic integration. The agreement establishes the areas in which Georgia needs to carry out specific reforms with the support of the European Union. This agreement bears particular strategic importance for Georgia, emphasizing its national priorities and European aspirations.

Environmental provisions are set out in four sections of the Agreement: Chapter 13 in DCFTA, Trade and Sustainable Development - covers Multilateral Environmental Agreements (MEAs); Biodiversity; Sustainable Forest Management and Timber Trade and Trade in Fish Products (i); Title VI -AA, Chapter - Environment: covers seven sectoral areas: Environmental Governance; Air Quality; Water Quality and Resource Management, Marine Environment; Waste Management; Nature Protection; Industrial Pollution and Industrial Threats; Chemical Management (ii); Title VI -AA, Chapter 4 -Climate Action (iii) and Chapter 11, articles 335-338: address Fisheries and Maritime Governance issues (iv). Annexes XXVI and XXVII to AA include 23 environmental directives and 4 regulations. Terms of fulfillment of environmental obligations range from 2 to 15 years.

The environment and climate change chapters of the Agreement are very ambitious and commit Georgia to cooperation across the entire landscape of environmental policy issues. Implementation is a long and difficult process, with high costs, given Georgia's starting point, but should ultimately result in a material improvement in environmental quality and modernisation of the economy. (Emerson, Kovziridze, 2018).

Impact on the Environmental Governance

Legal and Policy Framework

The most significant impact of the agreement is envisaged on the legal and policy framework

development in the environmental sector. It obliged Georgia to introduce EU acquis, namely EU legislation (Directive 2011/92/EU; Directive 2001/42/EC Directive 2003/35/EC; Directives 85/337/EEC and 96/61/EC) as well as sectoral legislations, including adoption of more than 80 technical regulations, guidance documents and standards.

Environmental legislation of Georgia was based on the Law on Environment of 1996. But it was outdated and could not provide straightforward framework for emerging needs of environmental sector. Environmental policy development was informed by international environmental law. Georgia has ratified the biggest majority of MEAs already by the beginning of 2000s, however their implementation was purposefully delayed and commitments have not been sufficiently met, as sustainable development was considered jeopardizing element in light of the full liberalization of economy.

Environmental legal drafting has become intensive due to the EU-Georgia association process. The ratification of the EU-Georgia AA in 2014, provided a long-term perspective for the development of national policy in various fields, including the environment and natural resources. The AA also provided a solid legal basis for future lawmaking and the implementation process. Among other matters, it defined goals to be achieved within a clearly established timeframe for the following areas: (i) environmental governance; (ii) air quality; (iii) water quality and resource management (including the marine environment); (iv) waste management; (v) biodiversity protection; (vi) industrial pollution and industrial hazards; (vii) chemical management; and (viii) climate action. Sustainable forestry and fishery-related aspects were addressed in the Deep and Comprehensive Free Trade Area (DCFTA), which is the part of the EU AA. A number of draft laws (i.e. Law on Import, Export and Transit of Waste; Law on Water Resources Management) and bylaws, have already been prepared while others are either in the development stages or in the pipeline. (Georgian National Environmental Action Plan 2017-2021).

In addition to legislative framework development, national strategic documents have been developed regulating specific sectors of the environmental governance. Sustainable development and environmental protection were mainstreamed through Socio-economic Development Strategy of Georgia "Georgia 2020" (2014); The Regional Development Programme of Georgia (2015-2017); The Rural Development Strategy for 2017-2020 and The Georgian Cultural Strategy "Culture 2025".



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Institutional development

signing Decades before the of AA/DCFTA, environmental governance in Georgia characterized by the frequent structural and institutional changes. Currently a major portion of environmental policy and legislation is being developed by the Ministry of Environmental Protection and Agriculture (MEPA), which plays a major role in environmental administration, issuing and enforcement of the permits, state control, data analysis and management of natural resources. The MEPA also coordinates the cooperation within the framework of regional and international MEAs.

Notable progress was made in the existing permit system. The new law (The Environmental Assessment Code (2017)) introduces the principles of the EU Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) directives. As a result, all activities which are likely to have significant impacts on the environment and human health and therefore, will be subject to EIA. Considerable improvements were made in the issuance of the appropriate licenses and permits in the field of environmental and natural resources protection.

The major progress was made in the enforcement of the law. State control over environmental protection and the use of natural resources is being carried out by Department of Environmental Supervision (DES), under MEPA. As a result of the current structural reforms, the mandate of the Department has extended and the staff optimized to perform new functions. The environmental inspection and patrol is carried out 24 hours by Patrol and Rapid Response Services and Rapid Response Teams.

Strategic Planning, Data Management and Access to Information

As a result of AA/DCFTA Strategic planning of the environmental sector was further improved. Roadmap of implementation of the environmental commitments was developed, with roadmaps for all seven sectors: environmental governance; air quality; water quality and resource management; waste management; biodiversity protection; industrial pollution and industrial hazards; chemical management; and climate action. roadmap outlines the activities with time schedules, responsible authority; defines indicators timeframe. Strategic planning was increased to fiveyear planning period under Georgian National Environmental Action Plan 2017-2021 (NEAP). Parliamentary control and oversight were

considerably improved after elaboration of the Strategy of the Environmental Protection and Natural Resources Committee in 2014.

Data management is essential for environmental management and governance. In particular, progress was made in the climate change related data collection, self-monitoring and the use of modeling for analysis and prognosis. Overall management was through strengthening the environmental data reporting system and capacity building of designated staff. While data collection, processing and monitoring systems were improved, it contributed to the increased quality of national reporting to MEAs. The Paris Agreement on climate change entered into force for Georgia in 2017. In 2015, prior to the adoption of the Paris Agreement, Georgia submitted its Intended Nationally Determined Contribution (INDC) to the UNFCCC, FAO etc.

Access to environmental information and public participation in decision-making is crucial for good environmental governance. The government worked towards the development of proper mechanisms for effective access to environmental information. Designated state agency was established in 2013, Legal Entity of Public Law - Environmental Information and Education Center of the Ministry of Environment Protection and Agriculture of Georgia whose main objectives are to facilitate environmental and agricultural education and raise public awareness; support public participation in decision-making and ensure access to information.

What are the challenges of implementation and how can they be mitigated?

Until recently, Georgia has been deliberately delaying environmental objectives and derogating them from other priorities of lower-middle income country, such as poverty reduction, employment and social protection. Therefore, the sustainable development in general was postponed for the "better future" and did not enjoy a high demand from the public either. It can lead to the conclusion, that the implementation of sound environmental policies and practices required an external trigger rather than creating the demand internally.

The scope of the agreement and the process of approximation with EU acquis is followed by considerable structural changes and institutional adjustments. Therefore, comprehensive reforms in the number of sectors require specific technical expertise and relevant infrastructure. The ongoing reforms necessitate transformation of inspection process and procedures, building the qualification of inspectors,



Sustainable Development in EU Trade Policy and its Impact on Environmental Governance - The Case of Georgia © Nana Kurashvili GGPB Nº8/2020 development of sectoral guidelines and introducing electronic systems for reporting. Thus, the qualification and capacity building of the staff is of utmost importance.

The major concern remains the lack of financial resources. Despite the 5 % increase of the annual budget for environment, it is far from being enough for tackling governance issues. Road map for Environmental Sector indicates that 95 % of the funding is expected to come from external sources. It is not surprising, as environmental legislation and institutional adjustment, as well as infrastructural and technical adaptation is a costly process. The same scope of changes during the EU enlargement process in Eastern Europe was accompanied by strong financial support from EU and in particular an incentive of EU membership, which is not the case for Georgia. As a matter of fact, the implementation of the environmental commitments under the EU-Georgia Agreement is heavily dependent on the donor funding. It is worthy to mention, that the role of the private sector is overlooked in this process. More communication is needed with business to explain the financial benefits of the sustainable development in a long-run and attract their investment.

Another challenge is that the government falls short in ensuring sound participation of and consultation with public. As it was the case with the process that led to the merging of the Ministry of Environment and Natural Resources Protection with the Ministry of Agriculture Development in spring 2018. The requirements of the Environmental Assessment Code on public participation are often violated. This is a serious challenge, in light of the important role that is attributed to civil society and public participation in the EU-Georgia Agreement and in particular in the DCFTA. Consulting а broad spectrum stakeholders, using their potential can lead to successful changes in a more efficient way.

Conclusions

During the past decade, interconnectedness between respect for sustainable development and multilateral rules of conduct in international trade has increased. For many years, the European Union has promoted sustainable development with its trading partners, using the Generalised System of Preferences and bilateral or interregional free trade agreements. In

doing this, it has combined respect for internationally agreed labour market protection rules and respect for multilateral environmental agreements (MEAs). The persistent combination of respect for human rights and international core labour standards, and for specified MEAs through international trade agreements, is unique in the world. (L. Cuyvers, 2010)

Despite of the criticism of the effectiveness of the Trade and Sustainable Development chapters in the new generation of EU free trade agreements, due to its non-binding character and aspirational language, case of Georgia clearly illustrates that EU-Georgia AA/DCFTA has become the powerful instrument for advancing environmental objectives.

Environmental clauses of the EU-Georgia Agreement had a considerable impact for re-emerging the environmental governance, which was heavily deregulated in the middle of 2000s, while considered as a hindering factor for economic development. While overall impact is tangible, changes brought about to specific sectors are even more prominent, often building from the scratch and introducing for the first time the basic international standard and principles.

Alongside the progress made in the environmental governance, the full implementation of the agreement, and in particular, in the field of sustainable development, requires strong financial resources and investments as well as capacity and infrastructure development. As far as increased financial support is expected from EU, Government of Georgia to deliver on its environmental objectives, should demonstrate bigger ownership through highest uptake of commitments and increased participation of private sector in this process.

While political and geopolitical goals were paramount In shaping EU-Georgia relationships, AA/DCFTA, has become the roadmap for development and formidable changes for many sectors, and the environmental governance is undoubtedly one of them. Despite the fact that EU-Georgia Agreement does not include any commitments for Georgia's EU-membership, it is still highly accompanied by such perceptions and expectation from the government and population. However, it is the case, when the journey towards the end goal can be as beneficial as the end goal itself-bringing the real perspectives of well-being and sustainable development for the people of Georgia.

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Nana Kurashvili was working for two years as Head of Programs in People in Need, Czech INGO in Georgia. She leaded a team of Project Managers working in the field of Good Governance, Rural Development, Agriculture Development, Human Rights Education and Social Inclusion. Nana has 17 years management experience working in a number of international organizations and as a founder/director of local organization CDA. She has led and been involved in the development of national and municipal strategies in Social Inclusion, Youth Participation and Human Rights. She is author and editor of 8 guidebooks and manuals in human rights education, social inclusion and youth participation.

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