

## **Masters Thesis**

A force for environmental good? A co-variational analysis  
on the effect of civil society on the compliance of  
environmental provisions in new generation EU PTAs

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# Summary

The failure of the Doha Round negotiations in mid-2006 created a domino effect for the global trade arena. Discussions to collectively open up markets around the world collapsed, and so did efforts for the broadening of the World Trade Organization (WTO) agenda. In the years that followed, global trade would see a rise in preferential trade agreements (PTAs) that fell outside the framework of the WTO. With the increasing number of PTAs also came new PTA designs and content, such as the inclusion of non-trade provisions on intellectual property rights, investment, and even social issues such as human rights and the environment. The inclusion of environmental standards seeking to regulate and protect the environment and promote sustainable development is the focus of this study.

The European Union (EU) has been a leading actor in the rise of PTAs and the inclusion of environmental provisions in its PTAs. Yet, unlike other countries such as the United States and Canada that use enforcing measures such as sanctions and fines to ensure compliance, the EU uses a cooperative approach of dialogues and consultations with civil society and signatory partner governments to facilitate compliance. In the last ten years, this method of involving civil society has become institutionalized in the implementation process of the environmental provisions in what are called the EU's 'new generation' PTAs. The question remains what effect civil society has on this process. This study seeks to provide greater understanding on the possible effect of civil society and civil society strength on the compliance of environmental provisions by signatory countries in PTAs with the EU. To do so, this study uses a co-variational analysis comparing the cases Colombia and Peru, countries which have been in a PTA with the EU since 2013.

To research this effect, this study uses a conceptualization of civil society strength, based on the two logics developed by Schmitter and Streeck (1999) and of a recent study by Schrama and Zhelyazkova (2018). The findings demonstrate slight evidence that higher levels of civil society strength in terms of civil society *participation* and *consultation* does have a positive effect on compliance, however other factors such as business interests, government priorities at the domestic level, ongoing internal conflicts, and shortfalls in the PTA design are found to also affect compliance. This study provides valuable insights for policymakers and civil society actors involved in the implementation of the social and environmental provisions in EU PTAs.

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# List of abbreviations

CANCC	Peru's High-Level Commission on Climate Change
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CBD	Convention on Biological Diversity
CNCC	Peru's National Commission for Climate Change
CON	Congruence Analysis
COV	Co-variational Analysis
CPT	Causal-process Tracing
CSD	Civil Society Dialogue
CSO	Civil Society Organization
DAG	Domestic Advisory Group
DAR	Derecho, Ambiente y Recursos Naturales (Law, Environment and Natural Resources)
EEAS	European External Action Service
EESC	European Economic and Social Committee
EIA	Environmental Impact Assessment
EIU	Economist Intelligence Unit
EPRS	European Parliamentary Research Service
EU	European Union
FARC	Revolutionary Armed Forces of Colombia
GDP	Gross Domestic Product
ILO	International Labor Organization
IPRs	Intellectual Property Rights
ITS	Supporting Technical Reports (Peru)

## List of abbreviations (continued)

MEA	Multilateral Environmental Agreement
MINAM	Ministry of the Environment (Peru)
Minambiente	Ministry of Environment and Sustainable Development (Colombia)
NGO	Non-government Organization
OEFA	Organismo de Evaluación y Fiscalización Ambiental (Environmental Assessment and Enforcement Agency of Peru)
Oidhaco	Oficina Internacional de los Derechos Humanos Acción Colombia (The International Office for Human Rights Action on Colombia)
PCDHDD	Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo (Colombian Platform for Human Rights Democracy and Development)
PTA	Preferential Trade Agreement
RedGE	Red por una Globalización con Equidad (The Peruvian Network for a Globalization with Equity)
SPDA	Peruvian Society for Environmental Law
TSD	Trade and Sustainable Development
UNFCCC	The United Nations Framework Convention on Climate Change
US	United States
WDI	World Development Indicators
WGI	World Government Indicators
WTO	World Trade Organization

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# Chapter 1: Introduction

The failure of the Doha Round negotiations in mid-2006 created a domino effect for global trade, leading to the proliferation of bilateral trade agreements. Discussions to collectively open up markets around the world collapsed, and so did efforts for the broadening of the World Trade Organization (WTO) agenda. In the years that followed, global trade would see a rise in preferential trade agreements (PTAs) that fell outside the traditional realm and framework of the trade rules and regulations set by the WTO. PTAs, also known as bilateral, multi-party, or free trade agreements, are agreements made between two or more countries with the primary goal to lower tariffs on imports, open up markets, and facilitate trade (Lelieveldt & Princen, 2015). By 2020, the WTO reported that 339 PTAs had been notified to the organization (WTO, 2021a), in comparison to no more than 100 in the 1990s (Dür et al., 2014).

With the increasing number of PTAs also came new agendas. Although intended as instruments to foster market access, their use or rather their content have become deeper, covering areas beyond trade barriers (Horn et al., 2010; Milewicz et al., 2016). Chapters and provisions have been created to regulate issue areas from intellectual property rights (IPRs), to competition, investment, public procurement, and even social issues such as human rights and the environment have become part of the PTA package. Some of the first PTAs to include such provisions were the North American Free Trade Agreement and the Cotonou Agreement between the European Union (EU) and the African, Caribbean, and Pacific Group of States (Lechner, 2016). The lack of outcomes on negotiations regarding environmental issues at the WTO gave rise in particular to the inclusion of environmental provisions in PTAs, which is the focus of this study.

Environmental provisions are articles in PTAs which are used to regulate, protect, and ensure fair competition with respect to the environment and trade. Environmental degradation, climate change, resource overconsumption, and pollution have become defining world issues that countries must address. And despite international efforts and numerous multilateral agreements to ensure sustainability and environmental protection, market failures such as pollution and the “illegal trade in wildlife, timber trade, and illegal, unreported, and unregulated fishing have led to continued degradation” (Jinnah & Lindsay, 2016, p. 43). In response to this, the failure of the Doha Round, and economic reasons such as the 'race-to-the-bottom' rhetoric and the protection

of domestic industries, more countries have begun to incorporate environmental issues into their trade agreements (Dür, 2007; Morin et al., 2018; Brandi et al., 2019; Ravenhill, 2020). According to Brandi et al. (2019), a resounding 94.3 percent of PTAs since 2000 include at least one environmental provision. Amongst the world's top trading actors, the EU has been in the lead in both the rise of PTAs and the inclusion of environmental provisions.

Although the EU is a supporter of the multilateral trading system (European Commission, 2006), EU trade policy has shifted in favor of PTAs. To date, the EU has 37 PTAs in force, 43 that are provisionally applied, and 19 agreements that are currently in progress (European Commission, 2021d). This shift can also be traced once again to the collapse of the Doha negotiations. Just months after the failed talks, in part due to the EU's refusal to budge on agricultural subsidies for EU farmers, the European Commission (2006) published the communication '*Global Europe: Competing in the World*'. The strategy set out a new EU trade policy, placing greater emphasis on the creation of bilateral trade agreements, the encouragement of competition, economic openness and social justice including a focus on the environment (European Commission, 2006). The new strategy birthed a 'new generation' of EU PTAs.

It was not until the creation of the EU-South Korea PTA in 2011 that these PTAs came into force and the emphasis on the environment materialized. This took the form of a legally binding chapter dedicated to labor and environmental standards, called the Trade and Sustainable Development (TSD) chapter (also known as Title IX). As stated by the European Commission (2018b), the aim of the chapter is to achieve effective social and environmental policy change in signatory countries, while ensuring that existing or new policies and laws are not deviated from or lowered to encourage trade or investment. In this manner, the EU uses its trading power to shape domestic policies in its partner countries, which Meunier and Nicolaïdis (2006) have famously coined as 'power *through* trade'. The EU's agreement with South Korea went on to become the model standard for EU PTAs that followed. Until today, the EU has signed agreements with 15 countries that include the TSD chapter, and is currently in negotiation for new agreements or the modernizing of current PTAs with existing trade partners. Bilateral trade agreements are now considered a highly important mechanism with which the EU exercises its environmental governance (Kim, 2012; Postnikov, 2018).

Yet, unlike other countries such as the United States (US) and Canada that use enforcing measures such as sanctions and fines to ensure compliance, the EU uses a soft-measure

mechanism of dialogues and consultations with civil society and its signatory partner governments to facilitate compliance of the TSD chapter (Postnikov & Bastiaens, 2014). Like environmental provisions, this cooperative approach involving civil society in trading partner countries has become institutionalized in the EU's 'new generation' PTAs. Thus, compliance with the environmental provisions in the TSD chapter can be expected to be facilitated by the role and involvement of civil society.

## 1.1 - Research problem and objective

In light of the institutionalization of civil society in the implementation process of the TSD provisions in new generation EU PTAs, the question remains what effect civil society has on this process. One study in particular by Bastiaens and Postnikov (2017) found evidence that the compliance of environmental provisions EU PTAs is dependent on the strength of civil society in the partner country. To date, however, little research has added substance to this finding.

Ten years on since the first new generation EU PTA including a TSD chapter came into force, more research is needed to understand this effect and see if, how, and where it can be improved so that trade efforts too can contribute to increased environmental protection and sustainability. In response, this study seeks to provide greater understanding on the possible effect of civil society and civil society strength on the compliance behaviour of signatory countries in EU PTAs towards the environmental provisions in the TSD chapter.

## 1.2 - Research question

In response to the above research problem and objective, this thesis seeks to answer the following research question:

*Does civil society affect a signatory country's compliance with the environmental provisions in the TSD chapter of new generation EU PTAs?*

To answer this question, it is first necessary to define civil society and compliance.

## 1.3 - Definitions

### 1.3.1 - Civil society

The independent variable of this research relates to that of civil society. The term civil society has been subject to various interpretations over the years, and with that, contestation. This is largely due to its continuous evolutionary changes, as well as the philosophical, socio-political, and Western and non-Western perspectives that it has attracted (Blaney & Pasha, 1993). For the sake of clarity of this study, this section will provide a definition for civil society used in this thesis.

Traditionally, civil society has been described as the third sector of society, separate to that of government, the market, and family (Linz & Stepan, 1996). The former Civil Society Index by CIVICUS defines civil society as “the arena, outside of the family, the state, and the market, where people associate to advance common interests” (Heinrich & Fioramonti, 2007, p. 378). This definition remains too vague for this study however.

Instead, this thesis uses a more universal definition of civil society. Charles Taylor defines civil society as "a web of autonomous associations independent of the state, which bind citizens together in matters of common concern, and by their existence or actions could have an effect on public policy" (Kligman, 1990, p. 420). More and more, civil society has become characterized as mobilized groups of people working towards a similar cause, with an often societal purpose or mission (Cooper, 2018). It has been widely recognized as playing an important role in the societal, developmental, and governmental aspects of a country (World Economic Forum, 2013). When citizens come together to form organized groups, these are called civil society organizations (CSOs), which can consist of non-governmental organizations (NGOs), educational institutions, trade unions, social movements, advocacy groups, and faith groups (VanDyck, 2017). The issues that CSOs work on are diverse, including improving health care and education, defending the rights of workers and minorities, strengthening civic participation in governance, facilitating peace processes, as well as the protection of the environment and combating climate change (Cooper, 2018). Civil society in this thesis is thus defined as persons, groups, organizations, collectives, and movements that have the goal of advancing a common purpose or mission (Cohen & Arato, 1992).

### **1.3.2 - Compliance**

The dependent variable of this study is a signatory countries' compliance with the environmental provisions in the EU PTA. Compliance in this study refers to the creation and implementation of measures that contribute a certain commitment, as well as compliance with the actions of the measures (Jacobson & Weiss, 1995). According to Jacobson and Weiss (1995), compliance extends further than implementation to also include compliance with the existing or new measures in place. Furthermore, compliance is considered a process, which encompasses how countries are brought into compliance with their commitments.

## **1.4 - Relevance**

### **1.4.1 - Social relevance**

The relevance of this study is embedded in both social and academic importance. Regarding its social relevance, the study is of significance chiefly to policy makers and civil society actors. Since the creation of the EU's new generation PTAs, numerous new agreements have been signed that include a TSD chapter. As a result, since 2017, the European Commission has been assessing the effectiveness of the TSD chapter and the participation of civil society in the implementation of the chapter (European Commission, 2017*b*). In a 2018 Non-Paper, the European Commission (2018*b*) reinstated its commitment to a cooperative approach instead of a sanctions-based approach used by the US and Canada. Yet, discussions to improve the chapter are ongoing. By providing insights into the effect of civil society, potential shortfalls and areas of improvement, this study benefits policy makers and civil society who seek to improve the involvement of civil society and compliance with the TSD chapter provisions in this timely moment.

### **1.4.2 - Academic relevance**

The academic relevance of this study is rooted in calls for further research in the existing literature. As examples, Berger et al. (2017) has signaled for additional research on factors that can increase the potential impact of environmental provisions in PTAs. Brandi et al. (2019) have echoed this call, suggesting researchers identify causal mechanisms that make international

agreements (including PTAs) work. Scholars have also called for qualitative analyses which provide a deeper understanding into the factors and domestic mechanisms that influence or support the implementation of environmental provisions in PTAs, such as the strength of civil society or state capacity (Postnikov & Bastiaens, 2014; Bastiaens & Postnikov, 2017; McKenzie & Meissner, 2016).

Furthermore, environmental provisions have also been found to be less researched than their TSD counterpart on labor standards (see for example Marx et al., 2016; Harrison et al., 2018). Studies have also been dominated by quantitative analyses, hence the call by scholars for qualitative studies. This study addresses these calls for further research, making the study highly relevant for academia.

## 1.5 - Reading guide

This thesis consists of seven chapters. This first chapter has presented the research problem and objective, research question, key definitions, and discusses its relevance within social and academic contexts. Chapter 2 provides a literature review in which the main findings of previous studies are presented and summarized. The third chapter elaborates on the theoretical foundations that substantiate the relationship between civil society and compliance and civil society strength. Chapter 4 describes the research design used, and then the analysis is presented in Chapter 5. To accompany the analysis, the sixth chapter is dedicated to presenting the results of the hypotheses and discussing the findings in more detail. And lastly, the final chapter provides the conclusion which answers the research question, addresses the limitations of the study, and offers a future research agenda and policy recommendations.

## Chapter 2: Literature review

Chapter 2 provides the foundation for the understanding of this research, and presents the main findings of existing studies related to concepts relevant for this study. These include findings more generally on PTAs and non-trade provisions in PTAs, the compliance with such provisions, and what factors influence compliance.

### 2.1 - The rise of PTAs

The rise of PTAs can be best explained as a combination of political, strategic, and economic factors (Ravenhill, 2020). Politically, the rise or rather origin of PTAs is argued to be a result of the collapse of the Doha negotiations and deadlock at the WTO in the early 2000s (Bhagwati, 2008; Baccini, 2019; Jinnah & Lindsay, 2016). The inability for member states to come to a consensus meant that countries pursued bilateral agreements outside of the multilateral trading system. As a result, PTAs have become seen as quick solutions to ensure market access and investment (Heydon & Woolcock, 2009).

While the Doha Round played a key role in the initial catalyst for increasing PTAs, there are strategic factors that have contributed to their rise. For one, PTAs have been argued to bolster relations between countries as well as improve security in a region, such as the traditional example of the creation of the European Coal and Steel Community following World War Two (Ravenhill, 2020). The agreement amongst European countries was to ensure the regulation of member countries' industrialization, and in turn support the avoidance of future wars between member states. In this case, the signing of PTAs is a strategic choice to foster not only trade, but also political relations between countries.

There are also economic justifications for the rise of PTAs. Domestically, the creation of PTAs between countries is argued to help protect domestic industries from international competition. By joining agreements with trading partners, a country can slowly expose its domestic industries to competition (Ravenhill, 2020). Domestic pressures from export-oriented companies to gain access to foreign markets have also been found to be a driver behind governments creating PTAs (Dür, 2007). Dür (2007) found this to be the case in the creation of the EU-Mexico and EU-Chile PTAs, in which EU businesses were involved. At the transnational

level, the rise of PTAs has been argued to be a result of advanced economies attempting to facilitate economic reform and trade liberalization in developing countries (Ethier, 1998; Baldwin, 2011). Furthermore, there are social reasons for the rise of PTAs, but these will be discussed in relation to non-trade issue provisions.

## 2.2 - Non-trade provisions in PTAs

### 2.2.1 - Types of non-trade provisions in PTAs

The rise of PTAs has in turn given rise to beyond-trade provisions in PTAs. According to Milewicz et al. (2016, p. 744), non-trade provisions are provisions that “do not directly concern trade and go beyond what is typically regulated by the multilateral trading system”. By assessing the content of PTAs, scholars have found that in the last thirty years PTAs have not only included the means to lower trade barriers, but also increasingly provisions which “regulate investment, IPRs, competition policy, government procurement, and many other matters” (Baccini, 2019, p. 76). Still, Baccini's (2019) definition relates only to economic-related non-trade provisions. Other types of non-trade provisions, and which are most relevant to this study, are socially-orientated provisions. These provisions have been considered controversial, and have thus garnered much attention in the literature on the topic of non-trade issues in PTAs (Lechner, 2018).

Socially-orientated non-trade provisions are considered public goods, and can include provisions related to labor standards, democracy, human rights, the rule of law, the environment, and even security and anti-terrorism. The well-known study by Hafner-Burton (2005) researches human rights provisions in US and EU PTAs, while numerous studies have researched labor standards in PTAs (Heyden & Woolcock, 2009; Kim, 2012; Postnikov & Bastiaens, 2014; Marx et al., 2016). More recently, yet still sparse, scholars have begun to study PTA provisions relating to the environment (Bastiaens & Postnikov, 2017). In light of the increasing inclusion of these provisions in PTAs, it begs the question why countries or actors such as the EU include such provisions in the first place?



### 2.2.2 - Why do countries include non-trade provisions in PTAs?

Within the literature, scholars have generally agreed on the Doha Round and the inability amongst member states to agree on areas that extend further than simply markets and trade as the origin for the rise of PTAs and non-trade provisions in PTAs (Hafner-Burton, 2005; Postnikov, 2018). Yet, explanations for the inclusion of non-trade provisions extend further than merely the catalyst event that potentially spurred their rise. Other scholars have sought to provide further explanations to this phenomenon.

Firstly, there are economic reasons for why countries or actors such as the EU include such requirements. Socially-orientated non-trade provisions can help prevent a 'race-to-the-bottom', in which countries may use low domestic standards to gain economic advantages. Countries can use child labor, low wages, or poor environmental standards to have a competitive advantage over partner countries that do not use such standards (Eskeland & Harrison, 2003; Milewicz et al., 2016). This relates to the arguments by Bhagwati (1995), who posits in the same vein that non-trade provisions are a way for the EU to level the playing field against countries that may use low social standards, another reference to 'race-to-the-bottom' rhetoric (Bhagwati, 1995). The EU's 2006 *Global Europe* strategy is testament to this argument, which emphasizes competition and protection of EU trade through such policies. Furthermore, Morin et al. (2018) posit that countries that are at risk of import competition with signatory partners are more likely to include environmental provisions in their PTAs (Berger et al., 2020). This too relates to businesses in the EU.

On the other hand, socially-orientated non-trade provisions have frequently been associated with norms and values. Morin et al. (2018) find that actors that care about the protection of the environment are more likely to include environmental provisions in their PTAs. For Heydon & Woolcock (2009), the inclusion of these provisions are a solution to address market failures as a result of trade activities, such as damage to the environment, resource exploitation, and poor labor conditions for workers. The findings of these scholars relate to the EU, which has frequently been described as having a leading role in the promotion of norms and values (Manners, 2002). Meunier and Nicolaïdis (2006) argue that the EU has both 'power *in* trade' and 'power *through* trade', in which it uses its market access power to export its norms and values to its trading partners and influence change to the domestic policies of trading partner countries. As an example, the EU is said to link environmental provisions with trade agreements

as incentive for its signatory trade partners to strengthen their state capacity (Geraets & Natens, 2015). At the domestic level, scholars have posited that the inclusion of more rights-friendly provisions is a means to appease domestic constituents (Peacock, 2018). This correlates with a study by Bastiaens and Postnikov (2019), who found that citizens in advanced economies supported free trade more when PTAs included social standards.

The signing of PTAs is a two-way street, thus it is key to understand why countries sign onto PTAs with non-trade provisions that may be costly or require much action to implement.

### **2.2.3 - Why do countries sign PTAs with non-trade provisions?**

While Bhagwati (2002) argues that developing countries view non-trade provisions as a cover for advanced Northern economies to protect their own economies (such as from import competition), such agreements are even more frequently signed today. This raises the question as to why countries agree to such provisions that may have adverse or costly effects.

Despite Bhagwati's view, Meunier and Nicolaïdis (2006) have found that developing countries have in some cases insisted on the inclusion of non-trade provisions. The scholars argue that countries act in this manner in order to garner lucrative trade deals with powerful trading partners, such as the EU and the US, by showing a willingness to adopt such policies (Meunier & Nicolaïdis, 2006). Other scholars however suggest that smaller, less powerful countries have little bargaining power in comparison to their PTA signatory countries, such as the EU and the US. As a result, less powerful actors cannot easily negotiate the content of PTAs and in the end, countries are willing to accept non-trade provisions regardless due to the desire to access bigger markets and attract investment (Gillman, 2009).

Milewicz et al. (2016) found that countries join PTAs with non-trade provisions out of a desire to join beneficial trade agreements. Yet, there are obstacles. The scholars found that the initial slow rise of non-trade issues in PTAs to the now widespread inclusion of such provisions is due to these cost considerations of trading countries. Firstly, partner states are more open to joining PTAs including non-trade provisions if they have already joined previous agreements in which such provisions were already featured. For these countries, joining such agreements is no longer viewed as costly. With the rise of non-trade provisions and the rise of PTAs, the cost of implementing these provisions decreases with time and signals a socialization or diffusion of policies.

## 2.3 - The compliance of non-trade provisions in PTAs

Once environmental provisions are included in PTAs, the question remains: What happens next? This section discusses enforcement mechanisms and how studies have measured compliance, which relates to the dependent variable of this study. Since only a few studies have focused on environmental provisions in EU PTAs, this section looks beyond these studies to also include studies on labor standards in both US and EU PTAs.

### 2.3.1 - Enforcement of non-trade provisions and the timing of compliance

A few key studies have found that the enforcement mechanism used to implement non-trade provisions determines when compliance is met. As previously mentioned, the US uses hard-enforcing measures such as fines and sanctions to ensure compliance, while the EU has a softer and more cooperative approach through the use of dialogue with civil society and signatory countries. These enforcing mechanisms have an effect on compliance. One of the first studies to address this is by Kim (2012), who finds that US PTA partner countries implement the required provisions *prior* to signing an agreement with the US. Hafner-Burton (2005) found that PTAs were more effective in producing better practices for human rights due to their enforcement and incentive characteristics, however only when ‘hard standards’ are included. These can be rewards for compliance or costs for defection, and are conditional on a trading partner’s actions. Yet these studies have only focused on the US.

Postnikov and Bastiaens (2014) expand on these studies with a comparison on the enforcement mechanisms of labor standards in EU and US PTAs. They find that the partner countries implemented the standards *prior* to signing the PTA with the US in fear of harsh implementing measures, such as sanctions. While for the EU, they found that the EU’s dialogical approach with signatory partners resulted in the gradual implementation of non-trade conditions *after* the signing of the PTA. The importance given to the dialogues rather than to other coercive instruments such as sanctions signals the EU’s normative stance (Manners, 2009). Bastiaens and Postnikov (2017) extended their research to environmental provisions in EU and US PTAs, and found the same *ex-ante* and *ex-post* attributes for the implementation of environmental provisions in US and EU PTAs. Thus, the EU’s environmental provisions are complied with after the signing of the agreement.

### **2.3.2 - Measuring compliance with environmental provisions**

The most frequently used indicator to measure compliance with non-trade provisions in the existing literature has been their effects on policy outputs in the PTA signing countries. Notable studies are those by Jinnah and Lindsay (2016) and Brandi et al. (2019). Policy outputs can be defined as changes or reforms to a policy, which are intended to lead to a desired outcome. Although dependent on the type of non-trade provision, policy outputs have been observed mostly as legislative changes in a trading partner country in current empirical studies.

Using a small-N analysis, Jinnah and Lindsay (2016) provide one of the first in-depth assessments into the effect of environmental provisions in US PTAs on legislative change in the trading partner countries. Their findings find substantial evidence that environmental provisions lead to domestic policy and legislative changes. Another study by Brandi et al. (2019) produces similar findings, however their data extends past PTAs to also include other international treaties such as MEAs. In order to address the difficulty presented by assessing effectiveness, which they say is often subject to over- or underestimating, the authors look at legislative change of a country. Using a Large-N study, the authors find evidence of a positive relationship between environmental provisions in international agreements on the domestic environmental legislative change of a country. According to their study, the environmental provisions in PTAs were found to have a stronger effectiveness in generating legislative change in comparison to other types of treaties. The authors argue that this finding is due to hard-measure enforcement mechanisms of PTAs, however this can only relate to PTAs that use more stringent measures such as sanctions in US PTAs and not to the EU's use of softer enforcement mechanisms such as civil society dialogues. In addition, they find that there is more legislative change in areas that are viewed as socially attractive and less costly, signaling that issues which citizens care about and adoption costs affect compliance.

Unlike the above studies, other research has found little effect of the provisions on policy changes. A qualitative case study analysis by Marx et al. (2016) assessing whether the labor standards in the EU-Colombia trade agreement resulted in legislative change in Colombia found little to no effect on the policy in Colombia. They argue that the EU's lack of a stronger enforcing mechanism and the lack of engagement with civil society hindered the potential effects of the provisions.

Other studies have observed the compliance with non-trade issues in PTAs by analyzing specific policy outcomes in a signatory country. Policy outcomes refer to the ultimate changes that a policy is intended to yield. As an example, environmental provisions in PTAs may cause a change in domestic environmental policy, which may then lead to an improvement in a particular environmental situation in a trading partner country. Baghdadi et al. (2013) analyze PTAs with and without environmental provisions and find that those with such conditions have led to lower levels of CO<sub>2</sub> emissions in the partner signing country. These studies are however more difficult to confirm direct links with PTA provisions, and thus are open to more influencing factors domestically and internationally. Other scholars such as Brandi et al. (2019) highlight that international trade agreements may have effects that are difficult to measure, such as raising public awareness about an issue, promoting bureaucratic capacity, and *strengthening* the role of civil society.

Due to the complexity of measuring policy outcomes, the most promising measurement of compliance with non-trade provisions in signatory countries is through legislative change. If civil society does have an effect on the implementation of EU PTA environmental provisions, there should be a measurable effect represented by domestic policy changes for example.

## 2.4 - Factors that affect the compliance of non-trade provisions

Compliance, as discussed above, may be affected by various factors that influence the implementation of non-trade provisions. As non-trade provisions are a limited subject, this section expands to include more generally the compliance with commitments in international agreements.

The state capacity of a signatory country has been found to have an influence on the implementation of commitments in trade agreements. A quantitative study by Gray (2014) finds that implementation is strongly correlated with the domestic capacity and rule of law of a country. Countries with a higher domestic capacity and rule of law comply more with trade agreement commitments than other countries. This study however looks more broadly at the implementation of commitments relating to trade, and not explicitly to non-trade issues. Bastiaens and Postnikov (2017) also indicate the potential impact of state capacity in the implementation of environmental provisions, as well as Schrama and Zhelyazkova (2018). These

scholars suggest that countries with a low state capacity are less likely to comply with policies or listen to, for example, the suggestions of civil society. The adoption costs of provisions, which also relate to state capacity, can also be an influencing factor as previously described in relation to the study by Milewicz et al. (2016).

Secondly, the governmental structure of a country can affect compliance. Slaughter (1995) and Dixon (1993) argue that democracies are more likely to comply with international agreements than other types of regimes as democracies have higher respect for rule of law, and constitutional constraints. The governmental structure and level of democracy also relates to civil society, which Postnikov and Bastiaens (2014, 2017) posit in their studies has an influencing role on compliance and which is the focus of this study. CSOs are argued to have a greater freedom to function in democracies than other kinds of governance as democracies provide more freedom for citizens to associate, as well as more transparency, which facilitates easier monitoring (Jacobson & Weiss, 1997). Countries with authoritarian governance structures are found to have weaker civil societies, in which CSOs cannot freely mobilize, citizens are unable or restricted from forming groups or collectives, and where CSOs have no or limited access to policymaking forums (Heinrich & Fioramonti, 2007). As the EU's enforcing mechanism of its environmental provisions in its PTAs relies on the involvement of civil society, governmental structure and level of democracy is highly relevant.

Speaking of civil society, one of the first studies to signal the potential of civil society in supporting the implementation of non-trade issue provisions in PTAs was by Fritz Carrapatoso (2007), who studied the integration of environmental provisions in PTAs between New Zealand and Southeast Asian countries. Fritz Carrapatoso (2007) found that the involvement of civil society in Southeast Asian countries contributed to the effective compliance with the environmental provisions in the PTA. Yet the most compelling studies to date have been those by Postnikov and Bastiaens (2014, 2017), who argue that the strength of civil society can play an important role in the compliance of non-trade issue provisions specifically in EU PTAs.

## 2.5 - Effectiveness of the TSD Chapter

Lastly, it is important to this study to consider the existing literature on the TSD chapter of the EU. Only a few studies have assessed the TSD chapter and its effectiveness since its creation. Overall, the studies have had mixed results. Many scholars have signaled that the chapter is ineffective due to its content. A study by Croquet (2015) on the climate change provisions in the EU-South Korea PTA argues that the provisions are overly general, loose, and contain a low degree of clarity or detail. This is echoed by a later study by Bodensiek and Peluffo (2016) on Colombia's PTA with the EU, who conclude that the environmental obligations are not specific enough. In Hradilová and Svoboda's (2018) study, they compared the TSD chapter and its dialogical and participation approach to compliance with that of US PTAs to assess effectiveness. The scholars find that the main challenges of the TSD chapter is civil society involvement, a lack of cooperation amongst signatory parties, and monitoring implementation.

As for the involvement of civil society, Xu (2017) has criticized the EU's cooperative and dialogical approach, and instead argues in favor of sanctions. Prévost and Alexovičová (2019) on the other hand offer a nuanced approach, taking into account the reality of the tools at the EU's disposal in which sanctions are not included. They instead support the EU's dialogical approach with civil society, and posit that in order to improve compliance with the provisions in the TSD chapter, the approach must be improved with mechanisms of transparency, institutionalized dialogue, and accountability. The EU also must leverage increased pressure during TSD Sub-committee meetings, which the authors say has been found to be lacking.

## Chapter 3: Theoretical framework

The theoretical framework lays out the theoretical foundations of this study. Firstly, the way in which civil society affects compliance processes are discussed. Then, theories relating to what factors influence the effect of civil society are presented. A set of hypotheses is derived from this section.

### 3.1 - Civil society and policy implementation

#### 3.1.1 - The role of CSOs in environmental governance

The roles of CSOs can be considered diverse. Examples of possible roles played by CSOs include filling in societal gaps left by the government, defending collective interests of citizens, ensuring public and government accountability and transparency, and improving governance outputs and outcomes (World Economic Forum, 2013). They can also contribute to pressuring governments to reform policies through monitoring, sharing information and expertise, and advocacy practices (Cooper, 2018). To understand the effect of civil society, it is important to understand the roles they play in environmental governance. Gemmill & Bamidele-Izu (2002, p. 3) describe the role of CSOs in environmental governance as “highly diverse, including local, national, regional, and international groups with various missions dedicated to environmental protection, sustainable development, poverty alleviation, animal welfare, and other issues.”

Aside from the numerous empirical studies that detail the role of civil society in environmental governance (*for an in-detail literature list, see Charnovitz, 1997, p. 184*), other scholars have provided theoretical observations. Gemmill and Bamidele-Izu’s (2002) study identifies five roles that civil society can play in environmental governance. These include: (1) collecting, disseminating, and analyzing information; (2) providing input to agenda-setting and policy development processes; (3) performing operational functions; (4) assessing environmental conditions and monitoring compliance with environmental agreements; and (5) advocating environmental justice. In a similar manner, Utting (2002, p. 2) posits that CSOs can “set social and environmental standards, monitor compliance, promote social and environmental reporting and auditing, certify good practice, and encourage stakeholder dialogue and ‘social learning’”.



These roles provide insight into how civil society could affect the compliance of environmental provisions in EU PTAs. To understand this further, it is key to identify the various theoretical mechanisms through which compliance between parties occurs in order to identify these practices in the analysis. Policy diffusion will be used to shed light on this relationship.

### **3.1.2 - Policy diffusion mechanisms (coercion and learning)**

The theory of policy diffusion is traditionally associated with interactions between local or national governments. It holds the idea that existing practices and policy choices in one country or government influences practices and policy choices in another country or government (Simmons & Elkins, 2004). Yet, as global dynamics change, EU policy-making is becoming increasingly affected by interest groups such as business associations, CSOs, and other organized groups (Lelieveldt & Princen, 2015). While PTAs between the EU and its signatory parties fall outside of internal EU governance, the involvement of interest groups have diffused into the implementation processes of these agreements. Policy diffusion mechanisms can be used to understand better how the effect of civil society on compliance occurs.

The extensive literature on policy diffusion has led to the recognition of various factors that help to explain how policy diffuses amongst various actors. These include mechanisms of coercion, competition, learning, emulation and mimicry, and bandwagoning (Sabatier & Mazmanian, 1979; Simmons, 1998; Simmons & Elkins, 2004; Baldwin et al., 2019). Of these, the most relevant to this study are the dimensions of *coercion* and *learning*. These mechanisms are said to take place amongst countries of different power statuses, such as between the EU and many of the countries that the EU has signed PTAs with (Jetschke & Lenz, 2013). They have also been discussed in the literature on the compliance with non-trade provisions in PTAs (Hafner-Burton, 2005). On the other hand, other diffusion methods mentioned above are less relevant to this study. As an example, policy diffusion as a result of competition occurs mainly between countries of similar status (Jetschke & Lenz, 2013). Due to the EU's trade power status in comparison to its trading partners, the mechanism of competition is not expected to be relevant in this study. As for emulation, while the act of emulating the EU's policies by other countries of less or similar power status can and does occur (Baldwin et al., 2019), this diffusion method is less relevant for the effect of a third party (civil society). As such, this study focuses on these two mechanisms.

## ***Coercion***

*Coercion* rests upon the idea that one actor is able to influence another actor to do something that it would otherwise not do if this interaction did not occur (Simmons et al., 2006). The coercion mechanism assumes that strong states are norm promoters, in which they pressure weaker states into expressing certain norms (Simmons et al., 2006). This pressure can occur directly, such as through fines, or indirectly, such as through the *threat* of sanctions to improve specific behaviour in countries (Hafner-Burton, 2005). It can also involve the practice of ‘naming and shaming’ to coerce other actors to take action or change policy.

CSOs can play a key role in this diffusion dimension. They can share reports and information about implementation processes publicly, to their own government representatives, and to the EU to incite change (Utting, 2002). CSOs can also mobilize supporters via protests, media, and online and offline campaigns (Arond et al., 2019). CSOs from the EU and the signatory countries can also create alliances amongst each other that create additional pressure for compliance (Arond et al., 2019).

## ***Learning***

The second relevant diffusion mechanism is *policy learning*. Policy learning is the interaction between actors, in which one actor learns of a policy or reform that has been implemented by another actor. Information sharing and learning is said to be essential for stimulating policy change (Sikkink, 1998). According to Jetschke and Lenz (2013), processes that involve strong informational ties and communication amongst actors are more likely to exhibit policy learning. In sociology studies, the sharing of information is one of the main drivers of learning (Rogers, 1995). Yet the information that is made available to states is said to be key to how states will learn and effectively determine what they learn (Simmons & Elkins, 2004). For Etheredge (1981, p. 135), policy learning that occurs in governments is not self-driven, and is instead reliant on and affected by various variables such as “on what lobbying groups say, on the agendas the news media set, on the standards and quality of critics”. Thus, the principal aspects of the learning mechanism are frequent communication between governments and the information that is made available.

When linking this to civil society, there are various ways in which CSOs can facilitate policy learning. As mentioned, policy learning can occur government-to-government, but also between CSOs and governments and CSOs from both parties who can share information with each other (Arond et al., 2019). CSOs are often considered experts in their field, as they have access to the communities and areas in which government policies have impact. With this insight, CSOs can promote or suggest innovative approaches and solutions to agreement requirements based on their expertise and knowledge (Arond et al., 2019). Governments can then learn best practices from CSOs during consultations, from civil society reports, or statements.

The knowledge of these two mechanisms in which CSOs can affect compliance offer a deeper understanding for the analysis of this study's results, and will be taken into account in the analysis and discussion.

### 3.2 - Civil society strength

What does the effect of civil society mean in practice? To narrow this concept down, this study looks at the characteristics that determine the effect of civil society, such as civil society strength. This is derived from the existing literature, in which studies have argued that the compliance with environmental provisions is expected to be contingent on the strength and capacity of civil society in signatory countries of EU PTAs (Bastiaens & Postnikov, 2017).

What Bastiaens and Postnikov (2017) do not make clear however is what a strong civil society encompasses. One study in particular has conceptualized civil society strength in connection to policy implementation. Schrama and Zhelyazkova's (2018) study uses Schmitter and Streeck's (1999) '*logic of membership*' and '*logic of influence*' on business-interest associability to conceptualize civil society strength and assess whether the strength of civil society affects EU policy implementation. This study builds on this conceptualization, and uses these two dimensions of civil society strength to assess whether civil society has an effect on the compliance with environmental provisions in EU PTAs. These logics will be discussed in more detail. Three hypotheses are created based on the two logics that have conceptualized civil society strength and which have been derived from Schrama and Zhelyazkova's (2018) study.

### **3.2.1 - Logic of membership**

Schmitter and Streeck (1999) use two logics to assess the effect of business associations on defending business interests. The first logic, '*logic of membership*', relates to the characteristics of business associations. These properties include the size of its member base, the distribution of resources amongst members, competition, interdependence, heterogeneity, turnover of member base, profitability and growth, and social cohesion amongst members.

Schrama and Zhelyazkova (2018) have conceptualized the '*logic of membership*' as one of the two dimensions of civil society strength. In this logic, civil society strength relates to CSOs' ability to mobilize, to garner a large member base, and to ensure that their voices are heard. With a larger membership, CSOs are said to be able to better understand societal grievances and share this information with government representatives (Schrama & Zhelyazkova, 2018). Through the action of protests, public denunciations, collective or coalition statements, civil society can *coerce* governments to comply. Thus, civil societies with high CSO participation are more likely to have a greater impact on policy implementation and thus compliance (Schrama & Zhelyazkova, 2018).

In line with the '*logic of membership*' and the mechanism of coercion to facilitate compliance, the first hypothesis is thus:

*Hypothesis 1: A higher level of CSO participation (logic of membership) positively affects signatory countries' compliance with the environmental provisions in the TSD chapter of EU PTAs.*

### **3.2.2 - Logic of influence**

Schmitter and Streeck's (1999) second logic on the effect of business associations on defending business interests is the '*logic of influence*'. For these scholars, this logic theorizes that business associations have greater effect on state agencies when there are possibilities to influence government, such as through consultations.

Schrama and Zhelyazkova (2018) have conceptualized this dimension as the ability of and opportunities available to CSOs to cooperate and consult with government actors. CSOs that have more opportunity to influence government through avenues of consultation are expected to have a greater effect on policy implementation. Schrama and Zhelyazkova (2018) posit that the

involvement of civil society has numerous benefits on the implementation process and its respective policy outputs. These include increased social acceptance amongst citizens, enhanced monitoring, and the fostering of a greater understanding amongst policymakers of the impact of their policy decisions. In this respect, CSOs can facilitate *policy learning* by sharing information in consultations. The '*logic of influence*' relates strongly to the EU's dialogical approach involving civil society.

Based on the '*logic of influence*' and in line with the mechanism of *policy learning*, it is expected that the higher the frequency or activeness in which meetings, consultations, or dialogues with civil society groups and both EU and signatory governments are held will have a positive effect on compliance with the environmental provisions in the TSD chapter. The second hypothesis of this study is thus:

*Hypothesis 2: A regular consultation with CSOs (logic of influence) positively affects signatory countries' compliance with the environmental provisions in the TSD chapter of EU PTAs.*

And lastly, in combination, CSO consultation and participation are expected to have a positive effect on signatory countries' compliance with EU PTA environmental provisions. The literature states that in order for organizations to be successful, both logics must be balanced (Schmitter & Streeck 1999; Schrama & Zhelyazkova, 2018). In some cases, CSOs may prioritize CSO consultation over CSO participation and vice versa, yet this can have a negative effect. The third hypothesis is thus:

*Hypothesis 3: The combination of CSO consultation (logic of influence) and CSO participation (logic of membership) positively affects signatory countries' compliance with the environmental provisions in the TSD chapter of EU PTAs.*

## Chapter 4: Research design

This chapter lays out the research plan of this study. Firstly, the type of research approach is discussed. Then, the case selection and control variables, the operationalization of the dependent and independent variables, and the research methods used for data collection are provided for.

### 4.1 - Co-variational analysis

The research question of this study is ‘*Does civil society affect a signatory country’s compliance with the environmental provisions in the TSD chapter of new generation EU PTAs?*’. In order to answer this question, a small-N qualitative case study approach will be used. A small-N analysis allows for a more in-depth approach in comparison to large-N quantitative studies, which study high numbers of cases with the focus on generalizability. Due to the analytical objectives of this study, a small-N qualitative analysis was found to be most appropriate. Amongst the available qualitative comparative approaches, three distinct styles stand out in the literature (Blatter & Blume, 2008).

The first approach is the *co-variational analysis* (COV). The COV analysis seeks to uncover whether the independent X variable affects the dependent Y variable by studying a small number of cases (Blatter & Haverland, 2012). It compares different case studies, either cross-sectionally, for example over space (e.g. countries, cities, etc.), or intertemporally over time (Gerring, 2007). The second approach, *causal process tracing* (CPT), is an in-depth analysis usually consisting of just one case study. This style of qualitative study requires sufficient access to extensive information on the case, with the aim of assessing the interactions between possible causal factors. Lastly, the *congruence analysis* (CON) compares (often competing) theories to determine which theory best explains a phenomenon. Blatter and Blume (2008) distinguish between these three approaches with COV considered as variable-centered, CPT as case-centered, and CON as theory-centered.

For this study, a COV approach will be used. A COV analysis is often conducted in the field of social sciences relating to topics such as the introduction of a new policy or innovation (Blatter & Haverland, 2012). Blatter and Haverland (2012, p. 33) argue that “the COV approach has strong affinities to a distinctive research goal, namely to determine whether a certain factor

has an effect, that is, whether it ‘makes a difference’”. This approach fits best with the research goal of this thesis, which aims to discover whether the inclusion of civil society in new generation EU PTAs affects the compliance of the environmental provisions in the TSD chapter. This study employs a cross-sectional design, looking across different countries that are signatories in EU PTAs. This allows us to see the effects of variations in the independent variable across the selected cases.

Two factors are particularly important for a COV analysis to be considered valid. Firstly, case selection is not done at random, but rather carefully selected. In order to do this, the control variables that determine the case selection must be as similar as possible. Secondly, the independent X variable must vary as much as possible between the selected cases (Blatter & Haverland, 2012). The next sections of this chapter will address these requirements.

## 4.2 - Case selection

In a COV analysis, case selection is carried out with careful intention (Blatter & Haverland, 2012). This study selects its cases using the Most Similar Systems Design, which states that cases must vary with regards to the independent X variable, and must be as similar as possible with regards to the control variables chosen in this research (Blatter & Haverland, 2012). This will allow us to see what effect civil society has on the dependent variable, which is the compliance with environmental provisions in EU PTAs. The cases for analysis are countries.

The cases selected for this study must be countries in new generation PTAs with the EU, which were signed after 2009. For research feasibility, these cases must have been signed before 2014. This allows for sufficient time between the dates that the PTA is in force till present in order for compliance to take place, as this has been found to occur ex-post the signing of a EU PTA (Postnikov & Bastiaens, 2014; Bastiaens & Postnikov, 2017). These cases must vary with regards to the independent variable.

Furthermore, other factors are taken into account for the selection of new generation PTAs. Not all trade agreements from 2006 include a TSD chapter that institutionalizes the participation of civil society in the implementation of environmental provisions. Trade agreements between the EU and Iraq, Papua New Guinea, Morocco, and fifteen countries in the EU-CARIFORUM trade agreement do not include a TSD chapter, and thus are not included in

the pre-selection. The EU-Eastern and Southern African PTA also does not include a TSD chapter, although the parties are currently in negotiations to deepen the agreement to include the chapter.

#### **4.2.1 - Control variables**

In order to control for the effect of civil society on the compliance with environmental provisions, numerous variables must be taken into account. The literature on the compliance of non-trade provisions in PTAs and the effect of civil society have signaled that these aspects can be influenced by or are contingent on country specific behavioural and structural factors. For this study, the following variables are controlled for: (1) the economic development of a country, (2) regime type, (3) level of democracy, and (4) state capacity. A description of these variables and how they are measured and controlled for are described in the sections below, and summarized in *Table 1*. The cases of this study will be selected based on the similarity of these control variables and whether they vary on the independent variable.

It is important to note that not all factors can be controlled for in this study. The possible content differences in different PTAs such as the environmental or civil society provisions may, for example, have an effect on compliance or civil society strength. These factors are limitations to this study, and will be taken into account.

##### ***Economic development***

The first variable to control for is the economic development of a country, which may impact the compliance with environmental provisions. The economic development of a country could determine its ability to implement new policies due to adoption costs for example (Milewicz et al., 2016). In Bastiaens and Postnikov's (2017) study, the scholars controlled for economic development using the World Bank's (2021a) World Development Indicators (WDI) on a country's Gross Domestic Product (GDP) per capita. The GDP gives an indication to the size of a country's economy. This study will be using the same operationalization, and controls for this variable by selecting countries that have a similar GDP.



### ***Regime type***

The governmental structure of a country is a potential influencing factor on the quality and presence of civil society as well as the ability of a country's government to implement agreements (Dixon, 1993; Slaughter, 1995; Jacobsen & Weiss, 1997). Thus in order to control for this variable, only democracies will be chosen in this study.

### ***Level of democracy***

While countries can be considered democracies at the governance and structural level, this does not in practice ensure a high level of democracy. Thus, the level of democracy within a country is also controlled for. In order to operationalize this variable, data from the Economist Intelligence Unit (EIU) Democracy Index is used. The Democracy Index is scored on the following categories: electoral process and pluralism, the functioning of government, political participation, political culture, and civil liberties (EIU, 2021). The score is calculated as the average score based on the data from 2009 to 2020 (see *Appendix A*).

### ***State capacity***

State capacity is found to have an effect on compliance with PTA provisions (Gray, 2014; Bastiaens & Postnikov, 2017; Schrama & Zhelyazkova, 2018). The Government Effectiveness index as part of the World Governance Indicators (WGI) by the World Bank will be used to operationalize this. According to Kaufmann et al. (2011), the Government Effectiveness indicator depicts perceptions of the quality of public services and the civil service, policy formulation and implementation, and the credibility of the government's commitment to such policies. The score is calculated based on the average score from 2009 to 2020 (World Bank, 2021b) (see *Appendix A*).

<b>Control variable</b>	<b>Operationalization</b>
<b>Economic development</b>	WDI GDP per capita
<b>Regime type</b>	Democracy
<b>Level of democracy</b>	EIU Democracy Index
<b>State capacity</b>	WGI Government Effectiveness

*Table 1: Summary of control variables and their operationalization.*

*Table 2* summarizes the application of the PTA criteria and the control variables across the eligible cases. The countries most similar in relation to the control variables are Colombia and Peru. As Colombia and Peru are in the same PTA with the EU, this also supports controlling other factors that may influence, such as different environmental provisions in different PTAs. On the other hand, this also poses a potential limitation in which any structural or content hindrances in the PTA will also affect both cases. The next section will operationalize the dependent and independent variables, and test whether these selected cases vary with regards to the independent variables of this study.

	Colombia	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Panama	Peru	South Korea
<b>PTA characteristics</b>									
Year of accession*	2013	2013	2013	2013	2013	2013	2013	2013	2011
EU PTA with TSD chapter	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Control variables</b>									
Economic development (WDI GDP, 2013)**	323 bill	61.6 bill	27.02 bill	76.7 bill	25.1 bill	12.52 bill	66.8 bill	226 bill	1.67 trill
Regime type	Democracy	Democracy	Democracy	Democracy	Democracy	Democracy	Democracy	Democracy	Democracy
Level of democracy (EIU index, average 2009-2020)***	6.73	8.03	6.38	5.72	5.73	4.83	7.1	6.54	8.03
State capacity (WGI Government effectiveness, average 2009-2020)****	-0.04	0.5	-0.2	-0.69	-0.67	-0.83	0.16	-0.2	1.16

Table 2: Application of control variables for potential case selection. (European Commission, 2021\*; World Bank, 2021a\*\*, 2021b\*\*\*; EIU, 2021\*\*\*\*)

## 4.3 - Operationalization of variables

### 4.3.1 - Dependent variable

Most studies that attempt to assess the compliance with non-trade provisions in PTAs have examined policy outputs, such as domestic policy and legislative changes (Brandi et al., 2019). Scholars too have said that the only way we may capture if policy learning is taking place, one of the diffusion mechanisms discussed in Chapter 3, is through policy change (Bennett & Howlett, 1992). As such, this study looks at domestic policy and legislative changes related to the environmental provisions in the TSD chapter from the date of enforcement in 2013 until the end of May 2021. The specific environmental provisions that are analyzed for compliance will be discussed in Chapter 5 and summarized in *Appendix C*. Non-compliance is also accounted for in the dependent variable, in which no measures or policy change occurs, or where measures or policy change occurs that is detrimental to the aims of the PTA's environmental provisions.

### 4.3.2 - Independent variable

The independent X variable of this study is civil society. To operationalize this, the strength of civil society is used based on the two logics conceptualized by Schrama and Zhelyazkova (2018), in which this study derives two independent variables. These are the following:

1. *CSO participation*: This is assessed based on statements, reports, and publications released by CSOs, protests or physical mobilizations, online campaigns and petitions, and the creation or existence of CSOs and CSO collectives or networks *in response to the compliance of the environmental provisions in the PTA*.
2. *CSO consultation*: This is assessed based on the opportunities provided to CSOs in the implementation process of the environmental provisions in the PTA.

### ***Testing for variation***

In order to ensure that these two cases are valid for a COV approach, the independent variables must vary with regards to the cases selected. To confirm this, the two independent variables are tested for variation using indicators from Freedom House and the V-dem Institute, and their

average scores are displayed in *Table 3*. Calculations for the average scores can be found in *Appendix B*. These indicators will only be used for the confirmation of the case selection. The analysis will instead rely on qualitative findings.

Firstly, CSO participation is operationalized using the subcategory indicator Associational and Assembly Rights (category E) of Freedom House’s *Civil Liberties* score. This indicator was chosen as it relates to the concepts of CSO participation. The indicator is based on three sub-indicators: (1) freedom of assembly, such as the ability to protest safely and collective actions such as petitions, (2) the ability for NGOs to function, and (3) the ability for trade unions and labor organizations to associate (Freedom House, 2020). Each sub-indicator is given a score from 0 to 4, in which 0 is the lowest score in which freedom is low, and 4 is the highest score. The total of these three scores is the score for the indicator Associational and Assembly Rights.

Secondly, this study operationalizes CSO consultation based on the operationalization used in Schrama and Zhelyazkova’s (2018) study, which uses data from the *CSO consultation* indicator of the V-Dem Institute. The *CSO consultation* indicator seeks to provide insight into the question: ‘Are major CSOs routinely consulted by policymakers on policies relevant to their members?’ (V-Dem Institute, 2020). The scores range starting from code 0, in which the government is highly insulated from CSO input, to code 1, in which CSOs are consulted to some degree but are only one set of voices that policymakers take into account, and code 2, in which important CSOs are recognized as stakeholders in important policy areas and given a voice in such issues (V-Dem Institute, 2020).

	<b>Assembly and Association (E) (Freedom House Civil liberties, 2013-2021 average)</b>	<b>CSO consultation (V-Dem, 2013-2020 average)</b>
<b>Colombia</b>	5.33	0.97
<b>Peru</b>	8	1.59

*Table 3: Operationalization of the independent variables. (V-dem Institute, 2020; Freedom House, 2021)*

These two cases have shown to be as similar as possible for the control variables as seen in *Table 2*, while varying on the two independent variables seen in *Table 3*. Peru has been found to have higher scores on both variables in comparison to Colombia, and thus civil society in Peru is

expected to have a more positive effect on compliance. This validates this case selection for a COV approach. Other possible countries for the case selection as seen in *Table 2* were excluded due to their dissimilarities on the control variables, the lack of relevant data for the analysis based on a preliminary research on TSD meeting reports and evaluation reports, and the limited scope of this study.

## 4.4 - Data collection and reliability

To ensure reliability, this study uses the method of data triangulation. The reliability of a study means that if this exact study were to be repeated, another researcher would find the same results (Gschwend & Schimmelfennig, 2007). Data triangulation refers to the use of multiple sources to confirm or measure a finding (Blatter & Haverland, 2012). This research applies the data triangulation method by consulting multiple sources, including EU, Colombia, and Peru policy documents, evaluations, reports, meeting minutes, and news articles, statements and reports by CSOs and the media.<sup>1</sup>

## 4.5 - Validity

### 4.5.1 - Internal validity

A high internal validity is a key aspect of a COV analysis. Internal validity refers to whether there is a true causal relationship between the independent X and dependent Y variable (van Thiel, 2014). To infer internal validity, this study uses Kellstedt and Whitten's (2013) four causal hurdles that must be overcome to ensure this causality.

The first hurdle refers to whether there is a credible correlation between X and Y, in which X could cause changes in Y. Firstly, this study is based on an in-depth literature review that presents that there is a potential causal relationship between civil society and the compliance of non-trade provisions in EU PTAs (Postnikov & Bastiaens, 2014; Bastiaens & Postnikov, 2017). Secondly, the inclusion of multiple control variables also supports the internal validity of the study by limiting the possibility of other potential influencing factors.

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<sup>1</sup> It should be noted that a majority of the data analyzed in this study were in the Spanish language. As the author is non-Spanish speaking, the documents were translated and a catalogue of Spanish words were used to search for relevant evidence.

A valid research design should also ensure that the possibility that Y could cause X is eliminated, which is the second hurdle. This hurdle is more difficult to validate. There is a possibility that compliance, or non-compliance, could strengthen civil society strength as conceptualized as CSO consultation and CSO participation. Brandi et al. (2019) have mentioned that international trade agreements and thus compliance with these agreements may have an effect in strengthening the role of civil society. As a result, this presents a limitation to the validity of the study, and will be discussed further in Chapter 6.

The third hurdle requires that the X and Y variable must co-vary. For the independent variable, this study ensures that the two cases vary as much as possible on the independent variables, while other variables are controlled to ensure the cases are as similar as possible. Differences in the compliance of environmental provisions (Y) should provide a credible indication that X and Y co-vary. The COV approach used in this research design allows this study to overcome this hurdle.

The fourth hurdle relates to whether there is an additional variable Z that may make the observed causal relationship between X and Y to be spurious. As this study controls for potential influencing variables that have been derived from the literature, this hurdle is also overcome. There is however a possibility that not all potential influencing factors have been controlled for. This too represents a limitation to this study. Overall, the study is expected to be valid, however its limitations must be taken into account.

#### **4.5.2 - External validity**

External validity is the ability of a study to generalize its findings to a larger population. With a COV analysis, the external validity tends to be slightly weaker due to the small number of cases studied, representing a limitation of this approach. A Large-N quantitative study draws its findings from a large sample of usually over 100 cases, allowing a researcher to make generalizations appropriate for a larger population. The findings of this study are thus limited only to cases that are similar across the variables controlled for (Gerring, 2007; Blatter & Haverland, 2012).

## Chapter 5: Analysis

Chapter 5 presents the analysis of this research. This chapter will first detail characteristics of the EU-Colombia/Peru PTA and its provisions. Then, each country will be analyzed based on compliance, and then civil society strength using the two logics.

### 5.1 - About the EU-Colombia and Peru free trade agreement

Negotiations to establish a trade agreement between the EU, Colombia and Peru began in the early 2000s. Prior to the PTA, trade took place under WTO regulations and the Generalized Scheme of Preferences (European Economic and Social Committee (EESC), 2020*a*). On 22 January, 2009, the first round of trade negotiations took place between the EU and just three of the Andean bloc countries: Colombia, Ecuador, and Peru. After nine rounds of negotiations, an agreement was reached and signed on 26 June, 2012 between the EU, Colombia, and Peru (Ministerio de Comercio Exterior y Turismo, 2011). The trade agreement was approved by the European Parliament on 11 December 2012, and came into force and was provisionally applied in Peru and Colombia on 1 March 2013 and 1 August 2013 respectively. Ecuador joined the agreement four years later on 1 January 2017 following delays due to disagreements in the negotiation process.

The EU-Colombia/Peru PTA is one of the first new generation EU PTAs, predated only by the EU-South Korea agreement that came into force in 2011. The agreement contains 14 chapters, and seeks to gradually open up markets of all parties involved, while providing better conditions for trade, ensuring economic stability, and trade predictability (European Commission, 2012, 2021*a*). Today, the EU is the second largest trade partner of Colombia behind the US, and the third largest for Peru behind China and the US (European Commission, 2017*a*). As of 2021, exports from the Andean countries to the EU consist mainly of agricultural products, fishery products, and mineral products, whereas the EU exports consist mainly of manufactured goods (European Commission, 2021*a*).

As with all EU new generation PTAs, the scope of the agreement is comprehensive, covering both trade and non-trade provisions. In relation to trade, the agreement opens up the signatory parties' markets, reduces trade barriers, and promotes better conditions for non-tariff barriers, IPRs, investment, competition, public procurement, and transparency (European



Commission, 2021a). Important to this study is the inclusion of the TSD chapter which includes provisions relating to labor standards and the environment.

### **5.1.1 - The TSD Chapter**

The TSD chapter is a dedicated chapter for the protection of labor and environmental standards. It differs per EU trade agreement, yet because Colombia and Peru fall under the same PTA with the EU, the environmental provisions that both parties must comply with are the same. As mentioned in Chapter 4, this strengthens the control of other potential factors that could influence civil society involvement or the compliance with environmental provisions.

The implementation of the EU-Colombia/Peru PTA is overseen by the Trade Committee, and eight specialized intergovernmental sub-committees, including the TSD Sub-committee. The TSD Sub-committee is made up of high level representatives from the signatory parties, and is co-chaired by a representative of each signatory parties' government who is responsible for trade, environment, and/or social matters (European Commission, 2012). The TSD Sub-committee hosts a meeting annually to discuss the implementation of the TSD chapter, and is the primary body to consult with civil society.

#### ***Environmental provisions***

The articles pertaining to the environment in the EU-Colombia/Peru PTA and the objectives per article are provided for in detail in *Appendix C*.

At the foundational level, the TSD chapter seeks to strengthen national policy and legislation for the protection of the environment, while preventing the lowering of environmental standards for trade-related purposes. The first provision relating to the environment is the signing and ratification of a number of multilateral environmental agreements (MEAs) (Article 270). These include, but are not limited to, the Paris Agreement, the Convention on Biological Diversity (CBD), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under this article, MEAs are expected to be signed and ratified, and their provisions implemented into signatory parties' domestic laws and policies. MEAs that are not explicitly mentioned in the article can also be added during TSD Sub-committee meetings (European Commission, 2012).

Also referenced are other environmental provisions that focus on specific areas of environmental issues. Article 272 concerns the protection of biological diversity, and requires signatory parties to strengthen their national institutions responsible for the protection of biodiversity. Furthermore, there are articles on forestry and sustainable forest management (Article 273), rules and regulations on fisheries (Article 274), climate change (Article 275), and steps to transition to a low-carbon economy and promote environmentally sustainable products (European Commission, 2012). As a means to avoid the lowering of environmental standards, the chapter also includes Article 277, which states that; “No Party shall encourage trade or investment by reducing the levels of protection afforded in its environmental and labor laws.” (European Commission, 2012, p. 82).

It is important to highlight that the environmental provisions included in this PTA contain no deadline for compliance. This means that certain indicators for compliance are missing which could hinder the analysis, and thus pose a potential limitation to measuring compliance. This was also found in a 2016 study that stated that the obligations of the TSD provisions were less clear and thus difficult to assess (Swedish National Board of Trade, 2016). The lack of deadlines can also act as an influencing factor on compliance, and will be taken into account in the discussion.

### ***Civil society involvement provisions***

Next to its labor and environmental provisions, the TSD chapter also includes articles dedicated to its implementation, which specifically relate to the involvement of civil society. These articles can be found in detail in *Appendix D*.

Articles 281 and 282 capture the inclusion of civil society. At the national level, Article 281 requires signatory parties to regularly consult with its domestic labor and environmental groups, including CSOs. The groups, often called Domestic Advisory Groups (DAGs), should “have a balanced representation” and the groups “may submit opinions and recommendations on the implementation of this Title” (European Commission, 2012, p. 83). It should be made aware that the EU-Colombia/Peru PTA’s provision on domestic mechanisms (Article 281) is found to be flawed (Martens & Oehri, 2018). Unlike other EU PTAs with South Korea, Canada, and Georgia which state these groups must be independent of government, the EU, Colombia, and Peru are allowed to rely on existing groups or committees to consult with in relation to Article 281, including government bodies, rather than on the creation of new, independent, and balanced

groups (Orbie et al., 2016). This could allow for a certain degree of leeway for governments on how they want to include civil society (Orbie & Van den Putte, 2016). This is found to be a potential limitation to the effect of civil society in both cases studied as they are in the same PTA with the EU.

Article 282 relates to consultations with civil society at the transnational level. This provision states that the TSD Sub-committee must host an annual dialogue with the signatory countries' civil society and the public at large about the implementation of the chapter (European Commission, 2012). These civil society dialogue (CSD) meetings occur in the same time period of the TSD Sub-committee meetings. With each dialogue, the signatory parties are responsible for informing and inviting their own civil society to the meeting (European Commission, 2014). During the CSDs, the outcomes of the TSD Sub-committee meeting are presented, then attendee views are stated, and a statement is issued (European Commission, 2014).

TSD Sub-committee and CSD meetings began in 2014 and 2015 respectively, and have been hosted annually ever since. It should be noted that no report was issued for the TSD Sub-committee meetings in 2015, 2016, and 2017 (European Commission, 2014, 2018a, 2019a, 2020), however there were annual evaluation reports in 2016 and 2017 (European Commission 2016, 2017a). Reports from the CSDs were only made public for meetings from 2016 onwards, but were not made public in 2017 (EESC, 2016, 2018, 2019, 2020b). *Appendix E* provides an overview of the TSD Sub-committee meetings and CSD meetings to date.

## 5.2 - Colombia

Colombia is the first case to be analyzed. This section first provides a brief background on Colombia, and then assesses its compliance with the EU PTA environmental provisions since 2013, and lastly the effect of civil society on the compliance process based on the two logics of civil society strength.

### 5.2.1 - Colombia and the environment

Colombia is considered to be one of the most biodiverse countries in the world, second only to Brazil (Butler, 2016). It is home to diverse landscapes, ecosystems, and a huge array of wildlife species (OECD, 2014). As such, its main environmental challenges include deforestation and

(illegal) logging, the preservation of its wildlife, and water and air pollution (OECD, 2014). The abundance in natural resources has also driven Colombia's economy. Colombia's economy is primarily based on mining and manufacturing (OECD, 2014).

The social and political environment of Colombia has been tumultuous over the last four decades. Since 1964, Colombia has been ravaged by internal conflict between the Colombian government, and the far-left Revolutionary Armed Forces of Colombia (FARC), far-right paramilitary groups, and other groups seeking control of Colombian territory. In 2016, the process to reach a peace agreement began between the Colombian government and the FARC. Despite this, Colombia continues to face environmental challenges, in part due to ongoing conflicts. Since 2013, there have been annually 120 to 130 reported environmental conflicts in Colombia, in which Colombia has repeatedly ranked in the top five countries with the highest numbers of conflicts (EJAtlas, 2021).

In 2011, the Ministry of Environment and Sustainable Development (Minambiente) was created as the highest authority on environment and responsible for the country's environmental policies. Colombia's legal framework on the environment has strengthened over the last ten years. The reforms to Colombia's environmental policies relating to its commitments in the PTA with the EU will be discussed below.

### **5.2.2 - Compliance with the TSD environmental provisions**

The findings of Colombia's compliance with the environmental provisions in the PTA with the EU are detailed below based on evidence of compliance, no action and non-compliance.

#### ***Evidence of compliance***

Firstly, Colombia's compliance with Article 270 is assessed. Article 70 requires signatory parties to sign and implement international environmental agreements. Since 2013, Colombia has ratified and implemented various MEAs. In the TSD Sub-committee meeting reports between 2015-2020, Colombia reported on progress of the Basel Convention, the Montreal Protocol, the CBD, the Cartagena Protocol, and the United Nations Framework Convention on Climate Change (UNFCCC) (European Commission, 2014, 2016). In April, 2016, Colombia became a party to the Paris Agreement. As a response, in April 2017, Colombia's Constitutional Court created Law 1844 which supports the ratification of the Paris Agreement and places the

agreement in Colombia's constitution (European Commission, 2017a). The agreement was officially ratified in Colombian law in July, 2018 (Minambiente, 2018).

Colombia has also made progress on the implementation of the CITES (European Commission, 2017a), which it joined and ratified in 1981. During the third TSD Sub-committee meeting in 2016, the EU encouraged Colombia to comply with its commitments regarding trade in CITES-listed caiman and crocodile skins (European Commission, 2016). In response, Colombia submitted a proposal for the sustainable management of crocodile species, which was adopted in 2016 (European Parliamentary Research Service (EPRS), 2018).

In March 2018, Colombia joined the Minamata Convention on Mercury and played a leading role in the final negotiations of the convention. The Minamata Convention is an international agreement that aims to reduce global mercury emissions and minimize their impact on health and the environment (WWF, 2018). The ratification strengthens Colombia's Mercury Law (No 1658/2013), which prohibits the use of mercury in gold mining and in other industrial sectors from 2023. In light of Colombia's progress, the EU has also financially supported a project to encourage the reform.

One of the main focuses since signing the EU PTA has been Colombia's attention to greening business and achieving a circular economy. This relates to Article 271, in which signatory parties strive to facilitate trade in environmental goods and services. During the 2018 TSD Sub-committee meeting, Colombia shared its implementation of the National Circular Economy Strategy and the Generation Program Green Business supported by the EU. As a result, 683 green businesses have been created (European Commission, 2018a).

Colombia has also made progress on Article 272 relating to biological diversity. During the fourth TSD Sub-committee meeting in 2017, Colombia announced its National Biodiversity Plan (2016-2030) (Minambiente, 2017; EPRS, 2018). A year later in 2018, Colombia announced the implementation of the Normative Scientific Intergovernmental Platform on Biodiversity and Ecosystem Services (European Commission, 2018).

Deforestation is one of the leading environmental challenges in Colombia, and addressed by Article 273. In 2018, the National Council for the Fight Against Deforestation was created. The 2018-2022 National Development Plan also included a section on deforestation, but instead of decreasing deforestation levels, the plan maintains current levels (Oidhaco & Catapo, 2020).

Numerous legislative actions and policies have been created in line with Article 275 on climate change since 2013, however the article is vague and open to interpretation by the parties. Colombia's reforms include its National Climate Change Adaptation Plan in 2016, its National Climate Change Policy in 2017, and Decree 926/2017 on carbon tax, the Colombian Law Carbon Development Strategy, and Colombia's Climate Change Law created in 2018 (Gutiérrez et al., 2021).

Overall, Colombia has taken steps to strengthen its environmental legislation since 2013 in line with the environmental provisions in the PTA with the EU. Due to the lack of compliance deadlines and vague language of the provisions, clear confirmations of compliance for this study are hindered.

### ***Evidence of no action and non-compliance***

Despite actions where compliance has occurred, there has also been no action taken on various environmental provisions in the chapter, as well as non-compliance with Article 277.

Article 277 states that countries cannot lower environmental standards to promote trade and investment. Despite this, a five-year evaluation report of the EU-Colombia/Peru PTA by the EPRS (2018, p. 67) stated that "in 2017, the Colombian PTA observatory, Observatorio TLC, warned of a gradual regression in Colombia's national environmental legislation". This was also highlighted in a 2016 report by the Transnational Institute (TNI) and the International Office on Human Rights Action on Colombia (Oidhaco), which describes an "abusive relaxation of energy and mining exploration permits, including in special protection areas such as moorlands and ancestral lands" (TNI & Oidhaco, 2016; EPRS, 2018, p. 69). According to the report, the National Development Plan prioritized energy and mining activities by implementing laws that give flexibility to the granting of environmental licenses. This allowed for mining activities in protected natural and cultural areas, and also affects communities living in these areas (TNI & Oidhaco, 2016). This was again stated in a 2018 Joint Declaration of CSOs from the signatory countries following the 2018 TSD Sub-committee meeting (EESC, 2018).

In relation to Colombia's lack of action on other provisions, this has been most prevalent with some MEAs relating to Article 270. Colombia has failed to ratify the Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, which is the first Latin American environmental human rights treaty.

Colombia signed the agreement in 2019 but has not yet ratified it, despite calls to join by the EU and CSOs (Oidhaco, 2020; PCDHDD, 2021). Furthermore, Colombia has not yet ratified the Nagoya Protocol.

The following sections will explore the effect of Colombia's civil society on the compliance of the discussed provisions based on the two logics.

### **5.2.3 - Civil society strength (CSO participation)**

The analysis of available data finds a weak link between Colombia's CSO participation and the compliance of the environmental provisions in the EU PTA. Only a few environmental CSOs have been found to interact with the Colombian government on the topic of the PTA with the EU. These include CENSAT Agua Viva, a Colombian environmental NGO, and Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo (PCDHDD), which is a network of more than 100 local CSOs. At the transnational level is the International Office for Human Rights – Action on Colombia (Oidhaco), however this is a Brussels-based advocacy network working on the topic of Colombia and thus considered a EU CSO. Many other environmental CSOs exist, however no connection was found to the PTA with the EU.

While organized civil society in Colombia has taken part in many protests, legislative actions, and statements for the protection of the environment since 2013, these actions were not found to be directly linked to the environmental provisions in the PTA with the EU. A recent example of an action connected to the PTA occurred in 2019 by Colombian CSOs, who signed and sent a letter to the congress stating that the 2018-2022 National Development Plan meant that deforestation levels would remain the same and called for the decrease in annual deforestation (Dejusticia, 2019a). This was paired by a petition that garnered 226,000 signatures calling on the Colombian government to change the goal on deforestation (Dejusticia, 2019b). Yet, so far no action by the Colombian government has been taken to address the demands.

Based on a review of statements and meeting minutes, the analysis finds that Colombian CSOs working on the topic of the environment related to the EU-Colombia PTA appear to be small in number and their membership unclear. Instead, Colombia's human rights and labor organizations appear to be stronger in terms of CSO participation and more prominent in the consultations and dialogues. The meeting minutes between 2013-2020, the evaluation reports, and CSD statements on Colombia are primarily focused on its human rights and labor standards,

mostly in light of ongoing conflicts. Furthermore, the most recent joint declaration following the sixth CSD by CSOs from all signatory parties show that the CSOs involved in the Colombian DAG are primarily labor and human rights-related organizations, with only one environmental CSO included (La fundación Natura Territorio y Paz) (EESC, 2020b). This raises the question as to what extent environmental issues are represented in the Colombian DAG. In their report on labor provisions, Orbie and Van den Putten (2016) found that environmental groups do not seem to be strongly represented in the Colombian DAG nor the CSDs.

There are also findings that suggest Colombian CSOs are strongly against PTAs, including the EU-Colombia PTA. Colombian CSOs were active in denouncing the creation of the PTA with the EU in 2012 prior to it coming into force, citing the negative effects of the agreement on the socio-environmental situation in Colombia (EPRS, 2018). This included a manifesto presented by over 200 CSOs to the European Parliament denouncing the creation of the PTA (CAJAR, 2011). This also included in-person statements by Colombian CSO representatives (CENSAT, 2012; Oidhaco, 2012; CENSAT, 2018; European Commission, 2016).

The lack of evidence linking CSO participation with compliance and the findings suggest that environmental CSOs in Colombia may be strong in terms of CSO participation locally and nationally, but that these efforts are not concerned or directly linked with the provisions in the PTA with the EU. Civil society strength in terms of CSO consultation will be assessed next.

#### **5.2.4 - Civil society strength (CSO consultation)**

The findings on CSO consultation suggest only minor positive effects on compliance. At the 2016 and 2018 CSD meeting, civil society representatives actively called for the ratification of the Minamata Convention and the Paris Agreement (EESC, 2016; EESC, 2018). The demands of CSOs and the sharing of information was said to facilitate the ratification of both agreements (European Commission, 2018a). Yet little more can be found of a positive effect on compliance by Colombian civil society in consultations. As highlighted above, CSOs involved in the dialogues have focused less on the environmental provisions, and more so on labor and human rights provisions, as labor and human rights organizations dominate the DAG. During the 5th CSD meeting involving the newly formed Colombian DAG, the summary of the meeting for Colombia only included suggestions and recommendations related to the labor provisions (EESC, 2019). This was consistent in the meeting minutes in the following years.



Prior to 2016, there has been found to be obstructions to civil society's influence and consultation with the Colombian government. Instead of an independent committee, the National Council on Environment was originally selected as Colombia's existing consultative group under Article 281 (European Commission, 2021e). Since the start of the PTA with the EU, Colombian civil society and the EU DAG have called for an independent Colombian DAG. CSOs stated that this mechanism did not provide space for genuine dialogue, and the inclusion of government representatives in the group made it non-independent (European Commission, 2021c, 2021e). In response, Colombian CSOs held several meetings with the EU delegation and EU DAG to discuss how to set up a group (European Commission, 2021b, 2021e). In 2016, an independent DAG was established and recognized by the Colombian government during the 3rd TSD Sub-committee meeting in Brussels (EESC, 2020). Like the EU DAG, the Colombian DAG is made up of various interest groups including both social and environmental CSOs, however the above findings in CSO participation find that this consists mainly of labor organizations. Furthermore, the CSOs have noted that the dialogue was not functioning. CSOs proclaim that the Colombian government does not consult with the DAG before or after joint TSD Sub-committee meetings, does not share information presented during the TSD Sub-committee meetings, and does not offer a platform to the DAG in the joint meetings or within national consultative mechanisms (European Commission 2021e).

Also prior to 2016, it was found that CSO representatives were financially unable to travel to the annual meetings when they were held in different signatory countries (EESC, 2020). CSOs from Colombia lacked the financial support from the Colombian government to send civil society representatives to the annual meetings. This only improved from 2018 onwards, when the European Commission provided funding of three million euros to encourage civil society participation (European Commission, 2021e).

To add, it has also been found that the Colombian CSO DAG members are not able to dedicate much time to the effective operation of the DAG due to their existing responsibilities in organizations (European Commission, 2021e). This could affect the ability of CSOs to cooperate and monitor the implementation of the TSD environmental provisions, and has been highlighted as a shortfall that requires additional support by the EU and Colombian government to CSOs (European Commission, 2021e). In summary, the findings show little evidence of a direct link of the effect of CSO consultation on Colombia's compliance with EU PTA environmental

provisions. Evidence of compliance in *section 5.2.2* could thus be a result of other factors. Peru will be analyzed next.

## 5.3 - Peru

This section will provide context on Peru's relationship with the environment, and then assess its compliance with the environmental provisions in the PTA, and the effect of civil society on this process based on the two logics relating to civil society strength.

### 5.3.1 - Peru and the environment

Similar to Colombia, Peru is home to one of the most diverse landscapes in the world. It is the country with the second largest land area of the Amazon rainforest behind Brazil, and home to desert regions and the Andes Mountains.

Amongst its Latin American counterparts, Peru is one of the leading economies in the region (OECD, 2016). Its economy is largely driven by the trade of its natural resources, in particular raw materials from mining such as copper, gold, lead, and zinc as well as timber, forest products and fish products (OECD, 2016). Other main sectors of Peru's economy are agriculture and tourism. As such, the main environmental issues in Peru include (illegal) logging and deforestation, (illegal) mining and harmful extractive practices, the illegal trade of wild flora and fauna, and environmental degradation. The overfishing of Peru's coastal areas is also a major issue. Yet unlike Colombia, Peru's social and political situation has been relatively peaceful since the fall of the Fujimori regime in 2000.

In 2008, the Peruvian government created the Ministry of the Environment (MINAM) and multiple sub-branches solely responsible for the oversight of the environment in Peru and the creation and implementation of environmental policies. In that same year, the Environmental Assessment and Enforcement Agency (OEFA) was established as a branch of MINAM, which is responsible for the enforcement of environmental laws.

### **5.3.2 - Compliance with the TSD environmental provisions**

The findings of Peru's compliance with the TSD chapter environmental provisions from 2013 to May 2021 are detailed below.

#### ***Evidence of compliance***

In comparison with Colombia, Peru's progress on the compliance with MEAs (Article 270) since 2013 has been more difficult to assess. In the 2016 and 2019 TSD Sub-committee reports, Peru has been found to mainly present its progress on national environmental policies, which indirectly contribute to the MEAs (European Commission, 2016, 2018*a*, 2021*d*). This is also in part due to the PTA's provision that states that signatory parties can establish their own policies in relation to the MEAs. Despite this, Peru has been found to have ratified MEAs since 2013. In April 2016, Peru became a party to the Paris Agreement and ratified the agreement in July the same year. In line with the Paris Agreement and the UNFCCC, Peru created a High-Level Commission on Climate Change (CANCC) under MINAM. CANCC is responsible for proposing measures at the domestic level to combat climate change (El Peruano, 2020). In 2014, Peru ratified the Nagoya protocol and in 2017 Peru ratified the Minamata Convention on Mercury.

On 1 April, 2018, Peru launched its first environmental court dedicated to the protection and regulation of activities relating to the environment (IUCN, 2018). The court is responsible for dealing with criminal, constitutional, and administrative cases with regards to the environment. The reform complies with Article 272, which requires states to strengthen their domestic institutions working on the protection of biological diversity.

New legislation has also been created to protect Peru's biodiversity. In April 2021, the Justice and Human Rights Commission of the Congress of the Republic of Peru approved a draft law (No. 6051/2020-CR) that includes crimes of illegal trafficking of species of wild flora and fauna and fishing in the Law Against Organized Crime, thus considering these crimes illegal (DAR, 2021*b*). This relates to the compliance with CITES and Article 270. Furthermore, in May 2021, the Peruvian government approved a historic Supreme Decree No. 006-2021-MINAM, which aims to protect the country's wetlands (El Regional Piura, 2021; SPDA, 2021). In 2018, Peru launched a Framework Law on Climate Change, in line with Article 275 and the UNFCCC.

### ***Evidence of no action and non-compliance***

While there has been some evidence of compliance, extensive evidence has been found of numerous laws that have been enacted by the Peruvian government which are in violation of its environmental commitments and of Article 277, which states that signatory parties cannot lower environmental standards to promote trade. The knowledge of these policies has been made known to the EU and the public by CSOs in publications and during the CSDs (EESC, 2016; Centro de Políticas Públicas y Derechos Humanos & 11.11.11, 2017; PEP, 2019b; EESC, 2020a; European Commission, 2021e).

According to a report by 40 CSOs on Peru's compliance with the TSD chapter by Peruvian CSOs, non-compliance has occurred since the beginning of the PTA's enforcement (Centro de Políticas Públicas y Derechos Humanos & 11.11.11, 2017). In 2013, the establishment of Supreme Decree No 054-2013-PCM (Article 4) sought the creation of Supporting Technical Reports (ITS), which allows for the special approval of companies to expand or modify investment projects. The creation of the ITS allows for loopholes in investment projects and weakens Peru's Environmental Impact Assessments (EIAs), which are impact studies conducted prior to the approval of a project related to industry. On top of this, Resolution No 0077-2019/CEB-INDECOPI has reduced the evaluation term of the EIA process from 120 to 30 days (PEP, 2019b). Despite the Peruvian elections in 2016 and change in government from President Ollanta Humala (2011-2016) to Pedro Pablo Kuczynski (2016-2021), the regulatory changes were maintained and continued in the new government (Centro de Políticas Públicas y Derechos Humanos & 11.11.11, 2017).

In 2017, the Peruvian government also reduced its air quality standards with the adoption of Supreme Decree No 003-2017. The policy change allows for the relaxation of the level of sulphur dioxide to be 12 times more than the recommended WHO average (PEP, 2019b). The reform is found to be due to pressures by business and investment groups involved in mining and energy (Gestión, 2017; EPRS, 2018). In November 2017, the Peruvian government submitted a proposal for the reform of a law on the fracking of hydrocarbons that would seek to benefit the hydrocarbon industry. The reforms, under Law 98/2016-CR, 1525/2016-CR and 2145-2017-PE, sought to attract investment in the hydrocarbon industry and would violate existing commitments to protect the Amazon rainforest and its inhabitants (DAR, 2018b).

Furthermore, Supreme Decree No 039-2014-EM reformed the article 19 of the Law on Organic Hydrocarbons (No. 30230) in 2018, which significantly reduced the powers of the OEFA, the governmental agency responsible for enforcing environmental laws. This was said to be in favor of mining and fossil fuel exploiting companies (Centro de Políticas Públicas y Derechos Humanos & 11.11.11, 2017). The reform limits the power of the OEFA to issue fines and sanctions and reduces the cost of fines that can be given for environmental damages.

Reports suggest that these reforms have been at the request of businesses and industries, which have in some instances boycotted production in order to pressure the Peruvian government to lower environmental standards (Centro de Políticas Públicas y Derechos Humanos & 11.11.11, 2017; EPRS, 2018). The business sector has been said to oppose the environmental provisions under the TSD chapter, leading to some of the above policy reforms such as weakening the power of OEFA to hand out sanctions or fines to businesses and the relaxation of air quality standards. There are also MEAs that Peru has failed to ratify since 2013. One of the most important is the Escazú Agreement. On 20 October, 2020, the Congress of Peru decided to put aside the Escazú Agreement despite the calls from CSOs and the EU (EESC, 2020a). The reasoning behind the stalling of the bill was a result of a 'fake news' campaign by business groups and politicians that argued the bill would threaten national sovereignty (Sosa, 2020).

Peru's compliance with the environmental provisions in the PTA with the EU since 2013 has been found to be subpar. While there have been actions for the creation of new environmental policies and strategies, there has also been significant reforms that lower Peru's environmental standards in support of industry and trade and which have continued in light of COVID-19 (Oidhaco, 2020). The following section will explore what effect civil society has had on the compliance behavior described above.

### **5.3.3 - Effect of civil society (CSO participation)**

#### ***Membership and structure of Peruvian CSOs***

Firstly, Peru's civil society working on the environment is discussed to provide context to the membership and structure of Peru's civil society related to the PTA.

The CSOs found to be connected with the TSD commitments consist of a diverse range of Peruvian and EU-based CSOs. At the local, regional, and national level, there is *La Red*

*Peruana por una Globalización con Equidad* (RedGE), one of the leading Peruvian civil society actors covering environmental processes. RedGE is a network of nine NGOs, unions and social movements that promote equity in the globalization process. The network is one of the most active in monitoring the PTA. NGO *Derecho, Ambiente y Recursos Naturales* (DAR) is another prominent Peruvian civil society actor and active in the PTA process. DAR focuses its work on the environmental legislation and policy for the management of the environment and sustainable use of natural resources. Another important actor is the *Sociedad Peruana de Derecho Ambiental* (SPDA), which specializes in the creation of environmental policy and legislation in Peru. Peruvian civil society is also characterized by a high number of indigenous organizations, such as collective AIDSESEP, which consists of 1,800 associated communities in 109 federations in Peru.

At the transnational level, a network of 16 European NGOs, *Plataforma Europa Perú* (PEP), is the leading actor that advocates towards the EU on the topic of Peru. Since the creation of the PTA, the PEP and RedGE networks have been most responsible for lobbying the EU and monitoring the trade agreement with relation to Peru. Overall, Peru's organized civil society working on the topic of environmental protection is extensive and well-networked, and as will be shown below, frequently works together.

### ***Linking CSO participation and compliance***

Peruvian civil society has been found to have an effect on the compliance of the TSD environmental provisions, particularly in relation to CSO participation via collective actions such as statements, petitions, and self-organized dialogues. The most recent example is the creation of a draft law on Flora and Fauna in compliance with Article 273, which has been found to be the result of an active effort by Peruvian CSOs in garnering public support and increasing public awareness about the issue. In response to the draft law (No. 06051/2020-CR) in early 2021, more than 40 CSOs jointly sent a letter requesting the Commission of Justice and Human Rights of the Congress of the Republic to review and discuss the bill in what can be described as an act of *coercion* (DAR, 2021a). Moreover, Peruvian CSOs launched a virtual petition through the Change website that collected over 35,000 signatures for the bill to be passed (DAR, 2021b). As of May 2021, the draft bill is still being discussed.

The greatest example of the effect of CSO participation on compliance since 2013 has been their response to the Peruvian government's actions of non-compliance. In October, 2017, 41 CSOs consisting of 27 Peru-based CSOs and 14 EU-based CSOs co-signed a letter issuing a complaint to the EU Commission and published a 154-page report detailing the lack of access to the implementation process of the PTA and Peru's non-compliance with the TSD chapter provisions in relation to Article 277 in what can be described as an action of coercion via 'naming and shaming' (Centro de Políticas Públicas y Derechos Humanos & 11.11.11, 2017). The CSOs proclaimed in their letter that, unlike their Colombian counterparts, Peruvian CSOs were not provided sufficient access to the implementation process and faced restriction by the Peruvian government. EU CSOs said that there was no clear civil society counterpart in Peru, which has weakened the dialogue. Furthermore, the 154-page report included in detail the legislative changes implemented in 2013 to 2017, which lowered environmental regulations and protection measures in favor of investment and extractive industries, particularly by EU member countries.

Following the 2017 letter, EU Commissioner Cecilia Malmström wrote to the Peruvian Minister of Foreign Trade and Tourism, Roger Valencia, regarding these complaints (European Commission, 2018c). A clear action plan was requested and technical meetings with the European Commission and the Peruvian government were conducted with CSOs to address the issues of non-compliance (European Commission, 2019b). In October 2018, a EU delegation traveled to Peru to review the country's noncompliance with the TSD chapter. The delegation met with thirty CSOs and representatives from the Peruvian government (Agencia EFE, 2018). EU CSOs also played an important role in relaying complaints from Peruvian CSOs to the European Commission via the issuing of a recommendation (EESC, 2020a). This supported the opening of a dispute settlement mechanism and a fact-finding mission in Peru.

Progress after the discussions was slow however. A letter on behalf of Peruvian CSOs by RedGE sent to Directorate-General for Trade of the European Commission, Madelaine Tuininga in April, 2019, highlighted again the pitfalls (RedGE, 2019a). Cano stated that the discussions had not led to any concrete objectives, no set deadlines for compliance, or roadmap for implementation (PEP, 2019b). The independent DAG of Peru, coordinated by RedGE, had also not been recognized by the Peruvian government. CSOs provided further recommendations to

the EU Commission to strengthen compliance including the creation of a timeline with deadlines to foster concrete results (PEP, 2019b).

These actions were not in vain. In the 2021 Interim Report, it was found that Peru implemented changes to its environmental assessment system in response to the CSOs complaints (European Commission, 2021e). These reforms include the strengthening of Peru's environmental assessment agency (OEFA) and the provision of greater access to civil society to information such as records of complaints.

### **5.3.4 - Effect of civil society (CSO consultation)**

The findings on CSO consultation suggest positive effects on compliance, however as briefly described above, there have been obstructions to consultation.

Peruvian CSOs played an important role in Peru's signing of the Escazú Agreement. DAR and SPDA worked closely with MINAM, and shared proposals by regional and national CSOs, signaling also a link with *policy learning* and CSO consultation between Peruvian CSOs and the government (CIVICUS, 2019). As a result, it is said this resulted in more consistent positions by the Peruvian government (CIVICUS, 2019). Although a positive outcome, the Peruvian government decided to put aside the agreement in 2019. SPDA also played a lead role in the formation of the law to protect Peru's wetlands, however the project was also supported by the US and Canada, and thus indirectly in compliance with the environmental provisions in the EU PTA.

In response to the proposed law on fracking, which would be in violation of Article 277, CSOs published statements and under the leadership of DAR and AIDSESEP organized a dialogue with Peruvian government representatives, energy experts, industry to share information about the effects of the law on the environment and indigenous communities, an example of *policy learning* and connected to CSO consultation (DAR, 2018a). As a result, the proposal was submitted for review to the Commission on Energy and Mining, and later rejected thanks to the efforts of Peruvian CSOs (DAR, 2018b, 2018c).

Furthermore, in the lead up to the report submitted in 2017 by 41 CSOs, CSOs involved in the dialogues repeatedly mentioned the failings of the Peruvian government. This included calls particularly in the 2016, 2017, 2018, and 2020 CSDs where CSOs expressed their concerns. CSO consultation has however been found to be obstructed, which has in turn affected civil



society's effect on compliance and is in part what led to the 2017 report. At the transnational level, various issues have been found that hinder CSO consultation. Firstly, like Colombia, Peruvian CSOs were unable to attend the first annual meetings in person due to a lack of financial support (EESC, 2020a). This was later changed in 2018, when the EU provided funding to encourage participation. Secondly, Peruvian CSOs are not well represented in the CSDs. This was emphasized in the 2017 report and CSOs' calls during CSDs. While Colombia's DAG took a few years to be recognized, Peru's DAG has not yet been recognized by the Peruvian government. Inspired by the actions of Colombian CSOs, multiple Peruvian CSOs working on the topic of labor and the environment called on the Peruvian government for the set-up of such a committee in 2017 (RedGE, 2019b; European Commission, 2021e). During the TSD Sub-committee meeting, this request was refused in light that Peru was using an existing consultative group which consists of government divisions working on the environment. The existing consultative group has however been deemed not independent, and CSOs involvement has also been restricted. As a result, Peruvian CSOs created a Peru DAG to monitor the TSD chapter on their own initiative (RedGE, 2019b; EESC, 2020a). The group has been active in monitoring the TSD chapter, holding 2-3 meetings a year, and maintaining contacts with other signatory parties' civil society. Up until now however, there has been no recognition of the committee and the Peruvian government does not consult with the parties involved.

In 2017, following requests by Peruvian CSOs and the European Commission, the Peruvian government set up the Comisión Nacional de Cambio Climático (CNCC) as a national dialogue with environmental CSOs (PEP, 2019b). Despite this, the dialogue platform is said to be inadequate. According to a letter by CSOs, the CNCC met only two times in 2018 to discuss the issues of the TSD chapter (PEP, 2019b). Civil society was however ill-informed regarding the open session and received no prior information or time to prepare for the meeting. Furthermore, Peruvian CSOs submitted four requests for their representatives to be allowed to participate in dialogues hosted by the Peruvian government in relation to the implementation of the TSD chapter, yet were denied (PEP, 2019b). The lack of timing provided both prior to meetings and the duration of the meetings themselves have also been reported by CSOs to hinder consultation.

While there has been evidence of a positive effect of consultation on compliance, there has also been found to be obstructions to Peruvian civil society in terms of CSO consultation.

## Chapter 6: Results and discussion

Chapter 6 discusses the results of the effect of civil society on compliance for Peru and Colombia, and places these findings in theoretical and empirical contexts previously discussed in this thesis.

### 6.1 - Effect of civil society (two logics) on compliance

This study has conceptualized civil society strength using the same conceptualization of scholars Schrama and Zhelyazkova (2018). Based on the findings, this study contributes to the scholars' work by applying a similar theoretical approach to another field of EU policy. The hypotheses of this study have also been derived from Schrama and Zhelyazkova's (2018) study, and the results are presented below.

The results find mixed evidence for all three hypotheses. Firstly, in line with *Hypothesis 1*, the results in this study provide evidence that higher CSO participation (*logic of membership*) has a positive effect on compliance. This was shown primarily in the case of Peru. Peru's well-networked and mobilized civil society was able to have a positive effect on the (non)compliance of several environmental provisions. This was particularly evident in the effect of the 2017 CSO report and subsequent actions by Peru's civil society that led to improved compliance, despite the many years and efforts to generate compliance. In the case of Colombia, the evidence for *Hypothesis 1* is mixed. Colombia's civil society was found to be less networked and less active in the area of the environment relating to the PTA, and there was little to no connection with compliance. Colombia has, however, been found to comply with some of the environmental provisions, but these actions could not be directly related to CSO participation, suggesting other factors that have influenced compliance. Relating to civil society, this includes that environmental CSOs are not well represented in the Colombian DAG. It could also be that Colombian CSOs are actively refraining from participating in the implementation of the PTA itself due to the earlier disagreement of the creation of the PTA with the EU in its early years of creation.

The results signal weaker evidence for *Hypothesis 2*, which expects that regular consultations with CSOs (*logic of influence*) has a positive effect on compliance. In the test for

variation of the independent variable for CSO consultation, Peru was expected to have a high level of consultation with civil society. The findings suggested the opposite was the case. Instead, Peruvian CSOs have faced obstruction with CSO consultation. Despite this, there were some concrete signs of where consultation did take place, which led to a positive effect on compliance. Furthermore, numerous laws have been enacted by Peru since the signing of the PTA that have lowered environmental standards and promoted trade and investment. This indication of a low level of compliance can be connected with the low levels of CSO consultation with Peruvian CSOs. In the case of Colombia, like the analysis on CSO participation, the findings found little evidence of the effect of CSO consultation on compliance. While compliance had occurred in some cases such as the ratification of the Paris Agreement and Minamata Convention, this could be due to the Colombian government and not in relation to CSO consultation.

This study provides mixed evidence for *Hypothesis 3*, due to the findings on CSO consultation. Although civil society in Peru was expected to have high levels in both CSO consultation and CSO participation, the results found that CSO consultation was obstructed and thus low in Peru while CSO participation was found to be high. It can be argued that Peruvian CSOs tried to balance their lack of access to consultations with increased CSO participation. For Colombia, this was in the reverse. CSO participation was found to be low in Colombia, which was expected, while CSO consultation was found to be slightly less obstructed than Peru, but still insignificant as only few environmental CSOs were represented in the consultations.

This study has also found evidence of *coercion* and *policy learning* taking place. With regards to *coercion*, actions of 'naming and shaming' were found to take place particularly in the case of Peru, which led to compliance. This was noticeable in the actions surrounding the 2017 report, in which Peruvian CSOs frequently reported on the noncompliance of the Peruvian government to the EU and which led the EU to exert pressure on the Peruvian government. In terms of *policy learning*, this was noticeable in the case of Peru on the Escazú agreement, the proposal on the fracking law, and the 2017 report. By listening to the suggestions and concerns voiced by CSOs, the Peruvian government made reforms or changes that positively affected compliance with the environmental provisions in the PTA.

It is important to note that Peru's (lack of) compliance may have fostered the collaboration and collective strength of Peruvian CSOs. This relates to the findings of Brandi et

al. (2019), who say that compliance can result in a strengthened civil society. Although in reverse, as mentioned in the research design, this poses a threat to the validity of this study as this could mean that the dependent variable X causes the independent variable Y. Thus, there is a possibility that (non)compliance has affected civil society.

## 6.2 - Other influencing factors on compliance and civil society

There are other potential factors that have been found in the analysis. Firstly, the priorities of governments and their willingness to comply with agreement commitments as well as listen to civil society have affected both compliance and the effect of civil society. This was particularly noticeable in the case of Peru, in which the Peruvian government denied the involvement of civil society actors. Furthermore, despite civil society efforts, in some cases the Peruvian government did not go through with the suggestions such as the case with the Escazú agreement. The same can be said for Colombia. In the 2021 Interim Evaluation Report of the PTA, Colombian CSOs expressed their frustration at the lack of political will of the Colombian government to address issues raised by CSOs in the TSD chapter (European Commission, 2021e). Government priorities may also be more focused on boosting the economy, which can be detrimental to existing environmental policies. This was seen in both Colombia and Peru.

Secondly, the strength of the business sector has been found to be an influencing factor on the compliance of signatory countries with environmental provisions. This was again found in the case of Peru, in which business interests pressured reform and the lowering of environmental standards. This also occurred in the case of the Escazú agreement, in which the Peruvian government effectively shelved a bill that would ratify the agreement in Peruvian law in 2019 as a result of a campaign against the agreement by business and politicians (Sosa, 2020). Thus, the strength of businesses in a country can have an effect on the compliance with environmental provisions.

In the case of Colombia, it is possible that ongoing conflicts in the country have affected the civil society strength and priorities of Colombian CSOs and the Colombian government. Many of the CSOs working on the environment also worked on issues such as peace and reconciliation. Issues relating to the PTA with the EU may also not be of priority to CSOs in light of other events that require more immediate attention. Furthermore, there are also dangers

present in Colombia for CSOs working on the topic of the environment, such as the increased attacks and murders of environmental defenders. Since 2016, over 690 social leaders including environmental and human rights defenders have been killed in Colombia (United Nations, 2020). The threats of working on social and environmental issues thus also can affect CSO participation.

Some environmental provisions have garnered less attention by CSOs. Most striking is the lack of evidence on both compliance with Article 274 on fisheries and civil society involvement on the issue. CSOs in Peru involved in the implementation process of the TSD chapter have been primarily working on the topic of indigenous rights, extractive industries, and illegal activities relating to the environment. Thus the effect of civil society on compliance can be affected by what issue a provision in the TSD chapter concerns.

Other factors that hinder compliance relate to the content of the PTA itself. Most notably is the lack of concrete deadlines in the PTA. This limitation has however been highlighted numerous times during dialogues with civil society as well as studies on the TSD chapter and will be discussed further in the policy recommendations of this study (Croquet, 2015; Bodensiek & Peluffo, 2016). Furthermore, it could be that a lack of EU pressure affects compliance. Although action was taken in response to the 2017 report by Peruvian CSOs, little other coercive pressure was found by the EU to support compliance. This has been mentioned in previous studies, and should be improved (Marx et al., 2016).

## Chapter 7: Conclusion

Unlike US PTAs, the EU's main enforcing mechanism for the implementation of its social and environmental provisions in its new generation PTAs is via a dialogical approach with civil society. In light of the findings by Bastiaens and Postnikov (2017), this study has sought to find out whether civil society and civil society strength has an effect on the signatory country's compliance with the environmental provisions in the TSD chapter of new generation EU PTAs. The expectations of this study was that a civil society with high levels of CSO participation and regular CSO consultation, based on the '*logic of membership*' and '*logic of influence*' of Schmitter and Streeck (1999) as conceptualized by Schrama and Zhelyazkova (2018), would have a positive effect on the compliance of the environmental provisions. Using a qualitative COV approach, this study analyzed the cases Colombia and Peru in their PTAs with the EU.

In conclusion, this study finds slight evidence that higher levels of civil society strength has a positive effect on compliance, however there are obstacles that exist for civil society and other influencing factors that may have played a role in compliance. These include business interests, government priorities at the domestic level, ongoing internal conflicts, and shortfalls in the PTA design. In the case of Peru, the strength of civil society in terms of CSO participation was found to be strong and well-networked while in terms of CSO consultation, there was found to be obstructions for Peruvian civil society. Peruvian civil society was found to have a positive effect on the compliance of the environmental provisions, which was mainly showcased in relation to CSO participation. In the case of Colombia, the effect of civil society has been limited and the connection between Colombian civil society working on the environment and the PTA with the EU is weak, however some compliance was found suggesting other factors. The study also adds to the literature on the role of civil society. Through both cases, it was shown that civil society plays a role in policy formulation, sharing knowledge and expertise with governments, and monitoring in the case of non-compliance and reporting this to the EU. This has also involved examples of where *coercion* and *policy learning* took place between CSOs and governments.

This study contributes to a growing debate and literature on the effect of non-trade provisions in PTAs, on enforcement measures, and on other influencing factors which affect compliance (Berger et al., 2017; Brandi et al., 2019). Furthermore, in response to Gemmill and

Bamidele-Izu's (2002) theoretical roles of CSOs, this study gives insight specifically into the roles CSOs play in the implementation of EU PTAs and showcases how civil society can affect policy implementation through the mechanisms of *coercion* and *policy learning*. And last but not least, in response to Bastiaens and Postnikov's (2017) findings and call for further research, this study finds that civil society does have an effect on compliance, but this is contingent on the strength of civil society as well as other influencing factors.

## 7.1 - Limitations and future research

It is important to note that while this study has sought to be as internally and externally valid as possible, there are certain limitations that have hindered this study. Furthermore, this study provides an agenda for future research.

Firstly, in regards to limitations, this study only researches two cases, which limits the generalizability of the findings. The cases selected are also in the same PTA with the EU. While this can strengthen control, it also means that any weaknesses in the content and/or provisions of the PTA are likely to affect both cases. Future research is encouraged to explore cases in other PTAs. The amount of time to assess the effect of civil society has also been found to be short. For both Colombia and Peru, CSOs struggled with accessing the dialogues with proper representation in the early years of the PTA. In addition, the lack of compliance deadlines and clearer actions in the environmental provisions has also made compliance difficult to assess, as certain indicators are missing for a comprehensive analysis. Furthermore, it could be that changes in laws are not necessarily in relation to the environmental provisions in the PTA with the EU.

Future research would benefit from qualitative studies that assess and compare new generation EU PTAs, such as with Georgia and Moldova, which have created further instruments to involve civil society. In addition, Chile and the EU are currently in the process of modernizing the current EU-Chile PTA, which involves the inclusion of a TSD chapter and similar civil society instruments to increase involvement as in new generation EU PTAs. If such developments occur, future research would further benefit from research assessing the EU-Chile PTA and the effect of civil society since its enforcement. This can be done with a temporal CPT qualitative study approach. Future research should also consider the use of interviews. Interviews

could support such a research, as there are many possibilities of events occurring behind closed doors. Unfortunately for this study, the COVID-19 situation made interviews less feasible. If accessible, future studies should seek interviews with relevant civil society and governmental actors.

Lastly, a majority of the articles and data collected was in Spanish. As the author of this study is non-Spanish speaking, this made data collection difficult. While translation programs such as Google Translate made data analysis possible, there are also possibilities that not all relevant data was found or that translations were not fully correct.

## 7.2 - Policy recommendations

This study provides useful insights for EU policymakers regarding the potential of civil society on the implementation process of the TSD chapter in EU PTAs. In particular, this study highlights the shortfalls in the TSD chapter with regards to its environmental provisions and ways in which civil society can be successful.

Based on this study, I offer a few policy recommendations to EU policymakers involved in the creation and implementation of the TSD chapter. Firstly, while sanctions are not a welcome option for the EU, other mechanisms can be improved or incorporated to support compliance. Policymakers can address compliance issues with the creation and inclusion of concrete deadlines and language that offers clearer objectives per TSD provision. Currently, the language of the provisions is vague, and leaves much leeway to signatory parties to decide on their own actions. Secondly, the strengthening of civil society should be given priority. As seen in the findings, the involvement of civil society and the formulation of independent DAGs can be improved. Furthermore, additional funding should not only be provided to CSOs for travel expenses to annual dialogues, but also to support their monitoring role as this requires time and funds. The TSD chapter is also lacking a dispute mechanism to address non-compliance. The establishment of such a mechanism that allows the inclusion of civil society could benefit compliance.



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# Appendices

## Appendix A

Calculations for the average control variable scores for the EIU Democracy Index (EIU, 2021) and the WGI Government Effectiveness indicator (World Bank, 2021b).

### Level of democracy - EIU Democracy index:

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Average score
<b>Colombia</b>	7.04	7.13	6.96	6.67	6.67	6.62	6.55	6.55	6.63	6.63	6.55	6.73
<b>Costa Rica</b>	8.16	8.13	8.07	7.88	7.88	7.96	8.03	8.03	8.1	8.1	8.04	8.03
<b>El Salvador</b>	5.9	6.15	5.96	6.43	6.64	6.64	6.53	6.53	6.47	6.47	6.47	6.38
<b>Guatemala</b>	4.97	5.26	5.6	5.86	5.92	5.92	5.81	5.81	5.88	5.88	6.05	5.72
<b>Honduras</b>	5.36	5.42	5.63	5.72	5.92	5.84	5.84	5.84	5.84	5.84	5.76	5.73
<b>Nicaragua</b>	3.6	3.55	3.63	4.66	4.81	5.26	5.32	5.46	5.56	5.56	5.73	4.83
<b>Panama</b>	7.18	7.05	7.05	7.08	7.13	7.19	7.08	7.08	7.08	7.08	7.15	7.1
<b>Peru</b>	6.53	6.6	6.6	6.49	6.65	6.58	6.54	6.54	6.47	6.59	6.4	6.53
<b>South Korea</b>	8.01	8	8	8	7.92	7.97	8.06	8.06	8.13	8.06	8.11	8.03

Table A.1: Level of democracy EIU Democracy index average score based 2010-2020. (EIU, 2021)

**State capacity - WGI Government Effectiveness indicator:**

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Average score
<b>Colombia</b>	-0.245 9242	-0.059 2384	0.0388 793	0.0229 52	0.0713 581	-0.100 5563	-0.036 1266	0.0154 443	-0.073 8818	-0.085 2262	0.0712 232	-0.04
<b>Costa Rica</b>	0.2842 943	0.3515 086	0.2521 123	0.2117 213	0.1561 034	0.0490 957	0.2012 671	0.2776 813	0.3313 352	0.3081 369	0.3381 54	0.5
<b>El Salvador</b>	-0.044 8861	0.0074 18	-0.102 8972	-0.127 1779	-0.115 2254	-0.032 7334	-0.235 5875	-0.285 0141	-0.364 9472	-0.447 1425	-0.465 4403	-0.2
<b>Guatemala</b>	-0.714 392	-0.697 995	-0.697 87	-0.755 4433	-0.703 1401	-0.728 8904	-0.711 0427	-0.606 3933	-0.640 4786	-0.682 0061	-0.676 8408	-0.69
<b>Honduras</b>	-0.675 4177	-0.641 6873	-0.535 3841	-0.698 26	-0.728 6451	-0.809 9896	-0.821 569	-0.726 3504	-0.508 081	-0.620 6585	-0.611 7631	-0.67
<b>Nicaragua</b>	-0.962 1149	-0.962 1997	-0.901 4012	-0.894 9555	-0.816 6822	-0.837 9031	-0.815 9055	-0.688 5888	-0.629 7874	-0.802 4699	-0.770 8744	-0.83
<b>Panama</b>	0.1434 586	0.1372 251	0.0858 171	0.2850 275	0.2886 036	0.2621 191	0.2921 956	0.1857 315	0.0218 192	-0.019 452	0.0655 402	0.16
<b>Peru</b>	-0.416 6843	-0.191 1707	-0.157 1881	-0.144 9162	-0.114 7713	-0.266 7779	-0.276 9882	-0.178 6185	-0.129 5326	-0.245 4309	-0.067 5457	-0.2
<b>South Korea</b>	1.0947 25	1.2046 64	1.2527 69	1.1993 33	1.1255 52	1.1647 46	1.0123 94	1.0640 42	1.0727 64	1.1826 65	1.3764 18	1.16

*Table A.2: WGI Government Effectiveness indicator average score based 2010-2020. (World Bank, 2021b)*

## Appendix B

Calculations for the independent variable scores for the CSO participation (Freedom House *Civil Liberties Association and Assembly Rights* indicator) and CSO consultation (V-Dem Institute, 2020).

### CSO participation (Freedom House *Civil Liberties Association and Assembly Rights* indicator):

	2013	2014	2015	2016	2017	2018	2019	2020	2021	Average score
<b>Colombia</b>	5	5	5	5	5	5	6	6	6	5.33
<b>Peru</b>	8	8	8	8	8	8	8	8	8	8

Table B.1: Association and Assembly Rights average score based on Freedom in the World Raw Data 2013-2020. (Freedom House, 2021)

### CSO consultation (V-Dem Institute CSO consultation indicator):

	2013	2014	2015	2016	2017	2018	2019	2020	Average score
<b>Colombia</b>	0.74	0.74	1.29	1.68	1.26	1.26	0.82	-0.07	0.965
<b>Peru</b>	1.64	1.64	1.64	1.56	1.3	2.02	1.04	1.84	1.585

Table B.2: CSO consultation average score based on V-Dem Institute data from 2013-2020. (V-Dem Institute, 2020)

## Appendix C

All environmental provisions included in the TSD chapter of the EU-Colombia/Peru PTA (*European Commission, 2012*). The descriptions have been summarized.

Article	Name	Description and objectives
270	<i>Multilateral Environmental Standards and Agreements</i>	<ul style="list-style-type: none"> <li>- The Parties shall implement into domestic laws and practices various multilateral environmental agreements, including <i>but not limited to</i>:               <ul style="list-style-type: none"> <li>- The Montreal Protocol on Substances that Deplete the Ozone Layer adopted on 16 September of 1987</li> <li>- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal adopted on 22 March 1989</li> <li>- The Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001</li> <li>- The Convention on International Trade in Endangered Species of Wild Fauna and Flora signed on 3 March 1973 (hereinafter referred to as "CITES"),</li> <li>- The CBD, the Cartagena Protocol on Biosafety to the CBD adopted on 29 January 2000</li> <li>- The Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted on 11 December 1997 (hereinafter referred to as "Kyoto Protocol")</li> <li>- The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998</li> </ul> </li>   <li>- The Trade Committee may recommend the extension of the application of paragraph 2 to other multilateral environmental agreements following a proposal by the Sub-committee on Trade and Sustainable Development.</li> </ul>
271	<i>Trade Favouring Sustainable Development</i>	<ul style="list-style-type: none"> <li>- The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods and services.</li> </ul>
272	<i>Biological diversity</i>	<ul style="list-style-type: none"> <li>- The Parties shall strive to strengthen and to enlarge the capacity of national institutions responsible for the conservation and sustainable use of biological diversity.</li> <li>- The Parties confirm their commitment to conserve and sustainably use biological diversity in accordance with the</li> </ul>

		CBD and other relevant international agreements to which the Parties are party.
273	<i>Trade in Forest Products</i>	<ul style="list-style-type: none"> <li>- In order to promote the sustainable management of forest resources, the Parties recognize the importance of having practices that, in accordance with domestic legislation and procedures, improve forest law enforcement and governance and promote trade in legal and sustainable forest products, which may include the following practices: <ul style="list-style-type: none"> <li>- The effective implementation and use of CITES with regard to timber species;</li> <li>- The development of systems and mechanisms that allow verification of the legal origin of timber products throughout the marketing chain;</li> <li>- The promotion of voluntary mechanisms for forest certification that are recognised in international markets;</li> <li>- Transparency and the promotion of public participation in the management of forest resources for timber production; and</li> <li>- The strengthening of control mechanisms for timber production, including through independent supervision institutions, in accordance with the legal framework of each Party.</li> </ul> </li> </ul>
274	<i>Trade in Fish Products</i>	<ul style="list-style-type: none"> <li>- The Parties recognise the need to cooperate in the context of Regional Fisheries Management Organisations (hereinafter referred to as "RFMO"), of which they are part, in order to: <ul style="list-style-type: none"> <li>- Revise and adjust the fishing capacity for fishery resources, including those affected by overfishing, to ensure that the fishing practices are commensurate to the fishing possibilities available;</li> <li>- Adopt effective tools for the monitoring and control, such as observer schemes, vessel monitoring schemes, transshipment control and port state control, in order to ensure full compliance with applicable conservation measures;</li> <li>- Adopt actions to combat illegal, unreported and unregulated (IUU) fishing; to this end, the Parties agree to ensure that vessels flying their flags conduct fishing activities in accordance with rules adopted within the RFMO, and to sanction vessels under their domestic legislation, in case of any violation of the said rules.</li> </ul> </li> </ul>
275	<i>Climate Change</i>	<ul style="list-style-type: none"> <li>- Bearing in mind the United Nations Framework</li> </ul>

		<p>Convention on Climate Change (hereinafter referred to as "UNFCCC") and the Kyoto Protocol, the Parties recognize that climate change is an issue of common and global concern that calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, for the benefit of present and future generations of mankind.</p>
277	<i>Upholding Levels of Protection</i>	<ul style="list-style-type: none"> <li>- Parties shall not fail to effectively apply its environmental legislation in a manner that affects trade between the parties. Nor is it allowed to incentivize trade by reducing levels of environmental protection.</li> </ul>
286	<i>Cooperation on Trade and Sustainable Development</i>	<ul style="list-style-type: none"> <li>- The Parties recognize the importance of cooperation activities that contribute to the implementation and better use of this Title and, in particular, to the improvement of policies and practices related to labor and environmental protection as set out in its provisions.</li> </ul>

*Table C.1: Summary of the environmental provisions in the TSD chapter of the EU-Colombia/Peru PTA. (European Commission, 2012)*

## Appendix D

All civil society-related provisions included in the TSD chapter of the EU-Colombia/Peru PTA. The descriptions have been summarized.

Article	Name	
280	<i>Institutional and Monitoring Mechanism</i>	<ul style="list-style-type: none"> <li>- Signatory parties agree to the establishment of a Sub-committee on Trade and Sustainable Development</li> </ul>
281	<i>Domestic mechanisms</i>	<ul style="list-style-type: none"> <li>- Each Party shall consult domestic labor and environment or sustainable development committees or groups, or create such committees or groups when they do not exist. Such committees or groups may submit opinions and make recommendations on the implementation of this Title, including on their own initiative, through the respective internal channels of the Parties.</li> <li>- The procedures for the constitution and consultation of such committees or groups, which shall have a balanced representation of representative organisations in the areas mentioned above, shall be in accordance with domestic law.</li> </ul>
282	<i>Dialogue with civil society</i>	<ul style="list-style-type: none"> <li>- Subject to Article 280 paragraph 3, the Sub-committee on Trade and Sustainable Development shall convene once a year, unless otherwise agreed by the Parties, a session with civil society organisations and the public at large, in order to carry out a dialogue on matters related to the implementation of this Title. The Parties shall agree on the procedure for such sessions with civil society no later than one year following the entry into force of this Agreement.</li> <li>- In order to promote a balanced representation of relevant interests, the Parties shall allow all stakeholders in the areas set out in Article 281 the opportunity to participate in the sessions. The summaries of these sessions shall be publicly available.</li> </ul>

*Table D.1: Summary of the civil society provisions in the TSD chapter of the EU-Colombia/Peru PTA. (European Commission, 2012)*

## Appendix E

All civil society-related provisions included in the TSD chapter of the EU-Colombia/Peru PTA. The descriptions have been summarized.

<b>Date</b>	<b>Meeting title</b>	<b>Description</b>
<i>February 2014</i>	First TSD Sub-committee meeting	- Held in Lima, Peru
<i>June 2015</i>	Second TSD Sub-committee meeting and first CSD meeting	- Held in Bogota, Colombia
<i>December 2016</i>	Third TSD Sub-committee meeting and second CSD meeting	- Held in Brussels, Belgium
<i>November 2017</i>	Fourth TSD Sub-committee meeting and third CSD meeting	- Held in Lima, Peru
<i>December 2018</i>	Fifth TSD Sub-committee meeting and fourth CSD meeting	- Held in Quito, Ecuador
<i>October 2019</i>	Sixth TSD Sub-committee meeting and fifth CSD meeting	- Held in Bogota, Colombia
<i>2020</i>	Seventh TSD Sub-committee meeting and sixth CSD meeting	- Held online due to COVID-19
<i>2021</i>	Civil Society Dialogue meeting on the ex-post evaluation of the implementation of the TSD chapter (interim report)	- Held online due to COVID-19

*Table E.1: Overview of EU-Colombia/Peru PTA TSD Sub-committee meetings and civil society dialogues (European Commission, 2021e).*