Environment and Regional Trade Agreements

OECD

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Foreword

It is generally recognised that multilateral trade rules provide the best guarantee for securing substantive gains from trade liberalisation for all WTO members. However, WTO rules also allow the possibility of regional integration and bilateral agreements for members who wish to liberalise at a quicker pace.

Over the last few years, the number of regional trade agreements (RTAs) has increased dramatically, and hardly a month passes without new trade agreements being negotiated or notified. RTAs have become so widespread that practically all WTO members are now Parties to one or more of them.

In 2003, the OECD explored in depth the relationship between regionalism and the multilateral trading system. This study found that RTAs can provide useful models and experiences that feed into multilateral rulemaking. It also, it found that they can bolster the case for multilateral rulemaking through the very divergences they embody.

Building on that work, in 2005-6, the OECD undertook an in-depth analysis of the ways in which governments deal with environmental issues in the context of RTAs. This study describes key provisions on environment in RTAs and examines countries' experience related to their negotiation and implementation.

The study was carried out in a co-operative process in which numerous experts and practitioners provided input and shared their experience. It thus constitutes a useful reference and learning tool for countries wishing to incorporate environmental considerations into trade agreements.

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List of Acronyms and RTA Memberships

ACP: African, Caribbean, and Pacific States
(Angola, Antigua and Barbuda, Bahamas, Barbados, Belize, Benin, Bissau, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo Democratic Republic, Cook Islands, Côte d'Ivoire, Djibouti, Dominica, Dominican Republic, Equatorial Guinea, Eritrea, Ethiopia, Federated States of Micronesia, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Niue, Papua New Guinea, Republic of Nauru, Republic of Palau, Rwanda, Samoa, Sao, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Sudan, Suriname, Swaziland, Tanzania, Togo, Tomé and Principe, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia, Zimbabwe).

AFTA: ASEAN Free Trade Area
(Brunei Darussalam, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam).

ANDEAN COMMUNITY: (Bolivia, Colombia, Ecuador, Peru, and Venezuela).

ANZCERTA: Australia-New Zealand Closer Economic Relations Trade Agreement.
(Australia and New Zealand).

APEC: Asia Pacific Economic Co-operation Forum
(Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States, Vietnam).

ASEAN: Association of Southeast Asian Nations
(Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam).

CACM: Central American Common Market
(Guatemala, El Salvador, and Nicaragua).

CCAEC: Canada-Chile Agreement on Environmental Co-operation.

CARICOM: Caribbean Community
(Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Republic of Suriname, and Trinidad and Tobago).

CCAEC: Canada-Chile Agreement on Environmental Co-operation.

CCFTA: Canada-Chile Free Trade Agreement.

CCRFTA: Canada-Costa Rica Free Trade Agreement.

CEFTA: Central European Free Trade Agreement
(Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovak Republic, Slovenia).

CEMAC: Economic and Monetary Community of Central Africa
(Cameroon Central, African Republic, Chad, Congo, Equatorial Guinea, Gabon).

CIFTA: Canada-Israel Free Trade Agreement.

COMESA: Common Market for Eastern and Southern Africa
(Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Zambia, Zimbabwe).

CUSFTA: Canada-United States Free Trade Agreement.

EC: European Community.

ECOWAS: Revised Treaty of the Economic Community of West African States
(Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo).

EEA: Agreement on the European Economic Area
(Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom).

EFTA: European Free Trade Association
(Iceland, Liechtenstein, Norway, and Switzerland).

EPA: Economic Partnership Agreement.

EU: European Union
(Austria, Belgium, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom).

Euro-Med: Euro-Mediterranean Agreements
(The EU has concluded agreements with Turkey, Israel, Morocco, the Palestinian Authority, Tunisia, Algeria, Egypt, Jordan, Lebanon, and Syria).

FTA: Free Trade Agreement.

GATS: General Agreement on Trade in Services.

GATT: General Agreement on Tariffs and Trade.

JSEPA: Japan-Singapore Economic Partnership Agreement.

MEA: Multilateral Environmental Agreement.

MERCOSUR: Mercado Común del Sur/Southern Common Market
(Argentina, Brazil, Paraguay, Uruguay).

NAAEC: North American Agreement on Environmental Co-operation
(Canada, Mexico, United States).

NACEC: North American Commission for Environmental Co-operation.

NAFTA: North American Free Trade Agreement
(Canada, Mexico, United States).

NZTCEP: New Zealand and Thailand Closer Economic Partnership.

NZSCEP: New Zealand and Singapore Closer Economic Partnership.

RTA: Regional Trade Agreement.

SAARC: South Asian Association for Regional Co-operation
(Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka).

SACU: Southern African Customs Union
(South-Africa, Botswana, Lesotho, Namibia, Swaziland).

SADC: Southern African Development Community
(Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe).

SPS Agreement: WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

TBT Agreement: WTO Agreement on Technical Barriers to Trade.

TPSEP: Trans-Pacific Strategic Economic Partnership
(Brunei, Chile, New Zealand, Singapore).

US-CAFTA – DR: US-Central American Free Trade Agreement
(Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, United States).

WAEMU: West African Economic and Monetary Union
(Burkina Faso, Benin, Côte d'Ivoire, Guinea Bissau, Mali, Nigeria, Togo)

WTO: World Trade Organisation.

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Executive Summary

Multilateral trade rules provide the best guarantee for securing substantive gains from trade liberalisation for all WTO members. Nevertheless, WTO rules also allow the possibility of regional integration and bilateral agreements for members who wish to liberalise at a quicker pace. In this sense, regional trade agreements (RTAs) should be seen as a complement rather than an alternative to multilateral agreements.

RTAs have allowed groups of countries to negotiate rules and commitments that go beyond what was possible at the time multilaterally. In turn, some of these rules have paved the way for agreement in the WTO. Services, intellectual property, environment, investment, and competition policies are all issues that were raised in regional negotiations and later developed into agreements or topics of discussion in the WTO. On the other hand, there are concerns that the proliferation of RTAs could create problems of coherence and consistency in trade relations, put developing countries at a disadvantage when negotiating RTAs, and generally divert negotiating resources and energy from multilateral negotiations. In order to limit the problems and maximise the benefits of regionalism, it is important to promote transparency in RTAs and to ensure the consistency of RTAs with WTO rules.

Environment in RTAs

Over the last few years, the number of RTAs has significantly increased. RTAs have become so widespread that practically all WTO members are now Parties to one or more of them. In the near future, if RTAs reportedly planned or already under negotiation are concluded, the total number of RTAs in force might soon approach 400.

While the purpose of many RTAs is to reduce tariffs, an increasing number of agreements also deal with other trade-related issues, such as labour and environment. Today, RTAs negotiated by most OECD members include some type of environmental provision.

The scope and depth of environmental provisions in RTAs varies significantly. Among OECD members, Canada, the European Union, New Zealand, and the United States have included the most comprehensive environmental provisions

in recent RTAs. The agreements by the United States are unique in that they put trade and environmental issues on an equal footing. Among non-OECD countries, Chile's efforts to include environmental provisions in its trade agreements are particularly noteworthy.

In spite of these developments, the number of RTAs including significant environmental provisions remains small, and there is still much scepticism, especially among developing countries, toward dealing with environment in the context of trade agreements.

Key environmental provisions in RTAs

So far, the most ambitious agreements, from an environmental point of view, include a comprehensive environmental chapter, or are accompanied by an environmental side agreement, or both. At the other extreme are those agreements which deal with environmental issues only in the form of exception clauses to general trade obligations under the agreements. Between these two poles is a variety of more or less detailed approaches to environment.

Some countries consider environmental issues before entering into an agreement, by carrying out a prior assessment of its potential environmental impacts. A number of RTAs include provisions on environment in the body of the agreement, in paragraphs dealing mainly with environmental co-operation, or in detailed chapters dealing with a broad range of environmental issues. Other RTAs have an environmental side agreement. Some RTAs have both: general environmental issues are dealt with in the body of the agreement, while specific aspects – mainly environmental co-operation – are spelled out in more detail in a side agreement. A few RTAs, which did not originally include environmental provisions, have later been complemented by an environmental agreement.

Environmental elements typically found in many RTAs are environmental co-operation mechanisms. These range from broad arrangements, to co-operation in one specific area of special interest to the Parties. The areas of co-operation in different RTAs vary significantly, and depend on a range of factors, *e.g.* on whether the trade partners have comparable levels of development or not (in which case, co-operation often focuses on capacity building), or whether they have common borders.

Environmental standards also figure in a range of agreements, in various forms. The obligation for Parties' to enforce their own environmental laws is included mainly in agreements involving the United States and Canada. These agreements generally also include provisions on procedural guarantees in environmental matters, as well as different types of enforcement and dispute settlement mechanisms. A few RTAs refer more generally to the Parties' commitment to maintain high levels of environmental protection. Others,

such as those recently negotiated by New Zealand, include references to the inappropriateness of lowering environmental standards. Some agreements also strive for harmonisation, for example, the MERCOSUR Framework Agreement for Environment, where Parties undertake to co-operate on the harmonisation of environmental standards.

Most RTAs contain clauses reiterating the compatibility between Parties' trade obligations and their right to adopt or maintain environmental regulations and standards. Some also include a reference to the compatibility between the agreement and multilateral or regional environmental agreements.

Negotiating environmental provisions in RTAs

The reasons for including provisions on environment in RTAs vary. For some countries, one of the primary reasons is to contribute to the overarching goal of sustainable development. Ensuring a level playing field among parties in the agreement is another key driver. A further motivation is to enhance co-operation in environmental matters of shared interest. Finally, some countries consider that including environmental issues in trade agreements provides an opportunity to pursue environmental objectives in a more efficient and rapid way than, for example, through multilateral environmental agreements.

Trade and environment debates have traditionally seen developing country negotiators cautious about incorporating environmental considerations into multilateral trade agreements. Similar concerns apply to the integration of environmental considerations into RTAs. Among the concerns are that environmental considerations will result in trade barriers or that their implementation will constitute an excessive burden in terms of financial and human resources.

For many countries involved in the negotiation of environmental provisions in a trade agreement, the first hurdles to overcome are often internal problems, including, *inter alia*, lack of motivation or opposition from higher levels of government, lack of capacity to negotiate on environmental issues, and insufficient coordination between trade and environment ministries.

Asymmetries in power also play a major role. The size and economic weight of the country wishing to include environmental considerations in the agreement will help to influence the outcome of the discussion. Negotiators from countries with significant market power may have the leverage to resist pressures, but small and medium-sized countries may find it more difficult. On the other hand, the willingness to take a flexible and innovative approach to the negotiations can help overcome such difficulties.

One major difficulty encountered by some developing countries was the need to negotiate environmental chapters in RTAs while their own national

environmental management system was in its infancy. Other difficulties are linked to geographical distance, differences in language, the weight of environmental issues on the agendas of the different governments, the level of negotiators' expertise on environmental issues, and available resources to adequately implement commitments under the agreement. Environmental co-operation arrangements can help address some of these difficulties.

In spite of the obstacles to including environmental issues in trade agreements, and the difficulties encountered by some developing countries when negotiating them, a number of developing countries have accepted the inclusion of strong environmental commitments in trade agreements signed with developed countries. However, at present, few trade agreements between developing countries include a reference to the environment.

Some key factors facilitate the negotiation of environmental considerations in RTAs. These include a strong political will to ensure that environmental issues are adequately included in the agreement. Where this will is reflected in a strong political mandate, or even in law, negotiators have a solid backing that supports maintaining strong positions in a negotiation. It is also important that the environmental commitments in the agreement be balanced and realistic and take account of the economic and political realities in the countries which are Parties to the agreement.

Benefits of environmental provisions in RTAs

From an environmental point of view, there are a number of potential benefits from including environmental considerations in RTAs, such as promoting mutual support of trade and environment policies, strengthening enforcement of environmental laws and raising the level of environmental standards, establishing or reinforcing environmental co-operation, and enhancing public participation in environmental matters.

But there are additional benefits. For some countries, the negotiation of an RTA which included environmental commitments, was a driver for reform, or for accelerating internal environmental policy processes (*e.g.* the codification of scattered environmental legislation). Other positive outcomes have been capacity building, better co-operation among trade and environment officials, and enhanced regional cohesion in environmental matters.

Public participation in environmental matters

Until recently, trade negotiations were generally held behind closed doors, with no involvement of the public, nor even of officials from other ministries. On the other hand, in matters dealing with environment, public involvement

has been stronger, and more common. Today, governments are increasingly using public participation and consultation processes in the negotiation and implementation of RTAs.

Public consultation is, however, not a general pattern in the negotiation or implementation of RTAs. Some countries engaged in RTAs are not democratic regimes, and keep public involvement in policy-making to a minimum level. Even among those that have a stable democratic system, many are not used to effectively involving the public in policy-making. Some countries, on the other hand, have the capacity to organise consultations that involve the public, but consider that this is an obstacle to smooth negotiation, or that it may delay the conclusion of a trade deal.

The increasing involvement of the public in the negotiation and implementation of RTAs is putting pressure on those governments which do not involve the public in general decision-making processes. This pressure can come from the RTA itself, as well as from civil society, which lobbies for similar approaches to public participation as those used in negotiations in other countries, including their trade partners.

Key conclusions

Countries are increasingly integrating trade and environmental issues in RTAs. Most of these agreements are very recent, and many countries have little experience with the actual implementation of environmental provisions in trade agreements. This is an on-going learning process and countries can greatly benefit from other countries' experience. Transparency and exchanges of experience are important to ensure that progress on environmental matters in RTAs eventually supports the multilateral trading system.

Dealing with environmental issues in RTAs is not a one-off exercise. It requires preparation, coordination among trade and environmental officials, setting of priorities, and reconciling conflicting views. Then, once a text is agreed on, continuous efforts are needed to ensure effective integration of trade and environmental issues throughout the life of the agreement. For developing countries, this effort often requires financial support and capacity building, either from the developed country trade partner or from other institutions, such as development co-operation agencies.

While RTAs have contributed to better integration of trade and environment at bilateral and regional levels, this progress is not yet visible in the multilateral arena. Indeed, it is striking that a number of countries have been prepared to incorporate environmental provisions in RTAs, but are not prepared to countenance similar outcomes at the multilateral level.

With the current proliferation of RTAs, and the variety of environmental arrangements contained in them, some countries face the increasingly complex problem of managing various levels of environmental commitments and different types of environmental co-operation programmes under a range of RTAs. This problem may need further attention in the near future.

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Chapter 1

Introduction

Background

It is generally recognised that multilateral trade rules provide the best guarantee for securing substantive gains from trade liberalisation for all WTO members. However, WTO rules also allow the possibility of regional integration and bilateral agreements for members who wish to liberalise at a quicker pace. As noted in the OECD Ministerial Communiqué in 2001, "WTO-consistent preferential trade agreements can complement but cannot substitute for coherent multilateral rules and progressive multilateral liberalisation". In 2003, the OECD explored in depth the relationship between regionalism and the multilateral trading system. This study found that Regional Trade Agreements (RTAs) can provide useful models and experiences that feed into multilateral rulemaking. It also, found that they can bolster the case for multilateral rulemaking through the very divergences they embody.

RTAs have allowed groups of countries to negotiate rules and commitments that go beyond what was possible at the time multilaterally. In turn, some of these rules have paved the way for agreement in the WTO. Services, intellectual property, environmental standards, investment, and competition policies are all issues that were raised in regional negotiations and later developed into agreements or topics of discussion in the WTO. On the other hand, there are concerns that the proliferation of RTAs could create problems of coherence and consistency in trade relations; put developing countries at a disadvantage when negotiating RTAs; and generally divert negotiating resources and energy from multilateral negotiations.

In order to limit the problems and maximise the benefits of regionalism, it is important to promote transparency in RTAs and to ensure the consistency of such agreements with WTO rules. This study aims to contribute to this process by describing the ways in which countries deal with environmental issues in the context of RTAs.

Overview and scope

Over the last few years, the number of Regional Trade Agreements (RTAs) has significantly increased. RTAs have become so widespread that practically all WTO members are now parties to one or more of them. In the near future, if RTAs reportedly planned or already under negotiation are concluded, the total number of RTAs in force might soon approach 400. The number of RTAs that include environmental provisions is also increasing. However, these

provisions, and the experience related to their negotiation and implementation, have not been examined in depth yet.

This study contributes to fill this gap. It provides an overview of approaches to environmental issues in RTAs and summarises countries' experience with their application in practice. The agreements surveyed here include regional and bilateral trade arrangements, including customs unions and free trade agreements.* Where these have associated side agreements on environment, those agreements are also analysed. The study is based on analysis of RTA texts and literature examining their actual implementation, as well as first-hand comments and input received from experts, from both OECD and non-OECD countries, in the negotiation and implementation of RTAs.

The first part of the study provides an overview of the key environmental provisions in RTAs and addresses some key questions related to the negotiation of environmental aspects in RTAs. What are countries' main motivations for including provisions in RTAs? Why are some countries opposed to dealing with environmental issues in RTAs? What are the benefits of including environmental considerations in RTAs?

The second part describes, first, various approaches to environmental assessments of trade agreements, and provides an overview of experience with such assessments. It then looks at the ways environmental issues are incorporated into various types of RTAs and analyses them in detail. This includes chapters on environmental co-operation; environmental standards and enforcement of environmental laws; procedural guarantees, enforcement and dispute settlement mechanisms; and Parties' right to adopt or maintain environmental regulations. This part of the study also looks at opportunities for public participation in the negotiation and implementation of RTAs.

The study ends with a summary of key experiences with the negotiation and implementation of different types of environmental provisions in RTAs.

A number of Annexes provide some additional material. Annex A lists the weblinks to the full text of selected RTAs, Annex B reproduces the text of some environmental chapters in, and environmental side agreements to, recent RTAs, Annex C summarises the results of environmental impact assessments of selected RTAs, and Annex D provides examples of provisions on environmental co-operation in selected RTAs.

* For the purposes of this report, the Treaties establishing the European Union (EU) are not considered to be RTAs.

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Chapter 2

Environment in Regional Trade Agreements

Current approaches to integrating environmental issues in RTAs vary significantly, and range from short references to environment in the preamble, to detailed environment chapters or environmental side agreement, or both.

Among the environmental issues included in RTAs are: environmental co-operation; environmental standards and enforcement of environmental laws; procedural guarantees, enforcement and dispute settlement mechanisms; Parties' right to adopt or maintain environmental regulations, and mechanisms for public participation on environmental matters.

As there is no single objective or structure for regional trade agreements, the purpose, nature, and scope of provisions on environment in trade agreements vary significantly. The extent to which environmental issues are integrated in RTAs depends, primarily, on the desire of the Parties to the agreement to do so, but is also related to the nature and scope of the agreement.

Some RTAs seek to establish free-trade areas to foster economic co-operation by reducing tariffs among the parties; others seek to establish customs unions and a common market with consolidated external tariffs; other agreements seek to establish partnerships that lay the institutional basis to foster dialogue for better economic relations; still other agreements deal comprehensively with regional integration, addressing a broad range of economic, political, and social issues. The environmental components of all these agreements thus also come in many different forms.

This section provides, first, an overview of the main types of environmental provisions that can be found in recent RTAs. It then provides examples of countries' mandates to integrate environmental provisions in RTAs and, finally, it looks at different types of RTAs and the ways in which they deal with environmental issues.

Key environmental provisions in RTAs

Many RTAs, especially the more recent ones, explicitly mention the resolve of Parties to promote sustainable development, which implies the integration of environmental, economic, and social policies, and most of them also specifically refer to the environment. Although such statements are often included in the preamble rather than the main treaty text, they are relevant for interpreting the text of the agreement in which they appear and they set the tone for how the Parties may treat situations where environment and trade interact. Examples of agreements that contain general references to sustainable development and environmental protection include NAFTA and all subsequent agreements adopted by Canada and the United States, MERCOSUR, a majority of agreements signed by the European Union (EU), recent agreements signed by New Zealand, and some RTAs in Asian countries.[1]

Increasingly, in addition to references to environment in the preamble, RTAs also deal with environmental issues in the body of the agreement, or in an environmental side agreement or statement.

The most ambitious agreements so far, from an environmental point of view, include a comprehensive environmental chapter, or are accompanied by an environmental side agreement, or both, detailing the Parties' environmental commitments or objectives. In these agreements, environmental commitments are placed practically on an equal footing with trade commitments.

The best-known example is the North American Free Trade Agreement (NAFTA), which includes detailed, legally binding environmental provisions, and has, in addition, a side agreement on environmental co-operation. All RTAs subsequently negotiated by the United States include environmental considerations both in environmental chapters and in separate instruments, focussing mainly on environmental co-operation. Examples include the agreements concluded with Singapore, Chile, Australia, Bahrain and Morocco, as well as that with the five Central American countries and the Dominican Republic (US-CAFTA-DR). These agreements explicitly provide for an obligation by the Parties to effectively enforce their environmental laws, and include mechanisms to ensure enforcement of this commitment (*e.g.* dispute settlement and public submissions mechanisms). They also provide for environmental co-operation between the Parties, and are accompanied by an environmental co-operation agreement or memorandum of understanding that establishes the framework for such co-operation. The US-Jordan Free Trade Agreement does not include an explicit reference to environmental co-operation *per se*, but does include an obligation to effectively enforce environmental laws and is accompanied by a Joint Statement on Environmental Technical Co-operation aimed at building Jordan's capacity to protect the environment. Ongoing negotiations between the United States and certain Andean countries, countries in the Middle East, and in South East Asia are using similar approaches.

Other RTAs including detailed environmental provisions, either in the main text or in a side agreement, or both, are the agreements between Canada and Chile, and Canada and Costa Rica, as well as recent RTAs signed by New Zealand, *e.g.* the Trans-Pacific Strategic Economic Partnership Agreement (TPSEP) with Brunei, Chile and Singapore.

As was already mentioned, some RTAs which initially did not have an environmental chapter have evolved over time, and Parties have added on environmental commitments over the years, *e.g.* through a protocol to the agreement. MERCOSUR members, for example, adopted a Framework Agreement on Environment in 2001, ten years after the adoption of the main trade agreement. Parties to ASEAN have also gradually expanded co-operation on environmental matters.

At the other extreme are those agreements which deal with environment only in the form of exception clauses to general trade obligations. Most RTAs

allow Parties some ability to regulate or limit trade in certain goods (*e.g.* in food, chemicals, and livestock) for reasons related to the environment. These provisions are often modelled on Article XX of the GATT.[2]

Between these two poles RTAs feature a whole range of more or less detailed approaches to environment. Environmental elements typically found in many RTAs are environmental co-operation and consultation mechanisms. These range from broad co-operation arrangements, as can be found, *e.g.* in the Euro-Med agreements, to co-operation in one specific area of special interest to the Parties, such as a commitment to co-operate on Compressed Natural Gas technologies and policies in the Japan-Korea agreement.[3] The areas of co-operation vary significantly, and depend on a variety of factors, *e.g.* on whether the trade partners have comparable levels of development or not (in which case, co-operation often focuses on capacity-building), or on whether they have common borders. Some agreements also refer to co-operation on the implementation of MEAs to which both trade partners are Parties. The broader co-operation arrangements generally also include the establishment of appropriate institutions.

Environmental standards also figure in a range of agreements, in various forms. The obligation to enforce environmental laws, included mainly in agreements involving the United States and Canada, was already mentioned. These agreements also refer to the Parties' commitment to maintain high levels of environmental protection (*e.g.* the agreements between Canada and Costa Rica, and Canada-Chile). Some agreements, such as those recently negotiated by New Zealand, include references to the inappropriateness of lowering environmental standards. A few agreements also strive for harmonisation: under the MERCOSUR Framework Agreement on Environment, for example, Parties undertake to co-operate on the harmonisation of environmental standards. Another provision included in some RTAs is a reference to the compatibility between the agreement and multilateral or regional international environmental agreements.

Box 2.1 lists the range of key provisions dealing with environmental aspects typically found in current RTAs. As mentioned above, only the most ambitious agreements include the whole range of provisions, others focus on environmental co-operation, and a large number only refer to environmental issues in the preamble and in exceptions clauses. For further illustration, Annex B provides the text of the environmental chapters and, where relevant, side agreements, from three RTAs: the 2001 Agreement on Environmental Co-operation between Canada and Costa Rica, the 2005 US-CAFTA-DR, and the 2005 TPSEP between Brunei, Chile, Singapore, and New Zealand.

Box 2.1. **Key provisions related to environment in RTAs**

- References to environment or sustainable development in the preamble.
- Commitments to effectively enforce national environmental laws.
- Commitments related to environmental standards (not lowering, enhancing, or harmonising standards).
- Procedural guarantees and public submissions processes to ensure enforcement of domestic environmental laws.
- Binding dispute settlement mechanisms with respect to environmental obligations.
- Co-operation and capacity building mechanisms in the field of environment.
- Language to reconcile commitments under the agreement and regional or multilateral environmental agreements.
- Environmental exceptions to trade disciplines.
- Mechanisms for public participation in the implementation of the agreement.

Countries' mandates on environment and RTAs

Countries' mandates to include environmental considerations in RTAs are based on a variety of instruments, including, *inter alia,* parliamentary orders to ensure the compatibility of trade and environmental policies and government commitments to integrate trade and environment. Some countries, *e.g.* the United States, have enacted legislation that provides specifically for the inclusion of provisions in RTAs to address environmental issues. The European Union has included a reference to enhancing the relationship of trade and environment in its sustainable development strategy. These examples are described in more detail below.

While not strictly speaking a mandate, the "Best Practices for FTAs and RTAs involving APEC economies", adopted by APEC Ministers in 2004, also deserve attention in the context of this discussion (see Box 2.2). These "best practices", deal only marginally with environment. However, by recognising that trade is an integral component of APEC economies' sustainable development, and that economic development, social development, and environmental protection are mutually supportive, they set a basis for the inclusion of relevant provisions on environment in future RTAs.

Box 2.2. **Sustainable Development in APEC's Best Practices for FTAs and RTAs**

In 2004, APEC Ministers adopted Best Practices for FTAs and RTAs involving APEC economies. These include:

- consistency with APEC principles of free and open trade and investment in the Asia Pacific; and promoting structural reform through transparent and open regulatory procedures and decision-making processes;
- consistency with the disciplines of the WTO and the relevant provisions of GATT and GATS;
- go beyond WTO commitments, building upon existing WTO obligations, so that that APEC economies are in a better position to provide leadership in WTO negotiations;
- comprehensiveness in scope, to deliver maximum economic benefits, and benefits to all sectors of the economy;
- transparency by ensuring that texts of FTAs/RTAs are readily available and in English, where possible, on official websites;
- trade facilitation provisions to reduce transaction costs for exporters. Opaque regulatory and administrative requirements can particularly hurt small businesses;
- mechanisms for consultation and dispute settlement to reduce uncertainty and prevent and resolve disagreements in an expeditious manner; and co-operation commitments between the parties to develop common understandings;
- simple rules of origin to reduce compliance costs for business and recognize the increasingly globalized nature of production;
- sustainable development – recognizing that trade is an integral component of APEC economies' sustainable development, and that economic development, social development, and environmental protection are mutually supportive;
- openness to accession by third parties to contribute to the momentum for liberalization throughout the APEC region, and periodic review to ensure full implementation of the terms of agreement.

Source: APEC, www.apecsec.org; USTR www.ustr.gov.

The European Union's Sustainable Development Strategy

The EU Sustainable Development Strategy, adopted in 2001 and revised in June 2006, includes seven Key Challenges, one of which is to actively promote sustainable development worldwide to ensure that the European Union's

internal and external policies are consistent with global sustainable development and international commitments.

Among the actions to achieve that objective, the strategy provides: "The Commission and Member States will increase efforts to make globalisation work for sustainable development by stepping up efforts to see that international trade and investment are used as a tool to achieve genuine global sustainable development. In this context, the EU should be working together with its trading partners to improve environmental and social standards and should use the full potential of trade or co-operation agreements at regional or bilateral level to this end".

New Zealand's Framework for Integrating Environment Standards and Trade Agreements

In New Zealand, a Cabinet-mandated directive instructs the government to integrate trade and environment policies in all international negotiations. The 2001 "Framework for Integrating Environment Standards and Trade Agreements" guides and informs New Zealand's trade and environment negotiations, and provides overarching environment and trade policy principles to ensure that sustainable development considerations are incorporated in all its international negotiations.[4]

The aim of the Framework is to harmonise New Zealand's objectives in trade and environment policies, while recognising that environmental standards should not be misused for protectionist reasons. The Framework lays out a set of principles to guide and inform New Zealand's policy in multilateral trade and environment forums, and in bilateral negotiations. These principles include, among others, the promotion of greater coherence between multilateral environment and trade agreements and greater co-operation between the institutions which service them; the guarantee that the government's ability to regulate for the protection of New Zealand's environment is not compromised or encumbered; and the recognition that agreements to advance international environment objectives sometimes need to be reinforced by trade measures.

The United States' Trade Act of 2002

The "Trade Act of 2002" gives the President of the United States trade promotion authority (also called "fast track authority"), under which future international trade agreements are subject to an up-or-down vote, but not amendment, in Congress. In the Trade Act, the US Congress clarified the principal trade negotiating objectives.[5] In the list of overall objectives, the Congress calls upon negotiators, *inter alia*, "to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so,

while optimizing the use of the world's resources" and "to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labour laws as an encouragement for trade."

The Trade Act also sets out negotiating objectives related specifically to environmental matters. It lists, among other things, the following objectives:

- to ensure that a Party to a trade agreement with the United States does not fail to effectively enforce its environmental laws in a manner affecting trade;
- to strengthen trading partners' capacity to protect the environment through the promotion of sustainable development;
- to seek market access for US environmental technologies, goods, and services; and
- to ensure that environmental policies and practices of the Parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against US exports or serve as disguised barriers to trade.

Under the Trade Act of 1974, the US Congress established a private-sector advisory committee system, which, today, includes the Trade and Environment Policy Advisory Committee (TEPAC). This committee is intended to ensure, *inter alia*, that the full range of trade negotiation objectives, especially those relating to the environment, are adequately taken into account in trade negotiations.[6]

Types of RTAs and their environmental components

For the purposes of this report, the following distinctions have been made among different types of agreements, and their corresponding approaches to environmental co-operation: *narrow* trade agreements; *broad* trade agreements; trade agreements that are a component of broader strategies of *regional integration*; and agreements aiming to *increase collaboration and dialogue* on a number of different economic, political, social, and cultural issues. These different types of agreement are not mutually exclusive.

Narrow RTAs

Some RTAs aim primarily at reducing tariffs in certain sectors, establishing basic economic frameworks, or achieving mutual recognition of certain standards and regulations. These types of agreements are frequently, but not exclusively, concluded among industrialised countries. In the context of such agreements, environmental co-operation is seldom included. Environmental considerations are generally included in so far as they relate to ensuring that the new trade framework does not undermine governments' ability to protect the environment.

Trade and economic co-operation agreements signed between Canada and countries like Australia, Norway, and Switzerland do not refer to environmental co-operation, nor do mutual recognition agreements signed by the European Union and countries like Japan, New Zealand, and the United States. A number of trade agreements within Asia and Latin America do not include references to the environment either.

Broad RTAs

Other RTAs are more comprehensive, often including provisions on market access, domestic regulation, services, investment, and intellectual property. In addition to clauses aiming at ensuring the trade partners' ability to protect the environment, many of these agreements also contain references to environmental co-operation, either in the trade agreement itself or in a separate agreement.

In contrast to the narrow type of trade agreement, this type of trade-based economic partnership addresses environmental concerns not only through fine tuning traditional trade rules, but also through more robust approaches that seek to address specific environmental problems that trade liberalisation can create, such as potential effects on the environmental regulatory capacity of a Party, or provoking the lowering of environmental standards. In a few cases, these agreements have set up an institutional framework to facilitate co-operation on common environmental problems and to monitor the enforcement of national environmental laws.

The North American Free Trade Agreement (NAFTA), negotiated in the early 1990s, was the first trade agreement to be complemented by separate agreements dealing with labour and environment, respectively. Canada has since followed this model in its agreements with Chile and Costa Rica. The US RTAs that followed NAFTA all have environmental side agreements. The NZTCEP has an Arrangement on Environment (see Box 2.3). Similarly, the TPSEP involving Brunei, Chile, Singapore, and New Zealand is accompanied by an Environmental Co-operation Agreement.

RTAs as components of broader strategies of regional integration

Regional integration agreements, such as that establishing MERCOSUR, for example, typically include provisions on co-operation. The objectives of MERCOSUR – primarily, trade liberalisation – include the co-ordination of macro-economic and sectoral policies and the harmonisation of legislation. Environmental co-operation, detailed in the Framework Agreement on Environment, is defined quite broadly, not only addressing shared environmental problems related to trade, but also the sustainable management of natural resources, environmental planning, and environmental policy instruments.

Box 2.3. **New Zealand-Thailand Closer Economic Partnership Agreement Arrangement on Environment (Synopsis)**

Preamble

Noting the context of the growing economic and political relationship under the Closer Economic Partnership, the preamble sets out both countries' aspiration to conserve and enhance environmental quality and their commitment to sustainable development. It acknowledges the contribution sound environment policies and practices make to sustainable economic development and improved living standards. It also refers to the countries' sovereign rights and to legitimate comparative advantages.

Section 1: Shared Understandings

The two countries reaffirm their commitment to high levels of environmental protection and to ensuring that domestic environmental laws and practices are in harmony with internationally accepted levels of environmental protection. New Zealand and Thailand also undertake to:

- not seek trade or investment advantage by weakening or derogating from environment laws or standards, or to use their environment laws for protectionist purposes;
- promote public awareness of their environmental laws domestically and ensure their processes for the operation and enforcement of their environment laws are fair, equitable, and transparent.

Section 2: Co-operation

This section recognises the value of co-operation in enhancing environmental quality and achieving the Shared Understandings of the Arrangement. New Zealand and Thailand undertake to co-operate in areas of mutual interest including waste management, environmental remediation, and water resources management.

Section 3: Institutional Arrangements

A joint Environment Committee of senior officials will be set up to establish a programme of co-operative activities, oversee and review the operation of the Arrangement, and provide a forum for resolving differences. The Committee will meet within the first year of the Arrangement coming into effect. National focal points are also established to facilitate communication.

Members of the public in each country will be able to submit their views or advice to their governments on matters arising under the Arrangement. The Environment Committee will also be able to consult, seek the advice of, or invite the attendance of experts or non-government sectors at their meetings.

Box 2.3. **New Zealand-Thailand Closer Economic Partnership Agreement Arrangement on Environment (Synopsis)** *(cont.)*

Should any differences arise between New Zealand and Thailand over the Arrangement, the Environment Committee will attempt to resolve them through consultation. Any differences unable to be resolved in this way may be referred to the Ministers responsible for the Arrangement in each country.

Section 4: Final Paragraphs

The Arrangement will come into effect upon signature. It represents a political commitment between New Zealand and Thailand but does not legally bind either country.

Source: Ministry of Foreign Affairs and Trade, New Zealand, *www.mfat.govt.nz/tradeagreements/thainzcep/environment.html*.

The Common Market for Eastern and Southern Africa (COMESA) was established as an "organisation of free independent sovereign states which have agreed to co-operate in developing their natural and human resources for the good of all their people." As such it has a wide-ranging series of objectives, which necessarily include in its priorities the promotion of peace and security in the region. Its main focus is "the formation of a large economic and trading unit that is capable of overcoming some of the barriers that are faced by individual states". Other smaller regional integration agreements, such as the West African Economic and Monetary Union (WAEMU), also aim to co-ordinate sectoral policies, including policies related to the environment, though with less clear (or extensive) provisions or institutions.

RTAs aimed at increased collaboration and dialogue

Agreements aiming at increased collaboration and dialogue often include provisions related to environmental co-operation. Here, the issue of environment is not strictly related to trade, but is part of a broad-based, more co-operative approach covering a whole range of areas. The associations, co-operations, partnerships, and other types of agreements negotiated by the European Union with developing countries and countries in transition offer a range of examples.

Within the Euro-Mediterranean Partnership, a wide framework of political, economic, and social relations between the Member States of the European Union and countries of the Southern Mediterranean region establish co-operation, aimed at preventing deterioration of the environment, controlling pollution, and ensuring the rational use of natural resources. In a similar way, the

Partnership Agreement between the Members of the African, Caribbean, and Pacific group of States and the European Community (Cotonou Agreement, see Box 2.4)[7] states that environmental co-operation should endeavour to mainstream environmental sustainability into all aspects of development co-operation, strengthen the scientific and technical human and institutional capacity for environmental management, and support specific measures and schemes aimed at addressing critical sustainable management.

The Association of Southeast Asian Nations (ASEAN), in parallel to a free-trade agreement, also has a number of agreements and other co-operative arrangements addressing environmental issues. These include the ASEAN Strategic Plan of Action on the Environment.

Box 2.4. **Trade and environment in the Cotonou Agreement**

The Cotonou Agreement includes a section on Trade and Environment, under which:

"The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, in accordance with the international conventions and undertakings in this area and with due regard to their respective level of development. They agree that the special needs and requirements of ACP States should be taken into account in the design and implementation of environment measures.

Bearing in mind the Rio Principles and with a view to reinforcing the mutual supportiveness of Trade and environment, the Parties agree to enhance their co-operation in this field. Co-operation shall in particular aim at the establishment of coherent national, regional, and international policies, reinforcement of quality controls of goods and services related to the environment, the improvement of environment-friendly production methods in relevant sectors."

Source: European Union, http://ec.europa.eu/comm/development/body/cotonou.

Managing differing levels of environmental commitments: an emerging problem?

This section has described the main approaches to RTAs: differing mandates in individual countries, different types of RTAs, different scope and depth of environmental provisions. For countries engaged in several RTAs, this can result in a web of different levels of environmental commitments. One example is Chile, which has entered into RTAs with a range of countries, including OECD members (Canada, Korea, Mexico, the United States, New Zealand), the EU and developing countries (China, Colombia, and Panama), all

of which include at least some reference to the environment. Table 2.1 below provides a rough overview of different environmental commitments under these agreements.[8]

Most of these agreements are quite recent, and Chile does not have a long experience in implementing them yet. It has recently entered into an agreement with the Inter-American Development Bank to build capacity for the implementation of the RTAs to which it is Party. The programme includes a revision of all legal obligations under the different agreements, as well as an assessment of opportunities and challenges (*e.g.* for small enterprises) arising from the agreements. It also includes preparation of experts in the event of a potential trade dispute.

Other countries are in a similar situation. Mexico for example is currently partner to a dozen RTAs, with both developed and developing countries, and is negotiating more, especially in Latin American countries. Some of these agreements include detailed environmental commitments (*e.g.* NAFTA), others simply provisions on environmental co-operation (Mexico-Japan). As countries expand their regional and bilateral trade deals, and RTAs proliferate, some countries are faced with the increasingly complex problem of managing various levels of environmental commitments, and different types of environmental co-operation programmes under a range of RTAs to which they are Parties. This problem, which is likely to affect an increasing number of countries, may deserve closer attention in the near future.

Table 2.1. **Chile's environmental commitments under recent RTAs**

	Mexico-Chile (1999)	Canada-Chile (2001)	EU-Chile (2003)	EFTA-Chile (2003)	Korea-Chile (2003)	US-Chile (2003)	TPSEP (Brunei, Chile, New Zealand, Singapore) (2005)	Colombia-Chile (2006)
Environment or sustainable development in preamble	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Environment in RTA or in environmental side agreement	RTA	Environmental side agreement	RTA	RTA	RTA	Detailed environment chapter in the RTA and environmental side agreement	Environmental side agreement	RTA
Obligation to enforce environmental laws	No	Yes	No	No	No	Yes	No	No
Environmental standards	No[1]	No[2]	No	No	No[3]	Yes[4]	Yes[5]	Yes
Environmental co-operation	Yes[6]	Yes	Yes[7]	No	Yes	Yes	Yes	Yes
Consultations and exchange of information on environmental matters	No	Yes	No	No	No	Yes	Yes	Yes
Relationship with MEAs	Yes	Yes	No	No	No	Yes	No	No
Exceptions related to the environment	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Formal dispute settlement mechanism for env. matters	No	Yes	No	No	No	Yes	No[8]	No[9]
Public participation in env. matters	No	Yes	No[10]	No	No	Yes[11]	Yes[12]	Yes

Table 2.1. **Chile's environmental commitments under recent RTAs** *(cont.)*

	Mexico-Chile (1999)	Canada-Chile (2001)	EU-Chile (2003)	EFTA-Chile (2003)	Korea-Chile (2003)	US-Chile (2003)	TPSEP (Brunei, Chile, New Zealand, Singapore) (2005)	Colombia-Chile (2006)
Citizens' submissions mechanism	No	Yes	No	No	No	No	No	No
Other	A Party can ask a technical committee to conduct scientific reviews of environmentally-related measures. Environmental protection is a "legitimate objective" within the chapter on standardisation and technical barriers to trade.	A Party can ask a technical committee to conduct scientific reviews of environmentally-related measures.			Environmental protection is a "legitimate objective" within the Chapter on standardization and technical barriers to trade.	A Party can ask a technical committee to conduct scientific reviews of environmentally-related measures. Parties shall establish a roster of environmental experts to sit in panels for disputes in environmental matters Parties shall ensure citizen's access to judicial proceedings for the enforcement of Parties' environmental laws.	Parties agree it is inappropriate to set or use environmental laws for protectionist purposes	

1. There is no direct reference to environmental standards and *trade*, but there is one to Parties not lowering environmental standards in order to attract investment.
2. Same as previous footnote.
3. Same as previous footnote.
4. Parties should not lower environmental standards in order to promote investment and trade.
5. Parties agree it is inappropriate to relax, or fail to enforce environmental laws to encourage trade and investment.
6. In section on co-operation in standardisation matters.
7. Environment is also mentioned in the chapter on regional co-operation.
8. A consultation process is used by which Parties can resolve any difficulties, rather than a formal dispute settlement mechanism.
9. Same as previous footnote.
10. There is a provision on civil society involvement and consultation in matters related to the Agreement, but it does not make specific reference to environmental matters.
11. Parties are legally committed to allow for public participation in matters related to the implementation of the agreement
12. Parties may invite participation on non-government sectors in identifying areas of co-operation and undertaking co-operative activities.

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Notes

1. See, for example, the preambles of the bilateral agreements between the EC and Chile, Japan and Mexico, between Korea and Chile, MERCOSUR, Central American Common Market (CACM) – Chile, Panama – Taiwan; Mexico – Chile; Canada – Chile; Canada – Costa Rica; and agreements between the US and Chile, Australia, Morocco, Bahrain, and Singapore. The Euro – Med Agreements also refer to the environment, but do not refer to sustainable development.
2. Chapter 8 of this study deals in more detail with exception clauses.
3. Chapter 5 of this study deals with co-operation mechanisms.
4. *Framework for Integrating Environment Standards and Trade Agreements (2001),* Ministry of Foreign Affairs and Trade, *www.mfat.govt.nz/foreign/tnd/newissues/environment/envframework.html*.
5. Section 2102 of the US Bipartisan Trade Promotion Authority Act of 2002, 19 USC 3801, relating to "Trade Negotiating Objectives".
6. The TEPAC is described in more detail in chapter 9 of this study, which deals with public participation.
7. In 2000, the EU and the African, Caribbean, and Pacific Group of States, otherwise known as the ACP group, adopted the Cotonou Agreement, a framework trade, aid, and political co-operation treaty. It provides for a general set of privileged relations between the EU and the ACP countries in matters of market access, technical assistance, and other issues. The objective is to facilitate the economic and political integration of the ACP countries into a liberalised world market over the next 20 years. Under the Cotonou Agreement, the parties agreed to negotiate a separate set of individual bilateral treaties between the EU and the participating ACP countries. Those individual arrangements will provide specific rights and obligations tailored to each ACP region (West Africa, Eastern and Southern Africa, etc. are called "Economic Partnership Agreements" or EPAs). The EPA negotiations started in 2002, and by October 2008, all negotiations should be completed, and the EPAs in force.
8. The agreements between Chile and China, Colombia and Panama were all signed in 2006. As of January 2007, an environmental side agreement with China was still under negotiation. The RTA with Colombia contains a detailed chapter on environment. The RTA with Panama has an environmental side agreement, the contents of which are similar to those of the environmental side agreement to the TPSEP.

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Chapter 3

Negotiating Environmental Commitments in Regional Trade Agreements: Some Key Questions

One of the primary reasons for governments to deal with environmental issues in RTAs is to contribute to the overarching goal of sustainable development. Another driver is to ensure a level playing field among Parties to the agreement. One further motivation is to enhance co-operation in environmental matters of shared interest.

For many countries, the first hurdles to overcome are often internal problems, including, inter alia, lack of motivation or opposition from higher levels of governments, lack of capacity to negotiate on environmental issues, and insufficient coordination between trade and environment ministries. Asymmetries in power between negotiating Parties also play a major role.

Some key factors facilitate the negotiation of environmental considerations in RTAs. These include a strong political will to ensure that environmental issues are adequately included in the agreement. It is also important that the environmental commitments in the agreement be balanced and realistic and take account of the economic and political realities in the countries which are Parties to the agreement.

While the purpose of many RTAs is to reduce tariffs, an increasing number of agreements also deal with other, trade-related issues, such as labour and environment. The trend to include environmental considerations in trade agreements is relatively recent. The North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States, signed in 1992, was the precursor. It includes detailed environmental provisions, both in the body of the agreement, and in an environmental side agreement, the North American Agreement on Environmental Co-operation (NAAEC). Before then, environmental considerations in trade agreements were either totally non-existent or limited to exceptions clauses, generally modelled after Article XX of the GATT.

Today, RTAs negotiated by most OECD members include some type of environmental provision. Most include references to environment or sustainable development in the preamble. Some include provisions on environment in the body of the agreement, through paragraphs dealing mainly with environmental co-operation; (*e.g.* agreements by the EU and Japan), in detailed chapters dealing with a broad range of environmental issues (*e.g.* RTAs by Canada since NAFTA), in environmental side agreements (*e.g.* those recently negotiated by New Zealand), or in a combination of the previous approaches (*e.g.* most recent RTAs signed by the United States).

In spite of these developments, the number of RTAs including environmental provisions remains small and there is still much reticence among countries, especially developing countries, to deal with environmental issues in the context of trade agreements.

This chapter provides an overview of the key questions that may come up when considering the inclusion – or not – of environmental provisions in the negotiation of RTAs. Most of the questions will be discussed in more detail in the remainder of the study.

Why do some countries include environmental commitments in RTAs?

Promoting sustainable development

Many countries are committed to pursuing sustainable development and attaining high levels of environmental protection. For reasons of policy coherence, they aim to achieve these goals in all policies, including trade

policies. Linking environmental (and other) issues to trade negotiations contributes to putting trade in a broader perspective and to better integrating it in sustainable development approaches. For example, the EU Sustainable Development Strategy, adopted in 2001 and revised in June 2006, includes seven "Key Challenges", one of which is to actively promote sustainable development worldwide to ensure that the European Union's internal and external policies are consistent with global sustainable development and international commitments. Similarly, in New Zealand, the Government Framework for Integrating Environment Issues into FTAs states: "The government's aim is to harmonise its objectives for trade and for the environment, with both servicing the overarching objective of promoting sustainable development."

Levelling the playing field and improving environmental co-operation

Another motivation to deal with environment in trade agreements converges around two key considerations that supplement each other: to ensure fair competition and to provide environmental co-operation.

For some countries, one of the primary reasons for including environmental provisions in an RTA – especially those committing Parties to effectively implement their own environmental legislation, is to ensure that there is a level playing field among Parties to the agreement. The basic premise here is that weak environmental rules and ineffective enforcement in one country can create competitive advantages over its trade partners.

Co-operation in environmental matters can have various purposes. It can contribute to addressing common environmental problems, such as those relating to shared natural resources in the case of neighbouring countries. In agreements involving developing and developed countries, co-operation provisions are often aimed at capacity-building on a range of issues, including better understanding of trade and environment linkages. Co-operation can also contribute to levelling the playing field between Parties, by enhancing the capacity of trade partners to deal with environmental issues and improving its overall environmental performance.

Many developing countries, however, see environmental issues in a trade agreement as a means to impose developed country environmental standards on them. For them, the argument of "levelling the playing field" is a form of protectionism. They consider that there cannot be a levelling playing field between countries with very divergent economic powers, and that "imposing" one country's approach to environment on the other ignores the huge social and economic differences that often exist between trading partners. They are therefore generally sceptical about the inclusion of any kind of environmental provisions in trade agreements. According to an expert from a developing

country, environmental commitments in trade agreements are "for developed countries, not for us".

Pursuing an international environmental agenda

Some countries consider that including environmental issues in trade agreements provides an opportunity to pursue environmental objectives in a more efficient and rapid way than, for example, through Multilateral Environmental Agreements (MEAs). The context of a trade negotiation and the perspectives of obtaining a trade deal often provide an opportunity to obtain concessions in other, related fields, that would otherwise be difficult to obtain.

Indeed, trade agreements often create a unique relationship between countries, and the negotiations can provide momentum to discuss and improve other aspects of their relationship than just trade. One area is the implementation of commitments under MEAs. Parties to MERCOSUR, for example, have agreed to co-operate in the implementation of environmental agreements to which they are Parties. In the section on co-operation, the agreement between Japan and Mexico refers to "promotion of capacity and institutional building to foster activities related to the Clean Development Mechanism under the Kyoto Protocol ... and exploration of appropriate ways to encourage the implementation of Clean Development Mechanism projects".

While for some countries linking trade agreements and environmental objectives may constitute an advantage, others see this as a way of obtaining, through a trade agreement, something that should be better achieved through an international environmental negotiation.

Why do some countries resist including environmental considerations in RTAs?

Trade and environment debates have traditionally seen developing country negotiators cautious about incorporating trade and environment at the multilateral level. Moreover, many are wary of incorporating trade and environment in RTAs for fear of prejudicing their multilateral positions. Others fear that strong enforcement mechanisms will be used to create new barriers to their exports to developed RTA partner markets. They may also consider that the environmental agenda which the (developed country) partner wishes to pursue through the RTA is not *their* agenda, and they do not wish to make commitments in areas that are not on their own list of priorities.

Some countries also consider that environmental commitments will require substantive additional efforts and resources. This could include, for example, funds to set up specific institutions to oversee the implementation of environmental commitments, human (and financial) resources to strengthen the effectiveness of environmental enforcement, experts to train officials in

ministries, etc. In response to this fear, some RTAs between developed and developing countries provide for financial assistance and capacity-building programmes. Morocco for example, which has entered into an RTA with the United States and a Partnership Agreement with the EU, benefits from assistance for environmental capacity-building under both schemes.

There are also countries that do not consider the inclusion of environmental considerations in trade agreements to be a priority. This does not necessarily mean that they do not consider environmental protection and international environmental co-operation to be a political priority; they may simply not consider that trade agreements are a good place to deal with these issues. An example, among OECD countries is Australia: while sustainable development and environmental protection is high on its agenda, it takes the view that environmental co-operation should generally be dealt with independently of trade negotiations. Indeed, one of the objectives of Australia's "National Strategy for Ecologically Sustainable Development" (NSESD) is "to seek a high degree of integration of trade and environment policies",[1] and it commits the government, *inter alia*, to "continue to pursue global trade liberalisation in recognition of the contribution that this can make to the achievement of ecological and sustainable development". However, this has not translated into an obligation to ensure, for example, that trade partners maintain high environmental standards. As a consequence, RTAs entered into by Australia, although comprehensive, generally do not include explicit environmental co-operation provisions.[2]

A number of countries are not opposed, *per se*, to the inclusion of environmental considerations in a trade agreement, but see it as an obstacle to the rapid conclusion of an agreement. This "get a trade deal now and think about the environmental later" approach may be particularly extended in a period where multilateral negotiations yield little results, and regional and bilateral approaches to trade are intensifying. Some countries, *e.g.* Japan, have set themselves ambitious targets of signing a certain number of RTAs within a given period of time. In these circumstances, if there is not a strong governmental mandate to include environmental issues in the negotiations, those who argue that negotiating environmental provisions in the agreement may delay the process will easily find support.

Countries' positions towards including environmental issues in RTAs depend of course also on the type and scope of the provisions. Including legally binding, far-reaching commitments, requiring a country to strengthen internal enforcement mechanisms, or setting up specific institutions will logically need much more effort than, for example, agreeing on broad areas of environmental co-operation.

What are the main difficulties in the negotiation of environmental considerations in RTAs?

For many countries involved in the negotiation of environmental provisions in a trade agreement, the first hurdles to overcome are often internal problems, including, *inter alia,* lack of motivation or even clear opposition among higher levels of governments to include environmental provisions in a trade agreement, lack of capacity among negotiators to understand and discuss environmental issues, and insufficient coordination among trade and environment actors. When one country does not accept the idea of including environmental issues in an RTA, it is very difficult for the other party to "push" its environment agenda on the negotiating table, especially if it is a small country with limited economic weight.

Asymmetries of power play a major role in negotiations, and the size and economic weight of the country wishing to include environmental considerations in the RTA, or, on the contrary, opposing it, will be key to the success of this objective. Negotiators from countries with significant market power may have the leverage to overcome these concerns, but small and middle-power countries might have more difficulty.

Many countries still see environmental considerations as an obstacle to trade, and will therefore oppose, from the outset, to linking both areas in an agreement. This is often coupled with lack of capacity to discuss and negotiate environmental issues in the context of trade. Trade officials are often unfamiliar with environmental issues, and environmental officials with trade issues. This may create a sense of insecurity that does not favour engaging in new negotiating grounds.

In many countries there is hardly any coordination or communication between trade and environment officials, and trade negotiations are handled exclusively by trade experts. Getting these countries to include environmental experts in the negotiating teams, or to coordinate negotiating positions with both trade and environment officials are therefore often a major endeavour. Indeed, in some cases, trade and environment officials of one country have sat together at the same table, for the first time, during negotiations of an RTA. And even where both are involved in the negotiation, this does not warrant that environmental officials will actually have an opportunity to fully participate and intervene in the negotiations.

One major difficulty encountered by some countries was the need to negotiate environmental chapters in RTAs while their own national environmental legislation and implementation system was still in its infancy. This was for example the case for Mexico, which was still building up an internal environmental legislation at the time it was getting involved in NAFTA negotiations. This fact, coupled with lack of experience of negotiating

both trade and environmental issues simultaneously, and historic lack of co-operation between trade and environment officials made the negotiation of a trade agreement involving substantive environmental commitments a challenging undertaking. At the same time, it provided a suitable training ground for both trade and environment officials. More recently San Salvador encountered similar problems while negotiating the US-CAFTA-DR agreement.

Geographical distance can make the negotiation of environmental issues in an RTA less immediate and relevant to the Parties involved. Sharing a border and common environmental problems, or having similar geographical conditions, on the other hand, can create greater urgency and need to deal with such issues. Other difficulties mentioned by experts are linked to differences in language, mentality, the weight of environmental issues in the different governments involved, levels of negotiators' expertise on environmental issues, and available resources to properly implement commitments under the agreement. For Morocco for example, entering into an agreement with the United States which entailed the obligation to effectively enforce its environmental laws, was a major challenge, since tribunals and enforcement agencies were already totally overburdened. For the United States, this challenge was, clearly, much smaller.

How have countries' positions evolved?

In spite of the above arguments by some countries against including environmental issues in trade agreements, and the actual difficulties encountered when negotiating them, an increasing number of countries have accepted the inclusion of strong environmental commitments in trade agreements. In some cases, this was a condition *sine qua non* in order to obtain a trade deal. For example, under the Trade Act of 2002, the United States has a mandate by Congress to provide for detailed environmental chapters in all trade agreements, including certain binding obligations. Countries wishing to enter into a trade deal with the United States will therefore have to accept this requirement. In turn, these agreements all have an environmental side agreement dealing, *inter alia,* with environmental co-operation, and generally, the United States provides funding for the implementation of co-operation programmes. In other agreements, the environmental provisions focus on areas of environmental co-operation of mutual interest, such as the recent agreement between Japan and Malaysia. The TPSEP between New Zealand, Brunei, Chile, and Singapore has an environmental side agreement which covers a broad range of environmental issues, including both references to environmental standards and to environmental co-operation.

So far, only few trade agreements between developing countries or emerging economies include references to the environment. There are however

notable exceptions. Chile for example, has included environmental considerations in practically all of its trade agreements, both with developed and developing countries. The agreement that Chile signed with Canada in 1997 followed the NAFTA model, because there were expectations that Chile would join the latter. At that time, Chile did not have much more choice than to accept the inclusion of an environmental chapter. The agreement with the United States signed in 2003 also contains a strong chapter on environment, as do all agreements entered into by the United States under the Trade Act of 2002. Subsequent agreements by Chile, such as the most recent one with China, also include a reference to environmental issues. Indeed, according to experts in Chile, there is now an expectation in the country, including by civil society, that trade agreements also contain appropriate environmental provisions, either in the agreement itself or in a side agreement.

Some trade deals between developing countries, which initially did not contain any significant environmental provision, have over time added on protocols dealing with the environment. MERCOSUR, signed in 1991, with its Framework Agreement on Environment adopted in 2001, is one of the best-known examples.

In spite of this trend, it would be wrong to assume that including environmental considerations in trade agreements has become generally accepted or can even be taken for granted. On the contrary, negotiators have pointed out that it remains a challenge, first to convince their partners to accept the principle of including environmental issues at all in an RTA, and then, to negotiate the details. It is also quite significant that, while some progress is being made in discussions on the trade-environmental relationship at regional level, this has hardly penetrated at multilateral level, where many developing countries remain firmly in their long-standing position of not recognising this relationship. Indeed, it is striking that a number of countries have been prepared to incorporate environmental provisions in RTAs, but are not prepared to countenance similar outcomes at the multilateral level. For example, some developing countries, which have included provisions in RTAs aimed at facilitating trade in environmental goods and services, take much harder positions when discussing the issue at multilateral level.

Which factors facilitate the negotiation of environmental considerations in RTAs?

Where all the negotiating Parties have, from the outset, a similar view on the benefits of including environmental provisions in the agreement, and on the scope and these provisions, the negotiations have a good chance of success. However, this scenario is still the exception, and the typical pattern, especially in negotiations between developing and developed countries, is

that of one country wishing to include environmental issues in the agreement, and the other not. In these cases, the size and economic weight of the country wishing to include environmental provisions in the RTA can be a significant factor, but willingness to be flexible and creative in approaches is also a key consideration, as the example of New Zealand shows.

To successfully include environmental provisions in trade agreements, a strong political will to do so is of great help, if not essential. Where this will is reflected in a strong political mandate, or even in law (*e.g.* the US Trade Act of 2002), negotiators have a solid backing to maintain strong positions in a negotiation. Where such a mandate is lacking, or not clearly formulated from the outset, it is likely to be much more difficult to convince trade partners of the need to include strong environmental provisions in the agreement.

It is also important that the environmental commitments in the agreement be balanced and realistic in order to take account of the economic and political reality in the country. For example, to persuade a country to enter into a legal obligation to effectively enforce its environmental laws, it is necessary to also provide for co-operation and assistance to help it build up and maintain the necessary institutions. Similarly, for developing countries to accept a provision by which they will strive to enhance their environmental performance, or to ensure public participation in dealing with environmental issues in connection with the trade agreement, some mechanism will be necessary to help develop the necessary capacity.

Some countries seek a balance by using what commentators call a "carrot-stick" approach. Others prefer to apply an overall softer ("carrot-carrot") approach, based on confidence-building aimed at raising awareness and persuading the trade partner of the importance of dealing with environmental issues. This is for example the approach favoured by the EU, which includes environmental issues in trade agreements mainly through provisions focusing on co-operation and capacity building.

Some experts have highlighted the importance of a "positive environmental agenda", which would help limit the potential conflicts between trade and environmental requirements, and the perception that environmental requirements constitute barriers to trade. This could include mechanisms to enhance market access while improving environmental performance.

Agreeing on the level and depth of the environmental "content" in an RTA is often very difficult. Even with a strong mandate to pursue environmental issues, countries are often confronted with the dilemma of how much they are ready to concede in order to get their environmental agenda into the agreement. Here again, the economic and political weight of the partners and possible asymmetries between them play a decisive role.

What are the (ancillary) benefits of environmental commitments in RTAs?

From an environmental point of view, the inclusion of provisions aimed at the mutual supportiveness of trade and environment, promoting enforcement of environmental laws and raising the level of environmental standards, setting up environmental co-operation, enhancing public participation in environmental matters, etc. can be seen as a positive outcome of a negotiation. There are however additional benefits.

One of them is improving coordination among trade and environment officials. Many negotiators – including some which were initially opposed or at least reticent to including environmental issues in a trade agreement – have eventually found the experience of such negotiations to be very positive, *e.g.* in terms of building capacity among trade and environment officials. Meetings involving environmental officials were less tense than those involving only trade officials; exchanges and co-operation between different ministries were enhanced, and continued after the negotiations.

For some countries, the negotiation of an RTA that included environmental commitments was a driver for reform, or the acceleration of internal processes. In Morocco, for example, the negotiation of the RTA with the United States accelerated the adoption of several environmental Acts that had been pending for years. For Chile, the negotiations with Canada and the United States provided momentum for a thorough overhaul and codification of its environmental legislation, which up to then was scattered in numerous Acts and regulations. Without the "external" impulse given by the negotiation of this kind of provision, these changes may not have occurred, or would have occurred at a later stage.

Another positive outcome has been enhanced regional cohesion in environmental matters. For Central American countries involved in the negotiations of the US-CAFTA-DR, the experience of working on common "regional" positions, in preparation of the negotiations with the United States, enhanced regional cohesion and facilitated (for the first time) discussions on environmental and trade issues among experts of these countries. This contributed greatly to developing capacity and understanding of trade and environment links for officials involved in the discussions. A comparable experience in terms of regional cohesion is that of MERCOSUR members, which have set up a working group on environmental goods and services to discuss and coordinate national positions in advance of discussions at the CTE in Geneva.

While there is a legitimate expectation that environmental provisions will, in the shorter or longer term, lead to environmental benefits or improvements, one may also ask whether those environmental provisions might

have impacts – either positive or negative – on the economic performance of parties, and specifically on trade and sustainable economic development.

There is little empirical evidence on this question. One analysis – the only one found here that directly addressed these issues – argues that the environmental provisions in NAFTA have not negatively affected Mexico's economic performance, and that related institutions such as the North American Development Bank and the Border Environment Co-operation Commission have actually *helped* Mexico by investing in infrastructure that was both economically necessary and environmentally sensible (Miller, E., 2002). But this hardly constitutes enough evidence on which to base general conclusions. In the absence of more empirical work, it is necessary to draw on theoretical analysis.

Environmental co-operation provisions in RTAs may have positive economic impacts. Co-operation on environmental issues of regional concern, for example, might avert environmental damage that has tangible economic impacts. The ASEAN forest fires and haze in 1997-1998 were estimated to have cost the region some USD 9.3 billion in social, economic, and environmental impacts (Quadri, S.T, 2001). Direct economic impacts included loss of tourism revenue, disrupted transportation services, loss of timber resource, costs of fire suppression efforts, increased health care costs and so on. In a similar way, if the wildlife management objectives of the Common Market for Eastern and Southern Africa (COMESA) are achieved, this will have clear benefits in terms of tourism-related revenues and income derived from the raising of livestock. Capacity-building efforts can have positive effects, if they result in increased capacity for regional environmental co-operation on issues of shared interest. Co-operation that involves technology-sharing might also have economic benefits: increased efficiency and innovative processes are the bedrock of economic progress.

The nature of the economic impacts from stronger environmental standards is still an open debate, and the literature is full of studies on this question at the national and international levels.[3] Some consider strong environmental regulation to be a driver for innovation and economic growth (the so-called "Porter hypothesis"). On the other hand, others fear that standard-related environmental provisions impose an excessive economic burden on the promulgating country. A recent survey found studies that indicated slight negative impacts from environmental standards on national income and balance of payments, and with ambiguous employment effects. But the overall conclusion was that: "… there is no convincing evidence from empirical studies to support the hypothesis about the negative impact of environmental policy on international trade. Therefore, environmental policies, which are usually designed to serve social objectives, at least, should not seriously cause adverse trade effects and might even improve them" (Haixiao and Labys, 2001).

Clearly, more time and empirical evidence is needed to analyse the economic impacts of trade-related environmental provisions in RTAs. These impacts will depend on a multitude of factors, *e.g.* the characteristics of the countries involved and the nature and level of ambition of the provisions in question, and it may be difficult to draw general conclusions.

Basic institutional choices related to environment in RTAs

In designing an environmental component to be embodied in, or to accompany, an RTA, there are a number of basic choices that countries need to make before, or in the course of the negotiation, which will dictate the nature of the resulting regime. Indeed, negotiation and implementation of an agreement form part of a single process and cannot really be dissociated. Some examples of key decisions – and possible alternatives – are presented in Table 3.1. All of them are discussed in more detail in the following chapters.

Table 3.1. **Environment in RTAs: some basic institutional choices**

Carry out no environmental assessment	⇔	Carry out an environmental (or sustainable development) assessment
No public participation in the negotiation and implementation of the agreement	⇔	Public participation in the negotiation and implementation of the agreement
Deal with environmental issues during the negotiation of the RTA	⇔	Deal with environmental issues separately
Deal with environment in the body of the agreement	⇔	Deal with environment in a side agreement
Use non-legally binding language for environmental commitments	⇔	Include legally binding environmental commitments (*e.g.* the commitment to effectively enforce environmental laws)
Assign responsibilities to existing institutions	⇔	Create new institutions
Make budget allocations subject to available funding	⇔	Allocate specific budgets

These basic choices will be dictated in any individual case by the motivations of the agreement; by the levels of development of the respective parties, by the capacities of existing domestic institutions; by the level of political will; and by other considerations. But, based on the analysis of current practice, some general guidance can still be offered.

Environmental assessments serve two purposes: alerting negotiators to the potential positive or negative environmental effects of liberalisation; and involving the public in the making of better policy. If the partners share ecosystems (*e.g.* water resources), and if the agreement is between partners with significant economic relations, then the urgency of a thorough review is heightened. Approaching any assessment exercise as a learning experience is also important; the institution of assessment should be encouraged to develop over time. Involvement of the public is important, both in the assessment

process and when implementing the environmental agenda, in part, because it makes for better policy, and in part because it confers greater legitimacy and accountability to the final results.

Public participation in the negotiation and implementation of the agreement. Whether to involve the public in the negotiation of a trade agreement will depend a lot on the countries' general approach to public participation. In some countries, public involvement in policy-making is solidly institutionalised, and both the government and civil society are used to consultation procedures. In other countries, development of environmental policies is handled in a more transparent manner than the negotiation of trade agreements. And still in others, public participation in policy-making is almost, or totally, non-existent. The negotiation of a trade agreement can be the occasion for many countries to be exposed to different ways of negotiating treaties or developing policies. It may also create pressure on certain governments to depart from traditional, non (or hardly) transparent and participatory procedures, and engage in more substantive public participation and consultation.

Negotiate trade and environment issues together or separately. Some countries may have the desire to negotiate trade agreements as rapidly as possible, and deal with other issues later, in a separate process. This approach, however, has some shortcomings. First, the momentum created by trade negotiations will largely be lost, and for a country wishing to obtain an "environmental component" it may be much more difficult to strike such a deal once the trade part is negotiated. Secondly, the advantages of having trade and environment experts around the same negotiating table will be lost as well. The trade agreement will most probably be negotiated by trade experts alone, and the environmental agreement by environment experts. Since, most likely, the environment deal will need to be approved by a body composed by trade experts, it may be difficult to reach a high level of ambition. This is, for example, what happened in the case of the MERCOSUR Framework Agreement on Environment: the initial draft worked out by environment ministries had to be considerably scaled down in order to be eventually approved.

Environment in the body of the agreement or in a side agreement. Another basic choice is whether to pursue the environmental agenda from within the body of the RTA itself, or by using a side agreement (or some mixture of both). Some consider that including environmental provisions within the body of the agreement will mean a heightened profile for environmental issues and for the ministries involved. This can be a benefit in countries where environment is low in the governmental hierarchy. If, however, this means that trade and commerce officials are in full control of the agenda, it might mean later constraints on the capacity for ambitious environmental results. Others maintain exactly the opposite view: they consider that dealing

with environmental issues separately would put too much focus on them, whereas, including them in the body of the trade agreement would allow keeping things more balanced. If the key aim of the environmental provisions is trade-related (and thus, harmonisation and enforcement are high priorities) it probably makes most sense to include the related environmental elements in the body of the RTA. On the other hand, if the aim is essentially capacity building and environmental co-operation, without necessarily linking it to trade aspects, it may make sense to deal with it in a side agreement.

Legally binding environmental commitments or hortatory language. One of the key choices when negotiating international commitments is whether to use legally binding language ("Parties shall…"), or hortatory language, where the weight is political rather than legal ("Parties endeavour to…" or "Parties should…"). Examples of the former are NAFTA, and all subsequent RTAs negotiated by the United States under which Parties commit, *e.g.* not to lower the country's environmental standards and to effectively implement environmental laws. In most RTAs, however, environmental provisions refer to Parties' common objectives, *e.g.* to co-operate in, or regularly consult on, environmental matters, without however, establishing legal obligations. The Arrangement on Environment signed in conjunction with the New Zealand-Thailand Closer Economic Partnership Agreement (NZTCEP), for example, specifically provides that "the Arrangement … presents a political commitment ... but does not legally bind either country". Negotiating legally binding commitments *versus* "soft law" may mean, for some countries, the obligation to involve other Ministries, *e.g.* the Ministry of Foreign Affairs, and entail more complex internal procedures. What also risks making the inclusion of binding commitments more difficult for some countries is the need to put in place adequate internal mechanisms to ensure compliance with these commitments, and to find the necessary resources this entails.

Institutions to oversee the implementation of the agreement. Many RTAs establish specific institutions, composed of representatives of the Parties, to oversee the implementation of the agreement. In general, environmental aspects of the agreement are assigned to a specific body (such as the Commission for Environmental Co-operation, under the NAAEC). This approach – establishing a separate entity to oversee environmental co-operation commitments – may facilitate the process of raising funds and of co-ordinating efforts with those already engaged in these areas of work, *i.e.* bilateral development agencies and environment ministries. For example, CARICOM's Caribbean Environmental Program, which is run separately from its work on regional economic integration, has been extremely successful in attracting bilateral and multilateral funding to support its activities. A related choice is over the level of depth in the mandates of the agencies responsible for improving environmental management. Should these agencies simply

co-ordinate national-level efforts to improve environmental management (the MERCOSUR model), or should they promulgate and supervise the implementation of regional plans for improvement (the EU model)? This will depend completely on the level of integration under the RTA in other respects. The EU has a complex set of regional institutions to manage the process of integration that is matched by no other agreements, and thus is something of a special case. In practice, the majority of RTAs will give very limited powers to any secretariats or joint bodies charged with improving environmental management, in almost all cases having them report to political executive bodies.

Assigning budgets for environmental issues: There is obvious benefit to allocating a set budget amount to a plan of work, once it is specified. This kind of commitment can ensure, in particular, the kind of continuity that is essential for the long-term task of capacity building. However, this may be a luxury that some countries cannot afford, and will certainly make it difficult to "sunset" the expenditures, once a desired level of results has been achieved. Many RTA efforts toward improved environmental management rely on funding from national development agencies. The benefits here include the obvious expertise in project and program delivery that is vested in these agencies, as well as the financial resources they may be able to bring to the task. One risk is that the agendas and priorities of these agencies may be different than those enunciated in the RTA, which might result in uneven coverage of the issues of concern. The North American Commission for Environmental Co-operation (CEC), for example, has been able to set its own agenda for co-operation and capacity building, within its limited resources. On the other hand, co-operation and capacity building for the Euro-Med Agreements are financed and managed by the EU's traditional aid delivery bodies, which may account for the lack of trade-related focus embodied in the resulting environmental management work.

Notes

1. Chapter 21, National Strategy for Ecologically Sustainable Development. *www.deh.gov.au/esd/national/nsesd/strategy/industry.html*.
2. One exception is the agreement between the United States and Australia, which includes an environmental chapter, albeit less prescriptive than similar chapters in agreements with developing countries.
3. A seminal survey of earlier work in this area is Jaffe, Adam, S. Peterson, Paul Portney and Robert Stavins, (1995). "Environmental Regulation and the Competitiveness of US Manufacturing: What Does the Evidence Tell Us?" *Journal of Economic Literature* 33: 132-163. See also Alpay, Ebru, Steven Buccola, and Joe Kervilet (2002). "Productivity Growth and Environmental Regulation in Mexican and US Food Manufacturing", *American Journal of Agricultural Economics* 84: 887-894; Berman, Eli and Linda T. M. Bui (2001). "Environmental Regulation and Productivity: Evidence from Oil Refineries", *Review of Economics and Statistics*. 83: 498-508. See also the influential article: Porter, Michael E. and Claas van der Linde (1995). "Toward a New Conception of the Environment-Competitiveness Relationship", *Journal of Economic Perspectives* 9: 97-118.

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Environment and Regional Trade Agreements

Chapter 4

Assessing the Environmental Impacts of Regional Trade Agreements

Environmental assessment of RTAs has become a critical tool for anticipating and managing the environmental impacts associated with increases in the volume of trade. Some countries, mainly the United States, Canada and New Zealand, as well as the EU, assess the potential impacts of trade agreements they negotiate. The majority of countries, however, still have to be convinced of the use and need to carry out such assessments.

While assessments have rarely led to any change to negotiating positions, their findings have contributed to putting in place proactive policies, such as capacity building for environmental management or increased co-operation. They have also contributed to better interaction between trade and environment officials, and to ongoing involvement of civil society in trade policy-making.

Environmental assessment of RTAs has become a critical tool for anticipating and managing the environmental impacts associated with increases in the volume of trade. An *ex ante* assessment of an RTA projects its consequences before it is adopted, as part of planning, designing, and approving the agreement. In contrast, an *ex post* assessment of an RTA assesses the actual consequences after the RTA has been adopted, to enable corrective action or improvements. In addition to enabling policy makers to plan and design RTAs in ways that prevent and minimise their environmental effects, the environmental assessment of RTAs also fosters co-ordination and dialogue among the various governmental agencies that have environmental competencies. Furthermore, the transparent and participatory assessment of RTAs also allows the general public, and especially local communities, to voice their concerns, to share their unique knowledge and perspectives, and to participate in the design and implementation of RTAs.

While the significance of understanding the environmental implications of trade agreements is not doubted, only few countries have enacted legislation that makes it obligatory to assess potential environmental impacts of a trade agreement. The United States and Canada are obliged to perform such assessments. New Zealand is required to perform what it calls a "National Interest Analysis" of any new treaty, an assessment that covers environmental impacts as one of a list of considerations that also includes economic, social, cultural, and fiscal effects. The EU has made it policy to do sustainability assessments of every major trade negotiation in which it is involved.

In practice, environmental assessments are carried out by a minority of, generally, developed, countries. Developing countries remain to be convinced of the usefulness of the exercise. For many, undertaking an environmental assessment is costly, complicated, time consuming, and only yields uncertain benefits in exchange. Some countries also have doubts about the real purpose and motivations of environmental impact assessments, and consider that they are not designed for policy reasons, but rather, to allay the concerns of domestic constituencies, such as NGOs. Finding the right methodology to carry out an assessment and applying it correctly can also be a hurdle for developing countries. In short, most developing countries do either not have the capacity, the resources, or the will to carry out such assessments.

Another challenge is time: a full-fledged impact assessment requires some time, even more so when it involves public consultations, and many

countries, whether developed or developing, are not willing to delay the conclusion of an agreement to carry out such an assessment.

However, experience has shown that environmental impact assessments of trade agreements are useful, if they are carried out correctly. The analysis below summarises the benefits of carrying out environmental assessments of trade agreements, based on the experience of those assessments carried out so far.[1]

What have been the main benefits of carrying out assessments?

Undertaking an environmental assessment or review provides an effective way of addressing environmental problems by improving overall policy coherence at the national level and by assisting decision makers in understanding environmental implications of trade policy. Since an assessment identifies the most likely and significant environmental impacts that can be expected from trade negotiations, States can take corrective steps at an early stage of negotiations. Information concerning significant environmental impacts identified can be provided to negotiators and decision makers throughout the government for further integration into the overall trade policy. Further, an assessment provides feedback for future negotiations (OECD, 1999).

Learning more about the future trade partner

All assessment exercises comprise extensive fact and information gathering, which go far beyond economic and trade figures that would typically be used in a trade negotiation. Though most reviews focus mainly on the impacts of the country that is carrying out the assessment (with the exception of the EU Sustainability Impact Assesments (SIAs), which examine impacts in both countries), they also include a significant amount of information on the trade partner's natural environment and related issues. This information may contribute, *inter alia,* to better understanding the negotiating position of the trade partner (if, for example, the assessment reveals significant environmental impacts in a specific sector), or to helping better design environmental co-operation programmes.

Impact on the negotiation process

One obvious impact to look for, and one which is foremost in the minds of the civil society actors who support the exercises, is any change to negotiating positions, or to final texts, or to any new mitigation or enhancement measures, as a result of the analysis. In reality, there have been very few changes of the first two types to date. There do not seem to have been any in the United States and Canadian context, and in the EU only rather limited examples were obvious, and then not environmental in nature.[2]

However, there are typically changes in the form of mitigation or enhancement measures: proactive policies such as capacity building for environmental management or increased co-operation that try to address the concerns raised. Indeed, there have been numerous instances of assessments feeding into the work programs of any related environmental co-operation or capacity building efforts.[3]

A further value of the assessment process is that it can help shape the design of any associated environmental co-operation agreement, or trade-related environmental capacity building. The US-Chile Environmental Review, for example, fed directly into the Agreement's eight-item work plan for environmental co-operation. The Canadian Environmental Assessment of its RTA with Singapore explicitly identified co-operation on illegal trade in endangered species of flora and fauna as appropriate for the associated environmental co-operation agreement. The EU's initial Strategic Impact Assessment in the Gulf Co-operation Council context directed its intensified focus on improving conditions for foreign direct investment.

Increased interaction between trade and environment officials

One of the most important impacts of the assessment exercises is paradigm change. Before the advent of these exercises, trade negotiators and policy makers did not take environmental concerns to be part of their mandate, and seldom saw the need to interact meaningfully with environment officials in their own countries. Although many initiatives have led to a much more meaningful interaction today, the exercise of the assessments undoubtedly played a key part in the change.

Trade officials (particularly those whose jobs were created after the advent of the new system) seem increasingly to accept that environmental concerns will need to be considered during the negotiations, and in some cases have even come to their environmental counterparts to suggest environmental concerns they felt should be raised. A key prerequisite to this sort of change is top-level buy-in within the trade ministries. When trade officials truly believe that environmental assessment is an important part of their job – a change that now seems to be occurring – the question then becomes simply how to do it well. To the extent that the partner country is involved in the exercise, the same effect may take place there. Environmental officials, traditionally the weak players in any government hierarchy, assume a higher importance, and initiate a dialogue with their trade counterparts that might not have been possible without the imperatives of the assessment exercise.

That said, many developing country officials view the assessment exercises with scepticism, fearing that the assessments will be used as a pretext for restricting their exports in sensitive sectors. Where the exercise is combined

with meaningful efforts at environmental co-operation (explored in greater detail below), such wariness seems to be considerably lessened. Of course, financial and technical assistance for the conduct of assessments is also helpful. The United States has been active on this front, for example, by conducting training sessions with the Gulf Co-operation Council and North African countries to train trainers on the conduct of environmental reviews. One lesson to be drawn from the experience to date in this area is the need to achieve buy-in from non-environmental areas of governments, in order to increase the probability that any improvements in capacity will be complemented by increased delegation of authority to environmental officials.

While greater understanding and co-operation between trade and environment officials is generally a good thing, it should be expected to result in some measurable improvements in environmental practice and, eventually, some improvements in environmental conditions. Those that are critical of the assessment exercises will likely demand this sort of evidence of effectiveness at some point.

Involving civil society

Another achievement of the assessment exercises is the ongoing involvement of civil society in trade policy-making. As described later in this study, the assessment exercises in the United States, Canada, and the EU engage in extensive gathering of public comments at various points in the process. This allows a voice to those who might otherwise have little influence on trade policy direction, and may even result in increased public understanding of the trade-environment interactions.

All of the efforts to date have involved extensive public input at all stages of the process, from "scoping" to final review, and it is widely agreed that this serves three important purposes. First, it helps to collect input and expertise from a broad range of actors. Secondly, it ensures that all the relevant issues are brought to the attention of the assessors (for example, the concern over migratory birds in the context of the US-Andean RTA negotiations was first raised in public consultations). Thirdly, public involvement confers a mantle of legitimacy and accountability to the resulting trade policy that many would contend was otherwise missing. Of course, these benefits will only exist if public involvement is taken seriously by those negotiating the RTAs, and the input received is reflected in the final outcome.

A learning process

It is important to understand that the exercises to date, and those of the near future, involve learning processes. Initial efforts to conduct these assessments can therefore be relatively limited, and be deliberately aimed at

building foundations on which subsequent efforts can build. Thus, for example, when Canada was creating its guidelines, it argued that while considering global impacts would be ideal, it was necessary to learn to "walk before it would be possible to run". In the end, even a limited assessment exercise yields more information than none at all.

Explicitly acknowledging the assessments as learning processes means allowing room for flexibility of design, in the light of subsequent experience. It also means an explicit commitment to conduct *ex-post* exercises that can identify strengths and weaknesses of their *ex-ante* precursors. While the value of *ex-post* follow-up and monitoring is generally acknowledged, there have not been any formal efforts to date to undertake this sort of work, with the exception of *ex post* analysis carried out by the North American Commission for Environmental Co-operation (CEC, 2005). In part this may be due to the fact that not enough time has passed for *ex-post* work to be appropriate.

Experience will inform both the process and the substance of the assessments. For example, if study after study finds significant scale effects from agricultural liberalisation, this will become part of the standard checklist of impacts to look for in all assessment exercises. Conversely, it may be that repeated analysis finds some types of impacts to be inconsequential, and they may be accorded less effort, *a priori*. For example, while regulatory impact assessment is mandated as part of the US approach, it has repeatedly turned up no impacts. If *ex-post* assessment over time confirms this finding, the emphasis on this type of impact might be lessened. These sorts of findings will also become important contributions to the wider understanding of the trade-environment nexus.

Country approaches to environmental impact assessment of trade agreements

Canada: Strategic Environmental Assessments

Canada derives its legal authority to conduct environmental assessments (EA) of trade agreements from two basic documents: the 1999 "Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals"; and the 2001 "Framework for Conducting Environmental Assessment of Trade Negotiations".[4] The former requires federal departments and agencies to undertake strategic environmental assessments (SEA)[5] of policy, plan, and programme proposals. The latter details the process of identifying and evaluating the likely and significant environmental impacts of trade initiatives. To supplement the Framework and provide guidance to federal government officials conducting Environmental Assessments of Trade Agreements, the Government of Canada released a "Handbook for Conducting Environmental Assessments of Trade Agreements" in April 2002, and updated it in March 2006.[6]

SEAs are undertaken: *i)* to assist negotiators to integrate environmental factors into the negotiating process, by providing information on the positive or adverse environmental consequences of trade initiatives; and *ii)* to address public concerns by documenting how environmental factors are being considered in the course of trade negotiations.

An SEA is expected to consider the scope and nature of the likely environmental effects, the need for mitigation to reduce or eliminate adverse effects, and the likely importance of any adverse environmental effects. The level and scope of analysis is determined on an issue-by-issue basis, according to the nature of the agreement under review. While an SEA analyses the most likely and significant environmental impacts of trade negotiations within Canada, the 2001 Framework does not exclude examination of transboundary, regional, and global environmental impacts, if they are expected to have a direct impact on the Canadian environment.

An SEA provides for the timing, scope, and ways of participation of the public and civil society, and identifies required outputs and decisions at every stage. It typically involves the following steps:

- announcement of intent to conduct an EA (when the trade negotiation is announced);
- preparation of an Initial EA (released in advance of negotiations);
- preparation of a Draft EA (released at the start of negotiations); and
- preparation of a Final EA Report (released after negotiations conclude).

The Initial EA, carried out for all negotiations of free-trade agreements, is a "scoping" exercise aimed at identifying the main environmental issues likely to arise as a result of the proposed trade agreement. The Draft EA phase elaborates on the Initial EA by providing a more thorough examination and assessment of environmental impacts of the prospective trade negotiation. The Final EA, released after the conclusion of the negotiations, details the outcome of the negotiations as related to the EA process, as well as any new information related to the EA or to trade negotiations. A report is produced and released to the public at the conclusion of each phase. In the event that the Initial EA does not identify likely and significant environmental impacts, the full EA process is not required.[7]

Canada is currently conducting environmental assessments of various trade and investment agreements, including the Canada-Korea Free Trade Agreement, the Government Procurement chapter of the Canada-Chile Free Trade Agreement, and the Canada-EU Trade and Investment Enhancement Agreement, currently under negotiation. Canada is also undertaking environmental assessments of the ongoing negotiations at the WTO.

Sustainability Impact Assessment in the European Union

In 1999, the European Union (EU) began to carry out Sustainability Impact Assessments (SIAs) for the negotiation of its major multilateral and bilateral trade agreements (see Box 4.1). The assessments aim at identifying the economic, social, and environmental impacts of those agreements.

Although the EU Commission issued a Communication in 2002 on Impact Assessment, the emerging practice of conducting SIAs has not yet evolved into a strict legal obligation.[8] The 2002 Communication has the legal status of a policy guideline, and stems from the decision of the 2001 European Council to better implement sustainable development in EU policies.[9] It requires the Commission to execute impact studies on sustainable development for different types of major regulatory initiatives, one being RTAs.

SIAs cover environmental, economic, and social impacts. Impacts are analysed both with respect to the EU and third-country partners. So far, SIAs have been carried out on the initiative of the Commission for a number of negotiations, including: the ongoing WTO negotiations pursuant to the Doha agenda; the agreements in the Euro-Mediterranean Free Trade Area; negotiations with Chile; African, Caribbean, and Pacific (ACP) countries (one for each sub-region); MERCOSUR; and the Gulf Co-operation Council countries.

Contracts to carry out SIAs are awarded by the Commission to independent external consultants following a tender procedure. A consultation committee within the Commission is set up to guide the consultants.

The Commission has identified four methodological steps for SIAs:

- **screening:** to determine which measures proposed on the trade agreement agenda may be excluded from appraisal because they are unlikely to give rise to significant impacts;
- **scoping:** to determine the terms of reference (components to be assessed; appraisal methods; consultation procedures);
- **preliminary assessment:** to determine the impacts associated with each measure and with the agreement as a whole; and
- **flanking measures (mitigation and enhancement analysis):** to determine types of measures which may reduce significant negative impacts that result from trade opening measures and enhance positive impacts on sustainable development (particularly for developing countries).

Box 4.1. **SIA: some frequently asked questions**

What is Sustainability Impact Assessment?

Sustainability Impact Assessment (SIA) is a process undertaken before and during a trade negotiation, which seeks to identify economic, social, and environmental impacts of a trade agreement. The purpose of an SIA is to integrate sustainability into trade policy by informing negotiators of the possible social, environmental, and economic consequences of a trade agreement. The idea is to assess how best to define a full package of domestic policies and international initiatives to yield the best possible outcome, not just in terms of liberalisation and economic growth, but also of other components of sustainable development. An SIA should also provide guidelines for the design of possible accompanying policy measures. Such measures may go beyond the field of trade as such, and may have implications for internal policy, capacity building or international regulation. Accompanying measures are intended to maximise the positive impacts of the trade negotiations in question, and to reduce any negative impacts.

What are the key principles in implementing an SIA?

These are the principles adopted to date:

- SIAs should be carried out for all major trade negotiations, multilateral and bilateral.
- All three pillars of sustainability, the economic, the social, and the environmental, should be tackled.
- Where possible, impacts on third countries should be analysed as well as those on the EU.
- SIAs should be carried out in co-operation with third country partners.
- SIAs should be based on transparency, with external consultations. All stakeholders should be given an opportunity to take part in the analysis of issues and impacts.
- Results of all SIAs should be made public.
- SIAs should be carried out by external consultants selected by public tendering procedures. Consultants are independent. The EU stipulates only that they work in a transparent and rational manner and base their findings on scientific evidence.
- An internal consultation process should be set up to guide consultants. An inter-service steering committee involving all agencies and negotiators within the EU should ensure the relevance of the SIA process.
- Coordination with Member State experts and Members of the European Parliament is also part of the SIA process.

Box 4.1. **SIA: some frequently asked questions** *(cont.)*

What does the Commission do with SIA outcomes?

The European Commission aims to integrate SIA results into its policy-making. For each SIA, the European Commission prepares a paper, based on the contractors' findings. It should define points of agreement and respond on disagreements. The paper considers what further analysis should be undertaken and what policy action should be implemented. Relevant flanking measures are identified and may include capacity-building and trade-related assistance initiatives, international regulation, use of trade and regional policy instruments within the EU. For each SIA final report, a position paper is drafted and discussed with Member States.

Source: EU Commission, *http://europa.eu.int/comm/trade/issues/global/sia/faqs.htm*.

New Zealand: National Interest Analysis

In New Zealand, a Parliamentary Standing Order requires that a National Interest Assessment (NIA) be conducted for all treaties to which New Zealand may become a Party.[10] The NIA assesses the impacts of the proposed treaty on a broad range of New Zealand's national interests, including the economic, social, cultural, and environmental effects for New Zealand, of the treaty entering into force and of the treaty not entering into force. The environmental component of the NIA is also supported by the 2001 "Framework for Integrating Environment Standards and Trade Agreements", which guides and informs New Zealand in negotiations on trade and environment.

Environmental effects of RTAs are assessed in the NIA using standard economic methodology. The first step of the analysis determines the type of economic changes that are likely to be generated from the RTA in question, and focuses specifically on possible regulatory implications, product effects (increases or decreases in particular types of products), as well as fluctuations in the overall scale and structure of trade. The second step of the analysis then examines whether there are any environmental effects that would likely flow from the anticipated fluctuations in economic activity. It is also common practice for the NIA to discuss whether New Zealand's current regulatory framework is sufficiently robust to address any unforeseen particular problems that may arise during the implementation of the RTA. So far, New Zealand has conducted National Interest Assessments for the TPSEP and the NZTCEP.[11]

United States: Environmental Reviews

The US government institutionalised the consideration of environmental factors into the development of its trade negotiating objectives in Executive

Order 13141, "Environmental Review of Trade Agreements" (November 1999) and the Guidelines for Implementation of Executive Order 13141 (December 2000) (see Box 4.2). Further, the Trade Act of 2002 directs the President to "conduct environmental reviews of future trade and investment agreements, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such reviews".[12]

Box 4.2. **The Environmental Review process in the United States: key aspects**

The framework for conducting environmental reviews of trade agreements is provided by Executive Order 13141 and the associated Guidelines.

The purpose of environmental reviews is to ensure that policy makers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), identify complementarities between trade and environmental objectives, and help shape appropriate responses if environmental impacts are identified.

Section 5(b) of Executive Order 13141 provides that "as a general matter, the focus of environmental reviews will be impacts in the United States", but "[a]s appropriate and prudent, reviews may also examine global and transboundary impacts". Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations.

The environmental review process provides opportunities for public involvement, including an early and open process for determining the scope of the environmental review ("scoping"). Through the scoping process, potentially significant issues are identified for in-depth analysis, while issues that are less significant – or that have been adequately addressed in earlier reviews – are eliminated from detailed study.

The Guidelines recognise that the approach adopted in individual reviews will vary from case to case, given the wide variety of trade agreements and negotiating timetables. Generally, however, reviews address two types of questions:

i) the extent to which positive and negative environmental impacts may flow from economic changes estimated to result from the prospective agreement; and

ii) the extent to which proposed agreement provisions may affect US environmental laws and regulations (including, as appropriate, the ability of state, local, and tribal authorities to regulate with respect to environmental matters).

Source: USTR, *www.ustr.gov.*

The Office of the US Trade Representative (USTR) and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. The USTR is responsible for conducting the individual reviews.[13]

Pursuant to the Executive Order, an Environmental Review (ER) should outline the proposed agreement, and public comment is to be solicited on the scope of the review. ERs are to be undertaken sufficiently early in the process to inform the development of negotiating positions, and, where practicable, a draft form made available before finalisation. The scoping process identifies possible environmental effects associated with an agreement and prioritises them for inclusion in the ER. This process identifies the environmental effects of the agreement within the United States, but consideration for possible inclusion of transboundary and global effects is also done at this stage. The US-CAFTA-DR Final Environmental Review report, for example, refers in detail to potential global and transboundary effects, including issues such as migratory birds, invasive species, wildlife protection, transboundary air pollution, and marine pollution.

An ER also analyses possible implications of a trade agreement for US environmental laws and regulations, as well as the economic changes that impact on the environment. Where such impacts are significant, options including changes in the trade agreement or policy measures taken outside the agreement in non-trade related domains are addressed. ERs are mandatory for trade agreements that involve: *i)* comprehensive multilateral trade rounds; *ii)* bilateral or plurilateral free-trade agreements; and *iii)* major new trade liberalisation agreements in natural-resource sectors.

The process of conducting an ER provides opportunities for the public to become involved in the development of trade agreements.[14] The public can participate in determining the scope of the ER at an early stage, and comment on the draft written review. The final review is prepared after incorporating those and other comments. The review provides options to mitigate negative environmental impacts and enhance positive environmental impacts.

Pursuant to the legal and policy framework available under the Executive Order and Guidelines, the United States has so far conducted final ERs in connection with negotiation of RTAs with Jordan (2000), Chile (2003), Singapore (2003), Bahrain (2004), Australia (2004), Morocco (2004), and Panama (2004), as well as negotiations for the US-CAFTA-DR (2003). It has also conducted interim ERs in connection with the negotiations of the Andean Free Trade Agreement, and RTAs with Oman, the United Arab Emirates, and Thailand.[15]

Other approaches

In addition to Canada, New Zealand, the United States and the EU, a few other countries have carried out environmental assessments of trade agreements, but not on a systematic basis. Japan's Ministry of the Environment investigated the possibility of doing environmental assessments. It commissioned a survey of current practice in 2000, and in 2002 established a Study Group on Environment and Economic Partnership Agreements/Free Trade Agreements (EPA/FTA), composed primarily of academic experts tasked with investigating the environmental impact assessment methods that would be applied in the event that Japan concluded an EPA/FTA.[16] The group explored methods to enhance the mutual supportiveness of trade and environment, developed a guideline on environmental impact assessment methods involving EPAs and FTAs, and carried out some case studies. The Korean Ministry of Environment also organised a joint working group on environmental impact analysis of free trade in Korea, and commissioned experts from both Korean and Japanese research institutes working together to make a trial assessment of the air pollution impact of the Japan-Korea FTA (Kang, S., *et al.,* 2005). In February 2005, Ministries of both Japan and Korea co-hosted a Joint Expert Seminar on Methods for the Assessment of Environmental Impacts by Free Trade Agreements in Tokyo. Further case studies concern hypothetical agreements with Thailand and Malaysia; these only included qualitative analysis.

So far, no developing country carries out systematic environmental reviews of RTAs. A few governments have performed assessments, when in negotiations with the United States, Canada, and the EU, all of which encourage and, in some cases, provide financial and technical support for such efforts by their negotiating partners. The United States, in particular, has encouraged its trade partners to conduct assessments. Morocco, Jordan, Chile, and Singapore for example have conducted assessments in connection with RTAs negotiated with the United States, but these reports are generally not publicly available. However, these efforts have not been duplicated in subsequent negotiations with other partners. Singapore, for example, performed an environmental review of the US-Singapore Free Trade Agreement, but did not repeat that effort in any of its subsequent RTA negotiations (Cosbey, *et al*., 2004).

In addition, some countries have conducted assessment studies with financial and technical support from the United Nations Environment Programme (UNEP). A large number of stakeholders including different ministries, industries, academic institutions, and civil society groups in these countries have been involved in identifying the key issues, discussing the results of the analyses and formulating policy recommendations. A few examples are described in Box 4.3.

Box 4.3. **UNEP's Integrated Assessments**

UNEP started its work on integrated assessment of trade and trade-related policies in 1997. It has sponsored several rounds of country studies covering more than 20 countries. Of these, the countries that have assessed impacts of regional trade agreements include Colombia and Lebanon.

- In Colombia, the assessment focused on the implications of the country's planned Free Trade Agreement (FTA) with the United States with regard to the corn sector.* Among the main recommendations was the need for special policies targeted at small corn farmers who will be negatively affected by trade liberalisation and who do not have many opportunities to switch to other crops but have a critical role in conserving biodiversity. Payment for environmental services by these farmers was suggested as one of the policy options. The recommendations of the assessment are expected to feed into the government's Internal Agenda, which is intended to address the transitional issues stemming from the FTA.
- In Lebanon, the assessment focused on the country's Association Agreement with the European Union (EU) with regard to olive oil exports to the EU. The recommendations of the assessment are expected to feed into the government's Action Plan, which will be supported by the EU to facilitate the implementation of the Association Agreement. The assessment has indicated that increased market access – export of 1 000 tonnes of olive oil per year duty free to the EU – could have positive effects on environmental protection and poverty reduction. But the country is currently unable to utilise this opportunity due to major constraints such as the lack of the necessary skills among the poor to meet the EU environmental standards and the lack of basic institutions such as laboratories and certifying bodies to differentiate between high and low-quality olive oil. Given these constraints, only the more established farmers are likely to benefit from this increased market opportunity, but only to a certain extent due to the limitations of scale of these farmers. Main recommendations include providing targeted technical support in several principle areas including quality, productivity, regulations and institutional matters, and strengthening capacities in the areas of standard setting and certification.

* The Agreement was concluded in February 2006.

Source: UNEP, *www.unep.org*.

Analysis of EU, US, and Canadian approaches

In practice, it is the United States, Canada, and the EU that have the most comprehensive programs, with many years of experience. This section therefore focuses on the experience of these three. To complement the discussion that

follows, Annex C provides an overview of most of the assessments done to date, describing their approaches and findings.

The three approaches are similar to a wide extent – they all entail an initial scoping exercise to identify key areas of interest, an exercise in impact assessment, and analysis of potential mitigation or enhancement measures. All involve public input as an essential element. But there are fundamental differences between the North American and European approaches. The North American approach, environmental reviews (ERs) in the United States, and environment assessments (EAs) in Canada, are conducted by governments, and focus on the environmental impacts in the assessing country. They start with an economic analysis of the likely changes in trade flows that the trade agreement might bring, and then ask what sorts of economically-driven environmental impacts might result from those changes.

The US model (and the Canadian model, as it is applied to investment agreements) also asks what sorts of regulatory impacts might result from changes to rules that do not involve market access, but rather commit countries to respect mutually agreed rules of play (*e.g.* investment rules, TRIPs, rules on sanitary and phytosanitary [SPS] measures). In accordance with the Executive Order, "as appropriate and prudent, reviews may also examine global and transboundary effects". However, the analysis is usually focussed on transboundary effects that manifest in the United States, rather than on environmental impacts in the partner countries more broadly. Impacts in partner countries are considered to the extent they have a transboundary impact (for example, the US-Andean FTA ER warned that increased trade flows might increase the risks, to all partners, of importing invasive species).

The Canadian framework for assessment also has a mandate to consider transboundary effects, but only to the extent they have direct impacts on the environment in Canada. Most of the North American assessments find few areas of concern, but those concerns that are highlighted can form the basis of plans for environmental co-operation or capacity building.

The EU's sustainability impact assessments (SIAs) have a broader mandate, exploring not only environmental, but also economic and social impacts. They are conducted by external consultants, however, the Commission and Member States then adopt a formal position paper on the assessment, including a response to the suggested follow-up measures.

Perhaps the most defining feature of the EU SIAs, as distinct from the North American exercises, is the geographical focus. The SIAs of EU RTAs typically focus more analytical energy on impacts in the partner countries than in the EU.[17] These are extensive exercises, involving in-depth regional and sectoral analysis based on Computable General Equilibrium (CGE) modelling and scenario-building. While environment is a key element of the SIAs, they are

just as much driven by a concern for the social and economic impacts of the agreements in question.

The assessments conducted for the EPA negotiations with African-Pacific-Caribbean (ACP) countries, for example, routinely consider the complex socio-economic impacts wrought by increased market access under the agreements, given the typically commodity-dependent state of the partners, and the erosion of preferences that the EPAs (in combination with other initiatives such as "Everything But Arms" and the General Systems of Preferences) might represent. The SIAs routinely consider the difficulties that the partners might encounter in trying to exploit market access, analysing, for example, capacity constraints in meeting EU standards (including environmental standards) and performing conformity assessment. These sorts of analyses then feed into recommendations for preventative, mitigation and enhancement measures, both in relation to trade and other policy areas, *e.g.* with respect to co-operation and capacity building.

It is difficult to assess the strengths and the weaknesses of two approaches with such different mandates, but two points at least can be made:

First, the broader the scope of the analysis, the better the exercise will take account of environmental and sustainable development concerns. This is particularly true of assessments carried out by major economies such as the EU and the United States, where the home-country economic impacts of RTAs will almost always be minor, *i.e.*, there will be no significant economically-driven environmental impacts.[18] The impacts on developing country partners, conversely, are bound to be of greater magnitude relative to the size of their economies, with consequently greater environmental and social impacts. There is a resulting unfortunate peculiarity that develops here: those states with the resources to carry out thorough environmental/sustainability assessments are the same states where the magnitude of the marginal effects is most likely to be minimal. The overwhelming majority of the concerns raised by the EU SIAs focus on impacts in partner countries, and most of those are economic, environmental, and social impacts, while North American reviews or assessments focus on environmental impacts.

Second, conducting the review internally has the strength that, having undertaken the exercise, the involved government experts and negotiators are bound to be adequately sensitised to the issues. It could be argued that consultant-run exercises will have to work harder to get buy-in from the departments whose efforts will be needed to implement most mitigation or enhancement measures. On the other hand, consultant-run exercises arguably have greater capacity to deliver objective analysis on politically sensitive themes. The table in Annex C shows that all of the SIAs predict significant negative consequences in one or more areas, while few of the North American exercises do (although much of that is due to the expanded scope; the concerns usually focus

on impacts in partner countries). Moreover, many SIAs make pointed recommendations specific to the negotiating process.[19]

The point of this analysis being to draw lessons applicable to other countries interested in conducting assessment exercises, it must be emphasised that the questions of scope and methodology will, for many countries, be in large part answered by the available budget.

On methodologies of impact assessment, it has been argued that for smaller agreements, **partial equilibrium analysis** is adequate (Ackerman F., *et al.*, 2002). Partial equilibrium analyses focus on particular sectors most likely to experience large changes, asking what the primary effects of trade liberalisation will be in those sectors, but not on trying to predict how the entire economy will change.

For more significant agreements, however, and if the impacts on partner countries are being considered as well, some sort of **computable general equilibrium** (CGE) analysis will be needed. Such models relate all sectors in the economy to all other sectors, and look not only at primary effects, but also at how they will play out in sectors related to those impacted by liberalisation, and at the resulting employment and income effects. This sort of analysis, while generally powerful and useful, suffers from a number of specific deficiencies (Gallagher, K. *et al.,* 2001). These can be in part addressed by basing the analysis not only on CGE results, but also on the intermediate steps to a good CGE result: partial equilibrium analysis and input-output analysis. Scenario-building, or running several analyses based on different probability negotiating outcomes, would also represent an important improvement (Ackerman F., *et al.*, 2002).

The process can be resource-intensive, and may involve more administrative and financial capacity than can be mustered unilaterally by most developing countries. Even many OECD members might find it difficult to undertake an exercise on the scale, for example, of the EU assessment of the sustainability impacts of the Doha Round: a three-phase process spanning some seven years, involving methodology development, eight in-depth sectoral studies, and a synthesis, each subject to extensive public consultation. The current four-year EU Trade SIA programme, covering multilateral, regional, and bilateral agreements, averages out at almost EUR 700 000 per year.[20] The United States and Canada exercises are carried out by government officials and their actual costs are more difficult to estimate, but obviously they also require substantive investments in terms of human resources, time, travel, etc.[21] Overall, sustainability and environmental impact reviews are a substantial commitment. On the other hand, some RTAs might merit more limited treatment, with obvious implications for the level of resources required.

Notes

1. This study does not describe nor assess the different methodologies used by countries, nor does it recommend any specific approach. Information on available methodologies can be found in OECD (1999). Recent information on assessment methodologies and current assessments carried out by various countries can be found in *www.ustr.gov/Trade_Sectors/Environment/Environmental_Reviews/Section_Index.html*. (environmental reviews carried out by the US), *http://ec.europa.eu/trade/issues/global/sia/index_en.htm* (SIA being undertaken by the EU Commission) *www.international.gc.ca/tna-nac/env/env-ongoing-en.asp* (assessments by Canada) and *www.unep.ch/etb/publications/intAssessment.php* (handbooks and case studies by UNEP on integrated assessments in developing countries).
2. For an analysis of EU experience on this subject see Pandey, Nishant (2006). "Trade SIAs: Theological Exercise for the Rich, or Useful Policy Tool for Developing Countries?" Paper prepared for the *EU SIA Stocktaking Conference*, 21-22 March, 2006, Brussels.
3. For more detail, see Chapter 5 on environmental co-operation.
4. The 2001 "Framework for Conducting Environmental Assessments of Trade Negotiations" was developed in consultation with the provinces and territories, aboriginal groups, and representatives from academia, non-governmental organisations, and the private sector. The text of the 1999 Cabinet Directive is available at *www.dfait-maeci.gc.ca/tna-nac/Environment-en.asp#annex1*; that of the 2001 Framework at *www.dfait-maeci.gc.ca/tna-nac/Environment-en.asp#N_1_*.
5. Environmental assessment of a *policy* differs from that of a *project*. The former is governed by the 1999 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, and the 2001 Framework for Conducting Environmental Assessments of Trade Negotiations, while the latter is a requirement under the Canadian Environmental Assessment Act.
6. Available at *www.dfait_maeci.gc.ca/tna_nac/env/env_ea_en.asp*.
7. See Initial Strategic Environmental Assessment Report of the Canada – Central America Four Free Trade Negotiations (El Salvador, Guatemala, Honduras, and Nicaragua).
8. Communication from the Commission of 5 June 2002 on Impact Assessment COM (2002) 276. Communication: *http://trade-info.cec.eu.int/doclib/docs/2005/february/tradoc_121479.pdf* .
9. See *www.eu2001.se/static/eng/eusummit/goteborg_1.asp*.
10. Parliamentary Standing Order 383, *www.clerk.parliament.govt.nz/NR/rdonlyres/636A8940-48FA-4A93-B8E6-3DD0844BB68E/0/SO2003bm.pdf*.
11. *See www. mfat.govt.nz/foreign/tnd/ceps/cepindex.html#Free%20Trade%20Agreements%20(FTA)*.
12. Section 2102(c)(4) of the US Bipartisan Trade Promotion Authority Act of 2002 provides a number of negotiating goals and other requirements relating to the environment. In particular, it provides for overall trade negotiating objectives; principal trade negotiating objectives; and promotion of certain priorities, including reporting requirements to Congress.
13. Before enacting official orders and legislation relating to the assessment of trade agreements, the United States had conducted an ER of NAFTA in 1992 and released a follow-up report on NAFTA-related environmental issues in 1993. The United

States also conducted reviews of the WTO Agreements negotiated in the Uruguay Round (1994) and APEC's Accelerated Tariff Liberalisation initiative for forest products (1999).

14. The World Wildlife Fund (WWF) has recently issued a Handbook for Conducting Environmental Reviews of Trade Agreements in the United States (WWF, 2004).

15. The reports are available at *www.ustr.gov/Trade_Agreements/Regional/Section_Index.html*.

16. Japanese Study Group on Environment and Economic Partnership Agreements/Free Trade Agreements (2004) "Guideline on Environmental Impact Assessment of Economic Partnership Agreements and Free Trade Agreements in Japan". An English summary is available at *www.env.go.jp/en/policy/assess/epa_fta*.

17. The ongoing ACP SIA, for example, involves almost no analysis of impacts in the EU.

18. The Andean Interim Review, for example, finds, "Based on existing patterns of trade and changes likely to result from provisions of the US-Andean FTA, the impact on total US production through changes in US exports appears likely to be very small. As a result, the US-Andean FTA is not expected to have significant direct effects on the US environment".

19. The West African regional study component of the ACP SIA, for example, recommends a non-reciprocal approach to tariff reductions in agriculture; the Caribbean study recommends services "mode 4" liberalisation in the EU for tourism operators; and the Pacific study recommends possible special product status for fisheries.

20. European Commission, 2006, "Towards a More Sustainable Policy?", Background paper for the conference *S/A Stocktaking Conference*, 21-22 March 2006, Brussels.

21. It would be useful to have these figures, but they are inherently difficult to collect. In the Canadian context, the exercise consists almost entirely of inter-departmental collaboration, with contributions coming out of existing budgets from the various departments. There are relatively few full-time staff dedicated to the conduct of EAs. As such, there is no easily defined budget line for the exercises.

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Environment and Regional Trade Agreements

Chapter 5

Environmental Co-operation

Most RTAs dealing with environmental issues do so in the form of commitments by Parties to co-operate on environmental matters. The scope and depth of these commitments vary, and range from co-operation in one specific technology area to fully-fledged co-operation programmes.

Approaches that include capacity building are important in easing the tensions, and getting genuine buy-in from the negotiating partners.

Co-operation and capacity building efforts can only work if the adequate resources – institutional, human and financial – are also in place.

Growing interdependencies at the regional and global levels determine the need to collectively develop or co-ordinate policies, rules, and institutions in areas such as trade and environment. In addition, these different sets of rules and policies are in themselves becoming more linked. One of the consequences of these trends is that countries are increasingly incorporating environmental co-operation provisions in RTAs or otherwise relating co-operation on environmental protection to trade negotiations.

Environmental co-operation provisions may have a range of objectives. These may include, *inter alia*, enhancing the protection of the environment in the territories of the Parties; mainstreaming environmental sustainability into all aspects of co-operation and interaction between the Parties; promoting development of and compliance with environmental laws, regulations, procedures, policies, and practices; strengthening the scientific and technical human and institutional capacity for environmental management; promoting rational management of natural resources and the adoption of environmentally-friendly policies, production processes, and services; and increasing transparency and public participation in environment-related discussions and processes.

Environmental co-operation provisions are included either in the body of the RTA, or in side agreements (including joint statements, arrangements, etc.). The RTAs recently concluded by Canada and the United States lay out the main environmental commitments of the Parties, and leave the particular objectives of environmental co-operation to be elaborated in side agreements. Many recent agreements concluded by the EU, on the other hand, refer themselves to environmental co-operation priorities and activities. Under the NZTCEP, environmental co-operation matters are dealt with in a separate Arrangement on Environment.

It is worth noting the difficulties involved in defining environmental co-operation and capacity-building efforts in the context of an RTA, since the former often precedes the latter. For example, the EU's work on environmental capacity-building in the Ukraine began in 1991, while the Partnership and Co-operation Agreement between the European Community and the Ukraine was not signed until 1994, and did not enter into force until 1998. Should any of the pre-agreement work be considered in any sense to be caused by the RTA, perhaps in anticipation of its signing? What proportion of the post-agreement work should be deemed additional to what would have occurred in the absence of an agreement?

Key aspects of environmental co-operation

Types of environmental co-operation

Environmental co-operation as used here means parties' efforts at mutual support to improve environmental management. These efforts may consist, *inter alia*, of co-ordinating existing environmental policies, sharing of expertise, and joint approaches to shared environmental problems.

Environmental co-operation in RTAs tends to take place among countries of roughly similar levels of development – as distinct from capacity building, which tends to take place in the context of international disparities. The lines of distinction here are not always obvious, particularly in the context of "sharing of expertise". However, if the expertise and the financial support run consistently and uniquely from one country to a partner, the exercise is probably best characterised as capacity building, rather than environmental co-operation. Unless otherwise indicated, this study therefore uses the term environmental co-operation in a broad sense.

Another distinction is between co-operation on trade-related environmental matters and co-operation on purely environmental matters. Tables 5.1 and 5.1 describe initiatives under selected RTAs aimed at each of these types of co-operation. The two categories are admittedly, quite broad, and the distinction is provided only for illustrative purposes. The line between both types of co-operation is not always easy to draw, and in many cases, "pure" environmental co-operation is, also, in one way or the other, linked to trade issues.

Some agreements include both types of co-operation. The NAAEC, for example, involves mostly "pure" environmental co-operation, but also has a long-standing mandate to explore the environmental impacts of trade. Most environmental co-operation is not, in fact, trade-related (though a great deal of trade-related *capacity building* is incorporated in RTAs, as described above). Moreover, as shown in Tables 5.1 and 5.1, it typically occurs among regional groupings with shared ecosystems. Given the nature of environmental co-operation as it has been defined here, this is not surprising. Countries that share ecosystems have more reasons for environmental co-operation. Countries of widely varying levels of development tend to also have varying levels of capacity to contribute to shared knowledge and experience on environmental management issues, making a capacity-building approach more appropriate.

It is worth asking whether the "purely" environmental co-operative efforts surveyed here could have in fact been achieved outside the context of regional economic integration. In fact in many cases the efforts at environmental co-operation described in Table 5.1 are descendents of co-operation that pre-dates the entry into force of free trade agreements. This is the case, for example, in the Caricom, ASEAN, and SAARC regions. Similarly, US efforts at environmental capacity-building in the CAFTA-DR region, although undertaken

Table 5.1. **Environmental co-operation in selected RTAs**

RTA	Areas of Co-operation
MERCOSUR	Framework Agreement on Environment calls for development of environmental management tools, *e.g.* environmental impact assessment, monitoring, information sharing. Environmental Protocol has provisions on environmental management, protected areas, and sustainable use of natural resources.
CARICOM	Protocols, Conventions on: protection of the marine environment, oil spills, wildlife management, land-based marine pollution. Caribbean Environment Program focuses on: coastal zone management, biodiversity, coral reef management, protected areas and wildlife, education/training/awareness. Caribbean Community Climate Change Centre focuses on adaptation issues. Some regional work on development and dissemination of renewable energy technologies.
SAARC	Established Coastal Zone Management Centre (Maldives); Forestry Centre (Bhutan). Regional co-operation on natural disasters with some focus on environmental protection as prevention.
UEMOA	Regional Department of Rural Development and the Environment focuses on: agriculture, fisheries, water resources, desertification, coastal erosion, biodiversity. Ongoing process to harmonise rules and control mechanisms to deal with ozone-depleting substances.
APEC	Energy Working Group focuses on energy efficiency, renewable energy, developing alternative fuels. Bali Plan of Action focuses on sustainable management of marine environment, sustainable economic benefits from the oceans, enabling sustainable development of ocean communities.
ASEAN	Agreement on Transboundary Haze Pollution; significant regional and sub-regional co-operation on fire fighting. Established ASEAN Regional Centre for Biodiversity Conservation (with EU support). ASEAN Working Group on MEAs promotes common positions and understanding in a number of multilateral environmental agreements. Current 5-year program focuses on, *inter alia*, transboundary haze pollution, public awareness, promoting green technologies, urban environmental management, improved monitoring and reporting, database harmonisation and state of environment reporting, establishing a network of protected areas. Further environmental co-operation envisioned between ASEAN and: Japan (Japan ASEAN Plan of Action), China (Plan of Action to Implement the Joint Declaration on ASEAN-China Partnership for Peace and Prosperity), India, and Korea.
NAFTA	NACEC's Pollutants and Health program focuses on, *inter alia*: standardising techniques and methodologies for data gathering and analysis; recommending appropriate limits for specific pollutants; promoting pollution prevention techniques and strategies. Among the initiatives in this area are work on Children's Health and the Environment, and a North American Pollutant Release and Transfer Registry. NACEC's Conservation of Biodiversity program focuses on shared and critical habitats and wildlife corridors, and migratory and transboundary species (primarily birds and marine animals). Initiatives include trinational conservation plans, and co-operation on invasive species. Research on issues of shared interest, such as biodiversity and GMOs; electricity, continental pollution pathways, etc.
Singapore-Korea	Memorandum of Understanding (MOU) on Co-operation on Compressed Natural Gas Technologies and Policies. Objective is to share expertise on CNG, encourage co-operation within private sector, hold workshops, participate in collaborative research, exchange experts, and share information on CNG technologies and polices.

Table 5.1. **Environmental co-operation in selected RTAs** *(cont.)*

RTA	Areas of Co-operation
MERCOSUR	In its early years, Sub-Group 6 focused on environment and market access issues, working on Ecolabelling, ISO 14000, and environment-related trade measures as non-tariff barriers.
CARICOM	Caribbean Environment Program works on, *inter alia*, sustainable tourism.
APEC	Developed list of environmental goods that has been influential in the WTO's Doha negotiations.
NAFTA	NACEC's Environment, Economy, and Trade program focuses on, *inter alia*, the environmental impacts of trade, greening trade (assessment, labelling, financing, and purchasing of environmentally friendly products).
ASEAN	Five-Year Regional Action Plan on Trade in Wild Fauna and Flora – 2005-2010. Follows on the ASEAN Statement on CITES (the Convention on International Trade in Endangered Species of Flora and Fauna), issued at COP-13 of CITES, Oct. 2004.

in expectation of the entry into force of the trade agreement, were initiated well before that Agreement took effect.[1]

For others (MERCOSUR and the WAEMU are good examples), the discussions on economic integration provided an institutional platform that was subsequently used to address other issues of regional concern, including environmental issues. Even in those cases where there was environmental co-operation before economic integration, the environmental issues have been pursued with greater vigour since the commencement of free trade efforts.

Factors determining the scope of environmental co-operation in RTAs

The scope and context of environmental co-operation provisions, as with other provisions of RTAs, depend on a broad range of considerations that vary for each specific negotiation. The interdependence created by geographical proximity and close economic and cultural ties, for example, seems to encourage a framework for co-operation on environmental matters. This is reflected particularly in agreements aimed at regional integration. NAFTA's comprehensive co-operation provisions and institutions, for example, illustrate that geographical proximity is an important factor in determining the extent of environmental co-operation in an RTA. The ASEAN Strategic Plan of Action on the Environment, the ASEAN Plan of Action for Energy Co-operation, and the ASEAN Agreement on Transboundary Haze Pollution are further examples of how countries cooperate to address mutual environmental concerns.

Many RTAs take an open and flexible approach to environmental co-operation. In the case of the NZTCEP and the TPSEP, for example, the scope of environmental co-operation is left open in the agreement and is determined during the implementation phase through discussions among environmental officials. Current priorities for each government are identified and co-operative activities developed on the basis of needs and capability to meet those needs. This provides a durable basis for ongoing development and consolidation of relationships among the partner countries.

Another factor that influences the nature and scope of environmental co-operation in RTAs is the level of development of the Parties. In this regard environmental co-operation appears more prevalent in RTAs between countries with different levels of development (although this does not apply to regional integration agreements, where environmental co-operation is usually quite extensive). The EC, for instance, while including provisions on environmental co-operation in the agreements with developing countries, such as the Cotonou Agreement, generally does not incorporate such provisions in the agreements negotiated with developed countries. This may also be linked to the fact that agreements between industrialised countries tend to be narrower agreements, such as mutual recognition agreements. However, even the broader EC-Korea Framework Agreement for Trade and Co-operation, for example, which does address co-operation in environmental matters, does so in a less extensive manner than in agreements with developing countries.

Trade agreements between developed and developing countries often take into account the lessons of co-operation of previous North – North or regional integration agreements. Canada, for instance, has followed the NAFTA model of environmental co-operation for its bilateral trade agreements with Chile and Costa Rica.

Technical assistance and capacity building

Since environmental co-operation provisions are most common in North-South trade agreements, their core objective is often technical assistance and capacity building. Although RTAs expressly recognise the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify its environmental laws, environmental provisions in these RTAs mainly aim at improving environmental laws, policies, and institutions. Technical assistance seems to be essential for achieving this gradual improvement. The US-CAFTA-DR environmental co-operation agreement, for instance, aims to strengthen environmental management systems, including reinforcing the institutional and legal frameworks and the capacity to develop, implement, administer, and enforce environmental laws, regulations, standards, and policies. The EU agreements with developing countries also highlight these elements, emphasising the need "to build and strengthen scientific, technical, human, and institutional capacity for environmental management".[2]

Technical assistance, particularly in regional contexts or when the differences in levels of development are less marked, may be aimed at sharing and exchanging information. Information is a critical part of establishing comparable methodologies and common indicators for the effective monitoring and response to environmental problems. The US-Chile environmental co-operation agreement, for example, clearly focuses on the gathering and

exchange of information, academic and professional exchange, organisation of conferences and other meetings, and provision of other technical assistance, all with a view to improving environmental enforcement and assurance. The EU agreements also refer to, *inter alia*, the exchange of information, joint research activities, improvement of laws, environmental training and institutional strengthening, co-operation at the regional level, and the development of joint strategies. The Declaration on a MERCOSUR Biodiversity Strategy provides for training and capacity building through, *inter alia*, exchange programmes, joint training activities and information exchange.

A key example: capacity building under NAFTA

Some of the most impressive results of capacity building associated with an RTA have come out of the North American Commission for Environmental Co-operation (CEC) – the institution set up to administer the NAAEC. Capacity building is only one part of the activities of the CEC, which has two other priority areas for trilateral co-operation: information for decision-making, and trade and environment. But to some extent, all CEC activities result in increased capacity for environmental management. The CEC's contribution to capacity building in Mexico in summarised in Box 5.1.

Box 5.1. **The CEC's contribution to capacity building in Mexico**

Even though capacity building was initially not considered an objective as such in the NAAEC, it has been an implicit element in the achievement of many of its objectives. For this reason, capacity building has been an important activity for the CEC even before Council decided to formally include it in its program of work.

An independent ten-year review of the CEC's activities concluded that in its ten years, the CEC has helped Mexico build capacity in a range of areas, most notably in the areas of

i) pollution prevention (with the CEC's assistance, Mexico has developed a pilot funding mechanism for small and medium-size enterprises (SMEs) which is now being replicated, set up a chemicals department in [Mexico's environment agency], expanded its technical capacities and established a round table of stakeholders);

ii) the management of toxic chemicals (Mexico's successful approach at phasing out DDT is now being adopted in Central America and has attracted India's interest);

Box 5.1. **The CEC's contribution to capacity building in Mexico** *(cont.)*

iii) the development of a mandatory pollutant release and transfer registry (PRTR); and

iv) the conservation of wildlife habitat.

The Mexican beneficiaries concerning the CEC efforts in capacity building have been:

- **Government officials:** the main interlocutors for the CEC activities in this area have been the governments of the three countries.
- **NGOs:** One of the main contributions from the CEC for Mexico has been the promotion of the right to information to promote civil society participation offering an important discussion forum. "The CEC has achieved the gradual inclusion of more and more organisations, in particular NGOs, which previously did not have the adequate forum to express their views and concerns."
- **Industry representatives:** Through their chambers and associations, the private sector has received important information which was helpful to ensure compliance with the compulsory PRTR requirements. A growing number of enterprises mainly from the Mexico City region, have obtained access to financing support and technical assistance concerning their pollution prevention activities.

In 2004, capacity building was institutionalized as one of the main pillars of the CEC's work programme. The general objective of this pillar consists in strengthening the capacities of the three countries in environmental management issues of common interest, recognizing prevailing asymmetries among them, and is particularly designed to increase co-operation with Mexico to help it develop those capacities.

The four goals for capacity building are:

- Strengthen capacities to improve wildlife laws compliance.
- Improve environmental performance of the private sector through model environmental compliance approaches.
- Strengthen capacities for habitat and species conservation of common interest trough, *inter alia*, capacity building for planning, monitoring and management, with the participation of relevant stakeholders; and
- Strengthen the capacities of the Parties for control and assessment of chemical substances of interest.

Source: Johnson, P.M. (2003) and contribution to the OECD workshop on RTAs and Environment (OECD, 2006).

Countries' main motivations to include environmental co-operation in RTAs

RTA efforts to improve environmental management can also involve elements aimed at building capacity for environmental management in RTA partners. Most such efforts involve developed countries undertaking capacity building efforts in less-developed partner countries, where there are perceived to be critical gaps.[3] The rationale for linking such efforts to trade agreements is that the economic growth that should result from liberalisation needs to be sustainably managed, and in many countries the necessary institutions and expertise are poorly developed. Environmental co-operation, especially in agreements between developed and developing countries, can therefore be seen as recognition by Parties of the need to mitigate or address potential negative environmental impacts arising from trade provisions, which are often greater in developing countries; and the importance of building on economic co-operation through social and environmental collaboration.

It is worth noting, however, that co-operation is not one-way. Developed countries can also use the co-operation mechanism as a way of enhancing their own understanding of critical issues. In the case of the NZTCEP and the TPSEP, for instance, cooperative activities have been undertaken where New Zealand is the beneficiary. One example is a vehicle emissions study tour to engage Thailand and Singapore expertise on methods to control vehicle emissions, including vehicle emission testing technologies, transport management policies and strategies, vehicle emission enforcement programmes, fuel economy labelling and climate change policies.

Another part of the motivation for co-operation and capacity building can be self-interest on the part of the more-developed partner. Particularly when the partners share ecosystems, there is risk of "environmental blowback" from unmanaged growth across the border. This was clearly a consideration in the development of the environmental elements of the NAFTA relationship, where US border states watched the growth of Mexican *maquiladora* industries with some concern (Cortinas de Nava, C., 2002). This logic extends (though perhaps with less immediacy) beyond border relations, to include spillovers from global environmental damage caused by trading partners in such policy areas as climate change, ozone depletion, and biodiversity loss.

There may also be a broader desire for prosperity in neighbouring states, given the spillover (regional) effects that such prosperity will have in terms of stability, increased trade, reduced immigration pressure, etc. The EU's Association agreements with the Mediterranean countries explicitly aim to bring peace, stability and security to the Mediterranean region, and in that context "recognize the importance of reconciling economic development with environmental protection". That said, the focus of the EU's capacity building efforts in these

agreements is extremely broad (as dictated by their broad objectives), and environmental management is only one of many areas addressed.

In a similar vein, US efforts at capacity building associated with the US-Morocco agreement are part of a wider effort: the Middle East Partnership Initiative – a State Department program that has spent some USD 300 million since 2002 to support democratic and economic reform initiatives, educational development, and women's empowerment in the Middle East. This Agreement has also been used as a launching pad for regional training efforts in places not covered by US RTAs – the GCC countries and North Africa – in areas such as pollution prevention, cleaner production, the principles of environmental law and enforcement.

How have approaches to environmental co-operation in RTAs evolved?

Many RTAs that contain elements involving environmental co-operation did not envision any such elements at their inception. Within the Treaty of Asuncion establishing MERCOSUR, for example, there is just one mention of the environment (and that only in the Preamble, where members recognise that economic integration requires the "effective" use of available resources and the preservation of the environment). Yet, the current work on environmental co-operation under that RTA is well developed. A technical working group on environmental matters meets three or four times a year, reporting to the Common Market Group, the highest decision-making body under the treaty. Its agenda includes work on regional approaches to eco-labelling and compliance with norms such as ISO 14000. The MERCOSUR Framework Agreement on Environment of 2001 is a basis for further regional co-ordination of efforts.

ASEAN also started out with no specific references to the environment in its objectives, although it has always been aimed at fostering regional peace and stability, a goal for which environmental integrity will necessarily be an important element. The 1999-2004 Ha Noi Plan of Action (HPA) included work on transboundary haze, nature conservation and biodiversity, coastal and marine environment, global environmental issues, and cross-cutting environmental initiatives. Some USD16 million was spent on environmental initiatives under this Plan. Of this, 72 per cent went to biodiversity conservation; another 15 per cent, USD2.5 million, went to transboundary pollution. An assessment of the HPA environmental activities found that four of the HPA's 15 initiatives were fully accomplished (Habito, C., *et al.,* 2004). This included the signing of the transboundary haze agreement (entered into force in 2003, though Indonesia has yet to ratify), mechanisms to facilitate co-operation on haze, and the establishment of a regional centre on biodiversity. The Vientiane Programme, announced at the 10th ASEAN Summit in Laos in 2004, sets out the goals for the next five-year programme, which includes an extensive suite of environmental co-operation initiatives.

These examples seem to demonstrate the need to deal with environmental issues in tandem with economic integration.[4] Environmental issues, while not part of the original agenda, have forced their way onto that agenda by necessity, because of concerns about intra-regional competition and the need for a level playing field (initially of primary importance in the cases of the EU and MERCOSUR), and because of issues of regional environmental importance, such as ASEAN's haze pollution problem.

Perhaps in acknowledgement of this fact, RTAs are increasingly establishing some sort of framework for environmental co-operation at the outset. These range from the highly specific (such as the Singapore-Korea Memorandum of Understanding [MOU] on co-operation in compressed natural gas technologies[5]), to the more general, such as the Environmental Co-operation Agreement signed by the parties to the TPSEP. The latter is similar to a framework agreement, setting out broad objectives and a timetable for review of progress, but establishing no concrete areas of work at the outset. The advantage of a more general framework is that it allows for a work program to develop in response to demonstrated needs and Parties' current environmental priorities, and is flexible to accommodate any changes in priorities.

Some of the environmental co-operation activities carried out in the framework of RTAs are related to ongoing initiatives that were subsequently formalised or integrated in the text of the agreement. It is therefore not easy to distinguish successful environmental co-operation under an RTA from co-operation outside the framework of a trade agreement. Nevertheless, there is a number of successful examples of environmental co-operation that are clearly linked to an RTA, including some of the NAFTA efforts (*e.g.* on the sound management of chemicals, and on migratory birds, the ASEAN efforts to tackle regional haze problems, and others (Block, G., 2003, Ebinezer, F., 2004)

In practice, the least challenging sort of co-operation is probably the sharing of environmental expertise, as reflected, for example, in the Singapore-Korea MOU on Co-operation on Compressed Natural Gas Technologies and Policies. Somewhat more difficult is co-operation on environmental issues of regional interest, where environmental co-operation is expected to help harness the energies and institutional platforms created by a trade agreement to address shared concerns (Schiff, M. and Winters A., 2002). Success in this case demands some modicum of international institutional development, as well as considerable political will. The most demanding type of co-operation is in the co-ordination of environmental policies, where only highly integrated groupings such as the EU and, to some extent, NAFTA, usually have the supporting institutional strength to make co-operation possible (and only then when strong political will exists).

Financing environmental co-operation

Adequate financing is a crucial element in the implementation of the environmental co-operation activities foreseen in the context of RTAs. Nevertheless, few trade agreements or side agreements on the environment specifically address financial issues. When they do, it is generally in an open-ended way. The Canada-Costa Rica agreement, for instance, provides that funding for the co-operative activities agreed by the Parties will be determined on a case-by-case basis. Financing for capacity building activities set out by the Commission under the Environment Affairs Council of the US-Chile agreement will be provided "according to legislation and availability of resources in each Party".

Behind those general statements in the body of the agreement, however, are often detailed programmes and the corresponding budgets, which reflect the willingness of the parties to effectively implement their environmental co-operation programmes. These budgets include funding to support the institutions established under the RTA on institutional arrangements, as well as the various programmes of co-operation.

For example, the MOU on Co-operation between the EU and Chile, signed in 2001, defines multi-annual guidelines for co-operation programmes for the period 2000-06. That MOU includes a Programme of Integral Management of Natural Resources, which identifies the problem that the "economic growth model of the country based on raw material export produced pressure on the natural resources, especially at the level of the non-renewable, which can endanger the viability of the various ecosystems in the future". To address this problem, the MOU sets out various strategies and specifies the forms of technical and financial assistance.

Table 5.2 gives a partial idea of the scope and nature of various efforts at environmental co-operation and capacity building. Some of this work is specifically trade-related, while there is also a great deal of work aimed more generally at improving environmental management, whether trade-related or not. Particularly in the case of EU projects, it is hard to disaggregate capacity building funding from support for environmental improvement (such as pollution clean-up projects), and from non-environmental trade-related technical assistance. As such, the budget figures are not properly comparable, and are presented here for illustrative purposes only. Furthermore, in addition to the "official" budget allocated for co-operation and related institutions, the costs (especially in terms of human resources managing co-operation) engaged by the individual countries also need to be considered.

The MERCOSUR Framework Agreement on the Environment mentions co-operative efforts to "identify financing" for capacity-building initiatives, research, and environmental education. It should be noted that funding for environment-related issues under MERCOSUR comes not only from Parties,

Table 5.2. **Funding of co-operation and capacity-building in selected RTAs**

Agreement	Co-operation and capacity-building Activities	Budget Indicators
Canada-Chile Agreement on Environmental Co-operation	Joint meetings and workshops. Issues include: information systems for enforcement of environmental and wildlife laws; environmental indicators; migratory bird management; environmental impact assessment; pollutant release and transfer registry; building NGO capacity, etc.	2003-2005 budget was CAD 355000, split roughly 50/50 between the two countries (Environment Canada funds).
Canada-Costa Rica Agreement on Environmental Co-operation	Scoping on Costa Rica's chemical management; on environmental instruments; roundtables on trade-environment; a workshop on pollutant release and transfer registries.	No set budget (case by case) (Environment Canada and CIDA funds); modest projects.
EU-ACP	Extensive projects, but those funded that relate to trade-related assistance include EUR 29 million for ACP companies and organisations to comply with EU pesticide residue regulations (since 2003); EUR 42 million to improve sanitary conditions for fish exports; EUR 12.5 million on sustainable fisheries in Caribbean.	Since 2003, EUR 83.5 million
EU-Chile	Seminars and workshops on sustainability assessment; collaboration on Chilean regulations and norms; a recent project (EUR 100 000) to create a website that provides information on Chilean and EU environmental regulations and requirements from the market; Germany: Air pollution control in Santiago; maintenance of natural resources; sustainable management of Chilean native forest; allowances for SMEs for investments in environmental technology.	Since 2000, EUR 233 000 committed (DG funds); EU member states contribute own. An Eco-certification for Wood Sector and Forestry project is valued at USD830 000.
Euro-Med Associate Agreements	Environmental co-operation is carried out under the SMAP (Short and Medium-term Priority Environmental Action Programme) within the context of the Euro-Med partnership. From 2000, eight projects valued at EUR 20 million: waste management for olive oil industries; marine and coastal protection; watershed management; water management; desertification; air quality programs; preparing environmental master plan in Lebanon and Syria. A monitoring agency was established and 12 national institutes to assist and co-ordinate with SMAP. More substantial funding through the MEDA programme, the primary vehicle for financing the Euro-Med partnership. MEDA II (2000-2006) is funded at EUR 5 350 million, but only a fraction of that is environment-related.	From 1998-2003, approximately EUR 36.8 million.

Table 5.2. **Funding of co-operation and capacity-building in selected RTAs** *(cont.)*

Agreement	Co-operation and capacity-building Activities	Budget Indicators
EU-Ukraine	Climate change, legislative harmonisation, EI assessment, water resource management, elaboration and implementation of biodiversity conservation measures, internal market functions with respect to environmental standards, Black Sea water pollution, and the development of a regional system for industrial waste throughout the Ukraine.	Between 1991 and 2003, EUR 17 million was spent to support environmental protection activities through national and multi-country initiatives.
North American Agreement on Environmental Co-operation (via the CEC)	Activities with a Mexican focus include sound management of chemicals; compliance with wildlife laws; improving private sector performance on environmental management; and the conservation of habitat and species.	Total annual budget (includes numerous non-capacity building activities) USD 9 million (split evenly among the three environment ministries)
US-Chile Free Trade Agreement	Projects on pollutant release inventory; mining; environmental law and enforcement/ compliance; private sector networking; agricultural practices; methyl bromide emission reduction; wildlife protection and management; and increasing use of cleaner fuels. Short-term secondments of Chilean environmental officials to US agencies of relevance to their work. Joint project with UNITAR to help develop pollutant release and transfer registry.	In 2004, USD 288,000 was spent. (funding through EPA, which carries out the capacity building activities)
US-Morocco	Trainers' courses in environmental regimes, enforcement and compliance, environmental impact assessment, use of economic incentives, etc, as well as capacity building for NGOs, institutional strengthening, and sector-focused capacity building to develop an effective program for addressing the main environmental problems in a selected sector, textiles.	In 2004, USD 498 000 was spent.

but also from development assistance funds, for example, from the German Gesellschaft für Technische Zusammenarbeit (GTZ).

The EU, on the other hand, has announced that financial support will be available for the negotiation and implementation of the future Economic Partnership Agreements with the ACP countries. The revised Cotonou Agreement contains preliminary conclusions on a multi-annual financial framework for co-operation, including a European commitment to maintain its aid effort to the ACP countries at a certain level, without prejudice to the eligibility of ACP countries for additional resources. The Declaration on a MERCOSUR Biodiversity Strategy refers to financing of the Strategy through, *inter alia*, the private sector and international co-operation.

Information on actual amounts spent on environmental co-operation activities under RTAs is not easily available. First, these figures are not always published. Second, there is not always a clear distinction between amounts spent for co-operation under the RTA and co-operation under other frameworks. An exception is the 5th Work Programme of the Canada-Chile AEC, which includes a detailed budget for the different activities set out therein (see Box 5.2). Under the

Box 5.2. **Budget for co-operative activities of the 5th Work Program of the CCAEC (2005-2007)**

Project No.	Project title	Estimated costs	
		Chilean pesos	Cdn dollars
05.1	**Enforcement and compliance**		
05.1.1	Evaluation of capabilities and requirements for setting up a National Protected Areas System	2 760 000	6 000
05.1.2	Migratory Bird Protection and Management (Training of Chilean officials responsible for the protection and banding of migratory birds)	5 060 000	11 000
05.1.3	Strengthening the Implementation of the Persistant Organic Pollutants (POPs) Convention	4 600 000	10 000
05.1.4	Exchange and Technical Co-operation Workshop on Sustainable Development Indicators	3 680 000	8 000
05.1.5	National Enforcement Management Information System and Intelligence System – Phase IV	5 520 000	12 000
05.2	**Public participation**		
05.2.1	Developing Non-governmental Organization Pollutant Release and Transfer Register Information Management Capabilities	3 680 000	8 000
05.2.2	Training public officials on Methodologies for Public Participation and Environmental Conflict Management	7 360 000	16 000
05.2.3	Strengthening NGOs within the Framework of Public Participation in Chile	7 360 000	16 000
05.2.4	Dissemination of Information on Environmental Management	7 360 000	16 000
05.3	**Trade and environment**		
05.3.1	Promoting Environmental Sustainability in the Aquaculture Sector	11 040 000	24 000
05.3.2	Climate Change – Road show on the Clean Development Mechanism (CDM)	10 120 000	22 000
05.3.3	Energy Efficiency	8 280 000	18 000
05.4	**Health and environment**		
05.4.1	Air Quality Index – Phase II	2 300 000	5 000
TOTAL		**79 120 000**	**172 000**

Source: Environment Canada, *http://can-chil.gc.ca/English/Activities/Work/2005wp/2005wp.cfm.*

NACEC, the three parties are committed to contributing the same amount each – USD three million per year – to maintain the CEC. While Mexico is probably most challenged by this requirement, it is also the main direct beneficiary of co-operation and capacity development under the NACEC.

Institutions dealing with environmental co-operation

Most RTAs, and in some cases their environmental side agreements, have set up specific institutions to implement the environmental commitments in the agreement.[6] The mandate and level of responsibility of these institutions will of course greatly depend on the level of environmental commitments undertaken by the parties in the RTA, but in general, their main function is to manage the environmental co-operation arrangements between the parties. This section describes a few examples.

Under the NAAEC, Parties established a Commission for Environmental Co-operation (CEC) with a Secretariat designated by the three environment ministers, a Council, and a Joint Public Advisory Committee. The Council is the governing body of the CEC. It is composed of the environment ministers (or the equivalent) of each country, and meets at least once a year to discuss CEC programs and activities. The Joint Public Advisory Committee (JPAC) is composed of *fifteen members*, five from each of the three countries (Canada, Mexico, and the United States), who are appointed by their respective governments. Its members *act independently* and their responsibility is to provide the *Council* with their advice on all matters within the scope of the NAAEC. The Secretariat is composed of professional staff who implement initiatives and conduct research in core program areas on topics pertaining to the North American environment, environmental law and standards, and other environment and trade issues, in addition to processing citizen submissions on enforcement matters. The Secretariat provides technical and operational support to the Council, as well as to committees and groups established by the Council.

Subsequent RTAs by the US and Canada have used simpler institutional arrangements. In the Canada-Chile and the US-Chile agreements, a Commission was created that meets at least once every two years. The Joint Statement on Environmental Co-operation that accompanies the US-Morocco agreement similarly establishes a Working Group on Environmental Co-operation, comprised of government representatives appointed by both Parties, to meet at least once a year to broaden and deepen effective co-operation on environmental issues. The US-Bahrain and Oman MOUs provide for a Joint Forum to meet "regularly" (Bahrain) or "within one year of signing and as appropriate thereafter" (Oman). The US-Singapore Memorandum of Intent of Co-operation on Environmental Matters, on the other hand, while referring to a plan to meet at least biennially to review the status of co-operation, does not refer to specific institutions.

Under the US-CAFTA-DR agreement, an existing institution, the Secretariat for Central American Economic Integration (SIECA) will provide the Secretariat to deal with public submissions by citizens from all Parties, except US citizens, who may bring submissions before the CEC established under the NAAEC.

The agreements concluded by the EU do not charge particular institutions with environmental co-operation, though the body overseeing the implementation of the Agreement – typically an Association Council or Co-operation Council – is also entitled to create sub-bodies to deal with specific issues.

The environmental side agreements to RTAs recently negotiated by New Zealand also describe in detail the institutions mandated with overseeing the implementation of the environmental aspects of the agreement. Box 5.3 describes one example: the Environment Committee set up under the NZTCEP's Arrangement on Environment.

Box 5.3. **Institutional arrangements in the New Zealand-Thailand Arrangement on Environment**

Article 3

3.1. The Participants establish an Environment Committee comprising senior officials of their government agencies responsible for environmental matters. The Committee will meet within the first year of the date of entry into effect of this Arrangement and subsequently thereafter as mutually decided by the Participants. Unless the Participants decide otherwise, the venue for meetings will alternate between the two countries.

3.2. Each Participant will designate a national focal point at officials' level to facilitate communication between the Participants concerning this Arrangement.

3.3. The Environment Committee and national focal points may exchange information and coordinate activities under this Arrangement between meetings using email, video conferencing, or other means of communication.

3.4. The functions of the Environment Committee will include:

a) establishing an agreed work programme of cooperative activities;

b) overseeing and evaluating the cooperative activities;

c) serving as a channel for dialogue on matters of mutual interest;

d) reviewing the operation and outcomes of the Arrangement; and

e) providing a forum for resolving differences.

Box 5.3. **Institutional arrangements in the New Zealand-Thailand Arrangement on Environment** *(cont.)*

3.5. In carrying out its work the Environment Committee may consult or seek the advice of non-government sectors or relevant experts in each country and may decide to invite their attendance at meetings of the Committee.

3.6. Each Participant will provide an opportunity for the members of its public or domestic non-government sectors to submit views or advice to it on matters relating to the operation of this Arrangement.

3.7. Where any differences arise between the Participants over the interpretation or application of this Arrangement, the Participants will endeavour to resolve the differences through consultation within the Environment Committee. If a Participant seeks a meeting of the Environment Committee to assist in resolving any such differences, the Environment Committee will meet as soon as practicable and no later than 90 days following the request.

3.8. The Ministers responsible for this Arrangement in each country will meet at least once within the first two years of the operation of this Arrangement and otherwise as mutually decided with a view to reviewing the operation of this Arrangement and resolving any differences not able to be resolved within the Environment Committee. The Ministers may seek a report of the Environment Committee to assist in their deliberations.

Source: Ministry of Foreign Affairs and Trade, New Zealand. *www.mfat.govt.nz/tradeagreements/thainzcep/environment.html*.

Areas of environmental co-operation in selected RTAs

It goes beyond the scope of this study to list all the areas of co-operation, including capacity building and technical assistance, detailed in the various RTAs. This section therefore only provides an overview of the main areas of co-operation established in selected RTAs. Boxes 5.4 and 5.5 provide some more detailed examples of co-operation arrangements. The section finishes with an overview of two specific areas in which Parties to some RTA have agreed to co-operate: the implementation of multilateral environmental agreements and the liberalisation of environmental goods and services.

In the context of NAFTA, the North American Agreement on Environmental Co-operation (NAAEC) establishes the framework for co-operation, aimed at, *inter alia,* developing environmental laws, enhancing compliance and enforcement, increasing transparency and accessibility to remedies, monitoring the

environmental impacts of the NAFTA, and facilitating co-operation on common environmental problems. The NAAEC, in turn, establishes the CEC, to elaborate specific recommendations on a number of issues, including technical capacity building, information exchange, compatibility of enforcement efforts, pollution prevention techniques and strategies, common indicators for reporting on the environment, and on environment matters as they relate to economic development (as well as others the Council of the CEC may decide).

Subsequent Canadian and US side agreements on environmental co-operation follow a similar approach, although not always addressing as comprehensively or explicitly the objectives and areas for co-operation as the NAAEC does. In the Canada-Costa Rica agreement, for example, although Parties agree to develop programs of co-operative activities to promote environmental objectives, there are no specific institutions entrusted with identifying or developing such activities.

Similarly, the Environmental Co-operation Agreement signed in the context of the US-Chile agreement establishes a framework for co-operation that is significantly less detailed than the one foreseen in the trade agreement.[7] At the same time, these agreements introduce other provisions that expand the approach to environmental co-operation, or provide elements to ensure it does not remain a "best endeavour" element. Provisions in the US-Australia agreement, for instance, include obligations in regard to public participation and access to information on ongoing co-operation efforts and on its environmental effects. Another example is the US-CAFTA-DR agreement, which requires Parties to develop, in the context of co-operative programs, benchmarks or other types of performance measures to assist the Commission of the Agreement's Environmental Affairs Council in its ability to examine and evaluate progress.

The MERCOSUR Framework Agreement on Environment establishes important objectives for co-operation, such as compliance with multilateral environmental agreements; promotion of analysis, information exchange, research and education in regard to the environment, and the co-ordination of national policies and harmonisation of legislation on environment and natural resources (Box 5.4). Specific thematic areas identified for such co-operation include sustainable management of natural resources, environmental planning, environmental policy instruments, and environmentally sustainable productive activities. Parties will develop a work plan on these areas, and others they may identify, in the context of the environmental agenda currently being taken forward in MERCOSUR. The 2006 Declaration on a MERCOSUR Biodiversity Strategy also includes detailed action for co-operation among Parties.

Box 5.4. **Environmental co-operation in MERCOSUR**

MERCOSUR's Framework Agreement on Environment*

Article 5 – Member States will cooperate in the implementation of international environmental agreements to which they are parties. This co-operation may include, when considered convenient, the adoption of common policies for the protection of the environment, the conservation of natural resources, the promotion of sustainable development, the presentation of joint communications on issues of mutual interest, and the exchange of information on national positions in international environmental fora.

Article 6 – Member States will enhance the analysis of the environmental problems of the sub-region, with the participation of relevant national bodies and of civil society organisations, and are required to implement the following actions, among others:

- increase the exchange of information on environmental laws, regulations, procedures, policies, and practices, as well as their relevant social, cultural, economic, and human health aspects; in particular, those that may affect trade or competitiveness in the MERCOSUR framework;
- promote national environmental policies and instruments, seeking to optimise environmental management;
- seek harmonisation of environmental laws, taking into account the different environmental, social, and economic circumstances in MERCOSUR countries;
- identify sources of financing for capacity-building of Member States;
- contribute to the promotion of environmentally healthy and safe labour conditions to improve, in a framework of sustainable development, quality of life, social welfare, and job creation;
- contribute to other MERCOSUR fora and activities adequately and timely considering relevant environmental issues;
- promote the adoption of environmentally-friendly policies, productive processes, and services;
- promote research and development of clean technologies;
- promote environmental education (…).

* Unofficial translation from Spanish.

Source: MERCOSUR, *http://ambiente.mercosur.int*.

In RTAs involving the EU, the principles and areas for environmental co-operation are established in the agreements themselves as a cross-cutting theme, and cover a wide range of issues.[8] The EU-Chile agreement, for instance, refers to co-operation on the relationship between poverty and environment, environmental impact of economic activities, projects to reinforce environmental structures and policies, exchanges of information, environmental education and training, technical assistance, and joint regional research programs. This more general approach to environmental co-operation allows for an ongoing assessment of needs by the developing-country Parties. Nevertheless, the failure of the agreements to identify more concrete projects and to create specific institutions to advance co-operation activities could prevent such comprehensive provisions from being implemented. The provisions incorporated in these agreements establishing the approximation of laws, including legislation on the environment and on natural resources, as a condition of strengthening the economic links between the parties, may already be defining the priorities for future co-operation.[9]

In the 2005-2007 Work Program established under the CCAEC, Canada and Chile agreed on a broad range of actions around four priority areas: environmental enforcement and compliance; participation of civil society in environmental management; trade and environment; and health and environment. Concrete actions include, for example, migratory bird protection and management; strengthening the implementation of the Stockholm Convention on Persistent Organic Pollutants (POPs Convention); training public officials on methodologies for public participation and environmental conflict management; promoting environmental sustainability in the marine aquaculture sector; and energy efficiency.

The Environmental Co-operation Agreement (ECA) signed in conjunction with the US-CAFTA-DR agreement, provides a comprehensive framework for environmental co-operation between the countries that builds on previous environmental capacity building in the region. Among its innovative features, the ECA includes provisions for establishing benchmarks to identify short, medium, and long-term goals for improving environmental protection in the region. The ECA also provides for independent, outside monitoring of progress in meeting the benchmarks. Future cooperative projects will be set out in a work plan that will be developed by the Environmental Co-operation Commission established in the ECA. The Commission may also consider recommendations on appropriate capacity-building activities developed through the public submissions process established under the US-CAFTA-DR agreement. Priority areas for co-operation under the ECA include: reinforcing capacity to implement and enforce environmental laws; promoting implementation of obligations under certain multilateral environmental agreements such as the Convention on Trade in Endangered Species of Flora and Fauna (CITES); improving

conservation of natural resources and increasing transparency in their pricing and regulation; and promoting clean technologies and environmentally friendly goods and services.

Under the SADC Treaty, Parties agreed to co-operate, *inter alia*, in the areas of natural resources and environment. Box 5.5 describes how this general commitment has translated into concrete action in the areas of wildlife management.

Box 5.5. **Co-operation for wildlife management in SADC**

Wildlife is a potential natural resource of the SADC region. SADC countries, excluding the Democratic Republic of Congo (DRC) and the islands, have 39 % of their total surface area as protected areas and a large population of wildlife, especially elephants (242 469) accounting for 39% of all African elephants.

SADC has adopted the Protocol on Wildlife Conservation and Law Enforcement as the basic platform for regional co-operation and integration in wildlife management. The Protocol identified two aspects that will guide the regional co-operation and integration in wildlife management. The first one is the establishing of common approaches to the conservation and sustainable use of wildlife resources, and the second one is on law and enforcement, *i.e.* effective enforcement of laws governing the use of resources.

The SADC has also adopted the Wildlife Programme of Action, which consists of a portfolio of projects that address some of the regional wildlife constraints, including Human Resources Development and Management; Management of Wildlife in Semi-Arid Areas; Disparity in Knowledge of Resource Base; Inadequate Resource Management and Control Mechanisms; Inadequate Development of, and access to, Land Practices and Conflicts; and Inadequate Co-ordination Among Stakeholders.

Examples of ongoing projects include:

- The SADC Regional Rhino Conservation Project, which contributes to the long-term conservation of the region's biodiversity by targeting the management of two key species – the Black and the White Rhinos
- The SADC Regional Wetlands Conservation Project, which promotes awareness of the role, value, and appropriate uses of wetlands amongst policy makers, resource planners, resource managers, extension workers and users, in particular where they are shared between countries through the formulation of management plans that congregate efforts and co-operation from the riparian countries in implementing of such plans.

Source: SADC, *www.sadc.int*.

Specific areas of environmental co-operation

Supporting the implementation of MEAs

Some RTAs refer to multilateral environmental agreements and generally do so in the Preamble and provisions on co-operation. The Preamble of the US-Chile Agreement, for example, states that the Parties are resolved to conserve, protect, and improve the environment, including through multilateral environmental agreements to which both countries are Parties. The environmental co-operation agreements between Canada and Chile and Costa Rica, respectively, also express a desire to support and build on international environmental agreements through collaboration.[10] Similarly, trade agreements signed by the European Union with Bangladesh and Croatia, among others, seek close co-operation in the achievement of the objectives of MEAs to which the signatories are Parties.

Certain RTAs, including MERCOSUR and the Japan-Mexico bilateral trade agreement, contain more elaborate provisions on co-operation for the implementation of MEAs. The Framework Agreement on Environment in MERCOSUR, for instance, highlights the importance of regional co-operation for the implementation of Parties' international environmental objectives: "The Parties will co-operate in the implementation of international environmental agreements to which they are parties. This co-operation can include, where necessary, the adoption of common policies for the protection of the environment, the conservation of natural resources, promotion of sustainable development, joint communications on subjects of common interest and exchanges of information about national positions in international fora."

Similarly, in the Colombia-Ecuador-Peru-US Environmental Co-operation Agreement, parties agree to work together to strengthen the capacity to implement MEAs and to develop proposals to enhance the work performed under MEAs. In the Japan-Mexico Agreement, on the other hand, co-operation in the field of environment is focused on the promotion of capacity and institutional-building to foster activities related to the Clean Development Mechanism under the Kyoto Protocol and exploration of appropriate ways to encourage the implementation of projects related to this mechanism (Box 5.6).

Promoting trade in environmental goods, services, and technologies

A few RTAs include references to environmental goods and services and environmentally sound technologies. Some do this in the chapter on environmental co-operation, *e.g.* the agreement between Japan and Mexico, or in side agreements, such as the ECA to the US-CAFTA-DR agreement, which includes among co-operation actions that of "developing and promoting environmentally beneficial goods and services".

Box 5.6. **Co-operation between Japan and Mexico in the field of environment**

Agreement between Japan and the United States of Mexico for the Strengthening of the Economic Partnership

Article 147: Co-operation in the Field of Environment

1. The Parties, recognizing the need for environmental preservation and improvement to promote sound and sustainable development, shall cooperate in the field of environment.

   Cooperative activities under this Article may include:

   a) exchange of information on policies, laws, regulations, and technology related to the preservation and improvement of the environment, and the implementation of sustainable development;

   b) promotion of capacity and institutional building to foster activities related with the Clean Development Mechanism under the Kyoto Protocol to the United Nations Framework Convention on Climate Change, as may be amended, by means of workshops and dispatch of experts, and exploration of appropriate ways to encourage the implementation of the Clean Development Mechanism projects;

   c) encouragement of trade and dissemination of environmentally sound goods and services; and

   d) encouraging the exchange of information for the identification of investment opportunities and the promotion and development of business alliances in the field of environment.

2. Implementing arrangements setting forth the details and procedures of cooperative activities under this Article may be made between the government agencies of the Parties.

Source: Ministry of Foreign Affairs of Japan, *mofa.go.jp/region/latin/mexico/agreement/agreement/pdf*.

The US Trade Act of 2002 includes, among the principal trade negotiating objectives specifically related to trade "to seek market access, through the elimination of tariffs and non tariff barriers, for United States environmental technologies, goods, and services". US RTAs systematically include text related to market access for environmental goods and services. For example, in the agreement between the United States and Morocco "Parties recognize that strengthening their co-operative relationship on environmental matters can encourage increased bilateral trade in environmental goods and services". All the reports issued by the TEPAC in connection with the negotiation of RTAs discuss the market access improvement for environmental goods that may be derived from the implementation of the Agreement.

The MERCOSUR Framework Agreement on Environment encourages the development of clean technologies, and the Declaration on a MERCOSUR Biodiversity Strategy provides for exchange of information and experience on international trade in biodiversity goods (biotrade). Finally, the National Interest Analysis of the NZTCEP predicts possible benefits from liberalisation of trade in environmental goods.

It is noteworthy, however, that advancement achieved in the liberalisation of trade in environmental goods and services in the framework of RTAs has not translated into significant progress on this issue at the multilateral level.

Key factors for successful environmental co-operation under RTAs

There is already a substantive body of experience with the implementation of co-operation mechanisms, and some conclusions can be drawn on those approaches that seem to have worked well. This section does not assess co-operation undertaken by countries in the framework of RTAs, but rather, attempts to provide some examples of how commitments made by countries have been translated into practice, and highlights experiences that may be useful for to others.

Assessing the needs

The principles of successful co-operation mechanisms and, in particular, capacity building, are not much different from the principles of successful development assistance. One of those is that any assistance must be demand-driven. Environmental capacity building can clearly not be forced on an unwilling negotiating partner.

In most cases, the procedure for defining a program of capacity building work begins with scoping exercises. The Canada-Chile Agreement, for example, was preceded by a thorough study – the first of its kind – of Chile's existing environmental laws, and of the many institutions across which responsibility for environmental protection was spread. This served to highlight the areas where additional work was needed. Following the scoping of areas of concern, Chile identified a list of areas of priority for environmental capacity building. Canada compared this list to those areas in which it had expertise, and for which it had the necessary financial resources, to come up with two potential themes of particular focus: participation of civil society in environmental management, and enforcement and compliance with environmental legislation.[11] This sort of demand-driven exercise is also typical of the US and EU approaches. In the US-CAFTA-DR negotiations, for example, each Central American country submitted a capacity building report identifying its priorities.

The ACP countries currently negotiating Economic Partnership Agreements with the EU are conducting similar exercises.

Several government officials interviewed for this study noted that – particularly when they were dealing with governments "suspicious" of the trade-environment linkage – an approach that included capacity building was important in easing the tensions and getting genuine buy-in from the negotiating partners.

Coordinating parallel efforts

Environmental capacity building efforts may face problems of coordination, both with existing programs of capacity building outside the context of RTAs, such as Official Development Assistance, and with RTA-driven capacity building carried out by third countries. A key challenge for the United States, for example, in designing a program of environmental capacity building for CAFTA-DR was the wide variety of existing efforts in this region, prominent among them the ongoing work of USAID on environmental issues. Similarly, countries engaged in several RTAs (such as Morocco, which is Party to RTAs with the EU and the United States) with different co-operation programmes need to make an effort to manage these programmes efficiently.

Providing adequate resources

Co-operation and capacity building efforts can only work if the adequate resources – institutional, human and financial – are also in place. Where co-operation commitments in the text are not accompanied by the necessary resources, their effectiveness is likely to be short-lived. Some developing countries have complained that once the momentum of the negotiation is gone, and commitments on environmental issues agreed, the necessary resources for the implementation of environmental co-operation provisions does not always follow, or the allocation of resources is not necessarily in line with the recipients' priorities.

Assessing the results

An important aspect of successful co-operation initiatives is the need for ongoing assessment of current and future efforts. The review and assessment of the CEC, mentioned above, stands out as one of the few publicly available assessments of the millions of dollars devoted to RTA-related environmental capacity building to date. Without greater efforts to assess past actions, and without informed benchmarking and indicators of success to guide future efforts, it will be difficult even to assess the state of play, much less to improve it.

In another parallel with Official Development Assistance, capacity building efforts are often too easily assessed on a per-dollar investment basis: "more is

better". There is a clear need for objective measures of success that include the sorts of parameters the efforts are aimed at affecting. This sort of measurement is inherently difficult but, given the amount of resources currently devoted to trade-related environmental capacity building efforts, best efforts would seem to be easily justified.

The review of the CEC concluded that the CEC's 10-year multi-million dollar effort to build capacity had "only scratched the surface".[12] This underscores the message that capacity building can be a long-term and costly prospect, like development assistance efforts (Audley, J. and Ulmer, V., 2003). For Canada and Mexico, the CEC budget has been a significant part of the program spending for their environment ministries over recent years. This in part explains the gradual scaling back of the institutional structure accompanying Canadian and US subsequent environmental side agreements (though of course the subsequent agreements were also directed to circumstances that differed from the unique North American context). Once an institution such as the CEC has been established, it is very difficult to take the decision to shut it down. Lighter institutional arrangements, on the other hand, without specific budget allocations, are more easily allowed to expire.

This is not a criticism of the CEC model. To some extent, countries get what they pay for, and it is doubtful that many of its accomplishments could have been achieved without some sort of dedicated trilateral institution with adequate and predictable funding. Indeed, the ten-year review and assessment concluded with a call for the Parties to publicly renew their commitment to the CEC as their institution of choice for trilateral co-operation on the environment.

The CEC experience demonstrates that capacity building efforts can be effective, and that RTAs can serve as a platform for delivery of these programmes. In fact, these sorts of efforts can act to raise standards (as is the case for Mexico's regime for management of chemicals, for example). This is particularly noteworthy in light of the earlier argument that general commitments to raising environmental standards showed no clear results.

But it also shows that capacity building efforts are difficult. Among the concerns identified in the review were:

- rapid turnover of staff in the relevant areas of the CEC's key audience, the Mexican environment ministry, resulting in knowledge lost;[13]
- the absence in Mexico of a "stable supporting infrastructure," meaning that at times trained individuals were constrained in their ability to put their training to use;
- capacity building that was, at times, inappropriate to Mexican own priorities and conditions.

Again, these are concerns that sound familiar to those steeped in the experience of development assistance. A rich literature on experience in delivery of aid confirms the sorts of points made above in relation to environmental capacity building.[14]

Based on the lessons of that literature, adapted to the context of capacity building efforts in RTAs, for such efforts to be effective the following points should be considered:

- Capacity-building must be demand-driven and be suited to the needs and priorities of the host state. It should be preceded by donor-assisted efforts to identify those needs and priorities.
- Parallel efforts by different agencies need to be coordinated – an undertaking that is difficult for many host states because of the very realities that make capacity building necessary in the first place.
- Success demands a long-term commitment, meaning efforts at the program level, rather than just at the project level, and a sizable investment of resources.
- A dedicated institutional structure may be valuable in delivering the necessary continuity and long-term framework.

Notes

1. Spending on environmental capacity-building in 2004 was over USD 3 million. For the Andean states, currently still in negotiation with the US, spending in 2004 exceeded USD 8.5 million.
2. See, *e.g.* the Cotonou Agreement.
3. For a survey of the environmental capacity needs in the developing countries of the Americas, see Segger, Marie-Claire, *et al.* (2004), "Americas Capacity Assessment: Synthesis Report" IISD/CISDL/UNEP.
4. It has been argued, for example, that the environmental co-operation in MERCOSUR came into being precisely to fill the institutional void on regional environmental issues that existed prior to that time. See Onestini, Maria (1999), "The Latin American Southern Common Market (MERCOSUR): Environment and Regionalisation", University of Warwick, CSGR 3rd Annual conference, September 1999.
5. Memorandum of Understanding between the Ministry of Environment of the Republic of Korea and Ministry of the Environment and Water Resources of the Republic of Singapore Regarding Co-operation on CNG Technologies and Policies, February 2005.
6. In addition, countries also assign responsibilities to national institutions to manage and oversee their commitments as a Party. This section will not deal with these kinds of arrangements.
7. Projects identified in an Annex to that agreement include developing a Pollutant Release and Transfer Register in Chile, improving environmental enforcement and

compliance through training and the exchange of information, and improving wildlife protection and management. The work plan in the Environmental Co-operation Agreement, however, only refers generally to activities related to information gathering, and to the exchange and promotion of best practices.

8. This applies to the agreements in the geo-political framework of the Euro – Mediterranean initiative, the agreements geared towards a "*rapprochement*" to Balkan and Eurasian countries, and for more trade-oriented agreements with Chile or Mexico.

9. See, *e.g.* the agreements between the EC and Armenia, Azerbaijan, Georgia, Kazakhstan, Moldova, and the Kyrgyz Republic.

10. Preambles of the Canada – Chile and Canada – Costa Rica Agreements on Environmental Co-operation.

11. The agenda has since broadened to include trade and environment, and trade and health issues.

12. According to some authors, "An institution with an annual budget of USD9 million can hardly make a dent in a series of problems that cost the Mexican economy over USD 40 billion annually "(Gallagher, K., 2003).

13. Conversely, Cortinas de Nava (2002) argues that the existence of a dedicated institution (the CEC Secretariat and the governmental bodies established under its auspices) meant a more enduring institutional memory and capacity than would have been the case with a lighter institutional structure.

14. Sachs, Jeffrey (2005), *The End of Poverty*, New York: Penguin; van de Walle, Nicolas (2005), *Overcoming Stagnation in Aid-Dependent Countries*, Washington, D.C., Center for Global Development; Dollar, David and Lant Pritchett (1998), *Assessing Aid: What Works, What Doesn't, and Why*, Oxford: Oxford University Press and the World Bank; Cassen, Robert and Associates (1994), *Does Aid Work?* (2nd ed.), Oxford: Oxford University Press. Also see the work of the OECD DAC's Network on Development Evaluation, and the DAC Working Party on Aid Effectiveness and Donor Practices.

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Environment and Regional Trade Agreements

Chapter 6

Environmental Standards and Enforcement of Environmental Laws

There are various different angles to the relationship between environmental standards and trade: one is the general recognition that countries maintain their prerogative to determine their own preferred levels of environmental protection. Another one is the risk that non-enforcement of environmental laws or the lowering of environmental standards can lead to unduly competitive advantage and has potential for a "race to the bottom". Finally, some RTAs set the bases to elaborate regional environmental standards.

Key links between environmental standards and trade

The issue of the level of environmental protection – or environmental standards – that the Parties to a trade agreement choose to establish or maintain in their country is key to the discussion on the mutual supportiveness of trade and environment, and has a prominent role in many RTAs. Box 6.1 provides an overview of the key issues in this debate, as reflected in New Zealand's Framework for Integrating Environment Issues into Free Trade Agreements.

There are various different angles to the relationship between environmental standards and trade. First, there is the general recognition that countries maintain their prerogative to determine their own preferred levels of environmental protection. Another key concern is the potential non-enforcement of environmental laws or the lowering of environmental standards to unduly gain competitive advantages. Finally, some RTAs, typically those designed to deepen regional integration, often place emphasis on standardisation processes and the elaboration of regional environmental standards.

Mechanisms for achieving these various objectives include provisions committing parties to *effectively enforce* their environmental laws; commitments *not to lower* environmental standards in an effort to encourage trade or investment; commitments to *raise* environmental standards; and commitments to *harmonise* environmental standards.[1] This section provides an overview of countries' experience with the implementation of such mechanisms, where such experience actually exits.

Setting levels of environmental protection

The prerogative for countries to establish their own levels of domestic environmental protection is generally recognised, and a range of RTAs, such as those involving the United States and Canada, make a specific statement to this effect. This statement is generally coupled with a pledge by Parties to ensure that their laws and policies provide for, and encourage, high levels of environmental protection and to strive to continue to improve those laws and policies.[2] In the Environment Co-operation Agreement among the Parties in the TPSEP, the Parties "reaffirm their intention to continue to pursue high levels of environmental protection and to fulfil their respective multilateral environment commitments and international plans of action designed to achieve sustainable development". This agreement is one of the few that refer

Box 6.1. **New Zealand's views on environmental standards and trade**

New Zealand's Framework for Integrating Environment Issues into Free Trade Agreements refers to environmental standards on various occasions:

[…] Maintaining high standards for environment protection is both important in its own right and fully compatible with economic prosperity. Our aims, domestically and internationally, are to develop sound, sustainable policies in both trade and environment management; and to ensure that the policies are mutually supportive. When constructed with care, trade agreements can and do provide scope for action to be taken to mitigate any harm that comes from increased economic activity.

Given the importance of trade to development, it is vital that environment standards are not misused for protectionist reasons. Genuine environment objectives are never served by discriminating between products on the basis of their respective national origins. Governments should design environmental standards to meet their objectives rather than seek to prescribe the ways in which others must meet the standards. Not all countries will have access to the same technologies.

[…] New Zealand wants a sustainable international trading system which maximises the opportunities for all countries to participate in the global economy. To this end New Zealand will:

- seek standards that focus on the environmental objective which is being promoted, rather than seek to prescribe unnecessarily the method by which the objective should be reached;
- respect the right of other governments to determine their own domestic regulations where these impact only on the environment in their own jurisdictions and do not result in breaches of international rules on either environment or trade;
- oppose the use of environment standards as a form of economic protectionism from lower priced international competition.

Source: Ministry of Foreign Affairs and Trade, New Zealand, *www.mfat.govt.nz/foreign/tnd/newissues/environment/envframework.html*.

to the use of environmental standards for protectionist reasons: "the Parties agree that it is inappropriate to set or use their environmental laws, regulations, policies, and practices for trade protectionist purposes."

Differences among countries' environmental standards can result in competitive advantages. To address the possible temptation to weaken environmental standards, a number of RTAs, including all recent RTAs negotiated by the United States, provide that "it is inappropriate to encourage

trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory".[3]

At the same time, civil, administrative, or criminal enforcement of environmental laws requires, *inter alia,* strong institutions, trained judiciary, extensive financial resources, and qualified personnel. In many countries and in developing countries in particular, governments are faced with limited resources and competing demands leading to limitations in their capacity to effectively enforce their laws.

Establishing the appropriate level of environmental protection and related standards may pose challenges for both developing and industrialised countries. The latter have to find the balance between maintaining and improving their environmental standards, while avoiding the migration of their industries, and a race toward the lowest common denominator in such standards. Developing countries face the formidable challenge of improving their environmental frameworks, even where more stringent regulations may withdraw some of the advantages associated with existing lower standards. Moreover, access to technology required for meeting more stringent standards may require significant investments that emerging local industry finds hard to finance in a highly competitive marketplace for capital.

Types of provisions related to environmental laws and standards

Commitments to enforce environmental laws

The need to maintain and improve laws providing for high levels of health, safety, and environmental protection is matched by an equally important consideration: the need to enforce laws that are enacted. Provisions to encourage enforcement of Parties' environmental standards are usually motivated by a desire to reduce the potential for a "race to the bottom". Indeed, even the most perfect environmental laws will be of little use if they are not effectively enforced. The necessary complement to good laws on the books is found in strong administrative and judicial activity that ensures compliance and enforcement of such laws.

Only a few countries systematically include this type of commitment in their RTAs (see Box 6.2). The best know example is NAFTA. Subsequent RTAs entered into by the United States and Canada follow the same pattern. Contrary to other provisions in RTAs, these commitments are unique in that they are

Box 6.2. **Provisions on effective enforcement of environmental laws in selected RTAs**

- Since the passage of NAFTA, all RTAs concluded by the United States include the obligation to enforce environmental laws: "[a] Party shall not fail to effectively enforce its environmental laws, through a sustained recurring course of action or inaction, in a manner affecting trade between the Parties…".[1] NAFTA's environmental side agreement, the NAAEC, contains a similar provision but does not nominally link the lack of enforcement to its effects on trade. It provides that each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action.[22]
- The NAAEC template, for the most part, has been used in the environmental side agreements between Canada and Chile, and Canada and Costa Rica.
- The Environment Co-operation Agreement among Parties to the TPSEP provides that "each Party shall endeavour to have its environmental laws, regulations, polices, and practices in harmony with its international environmental commitments".

1. See US – Australia (Article 19.2 [1] [a]); US – Chile (Article 19.2 [1]|a]); US – CAFTA (Article 17.2|1]|a]); US – Morocco (Article 17.2 |1] |a]); and US – Singapore (Article 18.2 [1][a]), US-Bahrain (Article 16.2|1][a]), US-Jordan (Article 5.3 |1] |a]), US-Oman (Article 17.2|1][a]).
2. It should be noted, however, that while "trade effects" are not expressly mentioned with respect to the obligation to enforce environmental laws, the NAAEC elsewhere implies a link between the failure to enforce and a trade effect.

legally binding and enforceable through various mechanisms, such as state-to-state and public submission mechanisms.

It is difficult, and too early, to assess the efficiency of this type of commitment and mechanism. At a minimum, it has the value of reflecting the importance that Parties to the RTA attach to environmental issues. For developing country parties, entering this commitment may constitute a challenge – but also an opportunity to have a closer look at their own environmental regulation and enforcement systems, and enhance their effectiveness.

The post-NAFTA agreements involving the United States take account of the challenges involved in the enforcement of environmental laws by recognising that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement.[4] The right to exercise discretion – if abused – could frustrate the obligation to effectively enforce environmental laws: a country could simply excuse itself by pointing to its priorities and limited resources. To address this situation, these RTAs clarify that a Party is in compliance with the obligation to effectively enforce laws where

a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

The obligation to effectively enforce the Parties' environmental laws is often coupled with an obligation to provide for adequate procedural guarantees and with specific dispute settlement mechanisms available to the Parties. These mechanisms are discussed in more detail in chapter 7 of this study.

Commitments not to lower environmental standards

In a number of RTAs Parties pledge not to lower environmental standards in an effort to increase exports or to attract investment. These sorts of provisions are clearly aimed at preventing strategic distortions of trade and investment flows, by creating so-called "pollution havens". Box 6.3 summarises recent discussions on the pollution haven hypothesis. One example of an RTA including this kind of provision is the Trans-Pacific Strategic Economic Partnership, whose Parties agree that "it is inappropriate to relax, or fail to enforce or administer, their environment laws and regulations to encourage trade and investment".[5]

It should be noted that even where the "pollution haven" effect is found to exist, there may not necessarily be strategic intent to foster it. Brunnermeier and Levinson (2004) are careful to issue this caution: "the finding that firms are responsive to regulatory differences in their location decisions does not demonstrate that governments purposely set suboptimal environmental regulations to attract business." In fact, while empirical studies have noted a lack of enforcement in many states (as distinct from a lowering of standards), it appears to be related more to lack of capacity than to any strategic intent (Cosbey, A., 2004).

Therefore, co-operation and capacity building mechanisms appear as essential complements to this type of commitment in RTAs. As already discussed, in practice, all RTAs that include commitments not to lower environmental standards do also provide for environmental co-operation and capacity, which ultimately aims at achieving a level playing field, as regards environmental standards, among the Parties.

Commitments to raise environmental standards

In some RTAs, parties pledge to raise or maintain high environmental standards. Under NAAEC, for example, Parties "shall ensure that [their] laws and regulations provide for the highest levels of environmental protection and shall strive to continue to improve those laws and regulations".

In practice, it is very difficult to assess whether provisions aimed at raising environmental standards have been effective. In most jurisdictions

Box 6.3. **The "pollution haven" hypothesis**

There is a vast literature on the "pollution haven" hypothesis, but there is little actual evidence to support it. A number of studies in the 1990s seemed to find that the fear that states would strategically lower or under-enforce their environmental standards born in the early days of the trade-environment debates was misplaced.[1] The studies typically found that environmental compliance costs are low (averaging only 2-3%, even though they may range to much higher values in specific sectors), and are only one of many important considerations for firms considering relocating. If firms indeed do not respond to strategic lowering or non-enforcement of environmental standards, then measures designed to "catch" such behaviour would of course come up empty-handed.

More recent studies, however, have criticised the early work on fundamental methodological grounds, and have consistently found a statistically significant "pollution haven" effect, albeit one with modest final results, and only present in a small sub-set of industries.[2]

The sectors prone to relocation tend to face high environmental costs, are relatively "footloose" – not tied to specific locations by the need for particular mineral resource inputs, for example – and are traded between industrialised and developing countries. The limited number of industries involved, and the moderate effects of the pollution haven dynamic may mean that these cases simply do not meet the critical test that countries use in deciding whether to make use of State-to-State mechanisms: the costs involved do not surpass the potential costs of "casting the first stone."

1. A comprehensive survey of the early literature is Jaffe, A., *et al.*, (1995), "Environmental Regulation and the Competitiveness of US Manufacturing: What Does the Evidence Tell Us?", *Journal of Economic Literature* 33, 132-163. See also Low, Patrick and Alexander Yeats (1992), "Do Dirty Industries Migrate?", in Patrick Low (ed.), *International Trade and Environment*, World Bank Discussion Paper No. 159; Tobey, James A. (1990), "The effects of domestic environmental policies on patterns of world trade: An empirical test", *Kyklos*, Vol. 43(2): 191-209; McConnell, Virginia D. and Robert M. Schwab (1990), "The impact of environmental regulation on industry location decisions: The motor vehicle industry", *Land Economics*, Vol. 66(1): 67-81; Lucas, Robert E.B., David Wheeler, and Hemamala Hettige (1992), "Economic development, environmental regulation, and international migration of toxic industrial pollution: 1960-1988", in Patrick Low (ed.) *op. cit.*, pp. 67-86; Birdsall, Nancy and David Wheeler (1993), "Trade policy and industrial pollution in Latin America: Where are the pollution havens?", *Journal of Environment and Development*, Vol. 2(1): 137-149; Eskeland, Gunnar S., and Ann E. Harrison (1997), "Moving to greener pastures? Multinationals and the pollution haven hypothesis", *World Bank Policy Research Working Paper* No. 1744. Washington, D.C., World Bank.
2. For an exhaustive survey of this body of work, as well as of the methodological problems with earlier work, see Brunnermeier, Smita and Arik Levinson (2004), "Examining the Evidence on Environmental Regulations and Industry Location", *Journal of Environment and Development*, Vol. 13(1): 6-41. Also see Taylor, Scott (2005), "Unbundling the Pollution Haven Hypothesis", University of Calgary Economics Department Working Paper No. 2005-15, University of Calgary, Canada;. Becker, Randy, and Vernon Henderson (2000), "Effects of air quality regulations on polluting industries", *Journal of Political Economy*, Vol. 108(2): 379-421; Brunnermeier, Smita, and Mark A. Cohen (2003), "Determinants of environmental innovation in US manufacturing industries", *Journal of Environmental Economics and Management*, Vol. 45(2): 278-293; Ederington, Josh, Arik Levinson and Jenny Minier (2003), "Footloose and pollution-free,"*NBER Working Paper* No. W9718, Cambridge, MA: National Bureau of Economic Research; Greenstone, Michael (2002), "The impacts of environmental regulations on industrial activity: Evidence from the 1970 and 1977 Clean Air Act amendments and Census of Manufactures", *Journal of Political Economy*, Vol. 110(6): 1175-1219; Keller, Wolfgang and Arik Levinson (2002), "Environmental regulations and FDI to US States", *Review of Economics and Statistics*, Vol. 84(4): 691-703; Levinson, Arik, and Scott Taylor (2004), "Unmasking the Pollution Haven Effect", *NBER Working Paper* No. W10629, Cambridge, MA: National Bureau of Economic Research; List, John A. and Mitch Kunce (2000), "Environmental protection and economic growth: What do the residuals tell us?", *Land Economics*, Vol. 76(2): 267-282.

where enough time has passed to allow for empirical analysis, various types of environmental standards have become more stringent. However, the key question is whether this has been the result of the commitments made in RTAs, or of the normal function of government acting in the interest of public welfare (*i.e.* in response to public demand, changing scientific understanding, increased severity of environmental problems, or the many other factors that can act to put upward pressure on standards). In MERCOSUR, since the Treaty of Asuncion, there has been (in all member countries) an improvement in environmental standards, but it is impossible to know how much the Treaty itself contributed to it (Hochsteller, K., 2003). The emergence of three of the four parties from authoritarian regimes to democracies was probably much more important as a causal factor in this case.

In some cases, a pre-existing commitment to strong environmental protection was the proximate cause of the treaty language. That is, it is arguable that the commitment to "a high level of protection and improvement of the quality of the environment", expressed in Article 2 of the EU's Treaty of Amsterdam, for example, was adopted as an expression of a commitment to environmental improvement, not as a prod to it. If environmental management is thereafter improved, is it the result of the treaty language, or of the underlying commitment that gave rise to that language?

That is not to say that RTA commitments to raise environmental standards, and to improve environmental management more generally, are ineffective. On the contrary, they are important in signalling the intentions of the Parties, and provide an enabling legal framework within which more specific objectives can be realised.[6] But it is difficult to causally link them to any sort of concrete progress. Moreover, in a number of cases, these sorts of general commitments are not prerequisites to progress. ASEAN's Regional Haze Action Plan, which, *inter alia*, calls for stricter domestic legal standards in the areas of air quality and forestry practice, is a good example. None of the basic legal documents establishing ASEAN commit to a general improvement of environmental management or (more specifically) to a raising of standards. Rather, starting with the 1998 Ha Noi Plan of Action and, to a more limited extent, with the 1997 ASEAN Vision 2020, they set out very specific areas of co-operation designed to raise environmental standards in the member countries.

Commitments to harmonise environmental standards

Provisions aiming at the harmonisation of environmental standards typically appear in RTAs aiming at reinforced regional integration. Under the COMESA agreement, for example, Parties recognise the importance of standardisation and quality assurance in the promotion of health, the enhancement of the standard of living, the rationalisation and reduction of an unnecessary variety of products, the facilitation of interchangeability of products,

the promotion of trade, consumer protection, the creation of savings in government purchasing, improved productivity, the facilitation of information exchange as well as in the protection of life, property, and the environment, and agree to promote and enforce standards relating to public health and safety and the protection of the environment by applying appropriate standards for goods produced and traded within the Common Market.

Harmonisation provisions may also aim to prevent a "race to the bottom", but are more fundamentally aimed at facilitating free flow of goods and services, unimpeded by technical barriers. There is no evidence in the literature of a competitive lowering of standards to encourage trade or attract investment.[7] There does not seem to be any evidence either of competitive standard-lowering in those contexts where the provisions did not exist.

There are few cases of actual harmonisation of environmental laws or policies among Parties to RTAs, even where there are specific provisions to that effect. The MERCOSUR Framework Agreement on Environment refers to Parties' efforts towards harmonisation of environmental regulations, taking into consideration the different environmental, social, and economic situations of the Parties, but in practice, little has been achieved. In the NAAEC, the Parties commit to study the idea of a transboundary environmental impact assessment mechanism, and in June 1997 the Council agreed to develop a legally binding instrument by 1998. This effort is now more or less permanently stalled (Know, 2003).[8] The Revised Treaty Establishing the Economic Community of West African States (ECOWAS) calls for the "harmonisation and coordination of policies for the protection of the environment", and for the establishment of a technical commission on the environment and natural resources, none of which seems to have taken place to date.

Given the difficulties in agreeing to harmonised standards and policies of any type, particularly when they are to replace existing and varying national approaches, this lack of actual progress may not be surprising.[9] More often, there has been agreement to adopt stronger environmental laws in particular sectors, but the nature of the law in each country is (to varying degrees) left up to the discretion of the national lawmakers. This is, for example, the nature of the ASEAN member compliance with the legislative requirements embodied in the Regional Haze Action Plan. The result is a welcome coordinated upward movement of environmental standards and strengthening of policies but is not, strictly speaking, "harmonisation".

Other mechanisms to enhance environmental performance

In addition to provisions addressing environmental standards, some agreements include language on voluntary instruments and mechanisms that can contribute to enhancing the environmental performance of Parties. MERCOSUR's Framework Agreement on Environmnt, for example, provides for

co-operation between the Parties to promote the use of economic instruments in support of policies that promote sustainable development and environmental protection. Parties also undertake to co-operate to promote environmental education and patterns of behaviour necessary to achieve sustainable development.

Box 6.4. **US-Morocco: complementary mechanisms to enhance environmental performance**

Art. 17.5

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of high levels of environmental protection, complementing the procedures set out in Article 17.4. As appropriate and in accordance with its law, each Party shall encourage the development of such mechanisms, which may include:
   - *a)* mechanisms that facilitate voluntary action to protect or enhance the environment, such as:
     - *i)* partnerships involving businesses, local communities, non-governmental organisations, government agencies, or scientific organisations;
     - *ii)* voluntary guidelines for environmental performance; or
     - *iii)* sharing of information and expertise among government agencies, interested parties, and the public concerning: methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or
   - *b)* incentives, including market-based incentives where appropriate, to encourage conservation, restoration, enhancement, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging or trading permits, credits, or other instruments to help achieve environmental goals efficiently.
2. As appropriate, and in accordance with its law, each Party shall encourage:
   - *a)* the development and improvement of performance goals and standards used in measuring environmental performance; and
   - *b)* flexible means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

Source: USTR, *www.ustr.gov*.

Several agreements signed by the United States, *e.g.* those with Chile and Singapore, provide that each Party "should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies (…)". More recent agreements, such as that between the United States and Morocco, and US-CAFTA-DR contain a detailed list of complementary, or voluntary, mechanisms to enhance environmental performance. One example is provided in Box 6.4. Actual experience with such provisions is, however, too recent to allow any significant conclusions.

Some countries are putting mechanisms in place to implement a "positive environmental agenda", which would help limit the potential conflicts between trade and environmental requirements, and the perception that environmental requirements constitute barriers to trade. These include mechanisms to enhance market access while improving environmental performance. Members of MERCOSUR, for example, are currently undertaking a project on competitiveness and environment, aimed at implementing policies on sustainable production and consumption. One aspect of the project is to help small and medium enterprises improve their overall environmental performance and strengthen their competitiveness through, *inter alia,* cleaner production processes and environmental management systems.

Notes

1. The term "commitment" is used here in a broad sense, including both legally binding and hortatory language.
2. See, *e.g.* Canada-Costa Rica and Canada-Chile.
3. US-Australia (Article 19.2.2); US-Bahrain (Article 16.2.2); US-CAFTA-DR (Article 17.2.2); US-Chile (Article 19.2.2); US-Morocco (Article 17.2.2); US-Singapore (Article 18.2.2). The similar clause in the US-Jordan Agreement (Art. 5.1) applies only to trade.
4. See US-Australia (Article 19.2 [1] [b]); US-Chile (Article 19.2 [1][b]); US-CAFTA (Article 17.2[1][b]; US-Morocco (Article 17.2 [1] [b]); and US-Singapore (Article 18.2 [1][b]).
5. Art. 2.5, Environmental Co-operation Agreement among the Parties to the Trans-Pacific Strategic Economic Partnership. The countries involved are Brunei Darussalam, the Republic of Chile, New Zealand, and the Republic of Singapore.
6. In countries with weak environmental regimes, such commitments of intent can be important to domestic constituencies working for environmental improvements.
7. While the dynamic involved with lowering standards to attract investment is straightforward, it is less clear how lower standards might encourage trade. Presumably, this would mean lowering processing and production method standards in sectors with a large export component. This specific language is widely used.

8. The CEC Secretariat tried to push this process forward by proposing that it should prepare a report of case studies of transboundary environmental impact assessment, but the proposal was unanimously rejected by the three Environment Ministers acting as Council. See Council Resolution 05-07, "Decision Regarding the Proposal by the Secretariat of the Commission for Environmental Co-operation to Prepare an Article 13 Report on Case Studies on Transboundary Environmental Impact Assessment", (C/C.01/05/RES/07/FINAL), August 31, 2005.

9. An exhaustive survey of regional integration efforts concludes, on the subject of policy integration more broadly than just environmental policies, "On balance, few [regional integration agreements] have gone far down the policy integration track, and most do not go much, if at all, beyond the WTO", Schiff, Maurice and L. Alan Winters (2003), *Regional Integration and Development*, Washington, USA, The World Bank and Oxford University Press.

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Environment and Regional Trade Agreements

Chapter 7

Procedural Guarantees, Enforcement Mechanisms and Dispute Settlement

RTAs providing for binding obligations related to enforcement of environmental laws also contain mechanisms to ensure enforcement of these obligations. They also set out what may be described as minimum procedural standards of environmental protection, according to which Parties have to ensure that adequate judicial, quasi-judicial, or administrative proceedings are available to sanction or remedy violations of its environmental laws.

One type of enforcement mechanism in RTAs are State-to-State dispute settlement mechanisms. To date, none has ever been exercised. Some RTAs also allow for public submissions on perceived lack of enforcement of environmental laws. Overall this mechanism may be the most effective of the various tools available for fostering compliance with domestic environmental laws. In addition, it can contribute to empowering civil society to help protect environmental integrity.

As noted in the previous chapter, some RTAs explicitly include a duty to enforce domestic environmental laws. This duty is generally coupled with the obligation to provide certain procedural guarantees. The mechanisms for the peaceful resolution of disputes in RTAs usually contemplate remedies that seek to preserve the balance of concessions as well as to induce compliance with the terms of the agreements. In this regard, RTAs establish channels for dialogue that may help to avoid disputes, for example, consultations, and, where these fail, formal dispute settlement mechanisms. Some RTAs, or their side agreements, distinguish between "environmental obligations", in particular, the duty to enforce environmental laws and "trade obligations", providing for different processes and mechanisms in case of alleged non-compliance.[1] Some RTAs establish processes under which citizens can file a submission asserting that a party is failing to effectively enforce its environmental laws. These specific mechanisms and processes for environmental disputes are examined in more detail below.[2]

Procedural guarantees

A number of RTAs have set out what may be described as minimum procedural standards of environmental protection. Pursuant to these provisions, each Party shall ensure that adequate judicial, quasi-judicial, or administrative proceedings are available to sanction or remedy violations of its environmental laws.[3]

This "procedural" obligation is, however, different from issues associated with "substantive" environmental standards: A country retains the right to set its level of protection and determine the environmental quality, emission, or design standards that it deems appropriate for its level of development. The purpose of procedural guarantees in RTAs is to ensure that breaches of those standards can be sanctioned or remedied in judicial, quasi-judicial, or administrative proceedings.

The RTAs negotiated by Canada and the United States elaborate on the particular building blocks of the rule of law, by requiring basic procedural tools such as "fair, open, and equitable" procedures. These tools concern both available remedies and access to remedies. In this respect, some RTAs contain more detailed provisions than others. For example, both the NAAEC and the

CCAEC specify that private access to remedies shall include rights, in accordance with the Party's law, such as:

- to sue another person under that Party's jurisdiction for damages;
- to seek sanctions or remedies such as monetary penalties, emergency closures or orders to mitigate the consequences of violations of its environmental laws and regulations;
- to request the competent authorities to take appropriate action to enforce that Party's environmental laws and regulations, in order to protect the environment or to avoid environmental harm; or
- to seek injunctions where a person suffers, or may suffer, loss, damage or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws and regulations or from tortuous conduct.[4]

Strengthening the legal and judicial environmental framework can pose significant challenges to many countries, and to developing countries in particular, since it requires sufficient human, financial, and technical resources. A strong legal and judicial framework, however, is a fundamental element of good governance and is key to the effective enforcement of environmental laws.

Enforcement mechanisms and dispute settlement

There are two basic types of mechanisms:[5]

- State-to-State mechanisms to ensure the enforcement of environmental laws, as found in NAAEC, CCAEC, and CCRAEC, and to ensure the enforcement of environmental laws in matters affecting trade, as found in RTAs between the US and Jordan, Singapore, Chile, Morocco, Bahrain, Australia, and in US-CAFTA-DR.
- Public submission mechanisms to promote the enforcement of environmental laws, as found in NAAEC, CCAEC, and US-CAFTA-DR.

These mechanisms are pioneering from the international environmental legal perspective, in that they focus not on the State's compliance with international legal obligations, but rather on its enforcement of purely domestic law.[6] They are aimed at one or both of two basic objectives: to strengthen the environmental regulatory regime of the agreement's trading Parties, and to level the playing field for competing industries by ensuring that, at a minimum, the environmental laws on the books are effectively enforced.

State-to-State mechanisms: key elements

Consultations on environmental matters

A few RTAs, notably those involving the United States and Canada, provide for a consultation process under which "a Party may request consultations with the other Party regarding any matter under the environment chapter. (…) The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem apropriate".[7] The provision on consultations in the Environment Co-operation Agreement to the TPSEP is formulated in a slightly different manner (see Box 7.1).

Box 7.1. **Consultation in the Environment Co-operation Agreement to the TPSEP**

Article 5: Consultation

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through dialogue, consultation and co-operation to resolve any issue that might affect its operation.
2. Should any issue arise between any of the Parties over the application of Article 2 (*Key Elements/Commitments*), the concerned Parties shall in good faith resolve the issue amicably through dialogue, consultation, and co-operation.
3. A Party may request consultation with the other Party (ies) through the national contact point regarding any issue arising over the interpretation or application of Article 2 (*Key Elements/Commitments*). The contact point shall identify the office or official responsible for the issue and assist if necessary in facilitating the Party's communications with the requesting Party. The concerned Parties will provide initial advice of the issue to the other Parties for their information.
4. The concerned Parties shall decide a timeframe for consultation which shall not exceed 6 months, unless mutually agreed.
5. Should the issue not be able to be resolved through the initial consultation process it may be referred to a special meeting of the interested Parties and to which all Parties would be invited. The issue may also be referred to the Trans-Pacific Strategic Economic Partnership Commission by any interested Party for discussions.
6. The special meeting of the interested Parties shall produce a report. The concerned Party (ies) shall implement the conclusions and recommendations of the report, taking into account the views of the Trans-Pacific Strategic Economic Partnership Commission, as soon as practicable.

Source: Ministry of Foreign Affairs and Trade, New Zealand, *www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Trans-Pacific/index.php*.

If the consultations fail to resolve the matter, Parties can generally go a step further and request that a specific body be convened to resolve the matter expeditiously. The means to come to a solution can include consultations of governmental or outside experts, and can take the form of good offices, conciliation and mediation. In the event that the Parties fail to resolve the question at issue, they may initiate formal dispute settlement proceedings (which are also applicable with respect to trade obligations).

However, this last option is only available in the case of alleged failure by a Party to effectively enforce its environmental laws.[8] It is not available for alleged violations of other environmental obligations under the agreements, such as the obligation not to weaken environmental standards or to provide for minimal procedural guarantees. That is, all other matters arising under the environmental chapter must be dealt with according to the consultation process established pursuant to the environment chapter of the RTA. The United States-Jordan Agreement is an exception: it subjects all provisions in the Agreement (including all those pertaining to the environment and to trade) to the same consultation procedure and the same formal dispute resolution mechanism.[9] However, the commitments are phrased differently and are "strive to commitments", which by their very nature limits their enforceability.

Under the NAAEC and the Canada-Chile Agreement on Environmental Co-operation, any Party may request consultations alleging a persistent pattern of failure of another Party to enforce its environmental law, but it may introduce dispute settlement proceedings only "where the alleged persistent pattern of failure by the Party complained against to effectively enforce its environmental law relates to a situation involving workplaces, firms, companies, or sectors that produce goods or provide services".[10]

Remedies

The normal trade remedy, *i.e.* the imposition of higher tariffs, may not bring about the desired changes in the government conduct that caused it to fail to enforce its environmental laws and regulations. Indeed, government failure to enforce environmental laws may be the result of inadequate institutional capacities or economic means, rather than an attempt to gain unfair trading advantages.

In response to these considerations, some RTAs provide for remedies other than retaliation in case of non-implementation of the obligation to enforce laws protecting the environment. These are the so-called "smart" penalties. Under these provisions, a Party in breach may have to contribute monetary assessments to a fund that will be expended for appropriate environmental initiatives, in the territory of the Party in breach, including efforts

to improve environmental law enforcement. Should that Party fail to make the required monetary assessment, however, the RTA does expressly allow the complaining Party to impose retaliatory tariffs as necessary to collect the assessment. All US RTAs since NAFTA include these smart monetary assessments.

Financial penalties for non-enforcement can reach up to USD 15 million. The exceptions are US-Jordan, the earliest of the post-NAFTA agreements, which has no environment-specific remedy provision, and the NAFTA itself, which sets a limit of USD 20 million. The penalties must be paid into a fund established for environmental initiatives – such as efforts to enhance enforcement – in the offending State.

Choice of forum

Another important element in the resolution of State-to-State disputes in RTAs concerns the forum in which claims may be brought, including the potential impact of such a choice on the relationship between RTAs and MEAs. With respect to disputes arising both under the RTA and the WTO, many agreements allow the complaining Party to decide where to present its claim.[11] However, if the respondent Party claims that its actions are covered by the specific provision governing the relationship between MEAs and the RTA, and requests that the matter be heard under the RTA, the complainant may proceed with the dispute solely under the RTA mechanism.[12] This type of provision is an important mechanism of coordination among international trade and environment agreements in an increasingly fragmented international legal order that frequently witnesses overlapping jurisdictions.

Environmental experts in dispute settlement bodies

Some RTAs have set out to strengthen the capacity of the organs called upon to decide on disputes relating to the alleged failure to enforce environmental laws, and contemplate a special role for experts and scientific review boards. One example is the US-Chile agreement, which provides for the establishment of an Environment Roster to address disputes relating to the alleged failure by a Party to enforce its environmental laws.[13] Under the US-CAFTA-DR, a panel convened to address an environmental dispute must be composed entirely of environmental experts.

In addition, some RTAs, such as the US-Chile agreement, provide, under the section on dispute settlement (applicable to all kinds of disputes under the agreement), that "on request of a Party, or, unless the Parties disapprove, on its own initiative, the panel may seek information and technical advice, including information and technical advice concerning environmental, labour, health,

safety, or other technical matters raised by a Party in a proceeding, from any person or body that it deems appropriate".[14]

Public participation

Public participation in dispute settlement proceedings can play an important role in linking trade and environment, as it allows input from environmental experts and gives an opportunity to civil society to voice its concerns where the dispute involves environmental aspects.

Public participation in State-to-State disputes exists in different variations across RTAs. Chapter 20 of the NAFTA, which outlines the arbitration procedures for disputing Parties, states that all panel hearings, deliberations, written submissions, and the initial panel report are to remain confidential. Following a similar model, the Canada-Chile FTA provisions on dispute settlement also indicate that all panel hearings must be closed.However, as Parties in these RTAs became familiar with the dispute settlement process and the various aspects of public participation became better understood, Ministers issued joint statements amending the closed operation of arbitration panels. At the July 2004 meeting of the NAFTA Free Trade Commission overseeing the implementation of the Agreement, Trade Ministers recognised the public interest in NAFTA texts and instructed their officials to "develop rules governing open hearings" for arbitration panels established pursuant to Chapter 20.[15]

Some of the most recently concluded RTAs make specific provisions for open hearings and public participation. The dispute settlement provisions of the Australia-US agreement and US-CAFTA-DR are almost identical, and provide for open hearing and public access to written submissions, subject to any information deemed to be commercially confidential.The Australia-US RTA instructs the Parties to develop model rules of procedure that ensure "that the panel shall consider requests from non governmental persons or entities in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties and provide the Parties an opportunity to respond to such written views". The Association Agreement between the European Union and Chile takes a similar approach. The Agreement provides that panel hearings may be open to the public if both Parties agree, subject to closure for confidential business information.The Agreement also specifies that the Panel may receive *amicus curiae* submissions, unless the Parties agree otherwise.[16]

Notwithstanding these recent developments, some RTA dispute settlement provisions continue to provide for closed and confidential hearings. The Japan-Mexico FTA provides for the establishment of arbitration panels under the dispute settlement mechanism, and specifies that the arbitral tribunal shall meet in closed session. The Thailand-Australia FTA provides that all arbitration

panel hearings are to be held in closed session, and that all written submissions to the Panel are confidential.[17] The Olivos Protocol governing disputes between MERCOSUR countries also specifies that hearings and written submissions be closed and confidential.[18]

Experience with State-to-State mechanisms

The idea of encouraging broad environmental regulatory enforcement was pioneered in the NAFTA context, where transboundary environmental damage is a potentially worrying issue. The effectiveness of North American environmental regimes is therefore a fundamental concern for all three Parties, *inter alia*, for reasons of self-interest. The subsequent incorporation of the approach in the Canada-Chile context was political: as Chile expected to accede to NAFTA (and the NAAEC), it felt obliged to take on NAFTA/NAAEC, as if they were commitments, in the agreement with Canada. In the Canada-Costa Rican context, the lack of substantive imperatives was probably responsible for the notable lack of remedy provisions.

Post-NAFTA US RTAs have all limited their scope to trade-related enforcement, incorporating a clause along these lines: "A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, *in a manner affecting trade between the Parties*, after the date of entry into force of this Agreement"[19] (emphasis added). These agreements also recognise that Parties retain the right to exercise discretion in enforcement matters.

How effective have these mechanisms been in achieving their dual objectives of improved environmental enforcement capacity and reduced trade friction from uneven regulatory playing fields? There are few concrete criteria by which to evaluate them, but one must surely be the frequency to which they have been put to use. To date, none has ever been exercised, even to the extent of recourse to the pre-dispute facilities for consultation and good offices.

In retrospect, this lack of use may be understandable. There is logically considerable discomfort in being brought to account by an international mechanism for failing to adequately enforce domestic environmental laws (considerably more so than, for example, being reprimanded for using prohibited trade measures to protect domestic industries). And there are few States in which enforcement of such laws is flawlessly executed. As such, countries may be hesitant to "cast the first stone" except in cases where the costs of inaction are very high for the potential complainant. Countries may simply hesitate to incur the costs – financial, political, and other – of initiating a dispute leading to imposing penalties on another country, even if the letter of the agreement would entitle them to do so.

It could also be argued, of course, that the enforcement mechanisms have not been used precisely because they are effective as *deterrents* to strategic under-enforcement of environmental standards. There is nothing in the literature that would provide evidence to prove or disprove this inherently difficult counterfactual hypothesis. There is, however, anecdotal evidence that the commitments in the US-Singapore Free Trade Agreement influenced Singapore to more effectively enforce its domestic laws related to illegal wildlife transshipment. Singapore has traditionally been one of the most important international hubs for illegal transshipment of wildlife (Lin, J., 2005). But in recent years the country has stepped up enforcement and co-operation efforts, and in March 2006 a new Endangered Species Act took effect that brought transshipment under the country's enforcement mandate, and increased penalties tenfold. Causality is difficult to determine without more in-depth analysis. Singapore's efforts may also relate to the ASEAN-wide push to cooperate on stronger implementation and enforcement against illegal wildlife trade.

It may also be that the mechanisms are not used because the problem that they seek, namely strategic non-enforcement of environmental laws to gain undue competitive advantages, simply does not exist. As explained above, insufficient, or lack of, enforcement is generally due to lack of capacity and resources, rather than a strategic choice of "creating a pollution haven" to attract trade and investment.

Public submission mechanisms

Overview of different modalities of public submission mechanisms

A number of RTAs allow for public submissions on perceived lack of enforcement of environmental laws. This measure, aimed at reinforcing provisions to prevent a Party from the lowering of environmental standards and thus to unduly gain competitive advantages, appears, for example, in RTAs entered into by the United States and Canada, notably the NAFTA and its environmental side agreement, the NAAEC (see Box 7.2).[20] The mechanism allows citizens of any Party to complain that one Party is failing to effectively enforce its environmental laws. There is no stipulation that the failure be trade-affecting. Where it is judged that the submission is valid, a factual record is produced, documenting the facts of the case. This is the "sunshine" strategy of ensuring compliance: it is assumed that the development of a factual record is embarrassing enough that the offending government will take steps to address the issue at hand (Jacobsen, H. and E. Brown-Weiss, 2001).

Articles 14 and 15 of the Canada-Chile Agreement on Environmental Co-operation are similar to those of NAAEC. Article 14 allows for public

Box 7.2. **The citizens' submissions process under the NAAEC**

The NAAEC, established the North American Commission for Environmental Co-operation (CEC) as a permanent Secretariat to address regional environmental concerns. This includes managing inquiry processes into the enforcement of domestic environmental laws within the territories of the contracting Parties.

Articles 14 and 15 of the NAAEC outline the parameters for a public submissions process, whereby "any non-governmental organisation or person established or residing in the territory of a Party to the Agreement may make a submission on enforcement matters" to the CEC for its consideration and investigation.[1] All submissions must be made in accordance with the set of criteria outlined in Article 14 (1) of the NAAEC.

If the submission meets the criteria, the CEC Secretariat decides to request a response from the named Party within 30 days. Following the Party's response, the Secretariat reviews the material and makes a recommendation to the Council of Ministers as to whether the preparation of a Factual Record is warranted. The Council, by a majority of two thirds, may accept or reject the recommendation from the Secretariat. If rejected, the investigation process is terminated. If accepted, the Secretariat is directed to proceed with the investigation and drafting of a Factual Record and, in so doing, may formally request information from the public, experts, and practitioners. The final Factual Record, which incorporates comments from all Parties to the NAAEC, is made available to the public if two-thirds of the Council of Ministers so directs. To date, all Factual Records have been made public.[2]

The intent of the Factual Record is not to provide a determination of law on any of the issues, but to "provide information on alleged failures to effectively enforce the environmental law in North America that may assist submitters, the NAAEC Parties, and other interested members of the public in taking any action they consider appropriate in regard to the matters addressed". The Secretariat does not make recommendations as to future work of the Parties, nor does it provide an institutionalised follow-up to any of its Factual Records.

The purpose of the Factual Record is for the Secretariat to undertake a thorough investigation of the allegations and to provide a neutral determination of facts. The Secretariat has in some cases uncovered areas where the enforcement of environmental laws has not been consistent. In one case, the Secretariat investigation found a sufficient level of information was lacking to properly respond to fisheries' degradation, and noted the Party's lack of an integrated region-wide strategy to effectively enforce its environmental laws in this particular area. In another case, the Secretariat found that no action had been taken by the Party to impede access to a polluted site, nor had any action been taken to prevent the flow of toxic material. In the same case, the Secretariat also noted that the government had not yet restored the site at issue to a suitable condition, despite its awareness of the harm to the community.

1. The Council of Ministers adopted in 1999 the *Revised Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Co-operation,* as a supplement to the provisions outlined in Articles 14 and 15 of the NAAEC. *www.cec.org/citizen/guide_submit/index.cfm?varlan=english*
2. Factual Records may be viewed and downloaded from the CEC website, *www.cec.org/citizen/status/index.cfm?varlan=english*.

Source: CEC, *www.cec.org*.

submissions on alleged non-enforcement of environmental laws by either Party, and Article 15 instructs that a Factual Record be prepared upon recommendation of the Petition Review Committee and accepted by either Party in the Council. To date, there have been four public submissions to the process.[21]

A less formal process for public submissions was incorporated into the Canada-Costa Rica Agreement on Environmental Co-operation. This Agreement provides that any member of the public may submit questions to either Party relating to its obligations to effectively enforce its environmental laws. Upon receipt of a question, the Parties agree to acknowledge the question in writing, provide a timely response, and make summaries of questions and answers publicly available. To date, no questions have been submitted.

Other advances in public submissions processes have been undertaken in the US-CAFTA-DR, which incorporates environmental provisions into its text, including the establishment of a public submissions process.[22] In addition to the public submissions process, the US-CAFTA-DR provides that each meeting of the Council will include a session with the public to discuss the implementation of the environmental provisions of the Agreement, unless otherwise agreed.

The format of the submissions process generally follows that of the NAAEC model, although there are noteworthy differences. First, US citizens and non-governmental organisations are not entitled to file complaints under Article 17 of the US-CAFTA-DR concerning alleged non-enforcement by the United States, but can use the mechanisms set up under the NAAEC. However, other citizens or non-governmental organisations of any other Party may file complaints of non-enforcement against the United States, provided the specified criteria are met. In addition, unlike the majority-voting scheme in the NAAEC Council of Ministers, under the US-CAFTA-DR model, a Factual Record is undertaken by the vote of any Party of the Council. Similarly, a Factual Record must be made public by the vote of any one Council member.

In contrast to mechanisms in other RTAs, the US-CAFTA-DR provides for a follow-up procedure: upon completion of the Factual Record, the Environmental Affairs Council may provide recommendations on matters addressed in the Factual Record, including recommendations on further development of a Party's mechanisms for monitoring its enforcement of environmental laws.

How have public submissions worked so far?

Public submission procedures have certainly been more thoroughly exercised than the State-to-State ones (see Table 7.1). Under the NAAEC, as of November 2006, there had been 57 citizen submissions. There is some evidence that in at least two cases, the process has resulted in improved environmental protection.[23] The Canada-Chile mechanism has been considerably less used,

Table 7.1. **RTAs and citizens' submissions processes**

Agreement	Contracting Parties	Supervising Institution/Secretariat	Year established	Number of Citizens Submissions Received
North American Agreement on Environment Co-operation	Canada, Mexico, United States	Commission for Environmental Co-operation	1995	57
Canada-Chile Agreement on Environmental Co-operation	Canada, Chile	Canada-Chile Commission, which established two national secretariats located in each Party	1998	4
Canada-Costa Rica Agreement on Environmental Co-operation	Canada, Costa Rica	No Institution or Secretariat established submissions are directed to the government of each Party	2001	0
Central America-Dominica Republic-United States Free Trade Agreement	Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, United States	Secretariat for Central American Economic Integration (Environmental Affairs Council)	2005	0

with four submissions since July 1997. None of these resulted in factual records, and in one case, the recommendation by a technical committee for a factual record was denied by the Council of Ministers, a fact that might in part explain the subsequent tailing off of submissions. CAFTA, which only recently entered into force, has yet to see its first submission.

It has been argued that the public submission process has the advantages of efficiency and effectiveness, given that governments do not possess all the knowledge of local effects of non-compliance, effects that will occur across a wide range of locations, and that some citizens or citizen groups have a keen interest in seeing effective enforcement (Raustiala, K., 2003). Those whose livelihoods are affected by pollution, for example, will be motivated to ensure that prevailing laws are respected. Further, to the extent a State can rely on citizens as police, it is fostering compliance in a cost-effective manner.

A related disadvantage is that submissions will focus on areas of keen interest to those organised and motivated enough to use the process. The range of issues addressed will therefore not necessarily correspond to the instances of non-enforcement that are most pressing from an environmental perspective (Raustiala, K., 2003). As such, this sort of mechanism is most

valuably used as a complement to effective governmental oversight (whether at the domestic or international level).

Further, this sort of mechanism is effective in direct proportion to the extent to which it causes discomfort to governments, a fact that may help explain its relatively low rate of duplication since its advent in the NAFTA context. Another factor is certainly the high level of financial, administrative, and human resources necessary to establish and administer a system of citizen submissions on an ongoing basis. The CEC exercises are roughly budgeted at USD 500 000 per submission, though the actual figures vary widely from case to case.

It might seem as though such a mechanism would be unduly harsh toward the less developed parties in RTAs, where environmental regulations might be less ably enforced. The NAAEC experience is instructive: of the 52 submissions, 26 concerned Mexico, and an equal number the United States and Canada combined. These sorts of mechanisms may therefore not be particularly attractive to some negotiating parties. If it is accepted that such mechanisms have some value, particularly where enforcement efforts are sub-optimal, the challenge is to find ways to make them acceptable to the governments involved. This may include offering a complementary suite of initiatives aimed at cooperatively improving enforcement capacity. A number of such efforts were described in the chapter dealing with co-operation and capacity building.

In some countries, the use of citizen submissions may clash with the traditional modes of government and citizen involvement. On the other hand, it may help promote citizen involvement in environmental issues in countries where traditionally no such opportunities existed. Overall, the mechanism may be the most effective of the various tools available for fostering compliance with domestic environmental laws, and may have the side benefit of empowering civil society to help protect environmental integrity.

Notes

1. The characterisation of "environmental obligations" is purely descriptive, for the purposes of this analysis. In rigor, obligations in Treaties are properly "international obligations", regardless of their subject-matter.
2. This study does not discuss the general dispute resolution mechanisms set out in RTAs but focuses on specific aspects related to environmental commitments.
3. See for example, NAAEC, Articles 6 and 7; US-Australia, Article 19.3(1)-(3); US-Chile, Article 19.8; US-Morocco, Article 17.4; US-Singapore, Article 18.3; CCAEC, Articles 6 and 7; CCRAEC, Articles 5 and 6.
4. NAAEC, Article 6.3; Canada-Chile Agreement on Environmental Co-operation, Article 6.3.

5. A third approach is that of the European Union, wherein supranational bodies (the European Commission, the European Court of Justice) have mandates to help ensure that national regulatory authorities are abiding by the *acquis communautaire*, including environmental Directives. This approach is not analysed here, being the product of such a unique intra-regional relationship as to hold useful lessons for RTAs more broadly.
6. Of course, by dint of the inclusion in the treaties of the duty to enforce, the distinction is blurred; enforcement of domestic law in effect becomes an international legal obligation.
7. US-Singapore, Art 18.7.1 and 2. See also US-Australia, Article 19.7 (1) to (3); US-Chile, Article 19.6 (1) to (5); US-Singapore, Article 18.7(1) to (3); NAAEC, Part Five (Consultation and Resolution of Disputes); Canada-Chile Agreement on Environmental Co-operation, Part Five (Consultation and Resolution of Disputes).
8. US-Australia, Article 19.7; US-Chile, Article 19.6 (6); US-Singapore, Article 18.7(4). Under these agreements, the substantive provisions relating to the duty to enforce laws is linked to the effect on trade between the Parties.
9. US-Jordan, Articles 16 and 17.
10. Canada-Chile Agreement on Environmental Co-operation, Arts. 22 and 24.
11. Canada-Chile, Article N-05 (1); Canada-Costa Rica, Article XIII.6 (1); NAFTA, Article 2005(1).
12. Canada-Chile RTA, Article N-05 (2); Canada-Costa Rica FTA, Article XIII.6 (2); NAFTA, Article 2005 (3). Other than NAFTA, other RTAs negotiated by the United States do not include this type of provision.
13. See also US-CAFTA-DR. Other agreements, such as US-Singapore and US-Morocco do not provide for an environmental roster.
14. Some other RTAs negotiated by the United States and Canada also allow panels to seek information from experts, but do not mention environmental or health measures specifically. See, for instance, US-Morocco, US-CAFTA-DR, Canada-Chile and Canada-Costa Rica. In all cases, Parties in the dispute must approve that a panel seek information on its own initiative.
15. Joint Statement, NAFTA Commission Meeting, San Antonio, July 2004, *www.dfait-maeci.gc.ca/tna-nac/wto_dispute-en.asp*.
16. Annex XV, Article 35, EU-Chile Association Agreement. Note that a decision by the Parties not to accept *amicus curiae* submissions must be made within three days of the establishment of the panel. Article 35 of Annex XV also states that *amicus curiae* briefs must be submitted within ten days following the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the factual and legal issue under consideration by the panel.
17. Article 1807(1) and 1807(2), Thailand – Australia. Note that Article 1807(2) does not preclude any Party from making its own submissions public on its own accord, but does not entitle it to make the other Party's submissions public, *www.dfat.gov.au/trade/negotiations/aust-thai/tafta_chapter_18.html*.
18. Article 46, Olivos Protocol on the Solution of Controversies, February 2002, MERCOSUR.
19. Cited from CAFTA Art. 17.2, but the language in other US agreements is effectively the same.

20. Citizen submission processes in RTAs involving members of NAFTA follow a similar pattern, though some differences with the NAAEC process exist. The Canada-Chile Agreement on Environmental Co-operation created the Canada-Chile Commission, with a mandate to review the enforcement of environmental laws by both Parties. Similar to the North American CEC, the Canada-Chile Commission is directed by the Council, which is composed of a Cabinet-level representative from each Party. The Commission also comprises a Petition Review Committee and a Public Consultation Committee. Experts from both countries are appointed on a rotating basis to each Committee. Unlike the permanent and centralised Secretariat established by the NAAEC, the Canada-Chile Commission establishes two national Secretariats, one in each country. For more detail, see the Chile National Secretariat website, *www.conama.cl/chilecanada/1288/channel.html*. See also, the Canadian National Secretariat website, *can-chil.gc.ca/English/Resource/Agreements/AECCC/Default.cfm*.

21. No Factual Record was prepared in any of the four cases. Preparation of a Factual Record was recommended by the Petition Review Committee in one case, although it was rejected by the Council. Information on the *Andacollo Cobre* mineral project can be obtained from the Chile National Secretariat, *www.conama.cl/chilecanada/1288/article-29497.html*.

22. Chapter 17, US-CAFTA-DR can be obtained from the USTR website. Specifically, Article 17.7 addresses submissions on enforcement matters. *www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/asset_upload_file9_3937.pdf*. To supplement and elaborate on environmental commitments undertaken in Chapter 17 of the Agreement, the Parties jointly signed an *Understanding Regarding the Establishment of a Secretariat for Environmental Matters*. This *Understanding* establishes a Secretariat for Environmental Matters, which will function as an independent entity, and be housed by the current Secretariat for Central American Economic Integration The text is available at *www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/Briefing_Book/asset_upload_file222_7227.pdf*.

23. The cases in question are the Cozumel Pier case (brought against Mexico) (see *JPAC Summary Report*, Mexico City Meeting, March 8, 2002, reporting comments of a JPAC member) and the BC Hydro case (brought against Canada) (see "Citizen Submission Proves Valuable in BC Hydro Case," *TRIO*, Fall 2001).

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Chapter 8

Parties' Right to Adopt or Maintain Environmental Regulations

Practically all RTAs include clauses allowing for derogations to the obligations under the agreement for the protection of health, the conservation of natural resources, or the protection of the environment. Many of them are modeled after Article XX of the GATT.

Some RTAs also contain provisions clarifying the relationship between the agreement and regional and multilateral agreements to which the trade partners are Parties.

Trade rules generally provide wide and ample scope to pursue domestic policies to protect the environment and human health. In addition, practically all RTAs include exceptions clauses that allow for derogations to the obligations under the agreement for the protection of health, the conservation of natural resources, or the protection of the environment. Only very few RTAs do not include general exceptions related to the environment (*e.g.* MERCOSUR or ECOWAS).

With respect to trade in goods, three broad categories of general exceptions clauses can be distinguished: those that are modelled after Article XX of GATT 1994 (hereafter, "Article XX"), those that are based on the language of Article 30 (ex-Article 36) of the Consolidated EC Treaty, and those that are structured in some other manner. These categories are explained in more detail below. Box 8.1 provides a sample of various exceptions clauses. Some RTAs also contain provisions clarifying the relationship between the agreement and regional and multilateral agreements to which the trade partners are parties. These are described at the end of this chapter.

So far, there is little experience with the practical implementation of these provisions, and there has been no formal dispute involving any of them. This does not imply, however, that these clauses are unnecessary; on the contrary, they have the value of reiterating countries' prerogatives to maintain high environmental standards within their boundaries, including those deriving from their international environmental commitments.

General exceptions clauses in RTAs modelled after Article XX

Many environment-related exceptions clauses in RTAs are modelled after Article XX, although the precise language varies. In general, they either repeat the language of that provision or they explicitly refer to, or incorporate it. Article XX justifies measures "relating to the conservation of exhaustible natural resources", or measures "necessary to protect human, animal, or plant life or health", subject to the requirements under the chapeau of Article XX, which provides that such measures may not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on international trade. This type of clause has been included in a large number of RTAs.[1]

Some of these "Article XX-type clauses" also clarify that the health exception includes *environmental* measures necessary to protect human, animal, or plant life or health, and that the exception relating to the conservation of natural resources in Article XX (g) includes *living* natural resources. Such provisions are primarily included in the NAFTA and post-NAFTA agreements concluded by Canada and the United States, but also in certain agreements concluded by MERCOSUR, Mexico and CARICOM.[2] The SADC adds to the language of Article XX (g) "the environment", so that the paragraph covers measures "relating to the conservation of exhaustible natural resources and the environment".

Some agreements, such as the ones between Mexico and Chile and between Australia and New Zealand, have modified GATT Article XX (g) language related to natural resources, by using the term "necessary to" instead of "relating to".[3] Other agreements, while following the GATT Article XX structure, omit the exception for measures relating to the conservation of natural resources altogether. The South Asian Free Trade Agreement and the EC-Chile Agreement, for example, provide exceptions only for measures necessary to protect human, animal, or plant life or health.

Exceptions clauses modelled after Article 30 (ex-Article 36) of the EC Treaty

Most of the agreements concluded between the EU and other countries, as well as a number of agreements concluded between the European Free Trade Association (EFTA) and other countries, include general exceptions clauses that largely reflect the language used in Article 30 of the Treaty Establishing the European Community, last updated through the 1998 Amsterdam Treaty (hereafter referred to as "EC Treaty"). That Article provides: "The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports, or goods in transit justified on grounds of public morality, public policy, or public security; *the protection of health and life of humans, animals, or plants*; the protection of national treasures possessing artistic, historic, or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."[4]

The text of this general exceptions clause differs from that of GATT Article XX. It requires that exceptions be "justified on" specified "grounds", terms not found in Article XX of GATT. At the same time, Article 30 of the EC Treaty includes language similar to that used in the chapeau of Article XX. In contrast with Article XX, however, Article 30 of the EC Treaty does not contain a specific exception relating to the conservation of natural resources. However, it

Box 8.1. **Exceptions clauses related to environment in selected RTAs**

US RTAs[1]

For the purposes of Chapters Two through Eight (National Treatment and Market Access for Goods, Agriculture, Textiles, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), GATT 1994 Article XX and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in GATT 1994 Article XX(b) include environmental measures necessary to protect human, animal, or plant life or health, and that GATT 1994 Article XX(g) applies to measures relating to the conservation of living and nonliving exhaustible natural resources.

Euro-MED Agreements[2]

Nothing in this Agreement shall preclude prohibitions or restrictions on imports, exports, or goods in transit justified on grounds of public morality, public policy, or public security, of the protection of health and life of humans, animals or plants, of the protection of national treasures possessing artistic, historic, or archaeological value, of the protection of intellectual, industrial, and commercial property, or of regulations concerning gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Japan-Mexico and Thailand-Australia

For the purposes of Chapters … Article XX of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*. (…)

SADC

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Member States, or a disguised restriction on intra-SADC trade, nothing in Article 7 and 8 of this Protocol shall be construed as to prevent the adoption or enforcement of any measures by a Member State:

- necessary to protect human, animal, or plant life or health;
- relating to the conservation of exhaustible natural resources and the environment…

New Zealand-Singapore

Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall preclude the adoption by any Party of measures in the exercise of its legislative, rule-making, and regulatory powers:

- necessary to protect human, animal, or plant life or health;
- to conserve exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption…

1. US-Australia (Art. 221.), US-Bahrain (Art. 20.1), US-Chile (Art. 19.3), US-CAFTA-DR (Art. 12.1), US-Jordan (Art. 12.1).
2. EC-Algeria (Art. 27), EC-Egypt (Art. 26), EC-Israel (Art. 27). EC-Palestinian Authority (Art. 16), EC-Jordan (Art. 27), EC-Lebanon (Art. 27), EC-Morocco (Art. 28).

does include an exception relating to health, and, additionally, to "public policy" (among others).[5]

Agreements that largely repeat the language of Article 30 (ex-Article 36) of the EC Treaty include the Euro-Med Agreements, the agreements between the EU and EFTA and the EU and South Africa, and a number of EFTA agreements (including those concluded with Croatia, Jordan, the Former Yugoslav Republic of Macedonia (FYROM), Morocco, the Palestine Authority, Bulgaria, and Romania, respectively).

Some agreements, while otherwise following the language and structure of Article 30 (ex-Article 36) of the EC Treaty, have also added an exception for the conservation of natural resources. Examples include agreements between the EU and countries in Eastern Europe. The West African Economic and Monetary Union (WAEMU) uses language similar to the EC Treaty language, but also refers to environmental protection as grounds to justify trade restrictions.

Other general exceptions clauses

A number of exception clauses are designed in a way that differs from both Article XX of GATT and Article 30 (ex-Article 36) of the EC Treaty. COMESA provides that a "Member State may … introduce or continue or execute restrictions or prohibitions affecting: … *c)* the protection of human, animal, or plant health or life, or the protection of public morality; …". The exception clause of the Southern African Customs Union (SACU) provides exceptions "for the protection of *a)* health of humans, animals or plants; *b)* the environment; … g) exhaustible natural resources".

The 1980 Instrument Establishing the Latin American Integration Association (ALADI), also referred to as the Treaty of Montevideo, provides: "No provision under the present Treaty shall be interpreted as precluding the adoption and observance of measures regarding: … protection of human, animal, and plant life and health". The MERCOSUR Treaty integrates the same exception by reference to the Treaty of Montevideo.[6]

Exceptions concerning sanitary and phytosanitary measures and technical barriers to trade

As mentioned above, many RTAs include provisions relating to both sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT).[7] These provisions are not exceptions *per se* but do recognise parties' rights to impose SPS and TBT measures subject to certain disciplines. SPS and TBT measures can have important environmental implications, as many environment and health-related measures qualify as TBT or SPS measures.

In general, RTAs containing SPS and TBT provisions aim at facilitating the application of SPS and TBT rules under the WTO. This is often done by reaffirming WTO rules and by pursuing a common understanding of the existing WTO provisions. Thus these RTAs largely rely on existing rights and obligations in the WTO's SPS and TBT Agreements. RTAs usually extend the application of their general exceptions clauses relating to trade in goods to also cover the chapters or provisions on SPS and TBT. Examples include NAFTA and subsequent agreements signed by the United States, as well as the EFTA-Singapore, EC-Mexico, and EC-Chile Agreements.[8]

Exceptions referring to services

A large number of RTAs that cover services incorporate, refer to, or repeat the language used in Article XIV of the GATS (the GATS general exceptions provision), some adding interpretational specifications. Article XIV provides an exception, *inter alia*, for measures necessary for the protection of human, animal, and plant life and health. In contrast to Article XX of the GATT, the GATS does not provide a separate exception for measures relating to the conservation of natural resources. Examples of RTAs that contain clauses similar to the ones in the GATS include: Australia-Thailand, EC-Mexico, EFTA-Mexico, EFTA-Singapore, Japan-Singapore, Japan-Mexico, Korea-Chile, Singapore-Jordan, and Mexico-Chile.

RTAs adopted prior to the creation of the WTO (and the adoption of GATS) naturally do not refer to the GATS exception. NAFTA, for example, includes an exception for "measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection". Most post-NAFTA agreements signed by the United States with other countries or trade areas refer to the GATS exception and also clarify that "the measures referred to in Article XIV(b) of the GATS include **environmental** measures necessary to protect human, animal, or plant life or health" (emphasis added). At least one agreement (New Zealand-Singapore) has added to the GATS Article XIV language, an exception for the conservation of natural resources.

The Euro-Med Agreements generally subject the application of the services provisions "to limitations justified on grounds of public policy, public security, or public health". They thus use similar language as in the exceptions clauses for goods. Some Euro-Med Agreements, such as the one with Egypt, do not include any exception for services provision. Free-trade arrangements between the EU and the former centrally-planned economies of East and Central Europe, as well as the republics of the former Soviet Union also contain similar exceptions clausexs.

Safeguard clauses

Some RTAs include environmental safeguard clauses in addition to the exceptions clauses. The updated EFTA Convention and the Agreement between the EU and EFTA, for instance, allow safeguard measures in case of environmental difficulties and authorise a Member State to unilaterally take appropriate measures "if serious economic, societal, or environmental difficulties of a sectoral or regional nature liable to persist are arising."

Relationship between RTAs and multilateral environmental agreements

The relationship between trade rules and the provisions of multilateral environmental agreements (MEAs) has been one of the topical issues in the trade and environment debate at the multilateral level. A number of recently concluded RTAs address this issue, probably a reflection of ongoing negotiations in the WTO Trade and Environment Committee on the relationship between existing WTO rules and specific trade obligations set out in MEAs. Some of the agreements concluded by the United States, *e.g.* US-CAFTA-DR and US-Chile, provide that Parties may consult "with respect to ongoing negotiations in the WTO regarding multilateral environmental agreements."[9]

Only few agreements contain specific savings clauses that would exempt MEA-related measures from the RTA's rules and obligations (see examples in Box 8.2).

Box 8.2. **References to MEAs in selected RTAs**

NAFTA

Relation to Environmental and Conservation Agreements*

In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, 3 March 1973, as amended 22 June 1979,

b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, 16 September 1987, as amended 29 June 1990,

c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, 22 March 1989, on its entry into force for Canada, Mexico, and the United States, or

d) the agreements set out in Annex 104.1,

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

Box 8.2. **References to MEAs in selected RTAs** *(cont.)*

NAFTA

The Parties may agree in writing to modify Annex 104.1 to include any amendment to an agreement referred to in paragraph 1, and any other environmental or conservation agreement.

US-CAFTA-DR

1. The Parties recognize that multilateral environmental agreements to which they are all party play an important role in protecting the environment globally and domestically and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all party and trade agreements to which they are all party.
2. The Parties may consult, as appropriate, with respect to ongoing negotiations in the WTO regarding multilateral environmental agreements.

* Similar text is used in subsequent agreements involving NAFTA Parties, *e.g.* the Canada-Costa Rica Agreement on Environmental Co-operation, and the RTA between Mexico and Chile.

Perhaps the best known one is Article 104 of NAFTA, which states that in case of any inconsistency between its provisions and the specific trade obligations set out in certain multilateral and bilateral environmental agreements, such environmental obligations will prevail as long as the Party involved chose, among equally effective and reasonably available means of complying with such obligations, the least inconsistent.[10] Similar text is used in subsequent agreements involving NAFTA Parties, *e.g.* the Canada-Costa Rica Agreement on Environmental Co-operation, and the RTA between Mexico and Chile.

The United States has taken a different approach in its bilateral trade agreements. In the US- Bahrain Agreement, for instance, Parties recognise that multilateral environmental agreements to which they are both Parties play an important role in protecting the environment globally and domestically and that implementation of these agreements at the national level is critical to achieving the environmental objectives of these agreements. Similar language can be found in the United States' agreements with Morocco and Australia.

The TPSEP does not refer specifically to MEAs but refers to multilateral agreements in general: "Nothing in this Agreement shall derogate from the existing rights and obligations of a Party under … any other multilateral or bilateral agreement to which it is a party."

Notes

1. Examples include: Australia-Thailand; China-Hong Kong; China-Macao; EC-Mexico; EFTA-Chile; EFTA-Lebanon; EFTA-Mexico; EFTA-Singapore; EFTA-Tunisia; Korea Chile; US-Laos; US-Mongolia; US-Morocco; US-Singapore; US-Vietnam; US-Israel (1982); Panama-Taiwan; Mexico-Columbia-Venezuela; Mexico-Triangulo del Norte; Japan-Singapore; Japan-Mexico; New Zealand-Singapore (same exception applies to services and investment); Singapore-Australia; Singapore-Jordan.

2. Examples include the agreements of Canada with Chile, Costa Rica, and Israel, US-Australia, US-Bahrain, US-Chile, and US-Jordan, MERCOSUR-Israel, MERCOSUR-India, and MERCOSUR-Chile, Mexico-Israel and Caricom-Costa-Rica.

3. The WTO Appellate Body has clearly distinguished the two terms and has interpreted the term "necessary to", in contrast to the term "relating to", as a balancing of factors such as the relevant measure's restrictive impact on international commerce and the contribution of the measure to the realization of the ends pursued by it.

4. These articles relate to the prohibition of quantitative restrictions. They provide:

   Article 28 (ex-Article 30): *Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.* Article 29 (ex-Article 34): *Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.*

   The European Court of Justice in 1974 (Case 8/74, *Dassonville*, [1974] ECR 837), following the approach taken by the Commission in its Directive 70/50, interpreted this prohibition very broadly. Thus, its scope arguably exceeds the scope of Article XI, and even Article III of the GATT. The exceptions clause under Article 30 of the EC Treaty only comes into play in the event that there has not yet been EC harmonisation. In cases where harmonisation has taken place Article 95 of the EC Treaty applies, which refers to the public goals recognised under Article 30 of the EC Treaty, but, in addition, also mentions environmental protection.

5. The requirement in Article 30 of the EC Treaty (ex-Article 36) that exceptions should not "constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States" has been interpreted by the European Court of Justice (ECJ) to include the requirement to examine whether the measure is proportionate to its aim. A thorough examination of the case law of the ECJ and of the WTO Appellate Body goes beyond the object of this study. However, some authors have concluded that procedures under Article 30 of the EC Treaty and Article XX(b) of the GATT would lead to similar outcomes in similar cases. See, for example, Axel Desmedt, *Proportionality in WTO Law*, 4 J.I.E.L. 3 (2001), 441-480. While the necessity test in certain Article XX cases is based on the use of the word "necessary" in the relevant provision (and thus not from the chapeau), the ECJ deduced such a test from the requirement that exceptions may not constitute "arbitrary discrimination" or a "disguised restriction on trade".

6. Annex A, Art. 1-2. This exception was examined in a dispute between Uruguay and Argentina concerning the import of remolded tyres (Award, Uruguay v. Argentina, *Prohibición de Importación de Neumáticos Remoldeados*, 25 October 2005, and Award, Tribunal Permanente de Revisión, *Prohibición de Importación de Neumáticos Remoldeados Procedentes del Uruguay*, 20 December 2005).

7. For example, United States RTAs with various countries include TBT and SPS provisions. The same applies to the Central America Common Market Agreement,

the SACU and SADC Agreements, as well as for the agreements between Mexico and Japan, MERCOSUR and the Andean Community, between Korea and Chile, between Singapore and Australia and between Thailand and Australia. The agreements of the EC with the ACP Countries, Chile, Mexico, and Korea also contain TBT and SPS clauses. All major agreements concluded by EFTA contain (often short) SPS and TBT provisions.

8. See also the Mutual Recognition Agreement between EC and Japan (Article 10.1) and EC and US (Article 15). Mutual Recognition Agreements between EC-Australia and EC-Canada, however, do not include such exceptions clauses.

9. US-CAFTA-DR, Article 17.12(2) and US-Chile, Art. 19.9.

10. The multilateral environmental agreements mentioned in Article 104 of NAFTA are the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes.

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Chapter 9

Public Participation and Consultation in RTAs

Governments are increasingly using public participation and consultation processes in the negotiation and implementation of RTAs.

Involving the public in trade negotiations requires adequate organisation of the consultations and meaningful processing of the input. Lack of capacity or experience can be overcome, inter alia, through adequately targeted capacity building and technical assistance.

The increasing involvement of the public in the negotiation and implementation of RTAs is putting pressure on those governments that traditionally did not involve the public in decision-making processes. For countries with little experience in public consultation, this may constitute a challenge, but also an opportunity to engage in a learning process towards more participatory processes.

Experience with public participation and consultation in RTAs

Until recently, trade negotiations were generally held behind closed doors, with no involvement of the public, or even of officials from other ministries. On the other hand, public involvement has been generally stronger, and wider accepted by governments, in matters dealing with environment. The events at the WTO Ministerial meeting in Seattle in 1999 and the demand for greater public involvement in the discussions around the Free Trade Area of the Americas (FTAA) have contributed to a change in mentalities and approaches to public participation in trade discussions. As a result, governments are increasingly using public participation and consultation processes in the negotiation and implementation of RTAs.

As in many policy areas, public consultation both during the negotiation and the implementation of RTAs is important for obtaining a broad range of views, advice, and expertise. Public participation can assist governments in enhancing the quality of the design and implementation of RTAs, by allowing for expert input. It also helps to gain greater acceptance and buy-in from the public.

Countries are using a variety of approaches to seek public input in the context of trade negotiations. Some countries, *e.g.* the United States, have passed national legislation or guidelines that allow for public consultations on the formation of trade policy, as well as actual negotiating positions. While most of these rules or practices concern public participation generally, some are linked specifically to environmental aspects. Other instances of public participation relating to the environment include institutionalised advisory committees that focus specifically on the environment, or processes for public participation in environment reviews of proposed trade agreements.

Various RTAs include mechanisms to involve the participation of the public in their implementation, both with respect to the implementation of the RTA in general, as well as that of specific environmental provisions. Specific mechanism within RTAs providing for input by the public, such as public submission processes, allow outside experts and groups to be informed about environmental issues at stake in dispute settlement cases, and to bring environmental considerations and expertise into the process. In addition to formal consultation mechanisms, one way of maintaining a dialogue with civil society in connection with the implementation of RTAs, either on general

issues or on particular aspects of the agreement, is through meetings and workshops involving government representatives and stakeholders.

Public consultation is, however, not a general pattern in the negotiation or implementation of RTAs. First, a number of countries engaged in RTAs are not democratic regimes, and keep public involvement in policy-making to a minimum level. Even among those that have a stable democratic system, many are not used to effectively involving the public in policy-making. Some countries, on the other hand, have the capacity to organise consultations to involve the public, but consider that this can be an obstacle to a smooth negotiation, or that it may delay the conclusion of a deal. They therefore do not engage in public consultations (or keep them to a minimum level).

The increasing involvement of the public in the negotiation and implementation of RTAs is putting pressure on those governments which traditionally do not involve the public in decision-making processes. This pressure can come from the agreement itself. The RTAs negotiated by the United States, for example, require that all parties put in place adequate mechanisms for public participation in environmental provisions. For countries with little experience in public consultation, this may constitute a challenge, but also an opportunity to engage in a learning process towards more participatory processes. Pressure on governments is also coming from civil society, which claims similar approaches to public participation as those they see are being used in negotiations in other countries, including their own trade partners.

The following paragraphs analyse how countries involve the public during the various phases of RTAs, including their negotiation, the assessment of environmental impacts, the ratification, and the implementation of the agreement.

Transparency and public participation before and during the negotiation of RTAs

Countries are using a variety of approaches to seek public input in the context of trade negotiations. The most commonly used method for seeking contributions from the public at large is the Internet. Many Ministries of Trade (or their equivalents) have websites devoted specifically to relaying information regarding their trade negotiations, and to seeking input from interested members of the public.[1]

In some cases, input into the negotiating position is sought and received from relevant industry and business groups that have economic interests in external markets and sensitivities in their own country. For instance, Singapore seeks guidance from domestic industries on their market access interests and current export challenges through a “pre-negotiation form” displayed on its

website, with accompanying guidelines on how to provide useful information to trade negotiators.

In other countries, civil society as a whole, with wide-ranging interests relating to environment, labour, human rights, and public services, is engaged. Both the European Commission and Canada publish all newly proposed bilateral and regional trade initiatives on their websites, and request input from the public, including industry, civil society, and interested members of the general public.[2] Such consultation requests often have associated deadlines tied to the development of the negotiating process, although general comments may be submitted via the website at any time.

Prior to the start of RTA negotiations, the United States requests public input and advice via the Federal Register. It also holds a public hearing on all aspects of the draft agreements prior to beginning negotiations. Japan does not hold regular public hearings, but has organised explanatory meetings, carried out public-private joint studies before the start of each negotiation, and exchanged opinions with relevant organisations or groups in specific areas. In the negotiations with Thailand and in the context of the TPSEP discussions, as well as in the current negotiations with China, Malaysia, and those related to the Australia-New Zealand-ASEAN RTA, New Zealand has undertaken extensive consultations on environmental matters with stakeholders (including NGOs and business), under the Government Framework for Integrating Environment Issues into FTAs. These consultations have taken place before (*e.g.* in the context of Joint Studies), as well as during and after the negotiations.

In launching possible negotiations with both Malaysia and China, Australia has added a further layer of transparency to the process by publishing all comments received, unless otherwise requested by the submitting party or if sensitive in nature. This allows members of the public to familiarise themselves with the concerns and interests of a wide range of stakeholders, and to evaluate whether input submitted has been adequately reflected in the final negotiating position.[3]

Involving the public in trade negotiations requires adequate organisation of the consultations and meaningful processing of the input. Some countries may initially not have sufficient capacity to do this. However, this can be overcome, *inter alia*, through adequately targeted capacity building and technical assistance, as well as providing for a budget to help civil society organisations attend meetings and take part in relevant parts of the negotiation or implementation of RTAs. The CEC budget, for example, supports civil society organisations' assistance at meetings. The EU also provides for financial assistance for civil society participation in SIA processes linked to the negotiation of trade agreements with developing countries.

For governments, the use of the Internet is an inexpensive and efficient way to communicate information to a broad public, and a cost-effective way to seek input. However, it is clear that the level of transparency and the quality of the participation process is directly related to the proportion of public groups and individual citizens with access to the Internet.

A more targeted consultative mechanism for obtaining public advice in trade negotiations is the use of structured advisory committees. The European Commission, the United States, Canada, Australia, and New Zealand all employ some form of trade advisory group to help inform their trade negotiations. The composition of such committees may be restricted to relevant business and industry associations, but often includes at least some representation from civil society.

In the United States, a significant portion of the public consultation process takes place through the Trade Negotiation Advisory Committee system. This system is run jointly by five federal agencies, primarily the Office of the United States Trade Representative (USTR), as well as the Department of Labor and the Environmental Protection Agency. The Advisory Committees consist of more than 700 advisors from business, labour, environmental, and consumer groups, as well as academics, experts, and state and retired federal officials. These committees provide comment and advice on proposed and ongoing trade activities through reports mandated by the 2002 Trade Promotion Authority Act. Negotiating texts and other restricted documents are made available by secure transmission to committee members, and they are otherwise kept informed of developments through meetings with USTR staff and officials, as well as by email, Internet, and fax transmissions.[4]

The European Commission seeks input and guidance through both regular and *ad hoc* meetings of its Contact Group, as part of the Civil Society Dialogue. Non-profit civil society organisations are eligible to participate in the Dialogue, upon registration. Meetings are held between the European Commission and the Contact Group in Brussels to discuss proposals of new bilateral or regional trade negotiations, as well as to consult more broadly on issues of importance as they arise in ongoing negotiations.[5] Reports of the meetings, as well as papers and submissions, are posted on the website and made available to the general public.

In the context of the FTAA, the participating countries created a Committee of Government Representatives on the Participation of Civil Society, tasked with receiving and analysing input from civil society organisations, and "presenting the range of views" for the consideration of the Ministers. Since 2003, the Committee has held three issue meetings with civil society organisations on agriculture, services, and intellectual property. Additionally, the Committee has issued an "Open and Ongoing Invitation to Civil Society in FTAA Participating

Countries",[6] which invites written submissions from civil society on issues related to developments in the negotiations. Contributions received are forwarded to Ministers in the Committee's report, prepared for each Ministerial Meeting, and are also made publicly available.[7] Draft negotiating texts are also made available to the public via the FTAA website, an unprecedented development, which began with the de-restriction of the first draft FTAA agreement in July 2003.[8]

Public participation in conducting environmental reviews

The United States, the European Union, and Canada have adopted processes for public participation in environment reviews of proposed trade agreements, as part of their more broadly defined public consultation strategies. Again, the most common tool for public outreach is via the Internet, where all developments related to the environmental review process are published. These developments include proposals for new environmental reviews, ongoing reviews in their interim or draft form, as well as background information on methodologies and guidelines used in conducting the reviews. With respect to active consultations, the websites are also used to request comments regarding environmental impacts related to newly proposed trade agreements, as well as for input on draft versions of ongoing reviews.[9]

Both Canada and the European Commission have sought public input on the development of the methodologies for their respective environmental review processes. In the development of its "Framework for Conducting Environmental Assessments of Trade Negotiations", Canada sought written comments from all members of the public, and convened round table meetings in five cities across the country.[10] The European Commission has held various meetings on improving the methodology of its Sustainability Impact Assessment, via its Civil Society Dialogue mechanism. Civil society organisations that are not-for-profit and are registered with the Commission have been invited to participate in meetings in Brussels to discuss the Sustainability Impact Assessment (SIA) of trade agreements, including the EU-Chile SIA, and the EU-African Caribbean Pacific SIA. The European Commission has also convened regional workshops in trading partner countries, to engage civil society on issues related to impact assessment in those countries.[11]

Public participation in RTA ratification processes

Typically, RTAs are negotiated by the designated Department or Ministry in each contracting party. Upon completion, the RTA and accompanying implementation legislation is tabled in the legislative house of each Party for their adoption. At this juncture, the level of transparency and room for public input is typically the same as for all other pieces of legislation tabled to the

houses of elected representatives. While the legislative process varies between countries, at the ratification stage of an RTA, public input is achieved, if at all, through political lobbying channels. It is often at this "post-negotiation" stage that environmental considerations and concerns are voiced.

Canada and Australia have similar legislative processes, whereby the concluded RTA is introduced to the legislature in three reading stages. At the second and third readings, Committees discuss, in depth, the substance and drafting of the RTA (and its accompanying implementation legislation). Once this process is completed, elected representatives vote on whether to accept the RTA as law. These debates are internal to the legislative process, and submissions from members of the public are not requested. However, the process is inherently political, and public input may be admitted to the process through lobbying of individual elected representatives, or through the mobilisation of constituency members in affected areas.[12]

In the United States, the Trade Promotion Authority Act of 2002 mandates the President to notify the House of Representatives and the Senate ninety days prior to the date he intends to enter into a concluded RTA, and to make this notification public by publishing it in the Federal Register.[13] Members of the House of Representatives and the Senate then debate the substance of the RTA, including any implementing legislation requested by the President.[14]

In the case of New Zealand, once the agreement has been signed, and during the ratification process through Parliament (at which point the text becomes a public document accessible, *inter alia,* through the Internet), the public can make further submissions through their Members of Parliament. In addition, the relevant Parliamentary Select Committee considering the agreement can ask for public submissions to inform its own thinking on the process.

Due to its supra-national character, the ratification process in the European Union operates in a different manner. The European Commissioner of Trade negotiates trade agreements on behalf of all twenty-five Member States. The Council of Ministers instructs the Trade Commissioner of his mandate, and usually makes final decisions on concluded agreements. If a political decision is necessary, the matter may be referred to the elected representatives of the European Parliament. However, this is rare, and typically the Council of Ministers is the final decision point for the EU ratification process.[15]

Public consultation in the implementation phase of RTAs

Several RTAs incorporate provisions around transparency and consultation that establish varying approaches to non-governmental participation during the implementation phase. Many address public consultation through general provisions providing that Parties may seek views on the implementation of the environmental side agreement, or the environmental aspects of the overall

agreement. For example, RTAs negotiated by the United States contain a transparency chapter which provides, *inter alia*, for the right of the public to comment on any proposed measures by a Party respecting any matter covered by the Agreement. In addition, these agreements instruct Parties to provide opportunities for public participation on matters related to the implementation of the environment chapter.[16] In the MERCOSUR Framework Agreement on Environment, the promotion of effective participation of civil society in environmental matters is included both in the preamble and in the body of the agreement, in the section on Principles.

As was already discussed in Chapter 7, under some RTAs, Parties have taken further steps to target public participation, such as "citizen submission processes", which allow public submissions on perceived lack of enforcement of environmental laws. The dispute settlement proceedings of several RTAs have also evolved to include open hearings, public access to documents, and to allow the submission of *amicus curiae* briefs. These new developments in dispute settlement allow outside experts and groups to be informed, for example, about environmental issues at stake in dispute settlement cases, and to bring environmental considerations and expertise into the process.

General provisions in RTAs usually provide a framework for Parties to invite participation from a broad range of stakeholders, including those with environmental expertise, and allow parties and domestic stakeholders to create and adapt consultative mechanisms to suit their needs. For instance, the Environmental Co-operation Agreement (ECA) to the TPSEP provides that each Party may consult with its public and non-governmental sectors, and invite relevant experts or organisations to provide information to meetings held under the umbrella of the ECA. A comparable provision on consultation is incorporated into the Arrangement on Environment of the NZTCEP.[17]

All RTAs entered into by the United States instruct Parties to provide for opportunities for public participation on matters related to the Environment Chapter, and provide details on the modalities of such participation (see Box 9.1).

The NAAEC provides that the Council of the Commission for Environmental Co-operation may "seek the advice of non-governmental organisations or persons, including independent experts"[18]. The EU-Chile Association Agreement broadly encourages regular meetings of civil society in both countries to "keep them informed on the implementation of this Agreement and gather their suggestions for its improvement".[19]

Some general provisions on public consultation also have an institutionalised element. For instance, the Arrangement on Environment of the NZTCEP states that both parties will provide a mechanism through which members of their public and non-governmental organisations may submit views or advice to the Environment Committee, with respect to the operation of the Arrangement. The US-CAFTA-DR includes provisions to the effect that,

Box 9.1. **Public participation in the US-Morocco Agreement**

ARTICLE 17.6: Opportunities for public participation

1. Recognizing that opportunities for public participation can facilitate the sharing of best practices and the development of innovative approaches to issues of interest to the public, each Party shall ensure that procedures exist for dialogue with its public concerning the implementation of this Chapter, including opportunities for its public to:
   a) suggest matters to be discussed at the meetings of the Joint Committee or, if a subcommittee on environmental affairs has been established pursuant to Article 19.2 (Joint Committee), meetings of the subcommittee; and
   b) provide, on an ongoing basis, views, recommendations, or advice on matters related to the implementation of this Chapter. Each Party shall make these views, recommendations, or advice available to the other Party and the public.
2. Each Party may convene, or consult an existing, national advisory committee, comprising representatives of both its environmental and business organisations and other members of its public, to advise it on the implementation of this Chapter, as appropriate.
3. Each Party shall make best efforts to respond favourably to requests for discussions by persons of the Party regarding its implementation of this Chapter.
4. Each Party shall take into account, as appropriate, public comments and recommendations it receives regarding cooperative environmental activities undertaken pursuant to the Joint Statement.

Source: USTR, *www.ustr.gov*.

unless the Parties otherwise agree, the Environmental Affairs Council will hold a session open to the public at each of its meetings. Both the NAAEC and the CCAEC also indicate that the Councils of their respective Commissions for Environmental Co-operation will hold public sessions during the course of their regular yearly meetings. The US-Morocco FTA directs the parties to include opportunities for their public to submit matters for discussion to the Joint Committee, or the subcommittee on environmental affairs, if one has been established pursuant to the Agreement.

In addition to formal consultation mechanisms, one way of maintaining a dialogue with civil society in connection with the implementation of RTAs, either on general issues or on particular aspects of the agreement is through workshops involving government representatives and stakeholders (see Box 9.2).

Box 9.2. **Canada-Costa Rica Free Trade Agreement: public workshop on trade and environment**

Canada and Costa Rica organised a Public Workshop on Trade and Environment (San José, Costa Rica, 9 June 2004) under the Canada-Costa Rica Agreement on Environmental Co-operation. One part of the workshop consisted of group discussions based on a questionnaire comprised of nine questions that covered several aspects of the relationship between trade and environment and their significance for the Costa Rican and Central American context. The opportunities that have arisen for Costa Rica and the region in the context of trade liberalisation and environmental protection were also discussed. The following were cited as being the most important :

- Free trade agreements contain environmental clauses that provide guidelines for protecting and improving the environment.
- The need to strengthen small and medium enterprises (SMEs), to inform them of the challenges of balancing competitiveness with environmental protection has been recognized.
- There is an opportunity to improve and update laws that are fundamentally good but require a new scope.
- Strengthening government bodies responsible for enforcing environmental legislation (especially the ministries of environment and natural resources).
- Opening the doors to a serious analysis of Costa Rica's and the region's capacity to create cleaner products that are more profitable abroad and use environmental consumables in a sustainable manner ("profitable sustainability").
- More public participation in decision-making on environmental management.
- Establishment of certified industries.
- Reviving regional institutions and using the different projects currently underway that seek to strengthen capacity in the region to face the environmental challenges of trade liberalization.
- Environmental services.
- Launch non-traditional products in international markets.
- Technology and knowledge transfer to foster better exploitation of natural resources.
- Stronger linkage between tourism and protected areas.
- Opening markets and reducing taxes on exports.

Source: International Trade Canada, *www.dfait-maeci.gc.ca/tna-nac/costa_rica-en.asp*.

Notes

1. See, for example, the websites of the United States' Trade Representative (*www.ustr.gov*); the European Commission (*http://europa.eu.int/comm/trade/index_en.htm*); International Trade Canada (*www.dfait-maeci.gc.ca/tna-nac/menu-en.asp*); Australia's Department of Foreign Affairs and Trade(*www.dfat.gov.au/trade/*); New Zealand's Ministry of Foreign Affairs and Trade (*www.mft.govt.nz/support/tplu/index.html*); and Singapore's Ministry of Trade and Industry (*www.mti.gov.sg/public/FTA/frm_FTA_Default.asp?sid=12*).

2. For examples of this type of information and request for input, see the European Commission's "Civil Society Dialogue" on public consultations (*http://trade-info.cec.eu.int/consultations/index.cfm*). For the Canadian context, see International Trade Canada's "It's Your Turn" (*www.dfait-maeci.gc.ca/tna-nac/consult-en.asp*). The United States has a similar but distinct process, whereby notices of all proposed negotiations are made to the Federal Register. Links to Federal Register notices can be found on the USTR website, in the Document Library pages of each regional or bilateral free trade agreement (*www.ustr.gov/Trade_Agreements/Section_Index.html*). The call for public submissions, therefore, is not via the Internet, although the information can be obtained from the website.

3. Australia's Department of Foreign Affairs and Trade received approximately 60 submissions from public groups regarding bilateral negotiations with Malaysia, and posted these comments on its website at *www.dfat.gov.au/geo/malaysia/fta/submissions/submission_texts.html*. The same process is being used in the development of Australia's negotiating position for negotiations with China, see *www.dfat.gov.au/media/releases/department/d008_05.html*

4. For a comprehensive list of Committees in the Trade Advisory Committee System, see the USTR website: *www.ustr.gov/Who_We_Are/List_of_USTR_Advisory_Committees.html*.

5. See the Civil Society Dialogue homepage at *http://trade-info.cec.eu.int/civilsoc/index.cfm*. Note that countries other than the United States and EU also use similar mechanisms. Sectoral Advisory Groups on International Trade are employed in Canada for all trade negotiations (*www.dfait-maeci.gc.ca/tna-nac/sagit-en.asp*). Australia and New Zealand also have trade advisory groups for targeted consultations on the ongoing WTO negotiations. For Australia's WTO Advisory Group, see *www.dfat.gov.au/trade/wtoag.html*. Australia also has a Trade Policy Advisory Council, which provides advice to the Minister on a range of trade policy issues. Its membership is composed of members from the business community and academia. For more information on New Zealand's Ministerial Advisory Group on Trade, see *www.mfat.govt.nz/foreign/tnd/cancun/tradeadvisorygroup.html*.

6. The full text of the "Open and Ongoing Invitation to Civil Society'" is available on the FTAA website, *www.ftaa-alca.org/spcomm/SOC/INVITATION/SOC15r5_e.asp*.

7. For this and other general information on consultations in the FTAA negotiating process, see the "Participation of Civil Society" page on the FTAA website *www.ftaa-alca.org*.

8. Draft negotiating texts are available at *www.ftaa-alca.org/ftaadrafts_e.asp*. Some of the participating countries have also posted the texts on their respective websites.

9. In the United States, all announcements of new Environmental Reviews and requests for comments on the Interim version of ongoing reviews are published in the Federal Register, which is duplicated on the USTR website. For a list of notices submitted to the Federal Register, see *www.ustr.gov/Trade_Sectors/Environment/Environment_Federal_Register_Notices/Section_Index.html*. In Canada, a similar

procedure is followed, where announcements of new initiatives are reported in the Canada Gazette, as well as on the Trade Negotiations and Agreements website. *www.dfait-maeci.gc.ca/tna-nac/env/env-ea-en.asp*.

10. For more information on the development of Canada's environmental review methodology, and a summary report of the consultations, see *www.dfait-maeci.gc.ca/tna-nac/comments_report-en.asp*.

11. Two such workshops were convened on the EU-African Caribbean Pacific SIA in Senegal and Trinidad. At each workshop, members of regional industry, interest groups, and non-governmental organisations participated, *http://europa.eu.int/comm/trade/issues/global/sia/studies_geo.htm#acp*.

12. For more information on the legislative and law-making processes in Parliamentary systems, see Canada *www.parl.gc.ca*, Australia, *www.ag.gov.au/agd*.

13. Section 2105 (a)(1)(A), Trade Promotion Authority Act of 2002, United States. Note that the date that the RTA is concluded, the date the President signs the RTA, and the date the Congress approves the RTA and any implementing legislation (which as with other legislation, requires the President's signature or an override vote if the President vetoes the legislation) are distinct.

14. A description of the necessary implementation legislation must be submitted to Congress 60 days following the date the President signs the trade agreement. See s.2105 (a) (1)(B), Trade Promotion Authority Act 2002, United States.

15. The European Parliament is involved in the decision-making process in specific cases outlined in Article 300 (3) of the Treaty, and is otherwise kept informed of the negotiations. See *http://europa.eu.int/comm/trade/whatwedo/work/index_en.htm*.

16. See, for example: US-CAFTA, Article 17.6; US-Australia, Article 19.5.3; US-Morocco, Article 17.6; US-Chile, Article 19.4; US-Singapore, Article 18.5.

17. Article 3.5, Arrangement on Environment Between New Zealand and the Kingdom of Thailand, available at *www.mfat.govt.nz/tradeagreements/thainzcep/environment.html*.

18. Article 9.5(b), NAAEC. There are similar provisions in most North American RTAs, such as Article 9.5 (b) of the Canada-Chile Agreement on Environmental Co-operation, for instance. Articles 17.5(3) and 17.5(4) of US-CAFTA-DR use stronger language, stating that the Environmental Affairs Council "*shall* seek views from its public", and "*shall* ensure a process for public participation in its work". See also similar references in Articles 19.3(2) and 19.3(3) of US-Chile.

19. Article 11, EU-Chile Association Agreement.

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Environment and Regional Trade Agreements

Chapter 10

Conclusions and Overview of Key Experiences

This study has examined the main approaches governments are using to integrate environmental issues in RTAs. These approaches vary significantly, and range from short references to environment in the preamble, to detailed environment chapters and environmental co-operation commitments, often developed in detail in an environmental side agreement. Many RTAs lie between these poles; most RTAs with an environmental component generally focus on environmental co-operation.

Among OECD members, Canada, the EU, New Zealand, and the United States have included the most comprehensive environmental provisions in recent RTAs. The agreements by the United States are quite unique in that they put trade and environmental issues and commitments on an equal footing. Among non-OECD countries, the efforts by MERCOSUR to add environmental provisions to existing arrangements and by Chile to include them in new RTAs are particularly noteworthy.

Dealing with environmental issues in RTAs is not a one-off exercise. It requires preparation, coordination among trade and environment officials (who, often, have often never previously worked together), setting of priorities, and reconciling conflicting views. Moreover, once a text is agreed on, continuous efforts are needed to ensure effective integration of trade and environmental issues throughout the life of the agreement. Experiences with NAFTA and MERCOSUR are probably among the most revealing cases in this regard.

While RTAs have contributed to the better integration of trade and environment at bilateral and regional levels, this progress is hardly visible in the multilateral arena. A number of countries have been prepared to incorporate environmental provisions in RTAs, but are not prepared to countenance similar outcomes at the multilateral level.

With the increasing proliferation of RTAs, and the variety of environmental arrangements they contain, some countries are faced with the increasingly complex problem of managing various types of environmental regimes simultaneously. This issue may require closer attention in the future.

This study has attempted to describe countries' key experiences with the negotiation and implementation of environmental commitments in RTAs. Since most RTAs including environmental provisions are very recent – many have been negotiated after 2000 – there is only limited experience with the actual implementation of these provisions. On the other hand, many see the

negotiation phase as part of the implementation, since countries already prepare themselves during the negotiations to meet their commitments and implement the necessary measures once the agreement is in force. The paragraphs below summarise the key experiences described in the study.

Negotiating environmental commitments in RTAs

The motivations for countries to include provisions on environment in RTAs vary, and so does the scope of these provisions. One of the primary reasons is to contribute to the overarching goal of sustainable development. For countries that have committed to pursuing sustainable development or aim to attain high levels of environmental protection, it is important to pursue these goals through all policies, including trade policies. Another driver is to ensure that there is a level playing field among parties in the agreement, *e.g.* by ensuring that each Party maintains acceptable levels of environmental protection and enforces its own environmental laws. For some countries, the main reason for including environmental co-operation provisions, often coupled to the first one, is to limit the possibility of transborder environmental pollution, where the trade partners are neighbours, or other negative spill-over effects. Some countries see the negotiation of a trade agreement as a unique opportunity to pursue global environmental policies.

The trade and environment debates have traditionally seen developing country negotiators cautious about incorporating trade and environment at the multilateral level. Moreover, many are wary of incorporating trade and environment in RTAs for fear of prejudicing their multilateral positions. Others fear that high environmental standards or strong enforcement mechanisms will be used to create new barriers to their exports to developed RTA partner markets.

Many countries do not consider the inclusion of environmental considerations in trade agreements to be a priority. This does not mean that they do not consider environmental protection and international environmental co-operation a political priority; they may simply not consider that trade agreements are a good place to deal with environmental issues. Some countries are not opposed, *per se*, to the inclusion of environmental considerations in a trade agreement, but see it as an obstacle to the rapid conclusion of an agreement. This approach may be particularly tempting in a period where regional approaches to trade are intensifying, and bilateral and regional trade agreements are proliferating, as is presently the case.

Where the negotiating Parties have, from the outset, a similar view on the benefits of including environmental provisions in the agreement, and on the scope and these provisions, the negotiations have a good chance of success. However, this scenario is still the exception, and the typical pattern, especially in negotiations between developing and developed countries, is that of one

country wishing to include environmental issues in the agreement, and the other not. Asymmetries of power play a major role, and the size and economic weight of the country wishing – or refusing – to include environmental considerations in the RTA will be key to the success of this objective. Negotiators from countries with significant market power may have the leverage to overcome these concerns, but small and middle-power countries might have more difficulty. However, willingness to be flexible and creative in approaches is also a key consideration, as the example of New Zealand shows.

While trade agreements between developed and developing countries are increasingly including environmental chapters, few trade agreements between developing countries do so. There are, however, notable exceptions, such as the RTAs signed by Chile with Colombia and Panama, which contain detailed environmental chapters or side agreements.

Some trade deals between developing countries, which initially did not contain any significant environmental provision, have, over time, added protocols dealing with the environment. MERCOSUR and ASEAN are good examples. Negotiating an environmental agreement to an RTA in a separate process, has, however, some shortcomings: first, the momentum created by trade negotiations will largely be lost, and the advantages of having trade and environment experts around the same negotiating table will be lost as well. The trade agreement will most probably be negotiated by trade experts alone, and the environmental agreement by environment experts. Since, most likely, the environment deal will need to be approved by a body composed by trade experts, it may be difficult to succeed in reaching a high level of "environmental ambition".

To successfully include environmental provisions in trade agreements, a strong political will to do so is of great help, if not essential. Where this will is reflected in a strong political mandate, or even in law (*e.g.* the US Trade Act of 2002), negotiators have a solid backing to maintain strong positions in a negotiation.

Among the main hurdles that countries need to overcome when negotiating environmental commitments in RTAs are lack of motivation or even opposition among higher levels of governments to include environmental provisions in a trade agreement, lack of capacity among negotiators to understand and discuss environmental issues, and insufficient coordination among trade and environment actors.

Another difficulty encountered by some countries was the need to negotiate environmental chapters in RTAs while their own national environmental legislation and implementation system was still in its infancy.

It is important that environmental requirements in RTAs be balanced. This includes coupling strong provisions, such as those aiming at enhancing

environmental standards or ensuring enforcement of environmental laws, with co-operation mechanisms and support towards capacity building. Some experts have highlighted the importance of a "positive environmental agenda", which would help limit the potential conflicts between trade and environmental requirements, and the perception that environmental requirements constitute barriers to trade. This approach would include mechanisms to enhance market access while improving environmental performance.

Benefits of environmental provisions

From an environmental point of view, the inclusion of provisions aiming at the mutual supportiveness of trade and environment, promoting enforcement of environmental laws and raising the level of environmental standards, setting up environmental co-operation, enhancing public participation in environmental matters, etc., is, *per se*, a positive outcome of a negotiation. But there are additional benefits.

One of these benefits is improving coordination among trade and environment officials. Officials of several countries – including some which were initially opposed or at least reticent to including environmental issues in trade agreements – have found this kind of negotiation to be a very positive experience, especially in terms of building capacity among trade and environment officials. Meetings involving environmental officials were less tense than those involving only trade officials. Exchanges and co-operation between different ministries were enhanced, and continued after the negotiations.

For Central American countries involved in the negotiations of the US-CAFTA-DR, the experience of preparing common "regional" positions, in preparation for the negotiations with the United States, enhanced regional cohesion and facilitated (for the first time) discussions on environmental and trade issues among experts of these countries. This contributed greatly to developing capacity and understanding of trade and environment links for officials involved in the discussions.

While there is a legitimate expectation that environmental provisions will, in the shorter or longer term, lead to environmental benefits or improvements, one may also ask whether those environmental provisions might have impacts – either positive or negative – on the economic performance of parties, and specifically on trade and sustainable economic development. Unfortunately, there is little empirical evidence on this question.

Environmental co-operation provisions and capacity building efforts in RTAs may have positive economic impacts. Co-operation on environmental issues of regional concern, for example, might avert environmental damage that has tangible economic impacts. Co-operation that involves technology-

sharing might also have economic benefits, as increased efficiency and innovative processes are the bedrock of economic progress.

Clearly, more time and empirical evidence is needed to analyse the economic impacts of trade-related environmental provisions in RTA. These impacts will depend on a multitude of factors, *e.g.,* the characteristics of the countries involved and the nature and level of ambition of the provisions in question.

Key approaches to environment in RTAs

Countries include environmental considerations in RTAs for a variety of reasons, which are reflected, *inter alia,* in parliamentary mandates to ensure the compatibility of trade and environmental policies, or a government's commitment to integrate trade and environment. Stakeholder pressure also plays a role. Some countries, *e.g.* the United States, have enacted legislation that mandates the inclusion of provisions in RTAs to address environmental issues. New Zealand has a Cabinet mandate for the "Integration of Environment Objectives and Trade Agreements".

The approach to environmental issues depends to a large extent on the type of agreement in question. Some RTAs aim primarily at reducing tariffs in certain sectors, establishing basic economic frameworks, or achieving mutual recognition of certain standards and regulations. In the context of such narrow trade agreements, environmental considerations are generally included in so far as they relate to ensuring that the new trade framework does not undermine governments' ability to protect the environment.

Other RTAs are more comprehensive, often including provisions on market access, domestic regulation, services, investment, and intellectual property. This type of broad trade-based economic partnership addresses environmental concerns not only through fine-tuning traditional trade rules, but also through more robust approaches that seek to address specific environmental problems that trade liberalisation can create, such as potential effects on the environmental regulatory capacity of a Party.

Agreements aiming at increased collaboration and dialogue often include provisions related to environmental co-operation that is pursuing economic and political goals. Examples are "Associations, Co-operations, Partnerships," and other types of agreements negotiated by the EU with developing countries and countries in transition. Here, environment is not strictly related to trade, but is part of a broad-based, more co-operative approach covering a whole range of areas.

The most ambitious agreements so far, from an environmental point of view, include a comprehensive environmental chapter, or are accompanied by an environmental side agreement, or both, detailing the Parties' environmental

commitments or objectives. In these agreements, environmental commitments are placed practically on an equal footing with trade commitments. At the other extreme are those agreements that deal with environment only in the form of exception clauses to general trade obligations under the agreement. Between these two poles is a whole range of more or less detailed approaches to environment. Environmental elements typically found in many RTAs are environmental co-operation and consultation mechanisms. Environmental standards also figure in a range of agreements, in various forms. Another provision typically included in RTAs is a reference to the compatibility between the agreement and multilateral or regional international environmental agreements.

Environmental impact assessments of RTAs

Some countries, mainly the United States, Canada, and New Zealand, as well as the EU, assess the potential impacts of trade agreements that they negotiate. The majority of countries, however, still have to be convinced of the use and need to carry out such assessments. For many, undertaking an environmental assessment is costly, complicated, and time consuming, while the benefits are uncertain at best. Finding the right methodology to carry out an assessment and applying it correctly has also been cited as a problem for many developing countries. Moreover, some countries have doubts about the real purpose and motivations of environmental impact assessments, and consider that they are not designed for policy reasons, but rather, to allay the concerns of domestic constituencies, such as NGOs.

Those countries with experience in carrying out environmental (or sustainability) assessments, however, have found the exercise to be generally useful. All assessment exercises comprise extensive fact and information gathering that go far beyond economic and trade figures and patterns that would typically be used in a trade negotiation. Though most reviews focus mainly on the impacts on the country that is carrying out the assessment (with the exception of the EU SIAs, which examine impacts in both partner countries or regions) they also include a significant amount of information on the trade partner's environment and related issues.

While assessments have rarely led to any change to negotiating positions, their findings have contributed to putting in place proactive policies, such as capacity building for environmental management or increased co-operation, which try to address the concerns raised in the assessment. There have been numerous instances of assessments feeding into the work programs of many related environmental co-operation or capacity building efforts.

One of the most important impacts of the assessment exercises is paradigm change. Before the advent of these exercises, trade negotiators and

policy makers did not take environmental concerns to be part of their mandate, and seldom saw the need to interact meaningfully with environment officials in their own countries. After the assessment exercise, this view was often reversed.

Another achievement of the assessment exercises is the ongoing involvement of civil society in trade policy-making. The assessment exercises in the United States, Canada, and the EU engage in extensive gathering of public comment at various points in the process. This gives a voice to those who might otherwise have little influence on trade policy direction, and may result in increased public understanding of the trade-environment interactions.

Environmental co-operation

Most RTAs dealing with environmental issues do so in the form of commitments by Parties to co-operate on environmental matters. The scope and depth of these commitments vary immensely, and range from co-operation in one specific technology to fully-fledged co-operation programmes.

Several government officials interviewed for this study noted that – particularly when they were dealing with developing country governments "suspicious" of the trade-environment linkage – an approach that included capacity building was important in easing the tensions, and getting genuine buy-in from the negotiating partners. It is also worth noting that co-operation is not one-way only: developed countries can also use the co-operation mechanism as a way of enhancing their own understanding of critical issues.

Environmental capacity building efforts, like Official Development Assistance, may face problems of coordination, both with existing programs of capacity building outside the context of RTAs, and with RTA-driven capacity building carried out by third countries. A key challenge for the United States, for example, in designing a program of environmental capacity building for US-CAFTA-DR was the wide variety of existing efforts in this region, prominent among them the ongoing work of USAID on environmental issues.

Co-operation and capacity building efforts can only work if the adequate resources – institutional, human and financial – are also in place. A good example of a solid co-operation mechanism, with a comprehensive work programme, the necessary institutional backing, and regular funding, is the CEC, set up under NAFTA's environmental co-operation agreement, the NAAEC. Mexico has been the main direct beneficiary of capacity building mechanisms, but the more developed trade partners, Canada and the United States, have also benefited from improvements in Mexico's environmental performance.

There is a need for ongoing assessment of current and future efforts towards environmental co-operation under RTAs, and for objective measures of success. This sort of measurement is inherently difficult but, given the

amount of resources currently devoted to trade-related environmental capacity building efforts, best efforts would seem to be easily justified.

Environmental standards and enforcement of environmental laws

The issue of the level of environmental protection – or environmental standards – that the Parties to a trade agreement choose to establish or maintain in their country is key to the discussion on the mutual supportiveness of trade and environment, and has a prominent role in many RTAs.

There are various different angles to the relationship between environmental standards and trade. First, there is the general recognition that countries maintain their prerogative to determine their own preferred levels of environmental protection. Another key concern is the potential non-enforcement of environmental laws or the lowering of environmental standards to unduly gain competitive advantages. Finally, some RTAs, typically those designed to deepen regional integration, often place emphasis on standardisation processes and the elaboration of regional environmental standards.

Mechanisms for achieving these various objectives include provisions committing parties to effectively enforce their environmental laws; commitments *not to lower* environmental standards in an effort to encourage trade or investment; commitments to *raise* environmental standards; and commitments to *harmonise* environmental standards.

The need to maintain and improve laws providing for high levels of health, safety, and environmental protection is matched by an equally important consideration: the need to enforce laws that are enacted. Provisions to encourage enforcement of Parties' environmental standards are usually motivated by a desire to reduce the potential for a "race to the bottom".

Only a few countries systematically include this type of commitment in their RTAs. The best known example is NAFTA. Subsequent RTAs entered into by the United States and Canada follow the same pattern. These commitments are unique in that they are legally binding and enforceable through various mechanisms, such as State-to-State and public submission mechanisms.

It is difficult to assess the efficiency of this type of commitment and mechanism. At a minimum, it has the value of reflecting the importance that Parties attach to environmental issues. For developing country Parties, entering this commitment may constitute a challenge – but also an opportunity to have a closer look at its own environmental regulation and enforcement systems, and have an additional motivation to enhance their effectiveness.

In some RTAs, Parties pledge to raise their environmental standards, or maintain high levels of such standards. Again here, it is difficult to assess whether provisions aimed at raising environmental standards have been

effective. In most jurisdictions where enough time has passed to allow for empirical analysis, various types of environmental standards have become more stringent. However, the key question is whether this has been the result of the commitments made in RTAs, or of the normal function of government acting in the interest of public welfare. In some cases, a pre-existing commitment to strong environmental protection was the proximate cause of the treaty language.

At a minimum, RTA commitments to raise environmental standards, and to improve environmental management more generally, are important in signalling the intentions of the parties, and provide an enabling legal framework within which more specific objectives can be realised.

Provisions aiming at the harmonisation of environmental standards typically appear in RTAs aiming at reinforced regional integration. Harmonisation provisions may also aim to prevent a "race to the bottom", but are more fundamentally aimed at facilitating free flow of goods and services, unimpeded by technical barriers.

There are few cases of actual harmonisation of environmental laws or policies among parties in RTAs, even where there are specific provisions to that effect. Given the difficulties in agreeing to harmonised standards and policies of any type, particularly when they are to replace existing and varying national approaches, this may not be surprising. More often, there has been agreement to adopt stronger environmental laws in particular sectors, but the nature of the law in each country is (to varying degrees) left up to the discretion of the national lawmakers. The result is a coordinated upward movement of environmental standards and strengthening of policies but is not, strictly speaking, "harmonisation".

In addition to the obligation to enforce environmental laws, some agreements include language on voluntary instruments and mechanisms that can contribute to enhancing Parties' environmental performance. These include co-operation to promote the use of economic instruments in support of policies that promote sustainable development and environmental protection, and to promote environmental education and patterns of behaviour necessary to achieve sustainable development, including corporate social responsibility. Actual experience with such provisions, however, is too recent to draw any significant conclusions.

Enforcement mechanisms and dispute settlement

RTAs providing for binding obligations related to enforcement of environmental laws also contain mechanisms to ensure enforcement of these obligations. Their objective is improved environmental enforcement capacity and reduced trade friction from uneven regulatory playing fields. Most of

these RTAs have also set out what may be described as minimum procedural standards of environmental protection. Pursuant to these provisions, each Party ensures that adequate judicial, quasi-judicial, or administrative proceedings are available under its law to sanction or remedy violations of its environmental laws.

One type of enforcement mechanism in RTAs are State-to-State dispute settlement mechanisms. To date, none has ever been exercised, even to the extent of recourse to the pre-dispute facilities for consultation and good offices. Several reasons can explain this lack of use. There is logically considerable discomfort in being brought to account by an international mechanism for failing to adequately enforce existing environmental laws, and there are few States in which enforcement of such laws is flawlessly executed. As such, countries may be hesitant to "cast the first stone" except in cases where the costs of inaction are very high for the potential complainant. Countries may simply hesitate to incur the costs – financial, political, and other – of initiating a dispute leading to imposing penalties on another country, even if the letter of the agreement would entitle them to do so.

It could also be argued, of course, that the enforcement mechanisms have not been used precisely because they are effective as deterrents to strategic under-enforcement of environmental standards. It may also be that the mechanisms are not used because the problem that they seek, namely strategic non-enforcement of environmental laws to gain undue competitive advantages, simply does not exist. Insufficient enforcement is generally due to lack of capacity and resources, rather than a strategic choice of creating a "pollution haven" to attract trade and investment. Therefore, capacity building aimed at enhancing enforcement of domestic environmental laws is a useful complement to these mechanisms.

A number of RTAs also allow for public submissions on perceived lack of enforcement of environmental laws. This measure is aimed at reinforcing provisions to prevent a Party from the lowering of environmental standards and thus unduly gaining competitive advantages. It allows citizens of any Party to complain that a Party is failing to effectively enforce its environmental laws.

This mechanism has been more thoroughly exercised than the State-to-State one. It has been argued that the public submission process has the advantages of efficiency and effectiveness, given that governments do not possess all the knowledge of local effects of non-compliance – effects that will occur across a wide range of locations – and that some citizens or citizen groups have a keen interest in seeing effective enforcement. Those whose livelihoods are affected by pollution, for example, will be motivated to ensure

that prevailing laws are respected. Further, to the extent a State can rely on citizens as police, it is fostering compliance in a cost-effective manner.

A related disadvantage is that submissions will focus on areas of keen interest to those organised and motivated enough to use the process. The range of issues addressed will therefore not necessarily correspond to the instances of non-enforcement that are most pressing from an environmental perspective. As such, this sort of mechanism is probably most valuably used as a complement to effective governmental oversight. Another negative factor is certainly the high level of financial, administrative, and human resources necessary to establish and administer a system of citizen submissions on an ongoing basis.

In the light of experience, it might seem as though such a mechanism would be unduly harsh toward the less developed parties in RTAs, where environmental regulations might be less ably enforced. This is an important consideration that should enter into the calculus of negotiation. The challenge is to find ways to make them acceptable to the governments involved. This may include offering a complementary suite of initiatives aimed at cooperatively improving enforcement capacity.

In some countries, the use of direct citizen involvement in the context of an RTA may clash with the traditional modes of government and citizen involvement. On the other hand, it may help promote citizen involvement in environmental issues in countries where traditionally no such opportunities existed. Overall, the mechanism may be the most effective of the various tools available for fostering compliance with domestic environmental laws, and may have the side benefit of empowering civil society to help protect the environment.

Parties' right to adopt or maintain environmental regulations

Trade rules generally provide wide and ample scope to pursue domestic policies to protect the environment and human health.

Practically all RTAs include some type of general exceptions clause that allows for derogations to the obligations under the agreement for the protection of health, the conservation of natural resources, or the protection of the environment. Some RTAs also contain provisions clarifying the relationship between the agreement and regional and multilateral agreements to which the trade partners are Parties.

So far, there is little experience with the practical implementation of these provisions, and there has been no formal dispute involving any of them. This does not mean, however, that these clauses are not necessary or useful. At a minimum, they have the value of reiterating countries' prerogatives to

maintain high environmental standards within their boundaries, including those deriving from national and international environmental commitments.

Public participation and consultation

Until relatively recently, trade negotiations were generally held behind closed doors, with no involvement of the public, nor even of officials from other ministries. On the other hand, public involvement has been stronger, and wider accepted by governments, in matters dealing with environment.

Today, governments are increasingly using public participation and consultation processes in the negotiation and implementation of RTAs. These processes generally allow civil society to raise environmental considerations and concerns related to the trade agreement. Some countries have passed national legislation or guidelines that allow for public consultations on the formation of trade policy, as well as actual negotiating positions. While most of these rules or practices concern public participation generally, some are linked specifically to environmental aspects. Other countries, such as New Zealand, actively encourage public participation in RTA processes, including through implementation activities, *e.g.* in the areas of co-operation and capacity building.

Public consultation is, however, not a general pattern in the negotiation or implementation of RTAs yet. Many countries keep public involvement in policy-making to a minimum level. Some countries, especially those that do not have a democratic regime, simply do not engage in public consultation. Others may lack the capacity to organise efficient consultations. But even countries that have the capacity, and a tradition of public participation in environmental matters, do not engage systematically in such consultations in the framework of trade agreements, because they consider this to be an obstacle to a smooth negotiation, or fear that it may delay the conclusion of a trade deal.

Involving the public in trade negotiations requires adequate organisation of the consultations and meaningful processing of the input. Lack of capacity or experience can be overcome, *inter alia*, through adequately targeted capacity building and technical assistance, as well as providing for a budget to help civil society organisations attend meetings and take part in relevant parts of the negotiation or implementation of RTAs.

The increasing involvement of the public in the negotiation and implementation of RTAs is putting pressure on those governments that traditionally did not involve the public in decision-making processes. This pressure can come from the agreement itself. The RTAs negotiated by the United States, for example, require that all Parties put in place adequate mechanisms for public participation in environmental provisions.

For countries with little experience in public consultation, this may constitute a challenge, but also an opportunity to engage in a learning process towards more participatory processes. Pressure on governments is also coming from civil society, which claims similar approaches to public participation as those they see are being used in negotiations in other countries, including their own trade partners.

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Environment and Regional Trade Agreements

ANNEX A

Selected RTAs

AMERICAS

North American Free Trade Agreement (NAFTA) (1994)	*www.dfait-maeci.gc.ca/nafta-alena/agree-en.asp*
Canada-Chile Free Trade Agreement (CCFTA) (1997)	*www.dfait-maeci.gc.ca/tna-nac/cda-chile/menu-en.asp*
Canada-Costa Rica Free Trade Agreement (CCRFTA) (2002)	*www.dfait-maeci.gc.ca/tna-nac/costa_rica-en.asp*
Canada-Israel Free Trade Agreement (CIFTA) (1997)	*www.dfait-maeci.gc.ca/tna-nac/cifta-en.asp#6*
Canada-United States of America Free Trade Agreement (CUSFTA) (1989)	*www.dfait-maeci.gc.ca/tna-nac/documents/cusfta-e.pdf*
US-Australia Free Trade Agreement (2005)	*www.ustr.gov/Trade_Agreements/Bilateral/Australia_FTA/Final_Text/Section_Index.html*
US-Bahrain Free Trade Agreement, Not yet ratified	*www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/final_texts/Section_Index.html*
Chile-US Free Trade Agreement (2004)	*www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/final_texts/Section_Index.html*
Central America-Dominican Republic-United States Free Trade Agreement (US-CAFTA-DR)	*www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/Section_Index.html*
US-Jordan Free Trade Agreement (2001)	*www.ustr.gov/assets/Trade_Agreements/Bilateral/Jordan/asset_upload_file250_5112.pdf*
US-Morocco Free Trade Agreement (2005)	*www.ustr.gov/Trade_Agreements/Bilateral/Morocco_FTA/FInal_Text/Section_Index.html*
US-Singapore Free Trade Agreement (2004)	*www.ustr.gov/assets/Trade_Agreements/Bilateral/Singapore_FTA/Final_Texts/asset_upload_file708_4036.pdf*
Andean Community (BOL, COL, ECU, PERU, VEN)	*Cartagena Agreement www.sice.oas.org/trade/JUNAC/Decisiones/dec563e.asp#CAg*
Treaty Establishing the Caribbean Community and Common Market (CARICOM) Revised Treaty establishing Caribbean Community including the Caribbean Single Market and the Economy (1973)	*Treaty Establishing Common Market www.sice.oas.org/trade/ccme/ccmetoc.asp* *Revised Treaty Establishing Single Market and the Economy www.sice.oas.org/trade/caricom/caricind.asp*
CARICOM – Costa Rica Free Trade Agreement (2004)	*www.sice.oas.org/trade/crcrcom_e/crcrcomind_e.asp*

Treaty establishing a Common Market between Argentina, Brazil, Paraguay and Uruguay (MERCOSUR) (1991)	*Establishing treaty www.sice.oas.org/trade/mrcsr/mrcsrtoc.asp Protocol on Investment /www.sice.oas.org/Trade/ MRCSR/colonia/pcolonia_s.asp Protocol on Services www.sice.oas.org/Trade/MRCSR/montevideo/ pmontevideo_s.asp#PARTE_II_ More protocols on www.sice.oas.org/agreemts/ Mercin_e.asp#MERCOSUR Framework Agreement on Environment www.medioambiente.gov.ar/mercosur.*
Agreement of the Economic Complementation of MERCOSUR and Andean Community	*Montevideo Agreement, phasing out tariffs between them in 15 years ("economic complementation agreement") www.comunidadandina.org/documentos/actas/ ACE59.pdf*

EUROPE

Partnership Agreement between the ACP Group of States and the EC (Cotonou Agreement) (EC-ACP) (2003)	*http://europa.eu.int/comm/development/body/cotonou/ agreement_en.htm*
Partnership and Co-operation Agreement between the EC and Armenia (1999)	*http://europa.eu.int/comm/external_relations/ceeca/pca/ pca_armenia.pdf*
Partnership and Co-operation Agreement between the EC and Azerbaijan (1999)	*http://europa.eu.int/comm/external_relations/ceeca/pca/ pca_azerbaijan.pdf*
Association Agreement the EC-Chile (2003)	*http://trade-info.cec.eu.int/doclib/docs/2004/november/ tradoc_111620.pdf*
Euro-Mediterranean Agreement Establishing an Association between the EC and Egypt (2004)	*http://trade-info.cec.eu.int/doclib/docs/2004/june/ tradoc_117680.pdf*
Euro-Mediterranean Agreement Establishing an Association between the EC and Israel (2000)	*www.bilaterals.org/IMG/pdf/EU-Israel_Association_Agreement_-_2000.pdf*
Euro-Mediterranean Agreement Establishing an Association between the EC and Jordan (2002)	*http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_129/ l_12920020515en00030165.pdf*
Partnership and Co-operation Agreement between the EC and Kazakhstan (1999)	*www.bilaterals.org/IMG/pdf/EU-Kazakhstan_Coop_Agreement.pdf*
Partnership and Co-operation Agreement between the EC and Kyrgyz Republic (1999)	*http://europa.eu.int/comm/external_relations/ceeca/pca/ pca_kyrgyzstan.pdf*
Euro-Mediterranean Agreement Establishing an Association between the EC and Lebanon (2003)	*http://europa.eu.int/comm/external_relations/lebanon/aa/ 1.pdf*
Partnership and Co-operation Agreement between the EC and Moldova (1998)	*http://europa.eu.int/comm/external_relations/ceeca/pca/ pca_moldova.pdf*
Euro-Mediterranean Agreement Establishing an Association between the EC and Morocco (2000)	*http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_070/ l_07020000318en00020190.pdf*
Euro-Mediterranean Agreement Establishing an Association between the EC and Palestine (1997)	*http://trade-info.cec.eu.int/doclib/docs/2004/june/ tradoc_117751.pdf*
Agreement on Trade, Development and Co-operation between the EC and South Africa (2000)	*http://europa.eu.int/eur-lex/pri/en/oj/dat/1999/l_311/ l_31119991204en00030297.pdf*
Euro-Mediterranean Agreement Establishing an Association between the EC and Tunisia (1998)	*http://europa.eu.int/smartapi/cgi/ sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN &numdoc=21998A0330(01)&model=guichett*

Partnership and Co-operation Agreement between the EC and Uzbekistan (1999)	*http://europa.eu.int/comm/external_relations/ceeca/pca/pca_uzbekistan.pdf*
Agreement on the European Economic Area (EEA = the EC + EFTA minus Switzerland) (1994)	*http://secretariat.efta.int/Web/EuropeanEconomicArea/EEAAgreement/EEAAgreement/EEA%20Agreement.pdf*

ASIA, PACIFIC AND MIDDLE EAST

Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (AFTA of ASEAN) (1992)	*www.aseansec.org/12375.htm*
Agreement between Japan and Mexico for the strengthening of the Economic partnership (2005)	*www.sice.oas.org/Trade/JPN_MEXDraftEPA_e/text_agreem_e.pdf*
Agreement between Singapore and Japan for a New-Age Partnership (JSEPA) (2002)	*http://app.fta.gov.sg/asp/fta/japan_text.asp*
Agreement between the Government of Japan and the Government of Malaysia for an Economic Partnership (2006)	*www.mofa.go.jp/region/asia-paci/malaysia/agreement/index.html*
Free Trade Agreement Korea – Chile (2004)	*www.bilaterals.org/IMG/pdf/Korea-Chile_FTA.pdf*
Agreement between New Zealand and Singapore on a Closer the Economic Partnership (ANZSCEP) (2001)	*www.fta.gov.sg/fta/pdf/anzscep.pdf*
South Asian Free Trade Area (SAFTA [SAARC]) (2006)	*www.saarc-sec.org/main.php?id=12&t=7.1*
Singapore-Australia Free Trade Agreement (SAFTA (2003)	*www.dfat.gov.au/trade/negotiations/safta/index.html*
Thailand-Australia Free Trade Agreement (TAFTA) (2005)	*www.dfat.gov.au/trade/negotiations/aust-thai/tafta_toc.html*

AFRICA

Treaty establishing African the Economic Community (AEC) (1991)	*http://mba.tuck.dartmouth.edu/cib/trade_agreements_db/archive/AfricanEconomicCommunity.pdf*
Common Market for Eastern and Southern Africa (COMESA) (1995)	*www.comesa.int/about/treaty/treaty_pdf*
Economic and Monetary Community of Central Africa (CEMAC) (2000)	*www.izf.net/izf/Institutions/Integration/AfriqueCentrale/TexteBase/traité%20cemac.htm*
South African Custom Union (SACU) (1970)	*www.dfa.gov.za*
Protocol on the establishment of the East African Community Customs Union (EAC) (2004)	*http://mba.tuck.dartmouth.edu/cib/trade_agreements_db/archive/EastAfricanCommunity.pdf*
Southern African Development community (SADC) Protocol on Trade (2004)	*www.sadc.int/index.php?action=a1001&page_id=protocols_trade*
Revised Treaty of the West African the Economic and Monetary Union (WAEMU-UEMOA) (2000)	*www.uemoa.int/actes/2003/TraitReviseUEMOA.pdf*

ANNEX B

Environmental Side Agreements and Chapters on Environment in RTAs

This Annex contains the following texts:

- The Agreement on Environmental Co-operation between Canada and Costa Rica (2001).
- The Environment Co-operation Agreement among the Parties to the Trans-Pacific Strategic Economic Partnership Agreement (Brunei Darussalam, the Republic of Chile, New Zealand, and the Republic of Singapore) (2005).
- The chapter on Environment of the Central America-Dominican Republic-United States Free Trade Agreement (US-CAFTA-DR) (2005), as well as the Environmental Co-operation Agreement between Parties to the latter.

1. Agreement on Environmental Co-operation between the Government of Canada and the Government of the Republic of Costa Rica (2001)

Preamble

The Government of Canada and the Government of the Republic of Costa Rica:

CONVINCED of the importance of the conservation, protection and enhancement of the environment in their territories and the essential role of co-operation in these areas in achieving sustainable development for the well-being of present and future generations;

REAFFIRMING the sovereign right of States to exploit their own resources pursuant to their own environmental and development policies and their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

FURTHER REAFFIRMING the Stockholm Declaration on the Human Environment of 1972 and the Rio Declaration on Environment and Development of 1992;

ACKNOWLEDGING the growing economic, environmental and social links between their countries through the creation of a free trade area;

RECALLING that Canada and Costa Rica share a commitment to pursue policies which promote sustainable development, and that sound environmental management is an essential element of sustainable development;

NOTING the existence of differences in their respective natural endowments, climatic and geographical conditions, and technological and infrastructural capabilities;

FURTHER NOTING the existence of differences in their respective socio-economic conditions and legal systems;

ACKNOWLEDGING the importance of transparency and public participation in the development of environmental laws and policies;

RECOGNIZING that it is inappropriate to relax environmental laws in order to encourage trade;

EXPRESSING their shared desire to support and build on international environmental agreements through Co-operation between the Parties;

Have agreed as follows:

Part one – Objectives

Article 1: Objectives

The objectives of this Agreement are to:

a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;

b) promote sustainable development through mutually supportive environmental and economic policies;

c) strengthen co-operation on the development and improvement of environmental laws, procedures, policies and practices; and

d) promote transparency and public participation in the development of environmental laws and policies.

Part two – Obligations

Article 2: Levels of Protection

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws, each Party shall ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

Article 3: Enforcement of Environmental Laws

1. With the aim of achieving high levels of environmental protection and compliance with its environmental laws, each Party shall effectively enforce its environmental laws through appropriate governmental action, subject to Article 14.
2. Each Party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its law to sanction or remedy violations of its environmental laws.

Article 4: Publication

1. Each Party shall ensure that its laws, regulations and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall publish in advance any such law or regulation that it proposes to adopt so as to enable those interested to provide comments.

Article 5: Private Access to Remedies

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration in accordance with its law.
2. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings:
   a) for the enforcement of the Party's environmental laws; and
   b) for the seeking of redress for another's violation of those laws.

Article 6: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in Articles 3(2) and 5(2) are fair, open and equitable, and to this end shall provide that such proceedings:
   a) comply with due process of law;
   b) are open to the public, except where the administration of justice otherwise requires;
   c) entitle the parties to the proceedings to support or defend their respective positions and to present information or evidence; and
   d) are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.
2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:
   a) in writing and preferably state the reasons on which the decisions are based;
   b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
   c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.
3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek, review and, where warranted, correction of final decisions issued in such proceedings.
4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

Part three – Implementation

Article 7: Implementation

1. Implementation and further elaboration of this Agreement will be through government to government coordination.
2. The Parties will meet biennially, or more frequently as mutually agreed, to review progress on the implementation and further elaboration of this Agreement.
3. The Parties, when they consider appropriate, shall jointly prepare reports on the activities related to the implementation of this Agreement. Such reports may address, among other things:
   a) actions taken by each Party further to its obligations pursuant to this Agreement; and

b) co-operative activities undertaken pursuant to this Agreement.

4. The Parties shall make such reports public.

Article 8: Intergovernmental Co-operation

1. The Parties may develop programs of co-operative activities, with the involvement of the public and experts as appropriate, to promote the achievement of the objectives of this Agreement. An indicative list of areas of possible co-operation between the Parties is set out in Annex A.
2. The funding of co-operative activities will be arranged on a case by case basis as mutually agreed.

Article 9: Accountability for Effective Enforcement

1. Any person or non-governmental organisation residing in or established in the territory of a Party may submit a written question to a Party indicating that the question is being submitted pursuant to this Article regarding that Party's obligations pursuant to Article 3(1) to effectively enforce its environmental laws.
2. The Party in question will acknowledge such questions, in writing, and respond to such questions in a timely manner. Where several questions are received on the same topic the Party may provide a combined response. Where an issue has been addressed in a previous response, the Party may refer the questioner to that response.
3. For greater certainty, in the event an issue raised in a question is being or has been addressed in another forum, whether domestic or international, the Party may simply refer to that fact in its response.
4. Each Party will make publicly available in a timely manner summaries of any questions it receives and of the responses it makes to those questions.

Article 10: Communications

1. Each Party shall designate a point of contact for communications between the Parties and from the public related to the implementation and further elaboration of this Agreement.
2. The points of contact so designated are identified in Annex B.
3. Either Party may by notice in writing to the other Party designate another point of contact for such communications.

Article 11: Public Engagement

The Parties will develop mechanisms to inform the public of activities undertaken pursuant to this Agreement, and will make efforts to create opportunities to engage the public, as appropriate, in such activities.

Article 12: Notification

1. A Party may notify the other Party of, and provide to that Party, any credible information regarding possible violations of, or failures to effectively enforce, its environmental laws, specific and sufficient to allow the other Party to inquire into the matter. The notified Party shall take appropriate steps in accordance with its law to so inquire and to respond to the other Party.
2. On the request of the other Party, a Party shall promptly provide information of any proposed or actual environmental measure and, as promptly as is reasonably possible, shall respond to any questions of the other Party pertaining to any such environmental measure.

Article 13: Consultation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation and consultations to resolve any matter that might affect its operation.

Part four – General Provisions

Article 14: Enforcement Principle

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 15: Private Rights

Neither Party may provide for a right of action under its law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement.

Article 16: Protection of Information

The Parties shall provide any information required pursuant to this Agreement unless the release of that information would be prohibited or exempted from disclosure under their respective laws and regulations, including those concerning access to information and privacy.

Article 17: Relation to Other Environmental Agreements

Nothing in this Agreement shall be construed to affect the existing rights and obligations of either Party under other international environmental agreements, including conservation agreements, to which such Party is a party.

Article 18: Application

The application of this Agreement is subject to Annex C.

Article 19: Definitions

For purposes of this Agreement:

A Party has not failed to "effectively enforce its environmental law" in a particular case where the action or inaction in question by agencies or officials of that Party:

a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or

b) results from *bona fide* decisions to allocate resources to:

i) enforcement in respect of other environmental matters determined to have higher priorities; or

ii) emergency needs arising as a result of an act of God;

"**environmental law**" means any statutory or regulatory provision of a Party, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

b) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto; or

c) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas,

- in the Party's territory, but does not include any statutory or regulatory provision directly related to worker safety or health;
- for greater certainty, the term "**environmental law**" does not include any statutory or regulatory provision, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources;
- the primary purpose of a particular statutory or regulatory provision for purposes of the definition of "**environmental law**" shall be determined by

reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part;

- "**non-governmental organisation**" means any scientific, professional, business, non-profit, or public interest organisation or association which is neither affiliated with, nor under the direction of, a government;
- "**province**" means a province of Canada, and includes the Yukon Territory, the Northwest Territories and Nunavut; and
- "territory" means

a) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources; and

b) with respect to Costa Rica, the territory and air space, and the maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which it exercises, in accordance with international law and its domestic law, sovereign rights with respect to the natural resources of such areas.

Part five – Final provisions

Article 20: Annexes

The Annexes to this Agreement are an integral part thereof.

Article 21: Entry into Force

This Agreement shall enter into force following an exchange of written notifications certifying the completion of necessary legal procedures. The Parties agree on the desirability of an exchange of such notifications by 1 January 2002.

Article 22: Amendments

1. The Parties may agree on any modification of or addition to this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article 23: Termination

Either Party may terminate this Agreement by giving written notice to the other Party. Such termination shall take effect six months after the date of receipt of written notice by the other Party.

Article 24: Authentic Texts

The English, French, and Spanish texts of this Agreement are equally authentic.

Annex I

1. In order to promote the achievement of the objectives of this Agreement and to assist in the fulfillment of their obligations pursuant to it, the Parties have established the following indicative list of areas of possible co-operation between them:
   a) strengthening environmental management systems, including:
      i) institutional and legal frameworks;
      ii) processes, policies and procedures for the development, administration and enforcement of environmental laws; and
      iii) technical and scientific capacity to support environmental policy-making and standard setting;
   b) expanding and strengthening the role, responsibility and participation of the public, including groups and sectors which have not traditionally so participated, in the process of environmental policy-making and in the implementation of environmental laws and policies; and
   c) promoting innovation and efficiency in the protection and conservation of biodiversity and the sustainable use of natural resources.
2. The Parties agree that it would be desirable if programs of co-operative activities developed by them could have as broad an application and benefit, as possible.

Annex II

For the purposes of Article 10 of this Agreement:

a) the point of contact designated by Canada is:

Director, Americas Branch

International Relations Directorate

Environment Canada

10 Wellington Street

Hull, PQ

Canada K1A 0H3

b) the point of contact designated by Costa Rica is:

Oficina del Viceministro

Viceministro de Ambiente y Energía

Ministerio de Ambiente y Energía

Av. 8 y 10, calle 25

San José, Costa Rica

Annex III

1. On the date of signature of this Agreement, or of the exchange of written notifications under Article 21, Canada shall set out in a declaration a list of any provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration shall be effective on delivery to Costa Rica, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify Costa Rica six months in advance of any modification to its declaration.
2. Canada shall use its best efforts to make this Agreement applicable to as many of its provinces as possible.

2. Environment Co-operation Agreement among the Parties to the Trans-Pacific Strategic Economic Partnership Agreement (Brunei Darussalam, the Republic of Chile, New Zealand, and the Republic of Singapore) (2005)

The Governments of Brunei Darussalam, the Republic of Chile, New Zealand, and the Republic of Singapore (hereinafter referred to collectively as the "Parties" or individually as a "Party", unless the context otherwise requires):

Desiring to express an approach dealing with environment issues, that takes account of the unique circumstances of each Party, and meets the needs and future aspirations of the Parties, and reflects the Parties' desire to strengthen the growing economic and political relationship as reflected in the Trans-Pacific Strategic Economic Partnership Agreement;

Noting the existence of differences in the Parties' respective natural endowments, climatic, geographical, social, cultural and legal conditions and economic, technological and infrastructural capabilities;

Committed to the pursuit of sustainable development as well as recognising its interdependent and mutually reinforcing pillars – economic development, social development and environmental protection;

Acknowledging that all Parties share a similar commitment to a high level of environmental protection and standards, and to upholding these in the context of sustainable development;

Recognising that environment and trade policies should be mutually supportive, with a view to achieving sustainable development;

Have agreed as follows:

Article 1: Objectives

The objectives of the Agreement shall be to:

a) encourage sound environment policies and practices and improve the capacities and capabilities of the Parties, including non-government sectors, to address environmental matters;

b) promote, through environmental co-operation, the commitments made by the Parties; and

c) facilitate co-operation and dialogue in order to strengthen the broader relationship among the Parties.

Article 2: Key Elements/Commitments

1. The Parties reaffirm their intention to continue to pursue high levels of environmental protection and to fulfill their respective multilateral environment commitments and international plans of action designed to achieve sustainable development.
2. Each Party shall endeavour to have its environment laws, regulations, policies and practices in harmony with its international environment commitments.
3. The Parties shall respect the sovereign right of each Party to set, administer and enforce its own environmental laws, regulations and policies according to its priorities.
4. The Parties agree that it is inappropriate to set or use their environmental laws, regulations, policies and practices for trade protectionist purposes.
5. The Parties agree that it is inappropriate to relax, or fail to enforce or administer, their environment laws and regulations to encourage trade and investment.
6. Each Party shall promote public awareness of its environmental laws, regulations, policies and practices domestically.

Article 3: Co-operation

1. Taking account of their national priorities and available resources, interested Parties will co-operate on mutually agreed environmental issues through the interaction of government, industry, educational and research institutions in each country.
2. Each Party may, as appropriate, invite the participation of its non-government sectors and other organisations in identifying potential areas for co-operation.

3. The Parties may invite the participation of non-government sectors and other organisations in undertaking co-operative activities as mutually agreed.
4. The interested Parties will encourage and facilitate, as appropriate, the following activities:
   a) collaborative research on subjects of mutual interest;
   b) exchange of environmental experts and management personnel;
   c) exchange of technical information and publications; and
   d) any other modes of co-operation agreed upon by the Parties.

Such co-operation shall take into consideration each Party's environmental priorities and needs as well as the resources available. The funding of co-operative activities shall be decided by the Parties on a case-by-case basis.

5. The Parties' intention is to co-operate in environmental areas of common global or domestic concern. To facilitate this, as an initial step, Parties shall exchange lists of their areas of interest and expertise.

Article 4: Institutional Arrangements

1. Each Party shall designate a national contact point for environmental matters to facilitate communication among the Parties.
2. The Parties, including senior officials of their government agencies responsible for relevant environmental matters, shall meet within the first year of signing this Agreement unless otherwise agreed, and thereafter as mutually agreed.
3. The agenda as agreed by the Parties may:
   a) consider areas of potential co-operative activities;
   b) serve as a forum for dialogue on matters of mutual interest;
   c) review the implementation, operation and outcomes of the Agreement; and
   d) address issues that may arise.
4. The Parties may exchange information and coordinate activities using e-mail, video conferencing or other means of communication.
5. After three years, or as otherwise agreed, the Parties shall review the operation of this Agreement and report to the Trans-Pacific Strategic Economic Partnership Commission.
6. Each Party may consult with members of its public and/or non-government sectors over matters relating to the operation of this Agreement by whatever means that Party considers appropriate.

7. The Parties may decide to invite relevant experts or organisations, to provide information to meetings of the Parties.
8. Each Party may develop mechanisms, as appropriate, to inform its public of activities undertaken pursuant to this Agreement in accordance with its laws, regulations, policies and practices.

Article 5: Consultation

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through dialogue, consultation and co-operation to resolve any issue that might affect its operation.
2. Should any issue arise between any of the Parties over the application of Article 2 (*Key Elements/Commitments*), the concerned Parties shall in good faith resolve the issue amicably through dialogue, consultation and co-operation.
3. A Party may request consultation with the other Party(ies) through the national contact point regarding any issue arising over the interpretation or application of Article 2 (*Key Elements/Commitments*). The contact point shall identify the office or official responsible for the issue and assist if necessary in facilitating the Party's communications with the requesting Party. The concerned Parties will provide initial advice of the issue to the other Parties for their information.
4. The concerned Parties shall decide a timeframe for consultation which shall not exceed 6 months, unless mutually agreed.
5. Should the issue not be able to be resolved through the initial consultation process it may be referred to a special meeting of the interested Parties and to which all Parties would be invited. The issue may also be referred to the Trans-Pacific Strategic Economic Partnership Commission by any interested Party for discussions.
6. The special meeting of the interested Parties shall produce a report. The concerned Party(ies) shall implement the conclusions and recommendations of the report, taking into account the views of the Trans-Pacific Strategic Economic Partnership Commission, as soon as practicable.

Article 6: Disclosure of Information

1. A Party shall not disclose any information that was obtained from another Party. A Party may disclose such information if the Party from which the information was obtained, consents to the disclosure.

2. Nothing in this Agreement shall be construed to require any Party to furnish or allow access to information the disclosure of which it considers would:
   a) be contrary to the public interest as determined by its legislation;
   b) be contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
   c) impede law enforcement; or
   d) which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 7: Final Provisions

1. The Agreement shall enter into force for a Party on the same date as the *Trans-Pacific Strategic Economic Partnership Agreement* enters into force for that Party.
2. The original of this Agreement shall be deposited with the Government of New Zealand, which is hereby designated as the Depositary of this Agreement, at the same time as the *Trans-Pacific Strategic Economic Partnership Agreement*.
3. The English and Spanish texts of this Agreement are equally authentic. In the event of divergence, the English text shall prevail.

3.1. Central America-Dominican Republic-United States Free Trade Agreement (US-CAFTA-DR) (2005)

Chapter 17: Environment

Article 17.1: Levels of Protection

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve those laws and policies.

Article 17.2: Enforcement of Environmental Laws

1.*a)* A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

2.*b)* The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

Article 17.3: Procedural Matters

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings, in accordance with its law, are available to sanction or remedy violations of its environmental laws.

   a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law and be open to the public, except where the administration of justice otherwise requires.

   b) The parties to such proceedings shall be entitled to support or defend their respective positions, including by presenting information or evidence.

   c) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:

      i) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

      ii) may include criminal and civil remedies and sanctions such as compliance agreements, penalties, fines, injunctions, suspension of

activities, and requirements to take remedial action or pay for damage to the environment.

2. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law.
3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 1.
4. Each Party shall provide appropriate and effective access to remedies, in accordance with its law, which may include rights such as:
   a) to sue another person under that Party's jurisdiction for damages under that Party's laws;
   b) to seek sanctions or remedies such as monetary penalties, emergency closures or temporary suspension of activities, or orders to mitigate the consequences of violations of its environmental laws;
   c) to request that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm; or
   d) to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction that is contrary to that Party's environmental laws or that violates a legal duty under that Party's law relating to human health or the environment.
5. Each Party shall ensure that tribunals that conduct or review proceedings referred to in paragraph 1 are impartial and independent and do not have any substantial interest in the outcome of the matter.
6. For greater certainty, nothing in this Chapter shall be construed to call for the examination under this Agreement of whether a Party's judicial, quasi-judicial, or administrative tribunals have appropriately applied that Party's environmental laws.

Article 17.4: Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the procedures set out in Article 17.3. As appropriate and in accordance with its law, each Party shall

encourage the development and use of such mechanisms, which may include:

a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

i) partnerships involving businesses, local communities, non-governmental organisations, government agencies, or scientific organisations;

ii) voluntary guidelines for environmental performance; or

iii) sharing of information and expertise among authorities, interested parties, and the public concerning methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

a) the maintenance, development, or improvement of performance goals and indicators used in measuring environmental performance; and

b) flexibility in the means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

Article 17.5: Environmental Affairs Council

1. The Parties hereby establish an Environmental Affairs Council comprising cabinet-level or equivalent representatives of the Parties, or their designees. Each Party shall designate an office in its appropriate ministry that shall serve as a contact point for carrying out the work of the Council.

2. The Council shall meet within the first year after the date of entry into force of this Agreement, and annually thereafter unless the Parties otherwise agree, to oversee the implementation of and review progress under this Chapter and to consider the status of co-operation activities developed under the Dominican Republic-Central America-United States-Environmental Co-operation Agreement ("ECA"). Unless the Parties otherwise agree, each meeting of the Council shall include a session in

which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

3. The Council shall set its own agenda. In setting the agenda, each Party shall seek views from its public concerning possible issues for discussion.
4. In order to share innovative approaches for addressing environmental issues of interest to the public, the Council shall ensure a process for promoting public participation in its work**,** including by engaging in a dialogue with the public on those issues.
5. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of co-operative environmental activities, including through the ECA.
6. All decisions of the Council shall be taken by consensus, except as provided in Article 17.8. All decisions of the Council shall be made public, unless otherwise provided in this Agreement, or unless the Council otherwise decides.

Article 17.6: Opportunities for Public Participation

1. Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Parties and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures.
2. Each Party shall make best efforts to accommodate requests by persons of that Party to exchange views with that Party regarding that Party's implementation of this Chapter.
3. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organisations, to provide views on matters related to the implementation of this Chapter.
4. The Parties shall take into account public comments and recommendations regarding co-operative environmental activities undertaken pursuant to Article 17.9 and the ECA.

Article 17.7: Submissions on Enforcement Matters

1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body ("secretariat") that the Parties designate.

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:
   a) is in writing in either English or Spanish;
   b) clearly identifies the person making the submission;
   c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;
   d) appears to be aimed at promoting enforcement rather than at harassing industry;
   e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and
   f) is filed by a person of a Party.
3. The Parties recognize that the *North American Agreement on Environmental Co-operation* ("NAAEC") provides that a person or organisation residing or established in the territory of the United States may file a submission under that agreement with the Secretariat of the NAAEC Commission for Environmental Co-operation asserting that the United States is failing to effectively enforce its environmental laws. In light of the availability of that procedure, a person of the United States who considers that the United States is failing to effectively enforce its environmental laws may not file a submission under this Article. For greater certainty, a person of a Party other than the United States who considers that the United States is failing to effectively enforce its environmental laws may file a submission with the secretariat.

1. The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or other form of agreement between the Parties.
2. Arrangements will be made for the United States to make available in a timely manner to the other Parties all such submissions, US written responses, and factual records developed in connection with those submissions. At the request of any Party, the Council shall discuss such documents.
4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:
   a) the submission is not frivolous and alleges harm to the person making the submission;

b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Co-operation Commission established under the ECA;

c) private remedies available under the Party's law have been pursued; and (d) the submission is drawn exclusively from mass media reports. Where the secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on notification to the secretariat, within 60 days of delivery of the request:

   a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and

   b) of any other information the Party wishes to submit, such as:

      i) whether the matter was previously the subject of a judicial or administrative proceeding;

      ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued; or

      iii) information concerning relevant capacity-building activities under the ECA.

Article 17.8: Factual Records and Related Co-operation

1. If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.
2. The secretariat shall prepare a factual record if the Council, by a vote of any Party, instructs it to do so.
3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.
4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

   a) that is publicly available;

   b) submitted by interested persons;

c) submitted by national advisory or consultative committees;

d) developed by independent experts; or

e) developed under the ECA.

5. The secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.
6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.
7. The Council may, by a vote of any Party, make the final factual record publicly available, normally within 60 days following its submission.
8. The Council shall consider the final factual record in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Co-operation Commission related to matters addressed in the factual record, including recommendations related to the further development of the Party's mechanisms for monitoring its environmental enforcement.

Article 17.9: Environmental Co-operation

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening trade and investment relations.
2. The Parties are committed to expanding their co-operative relationship, recognizing that co-operation is important for achieving their shared environmental goals and objectives, including the development and improvement of environmental protection, as set out in this Chapter.
3. The Parties recognize that strengthening their co-operative relationship on environmental matters can enhance environmental protection in their territories and may encourage increased trade and investment in environmental goods and services.
4. The Parties have negotiated an ECA. The Parties have identified certain priority areas of co-operation for environmental activities as reflected in Annex 17.9 and as set out in the ECA. The Parties also have established an Environmental Co-operation Commission through the ECA that is responsible for developing, and periodically revising and updating, a work program that reflects each Party's priorities for co-operative environmental programs, projects, and activities.
5. The Parties also recognize the continuing importance of current and future environmental co-operation activities in other fora.

Article 17.10: Collaborative Environmental Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 17.5.1.
2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.
3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for co-operation relating to the matter and information exchanged by the consulting Parties, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.
4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other Parties.3
5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.
6. If the matter concerns whether a Party is conforming to its obligations under Article 17.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may, as appropriate, provide information to the Commission regarding any consultations held on the matter.
7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 17.2.1(a).
3. For purposes of paragraphs 4, 5, and 6, the Council shall consist of cabinet-level representatives of the consulting Parties or their designees.
8. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 17.2.1(a) without first pursuing resolution of the matter in accordance with this Article.
9. In cases where the consulting Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement

to which the consulting Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

Article 17.11: Environmental Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 28 individuals who are willing and able to serve as panelists in disputes arising under Article 17.2.1(a). Unless the Parties otherwise agree, up to three members of the roster shall be nationals of each Party, and up to seven members of the roster shall be selected from among individuals who are not nationals of any Party. Environment roster members shall be appointed by consensus, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.
2. Environment roster members shall:
   a) have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade or environmental agreements;
   b) be chosen strictly on the basis of objectivity, reliability, and sound judgment; 17-10
   c) be independent of, and not affiliated with or take instructions from, any Party; and
   d) comply with a code of conduct to be established by the Commission.
3. Where a Party claims that a dispute arises under Article 17.2.1(a), Article 20.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 17.12: Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are all party play an important role in protecting the environment globally and domestically and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all party and trade agreements to which they are all party.
2. The Parties may consult, as appropriate, with respect to ongoing negotiations in the WTO regarding multilateral environmental agreements.

Article 17.13: Definitions

1. For purposes of this Chapter:

Environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

c) the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas,

In areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

For greater certainty, **environmental law** does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

For purposes of the definition of "environmental law," the primary purpose of a particular statutory or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

1. Statute or regulation means:

a) for Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, a law of its legislative body or a regulation promulgated pursuant to an act of its legislative body that is enforceable by the executive body; and

b) for the United States, an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.

2. For purposes of Article 17.7.5, **judicial or administrative proceeding** means:

a) a domestic judicial, quasi-judicial, or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an

administrative or judicial forum; and the process of issuing an administrative order; and

b) an international dispute resolution proceeding to which the Party is a party.

ANNEX 17.9

Environmental Co-operation

1. The Parties recognize the importance of protecting, improving, and conserving the environment, including natural resources, in their territories. The Parties underscore the importance of promoting all possible forms of co-operation and reaffirm that co-operation on environmental matters provides enhanced opportunities to advance common commitments to achieve sustainable development for the well-being of present and future generations.
2. Recognizing the benefits that would be derived from a framework to facilitate effective co-operation, the Parties negotiated the ECA. The Parties expect that the ECA will enhance their co-operative relationship, noting the existence of differences in the Parties' respective natural endowments, climatic and geographical conditions, and economic, technological, and infrastructure capabilities.
3. As set forth in Article V of the ECA, the Parties have identified the following priorities for environmental co-operation activities:
   a) strengthening each Party's environmental management systems, including reinforcing institutional and legal frameworks and the capacity to develop, implement, administer, and enforce environmental laws, regulations, standards, and policies;
   b) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, including the development of market-based initiatives and economic incentives for environmental management;
   c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;
   d) conserving and managing shared, migratory, and endangered species in international trade and management of marine parks and other protected areas;
   e) exchanging information on domestic implementation of multilateral environmental agreements that all the Parties have ratified;
   f) promoting best practices leading to sustainable management of the environment;

g) facilitating technology development and transfer and training to promote the use, proper operation, and maintenance of clean production technologies;

h) developing and promoting environmentally beneficial goods and services;

i) building capacity to promote public participation in the process of environmental decision-making;

j) exchanging information and experiences between Parties wishing to perform environmental reviews, including reviews of trade agreements, at the national level; and

k) other areas for environmental co-operation on which the Parties may agree.

4. Funding mechanisms for environmental co-operation activities under the ECA are addressed in Article VIII of the ECA.

3.2. Agreement among the Governments of Costa Rica, the Dominican Republic, el Salvador, Guatemala, Honduras, Nicaragua, and the United States of America on Environmental Co-operation (2005)

The Parties to this Agreement,

CONVINCED of the importance of promoting all possible forms of co-operation to protect, improve and conserve the environment, including natural resources, in the context of achieving their sustainable development objectives,

NOTING the existence of differences in the Parties' respective natural endowments, climatic, geographical, social, cultural and legal conditions and economic, technological and infrastructural capabilities**,**

RECOGNIZING the long and productive history of such co-operation among these seven governments and the importance of implementing the Agreement in close coordination, where appropriate, with existing and future environmental agreements, accords, initiatives and mechanisms for co-operation between and among their countries,

EMPHASIZING the importance of building capacity to protect the environment in concert with the strengthening of trade and investment relations, as may be reflected in bilateral and regional free trade agreements between the Parties, including the Dominican Republic-Central America-United States Free Trade Agreement,

ACKNOWLEDGING that economic development, social development and environmental protection are interdependent and mutually reinforcing

components of sustainable development and considering the need to augment institutional, professional and scientific capacity to achieve the objective of sustainable development for the well-being of present and future generations,

CONSIDERING that the broad participation of civil society is important for building effective co-operation to achieve sustainable development,

AFFIRMING their political will to further strengthen and demonstrate the importance attached by the governments to co-operation on environmental protection and the conservation of natural resources,

Have agreed as follows:

Article I: Short Title

This Agreement among the Governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States of America on Environmental Co-operation (hereinafter, the "Agreement") may elsewhere be referred to as the Dominican Republic-Central America-United States Environmental Co-operation Agreement ("DR-CA-US ECA").

Article II: Objective

The Parties agree to co-operate to protect, improve and conserve the environment, including natural resources. The objective of the Agreement is to establish a framework for such Co-operation among the Parties. The Parties recognize the importance of both bilateral and regional co-operation to achieve this objective.

Article III: Modalities and Forms of Co-operation

Co-operation developed under the Agreement may occur through bilateral or regional capacity building activities, taking into account relevant environmental co-operation provisions of bilateral or regional free trade agreements between the Parties, including Article 9 of Chapter Seventeen (Environment) of the Dominican Republic-Central America-United States Free Trade Agreement, on the basis of technical and/or financial assistance programs, including:

a) the exchange of delegations, professionals, technicians and specialists from the academic sector, nongovernmental organisations, industry and the governments, including study visits, to strengthen the development, implementation and assessment of environmental policies and standards;

b) the joint organisation of conferences, seminars, workshops, meetings, training sessions and outreach and education programs;

c) the joint development of programs and actions, including technological and practical demonstrations, applied research projects, studies and reports;

d) the facilitation of partnerships, linkages or other new channels for the development and transfer of knowledge and technologies among representatives from academia, industry, intergovernmental and non-governmental organisations, and government to promote the development and/or exchange of best practices and environmental information and data likely to be of interest to the Parties;

e) the collection, publication and exchange of information on environmental policies, laws, standards, regulations, indicators, national environmental programs and compliance and enforcement mechanisms; and

f) any other forms of environmental co-operation that may be agreed by the Parties.

Article IV: Establishment and Operation of the Dominican Republic-Central America-United States Environmental Co-operation Commission

1. The Parties shall establish a Dominican Republic-Central American-United States Environmental Co-operation Commission (the "Commission" or "DR-CA-US ECC"), which shall be composed of government representatives, appointed by each Party. The Commission shall be responsible for:
   a) establishing priorities for co-operative activities under the Agreement;
   b) developing a work program as described in Article V below in accordance with those priorities;
   c) examining and evaluating the co-operative activities under the Agreement;
   d) making recommendations and providing guidance to the Parties on ways to improve future co-operation; and
   e) undertaking such other activities on which the Parties may agree.
2. The Commission shall meet once a year in the country of the Party that is chairing the Commission, unless the Commission decides otherwise. The first meeting of the Commission should take place within six months after the Agreement enters into force. The Chair of the Commission shall rotate annually among each of the Parties. A high-level official of the Department of State of the United States of America shall chair the first meeting of the Commission. Thereafter, unless the Commission decides otherwise, the Chair will rotate, in English alphabetical order of the Parties, among high-level officials designated by the department or ministry of each of the Parties identified in paragraph 3. Each Party should ensure that its

departments or ministries with an environmental mission play a role, either directly or indirectly, in the work of the Commission.

3. The relevant department or ministry for each Party for the purposes of this Article shall be as follows:

   a) The Ministry of Environment and Energy in Costa Rica; the Secretariat of State of Environment and Natural Resources in the Dominican Republic; the Ministry of Environment and Natural Resources in El Salvador; the Ministry of Environment and Natural Resources in Guatemala; the Ministry of Natural Resources and Environment in Honduras; the Ministry of Environment and Natural Resources in Nicaragua; and the Department of State in the United States of America.

   b) Any Party that accedes to the Agreement pursuant to Article XI shall identify its relevant department or ministry to the Chair of the Commission.

   c) Any Party may change the relevant department or ministry by notifying the Commission in writing.

4. All decisions of the Commission shall be taken by consensus of the Parties. These decisions shall be made public by the Commission, unless it decides otherwise, or as otherwise provided in the Agreement.

5. Representatives of the Parties may meet between meetings of the Commission to analyze and promote the implementation of the Agreement and to exchange information on the progress of cooperative programs, projects and activities. Each Party shall identify a Coordinator from each of the departments or ministries identified in paragraph 3 above to serve as a general point of contact for co-operative work under the Agreement.

6. The Commission shall periodically inform committees established by bilateral and regional free trade agreements between the Parties to review the implementation of environment-related obligations under those agreements, including the Environmental Affairs Council established under Article 5 of Chapter Seventeen (Environment) of the Dominican Republic-Central America-United States Free Trade Agreement, of the status of co-operation activities developed under the Agreement.

Article V: Work Program and Priority Co-operation Areas

1. The work program developed by the Commission shall reflect national priorities for co-operative activities and shall be agreed upon by the Parties. The work program may include long-, medium-, and short-term activities related to:

   a) strengthening each Party's environmental management systems, including reinforcing institutional and legal frameworks and the

capacity to develop, implement, administer and enforce environmental laws, regulations, standards and policies;

b) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, including the development of market-based initiatives and economic incentives for environmental management;

c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;

d) conserving and managing shared, migratory, and endangered species in international commercial trade and management of marine and terrestrial parks and other protected areas;

e) exchanging information on domestic implementation of multilateral environmental agreements that all the Parties have ratified;

f) promoting best practices leading to sustainable management of the environment;

g) facilitating technology development and transfer and training to promote the use, proper operation and maintenance of clean production technologies;

h) developing and promoting environmentally beneficial goods and services;

i) building capacity to promote public participation in the process of environmental decision making;

j) exchanging information and experiences among Parties wishing to perform environmental reviews, including reviews of trade agreements, at the national level; and

k) any other areas for environmental co-operation on which the Parties may agree.

2. In developing co-operative programs, projects and activities, the Parties shall develop benchmarks or other types of performance measures to assist the Commission in its ability to examine and evaluate, pursuant to Article IV.1(c) above, the progress of specific co-operative programs, projects and activities in meeting their intended goals. The Commission should consider the extent to which the activities taken collectively are contributing to the fulfillment of the Parties' long-term national and/or regional environmental goals. As appropriate, the Commission may draw upon relevant benchmarks that have been established through other mechanisms.

3. As the Commission periodically examines and evaluates co-operative programs, projects and activities, it shall seek and consider input from relevant local, regional, or international organisations regarding how best to

ensure that it is accurately monitoring progress. Each Party shall periodically share with its public information regarding the progress of co-operative activities.

4. In order to avoid duplication and to complement ongoing and future environmental co-operation undertaken outside of the Agreement, the Commission shall endeavor to develop its work program in a manner compatible with the environmental work of other organisations and initiatives in which the Parties have an interest, including the Central America-United States of America Joint Accord (CONCAUSA) and programs conducted by government agencies. As part of its work program, the Commission shall seek to develop proposals and other means to complement and enhance the work of these organisations and initiatives.
5. The Commission may also include in its work program regional environmental co-operative activities of particular interest to the Parties, or a subset of the Parties, in order to concentrate on an issue or achieve an objective that the Commission determines is not being fully addressed in other fora.

Article VI: Participation by the Public, Governmental Organisations and Other Institutions

1. Unless otherwise agreed, the Commission shall include a public session in the course of its regular meetings.
2. The Commission shall promote the development of opportunities for public participation in the development and implementation of co-operative environmental activities. Each Party shall solicit and take into account, as appropriate, the views of its public with respect to the work program and should review and respond to such communications in accordance with its own domestic procedures. Each Party shall consider making these communications available to the other Parties and to the public.
3. In developing and implementing the work program, the Commission should take into account the views and recommendations of the appropriate government agencies in each country, committees established by bilateral and regional free trade agreements between the Parties to review the implementation of environment-related obligations under those agreements, including the Environmental Affairs Council established under Article 5 of Chapter Seventeen (Environment) of the Dominican Republic-Central America-United States Free Trade Agreement, and other established regional mechanisms concerned with the environment.
4. The Commission shall encourage and facilitate, as appropriate, direct contacts and co-operation among government agencies, multilateral organisations, foundations, universities, research centers, institutions,

nongovernmental organisations, firms and other entities of the Parties, and the conclusion of implementing arrangements among them for the conduct of co-operative activities under the Agreement.

Article VII: Bilateral Co-operation

To further promote environmental co-operation under the Agreement, Parties may pursue bilateral co-operative projects with each other in priority areas of shared interest. Bilateral co-operation under the Agreement is intended to complement any activities that are conducted outside of the Agreement.

Article VIII: Resources

1. All co-operative activities under the Agreement shall be subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the appropriate Parties.
2. In developing its work program, the Commission should consider the mechanisms by which cooperative activities may be financed and the adequate allocation of human, technological, material, and organisational resources that may be required for the effective implementation of the co-operation activities in accordance with the capacities of the Parties. The following funding mechanisms may be considered for environmental co-operation:
   a) co-operative activities jointly financed as agreed by the Parties;
   b) co-operative activities in which each institution, organisation, or agency assumes the costs of its own participation;
   c) co-operative activities financed, as appropriate, by private institutions, foundations, or public international organisations, including through ongoing programs; or,
   d) any combination of the above.
3. Unless otherwise agreed, each Party shall assume the costs of its participation in the work of the Commission.
4. Each Party shall facilitate, in accordance with its laws and regulations, duty free entry for materials and equipment provided pursuant to co-operative activities provided for under the Agreement.
5. Commodities provided pursuant to co-operative activities provided for under the Agreement and acquired by the United States, its contractors, grantees, or by foreign governments or their agents where such commodities were financed with United States funds, shall be exempt from taxation, including value-added taxes (VAT) and customs duties. If such taxation is imposed by a Party other than the United States of America, then

such Party shall provide timely reimbursement to the Government of the United States of America or its agents. Commodities include any materials, articles, supplies, goods, or equipment. These same rules apply to all funds provided for under the Agreement, including grants, salaries and all monetary assistance.

Article IX: Equipment and Personnel

Each Party shall facilitate the entry of equipment and personnel related to the Agreement into its territory, subject to its laws and regulations.

Article X: Technical and Confidential Information and Intellectual Property

1. Except as provided below, all technical information obtained through the implementation of the Agreement will be available to the Parties.
2. The Parties do not foresee the creation of intellectual property under the Agreement. In the event that intellectual property that can be protected is created, the Parties shall consult to determine the allocation of the rights to that intellectual property.
3. In the event that a Party deems information confidential under its laws, or identifies information in a timely fashion as "business-confidential," which is furnished or created under the Agreement, each Party and its participants shall protect such information in accordance with their respective applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

Article XI: Accession

The Parties may, by consensus, agree to invite, in writing, other Governments of the Central American and neighboring regions to accede to the Agreement. The Agreement shall enter into force for such other Government thirty days after receipt by the Secretariat of the Organization of American States (OAS Secretariat) of such other Government's expression of consent to be bound by the Agreement as between it and all other Parties. The OAS Secretariat shall communicate the fact of the accession to all the other Parties and shall furnish a certified copy of the Agreement to the new Party.

Article XII: Entry into Force, Withdrawal, Amendments

1. Each signatory Government shall notify the OAS Secretariat by diplomatic note upon completion of its internal requirements necessary for the entry into force of the Agreement, and the OAS Secretariat shall notify the signatory Governments upon receipt of each such diplomatic note. The Agreement shall enter into force thirty days after the receipt of the last such note by the OAS Secretariat.
2. The Agreement shall remain in force indefinitely. Any Party may withdraw from the Agreement upon six months' written notification to the OAS Secretariat of its intention to withdraw. The OAS Secretariat shall communicate this notification to all other Parties. Unless otherwise agreed, such withdrawal shall not affect the validity of any ongoing activities not fully completed at the time of termination, nor shall it affect the Agreement as it relates to the remaining Parties.
3. The Agreement may be amended by written mutual consent of the Parties.

ANNEX C

Overview of Environmental Impact Assessments of Selected RTAs

RTA	Methodology	Scope of Assessment	Areas of focus and main findings
Canada*-CA4[1] *www.dfait-maeci.gc.ca/tna-nac/IYT/ea0423-en.asp*	*Ex ante,* EA (initial)	Environmental impacts in home country	Focus on goods, services, investment. No likely and significant environmental impacts were identified as an outcome of the negotiations. Economic effects are small; some elements of negotiations are rules-based and do not affect trade volumes; any impacts can be dealt with by existing or planned environmental regulations.
Canada*-FTAA[2] *www.dfait-maeci.gc.ca/tna-nac/IYT/ea0422-en.asp*	*Ex ante,* EA (initial)	Environmental impacts in home country	Focus in each of nine negotiating areas: market access; agriculture; services; government procurement; investment; competition policy; dispute settlement; intellectual property rights; and subsidies, anti-dumping and countervailing duties. No likely and significant environmental impacts were identified as an outcome of the negotiations. Economic effects are small; some elements of the negotiations are rules-based and do not affect trade volumes; any impacts can be dealt with by existing or planned environmental regulations.
Canada*-Singapore *www.dfait-maeci.gc.ca/tna-nac/IYT/ea1104-en.asp*	*Ex ante*, EA (initial)	Environmental impacts in home country	Focus on trade in goods, trade in services, investment, government procurement and rules of origin and customs. Illegal transshipment of wildlife was identified as possible concern, but in the final analysis no likely and significant environmental impacts were identified as an outcome of the negotiations. Economic effects are small; some elements of the negotiations are rules-based and do not affect trade volumes; any impacts can be dealt with by existing or planned environmental regulations.

* The asterisk indicates the Party to the RTA that carried out the assessment. When more than one Party carried out an assessment of the same RTA, the different assessments are described. Some of these Agreements are still under negotiation.

RTA	Methodology	Scope of Assessment	Areas of focus and main findings
EU*-ACP *www.europa.eu.int/comm/trade/issues/global/sia/studies_geo.htm#acp; www.sia-gcc.org/acp/download/pwc_sia_acp20july2005.pdf*	*Ex ante,* SIA (not yet final)	Development (primarily) and environment impacts, focused on partner countries.	Phase I identified the key issues (trade-related and independent of trade), laid out an approach for assessing them in more detail, and produced regional reports on West Africa and the Caribbean. Both the West African and Caribbean reports predict likely shifts from agricultural exports to non-traditional sources. The former highlights the domestic constraints to exploiting the potential of liberalisation. The latter focuses on the removal of sugar and banana protocols, predicting sustainable development challenges. Both also look at fiscal impacts of liberalisation. Phase II produced sectoral analyses of agro-industry in West Africa, tourism in the Caribbean, and fisheries in the Pacific. The West Africa study recommended asymmetric tariff reductions, improved climate for FDI and capacity building/trade facilitation on standards. The Caribbean study focused on the need for services liberalisation in modes 3 (FDI into the region) and 4 (into the EU) in the tourism sector, and other related services sector liberalisation. The Pacific study focused on market access for fisheries products, recommending special products status; on measures for increased value added, and on capacity building on standards. All three studies also focused on needed domestic reforms. Three more regional/sectoral studies will be published in 2006.
EU*-Chile *www.europa.eu.int/comm/trade/issues/global/sia/studies_geo.htm#chile*	*Ex ante,* SIA	Sustainable development impacts in home and partner countries	Based on CGE modeling, and projected economically-driven environmental impacts. Predicts positive economic impacts in EU and Chile, with shifting of sectoral economic activity in line with comparative advantage. Predicts various types of negative scale impacts in Chile, balanced off, but not fully compensated by, technological effects. Predicts mostly positive social impacts, with some concerns for those with insecure land rights. Recommends various mitigation measures, mostly related to domestic policies in Chile.
EU*-EMFTA *www.europa.eu.int/comm/trade/issues/global/sia/studies_geo.htm#emfta; http://www.sia-trade.org/emfta/en/Reports/Phase2FinalreportMar06.pdf*	*Ex ante,* SIA	Sustainable development impacts in home and partner countries	Based on CGE modeling and four scenarios. Predicts regional negative impacts in the EU from agricultural liberalisation, and mixed environmental effects. In Mediterranean countries the study predicts mixed social impacts, with concerns over unemployment from tariff-lowering in agriculture and industrial products. Also predicts loss of government revenues, and mixed environmental impacts, with concerns over water resources, biodiversity, urbanisation and transport-related pollution. Recommends a number of mitigation measures related to trade negotiations. Also suggest domestic measures for EU and Mediterranean countries, and options for development assistance.

RTA	Methodology	Scope of Assessment	Areas of focus and main findings
EU*-GCC *www.europa.eu.int/comm/trade/issues/global/sia/studies_geo.htm#gcc*	*Ex ante*, SIA	Environment and development impacts, focus on partner economies.	Focus on economically-driven environmental impacts in the areas of water resources, coastal and marine areas and land resources. Also includes sectoral studies on petrochemicals and aluminum, concluding the prospect for GCC job creation in the latter (and EU job loss), and potential environmental damage in the former as production increases. Cites the need for proactive mitigation measures to prevent negative environmental and social effects.
NAFTA* (Canada) *www.dfait-maeci.gc.ca/sustain/EnvironA/strategic/naftaSum-en.asp*	*Ex ante*	Environmental impacts, pollution haven impacts in home country	Focused only on effects of bringing Mexico into the existing Canada-US Free Trade Agreement; does not look into US-Canada dynamics. Areas of focus: various types of environmental impact; "pollution haven" hypothesis; environmental provisions in agreement. Long-range transport of airborne pollutants were identified as a possible concern. No other significant negative environmental impacts or pollution haven impacts predicted.
New *Zealand*-Thailand CEP www.mfat.govt.nz/tradeagreements/thainzcep/nia/thainiaindex.html*	*Ex ante*	Environmental impacts (as part of wider analysis) in home country	Focused on regulatory, scale, product and structural impacts of the NZTCEP, not based on modeling. Predicts that New Zealand's regulatory regime is strong enough, and the trade impacts small enough, to negate any potential negative impacts, and predicts possible benefits from liberalisation of trade in environmental goods.
Trans Pacific SEP (New Zealand*) *www.mfat.govt.nz/tradeagreements/transpacepa/pdfs/transpacific-sepa-nia.pdf*	*Ex ante*	Environmental impacts (as part of wider analysis) in home country	Focused on regulatory, scale, product and structural impacts of the CEP, not based on modeling. Predicts that New Zealand's regulatory regime is strong enough, and the regulatory exceptions broad enough, to negate any potential negative impacts. Predicts possible benefits from selected liberalisation of trade in environmental goods.
US*-Andean Trade Promotion Agreement *www.ustr.gov/assets/Trade_Agreements/Bilateral/Andean_TPA/asset_upload_file27_7305.pdf*	*Ex ante*, ER (interim)	Environmental impacts (including regulatory impacts) in home country, and transboundary or global impacts	Small trade impacts relative to US economy means minimal economically-driven environmental impacts in the US, so the review focused on global and transboundary effects: migratory birds, wildlife trade, invasive species, tuna-dolphin, shrimp-turtle, coastal habitats and migratory marine species, transboundary air and water pollution Possible negative impacts from invasive species were identified (for Andean countries as well), indirect impacts of marine pollution on marine populations, and uncertainty on air transport of persistent organic pollutants. Also looked at regulatory impacts, predicting no negative impacts.
US*-Australia FTA *www.ustr.gov/assets/Trade_Agreements/Bilateral/Australia_FTA/asset_upload_file550_5830.pdf*	*Ex ante*, ER	Environmental impacts (including regulatory impacts) in home country, and transboundary or global impacts	Small trade impacts relative to US economy means minimal economically-driven environmental impacts in the US, so focused on global and transboundary effects: invasive species and remanufacturing, finding no predicted impacts from the former and possible positive impacts from the latter. Also looked at regulatory impacts, predicting no negative impacts.

RTA	Methodology	Scope of Assessment	Areas of focus and main findings
US*-Bahrain *www.ustr.gov/assets/Trade_Agreements/Bilateral/Bahrain_FTA/asset_upload_file720_3078.pdf*	*Ex ante*, ER (interim)	Environmental impacts (including regulatory impacts) in home country, and transboundary or global impacts	Small trade impacts relative to US economy means minimal economically-driven environmental impacts in US. No predicted impacts in Bahrain. No predicted negative legal or regulatory impacts in the US.
US*-CAFTA *www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/asset_upload_file953_7901.pdf*	*Ex ante*, ER	Environmental impacts (including regulatory impacts) in home country, and transboundary or global impacts	Small trade impacts relative to US economy means minimal economically-driven environmental impacts in US, so focused on global and transboundary effects: migratory birds, wildlife conservation and trade, shrimp-turtle, transboundary air pollution, tourism and invasive species. Found uncertainty on air transport of persistent organic pollutants and on marine pollution, and some concern on enforcement capacity on illegal trade. Also looked at regulatory impacts, predicting no negative impacts.
US*-Chile *www.ustr.gov/assets/Trade_Agreements/Bilateral/Chile_FTA/asset_upload_file411_5109.pdf*	*Ex ante*, ER	Environmental impacts (including regulatory impacts) in home country	Focused on agriculture, fisheries, forestry, environmental technologies, hazardous waste, mining and metals processing, pesticides and toxic substances. Also on transboundary/global effects: ozone-depleting substances, invasive species (impacts in both countries) and wildlife and endangered species. Also focused on legal and regulatory impacts. Small trade impacts relative to US economy means minimal economically-driven environmental impacts in the US. No predicted negative legal or regulatory impacts. Possible positive regulatory impacts, and positive effects of liberalised trade in environmental technologies.
US*-Jordan *www.ustr.gov/assets/Trade_Agreements/Bilateral/Jordan/asset_upload_file64_5111.pdf*	*Ex ante*, ER	Environmental impacts (including regulatory impacts) in home country, and transboundary or global impacts	Focused on transboundary issues: endangered species trade, migratory birds and protected areas; in US: sectoral impact analysis of non-wheat cereals, electrical machinery and machinery and transportation equipment. Small trade impacts relative to US economy means minimal economically-driven environmental impacts in the US. No predicted impacts in Jordan. No predicted negative legal or regulatory impacts.
US*-Morocco *www.ustr.gov/assets/Trade_Agreements/Bilateral/Morocco_FTA/asset_upload_file569_5831.pdf*	*Ex ante*, ER	Environmental impacts (including regulatory impacts) in home country, and transboundary or global impacts	Small trade impacts relative to US economy means minimal economically-driven environmental impacts in the US, so focused on global and transboundary effects: fisheries, wildlife trade, tourism, environmental goods and services. Found no predicted impacts. Also looked at regulatory impacts. No predicted negative legal or regulatory impacts.
US-Singapore (Singapore)	*Ex ante*	Economic and environmental impacts in home country	Predicts, based on CGE modeling, that trade and income will increase. Asserts that most new manufacturing and investment would be in high-tech and high value added sectors that have few environmental impacts. Overall, predicts environmental improvements for Singapore as a result of the RTA. No in-depth analysis.

RTA	Methodology	Scope of Assessment	Areas of focus and main findings
US-Singapore (US) *www.ustr.gov/assets/Trade_Agreements/Bilateral/Singapore_FTA/asset_upload_file538_5110.pdf*	*Ex ante*, ER	Environmental impacts (including regulatory impacts) in home country, and transboundary or global impacts	Focused on trade in protected species, ozone-depleting substances (CFCs), illegal logging and environmental technologies, and on legal and regulatory impacts. Small trade impacts relative to US economy means minimal economically-driven environmental impacts in the US, though some concern on illegal wildlife trade and CFC trade. No predicted negative legal or regulatory impacts.

1. Canada-Central America (El Salvador, Guatemala, Honduras and Nicaragua) Free Trade Agreement (not signed).
2. Free Trade Area of the Americas (not signed).

ANNEX D

Provisions on Environmental Co-operation in Selected RTAs

This Annex provides an overview of arrangements on environmental co-operation in selected RTAs. It does not intend to be exhaustive, but to provide a sample of approaches.

AMERICAS[1]

US – Australia Free Trade Agreement	
Article 19.6 : Environmental Co-operation	1. The Parties recognise the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations. Toward this end, the Parties acknowledge the importance of ongoing joint bilateral, regional, and multilateral environmental activities. The Parties agree to negotiate a United States – Australia Joint Statement on Environmental Co-operation under which the Parties will explore ways to further support these ongoing activities. 2. Each Party shall take into account, as appropriate, public comments and recommendations it receives regarding these ongoing co-operative environmental activities undertaken by the Parties. 3. The Parties shall, as appropriate, share information with each other and the public regarding their experiences in assessing and taking into account the positive and negative environmental effects of trade agreements and policies.
United States-Australia Joint Statement on Environmental Co-operation	The Government of the United States of America and the Government of Australia recognize that they share common concerns and similar responsibilities for protecting and conserving the environment in their respective jurisdictions, and have a common interest in advancing global environmental improvement and protection. The Governments further note that they face similar environmental challenges such as expanding urban populations, concentrated industrial activity, and sustainable use of natural resources. The United States and Australia have a long and productive history of co-operation on environmental issues. The Governments recognize the important environmental work that they have accomplished bilaterally, including through the US-Australia Climate Action Partnership and in areas such as botanic gardens, endangered and migratory species, Antarctica, meteorological and oceanographic research and management, and whale and ozone protection. The Governments look forward to continued co-operation in these areas and to future bilateral environmental activities in other areas, including national parks, wetlands, oceans management, conservation of Antarctic and sub-Antarctic ecosystems, biodiversity conservation, invasive species and natural heritage management.

	The United States and Australia share common goals in advancing science and technology initiatives to address environmental challenges. These initiatives include improving productive and sustainable natural resource use and global observation, developing cleaner, renewable and more efficient energy, and advancing agricultural technologies, including biotechnology. The United States and Australia are close partners in the Carbon Sequestration Leadership Forum, the International Partnership for the Hydrogen Economy, and the Ad Hoc Group on Earth Observations, and they look forward to the completion of a bilateral agreement on science and technology co-operation. The Governments also recognize the importance of multilateral environmental activities and acknowledge the close co-operation between the two countries in preparing for and participating in international environmental meetings and conferences on topics including protection, conservation or management of national parks and world heritage sites, endangered and migratory species, Antarctica, ocean affairs, marine living resources, chemicals and hazardous wastes, ozone protection, global climate change, forests, coral reefs, biological diversity and biosafety. The Governments further note the close co-operation between the two countries in environment related meetings of the United Nations agencies and the WTO. The United States and Australia intend to continue these co-operative efforts and desire to further strengthen their ties in these and other international forums in which environmental issues are considered. The Governments also acknowledge their successful environmental co-operation in the Asia Pacific region, including as members of the South Pacific Regional Environmental Program, the Asia Pacific Economic Co-operation forum and the Secretariat of the Pacific Community. The Governments recognize the importance of these regional efforts and intend to continue to pursue joint efforts to build capacity in the region for improved environmental stewardship and protection. Such future regional work may include developing or supporting further WSSD Type II initiatives in the Asia Pacific region. To further advance the collaboration and co-operation between the United States and Australia, the Governments intend to consult regularly to review ongoing co-operative activities, identify priority areas for potential future co-operative activities, and to the extent appropriate, review other matters related to this statement. In particular, the Governments intend to consider bilateral collaborative efforts to assist third countries build capacity in the areas described in Paragraphs 2, 3, 4 and 5 above. The Governments believe that participation of the public, and co-operation between governments and the community, are important means of enhancing environment stewardship, protection and conservation and sustaining natural resource management. The United States and Australia will continue to promote public participation, including soliciting and taking into account, as appropriate views of the public, including stakeholders, with respect to ongoing and future co-operative activities between the two countries.
US – Chile Free Trade Agreement	
Article 19.5: Environmental Co-operation	1. The Parties recognize the importance of strengthening capacity to protect the environment and promote sustainable development in concert with strengthening trade and investment relations between them. The Parties agree to undertake co-operative environmental activities, in particular through: *a)* pursuing, through their relevant ministries or agencies, the specific co-operative projects that the Parties have identified and set out in Annex 19.3; and *b)* promptly negotiating a United States – Chile Environmental Co-operation Agreement to establish priorities for further cooperative environmental activities, as elaborated in Annex 19.3, while recognizing the ongoing importance of environmental co-operation undertaken outside this Agreement.

Annex 19.3: Environmental Co-operation

1. Recognizing that co-operation on environmental matters provides enhanced opportunities to improve the environment and to advance common commitments on sustainable development, the Parties agree, pursuant to Article 19.5(1)(a) of this Agreement, to pursue, through their relevant ministries or agencies, the following co-operative projects identified during the negotiation of this Agreement:
   - *a)* Developing a Pollutant Release and Transfer Register (PRTR) in Chile. The PRTR is a publicly available database of chemicals that have been released to air, water and land or transferred off-site for further waste management. In developing the register, the Parties will co-operate and draw on lessons learned from other PRTR projects. Industrial facilities will report annually on the amounts of chemicals they have released or transferred and the final destination of those chemicals. Reported data will be made publicly available;
   - *b)* Reducing Mining Pollution. The United States will assist Chile in reducing contamination and pollution resulting from past mining practices by working with Chile to identify sources of pollution and explore cost-effective remediation methods;
   - *c)* Improving Environmental Enforcement and Compliance Assurance. The Parties will provide training and exchange of information to enhance each Party's capacity to enforce its environmental laws and regulations, and will develop and strengthen their co-operative relationships to promote compliance, enforcement, and environmental performance;
   - *d)* Sharing Private Sector Expertise. The Parties will seek to increase environmental stewardship by inviting enterprises of each Party to share their experiences in developing and implementing programs that have reduced pollution, including, where appropriate, demonstrating the financial benefits of these measures;
   - *e)* Improving Agricultural Practices. To help reduce pollution from agricultural practices in Chile, the Parties will adapt and implement a training program for Chilean farmers and other workers to promote appropriate handling of chemical pesticides and fertilisers, and to promote sustainable agriculture practices. The Parties will work jointly to modify existing training programs to fit Chilean agricultural practices and customs;
   - *f)* Reducing Methyl Bromide Emissions. To mitigate methyl bromide emissions the Parties will seek to develop effective alternatives to that chemical, which Chile and the United States have committed to phase out under the Montreal Protocol on Substances That Deplete the Ozone Layer;
   - *g)* Improving Wildlife Protection and Management. To protect wildlife in Chile and the Latin American region, the Parties will work together to build capacity to promote the management and protection of biological resources in the region, such as by collaborating with universities and providing programs for wildlife managers, other professionals and local communities in Chile and the region;
   - *h)* Increasing the use of cleaner fuels. The Parties will work to improve the environmental quality of fuels, especially diesel fuel and gasoline, used in their territories by providing joint training and technical assistance on a variety of fuels-related environmental issues. The Parties will publicize the benefits of this work.
2. The Parties shall pursue additional co-operative environmental activities under a United States – Chile Environmental Co-operation Agreement, as set out in Article 19.5(1)(b), and in other for a:
   - *a)* In negotiating the Co-operation Agreement, the Parties have agreed to take into account public input regarding priority areas for bilateral co-operation;
   - *b)* The Co-operation Agreement will, *inter alia* :
     - *i)* establish any institutional framework needed to coordinate the various elements of the Co-operation Agreement;
     - *ii)* establish procedures for the development of periodic work programs that set priorities for cooperative activities;
     - *iii)* provide for consultation and review, at regular intervals, of the work program for those cooperative activities;
     - *iv)* create appropriate opportunities for the public to participate in the development of new cooperative activities and the implementation of agreed activities;
     - *v)* encourage the exchange of information on the Parties' environmental policies, laws, and practices;

	vi) promote the understanding and effective implementation of multilateral environmental agreements to which both Parties are party; *vii)* promote the collection and publication of comparable information on the Parties' environmental regulations, indicators, and enforcement activities; and *viii)* provide for regular consultation with the Environment Affairs Council established in Article 19.3 (Environment Affairs Council) regarding the priorities that the Parties identify, as well as future co-operative work. 3. Co-operation under the Co-operation Agreement may include work in the following fields of activity *a)* improving capacity to achieve environmental compliance assurance, including enforcement and voluntary environmental stewardship; *b)* encouraging small- and medium-size enterprises to adopt sound environmental practices and technologies; *c)* developing public-private partnerships to achieve environmental objectives; *d)* promoting sustainable management of environmental resources, including wild fauna and flora, and protected wild areas; *e)* exploring environmental activities pertinent to trade and investment and the improvement of environmental performance; *f)* developing and implementing economic instruments for environmental management. 4. The Parties may implement co-operative activities under the Co-operation Agreement by: *a)* exchanging professionals, technicians, and specialists, including through study visits, to promote the development of environmental policies and standards; *b)* organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs; *c)* supporting, developing, and implementing collaborative projects and demonstrations, including joint research projects, studies, and reports; *d)* facilitating linkages among representatives from academia, industry, and government to promote exchange of scientific and technical information and best practices, and the development and implementation of co-operative projects; and *e)* engaging in other activities, that the Parties may undertake pursuant to the Co-operation Agreement. 5. The Parties recognize that the funding, scope, and duration of the projects listed in paragraph 1 and co-operative activities pursued under the Co-operation Agreement will be undertaken in accordance with the Parties' personnel and financial resources. 6. The Parties shall make publicly available information regarding the projects and activities they undertake pursuant to this Annex.
United States – Chile Environmental Co-operation Agreement (US-Chile ECA)	
Article III	1. The work programs shall reflect national priorities for co-operative activities as agreed upon by the Parties. In developing and implementing the work programs, the Commission shall take into account the views and recommendations of the appropriate government agencies in each country as well as the Environment Affairs Council established by the United States Chile Free Trade Agreement, and, where relevant to environmental issues, the Joint Committee established by the Basic Agreement Relating to Scientific and Technological Co-operation Between the Government of the United States of America and the Government of the Republic of Chile done at Washington on May 14, 1992, as extended by the exchange of diplomatic notes dated May 5, 1999 and June 22, 1999. 2. The program of work shall, *inter alia* , include activities related to: *a)* the collection and publication of comparable information on the Parties' environmental legislation, indicators and enforcement activities; *b)* the exchange of information on environmental policies, laws and practices in both countries; *c)* the exchange of information on the implementation of multilateral environmental agreements to which the United States and Chile are both parties; and the promotion of good domestic practices leading to sustainable management of the environment.

Article V	The co-operation contemplated in this Agreement may include: *a)* exchange of professionals, technicians, and specialists to promote the development and implementation of environmental laws, policies and standards; *b)* organisation of joint conferences, seminars, workshops, meetings, training sessions and outreach and education programs; *c)* support for joint programs and environmental technological and practical demonstrations, including projects, research studies and reports; *d)* facilitation of linkages among representatives from academia, industry, and government to promote the exchange of best practices and environmental information and data of interest to the Parties; *e)* exchange of information and consultation on national environmental programs; and *f)* such other forms of environmental Co-operation as may be mutually agreed.
Andean Community (Bolivia, Colombia, Ecuador, Peru, Venezuela) Cartagena Agreement	
Chapter I: Objectives and Mechanisms, Article 3	In addition to the mechanisms set out above, the following economic and social co-operation programs and aims shall be carried out in a concerted effort: Activities for the use and preservation of natural resources and the environment;
Agreement On Trade, Economic and Technical Co-operation Between the Caribbean Community (CARICOM) and the Government of The Republic of Colombia	
Article 19: Technical Co-operation	1. The Parties agree to encourage and promote co-operation in areas such as human resource development, institution building, science and technology, research and development, environmental management, disaster preparedness and management, health research and management, energy, tourism and agricultural development.
Treaty establishing a Common Market between Argentina, Brazil, Paraguay and Uruguay (MERCOSUR)	
Mercosur Framework Agreement on Environment Chapter III: Co-operation on Environmental-related Issues [unofficial translation from Spanish]	Article 5 – Member States will co-operate in the implementation of international environmental agreements to which they are parties. This co-operation may include, when considered convenient, the adoption of common policies for the protection of the environment, the conservation of natural resources, the promotion of sustainable development, the presentation of joint communications on issues of mutual interest, and the exchange of information on national positions in international environmental fora. Article 6 – Member States will enhance the analysis of the environmental problems of the sub-region, with the participation of relevant national bodies and of civil society organisations, and are required to implement the following actions, among others: Increase the exchange of information on environmental laws, regulations, procedures, policies, and practices, as well as their relevant social, cultural, economic, and human health aspects; in particular, those that may affect trade or competitiveness in the MERCOSUR framework; Promote national environmental policies and instruments, seeking to optimize environmental management; Seek harmonization of environmental laws, taking into account the different environmental, social, and economic circumstances in MERCOSUR countries; Identify sources of financing for capacity-building of Member States; Contribute to the promotion of environmentally healthy and safe labor conditions to improve, in a framework of sustainable development, quality of life, social welfare, and job creation; Contribute to other MERCOSUR fora and activities adequately and timely considering relevant environmental issues; Promote the adoption of environmentally-friendly policies, productive processes and services;…

EUROPE

Partnership Agreement between the ACP Group of States and the EC (Cotonou Agreement) (EC-ACP)

Article 20: The Approach	The objectives of ACP-EC development co-operation shall be pursued through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that must be locally owned. Co-operation shall thus provide a coherent enabling framework of support to the ACP's own development strategies, ensuring complementarity and interaction between the various elements. In this context and within the framework of development policies and reforms pursued by the ACP States, ACP-EC co-operation strategies shall aim at:… *a)* promoting environmental sustainability, regeneration and best practices, and the preservation of natural resource base.
Article 30: Regional Co-operation	1. Co-operation shall, in the area of regional co-operation, support a wide variety of functional and thematic fields which specifically address common problems and take advantage of scale of economies, including: *b)* the environment; water resource management and energy;
Article 32: Environment and Natural Resources	1. Co-operation on environmental protection and sustainable utilisation and management of natural resources shall aim at: *a)* mainstreaming environmental sustainability into all aspects of development co-operation and support programmes and projects implemented by the various actors; *b)* building and/or strengthening the scientific and technical human and institutional capacity for environmental management for all environmental stakeholders; *c)* supporting specific measures and schemes aimed at addressing critical sustainable management issues and also relating to current and future regional and international commitments concerning mineral and natural resources such as: *i)* tropical forests, water resources, coastal, marine and fisheries resources, wildlife, soils, biodiversity; *ii)* protection of fragile ecosystems (e.g. coral reef); *iii)* renewable energy sources notably solar energy and energy efficiency; *iv)* sustainable rural and urban development; *v)* desertification, drought and deforestation; *vi)* developing innovative solutions to urban environmental problems; and *vii)* developing innovative solutions to urban environmental problems; and *viii)* taking into account issues relating to the transport and disposal of hazardous waste. i) tropical forests, water resources, coastal, marine and fisheries resources, wildlife, soils, biodiversity; 2. Co-operation shall also take account of: *a)* the vulnerability of small island ACP countries, especially to the threat posed by climate change; *b)* the worsening drought and desertification problems especially of least developed and land-locked countries; and *c)* institutional development and capacity building
Article 33: Institution and Capacity Building	4. Co-operation shall also assist to restore and/or enhance critical public sector capacity and to support institutions needed to underpin a market economy, especially support for: *b)* improving capacity to analyse, plan, formulate and implement policies, in particular in the economic, social, environmental, research, science and technology and innovation fields;

Article 49: Trade and Environment	1. The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, in accordance with the international conventions and undertakings in this area and with due regard to their respective level of development. They agree that the special needs and requirements of ACP States should be taken into account in the design and implementation of environment measures. 2. Bearing in mind the Rio Principles and with a view to reinforcing the mutual supportiveness of trade and environment, the Parties agree to enhance their co-operation in this field. Co-operation shall in particular aim at the establishment of coherent national, regional and international policies, reinforcement of quality controls of goods and services related to the environment, the improvement of environment-friendly production methods in relevant sectors.

Euro-Mediterranean Agreement Establishing an Association between the EC and Algeria

Preamble	DESIROUS of establishing co-operation sustained by regular dialogue on economic, scientific, technological, social, cultural, audio-visual and environmental issues in order to achieve better mutual understanding;
Article 48: Scope	4. Preservation of the environment and ecological balances shall constitute a central component of the various fields of economic co-operation.
Article 50: Regional Co-operation	In order to maximise the impact of this Agreement *vis-à-vis* the development of the Euro-Mediterranean partnership and within the countries of the Maghreb, the Parties shall foster all activities which have a regional impact or involve third countries, notably: c) environmental matters;
Article 52: Environment	1. The Parties shall encourage co-operation in preventing deterioration of the environment, controlling pollution and ensuring the rational use of natural resources, with a view to ensuring sustainable development and guaranteeing the quality of the environment and the protection of public health. 2. Co-operation shall in particular focus on: ● issues related to desertification; ● rational water resource management; ● salinisation; ● the impact of agriculture on soil and water quality; ● the appropriate use of energy and transport; ● the impact of industrial development on the environment, in particular the safety of industrial plant; ● waste management, in particular toxic waste; ● the integrated management of sensitive areas; ● the control and prevention of urban, industrial and marine pollution; ● use of advanced environmental management and monitoring tools, particularly environmental information and statistical systems; technical assistance, in particular for the preservation of bio-diversity.

Partnership and Co-operation Agreement between the EC and Armenia

Article 55: Environment	(…) 2. Co-operation shall aim at combating the deterioration of the environment and in particular: ● effective monitoring of pollution levels and assessment of the environment; system of information on the state of the environment; ● combating local, regional and transboundary air and water pollution; ● ecological restoration; ● sustainable, efficient and environmentally effective production and use of energy; ● safety of industrial plants; ● classification and safe handling of chemicals; ● water quality; ● waste reduction, recycling and safe disposal, implementation of the Basle Convention; ● the environmental impact of agriculture, soil erosion, and chemical pollution; ● the protection of forests;

	● the conservation of biodiversity, protected areas and sustainable use and management of biological resources; ● land-use planning, including construction and urban planning; ● use of economic and fiscal instruments; ● global climate change; ● environmental education and awareness; ● technical assistance concerning rehabilitation of zones affected by radioactivity and addressing related health and social problems; ● implementation of the Espoo Convention on Environmental Impact Assessment in a transboundary context. 3. Co-operation shall take place particularly through: ● disaster planning and other emergency situations; ● exchange of information and experts, including information and experts dealing with the transfer of clean technologies and the safe and environmentally sound use of biotechnologies; ● joint research activities; ● improvement of laws towards Community standards; ● environmental training and institutional strengthening; ● Co-operation at regional level, including co-operation within the framework of the European Environment Agency, and at international level; ● development of strategies, particularly with regard to global and climatic issues and also with a view to achieving sustainable development; ● environmental impact studies.
Association Agreement EC-Chile	
Article 24: Co-operation on agriculture and rural sectors and sanitary and phytosanitary measures	2. The co-operation will focus on capacity-building, infrastructure and technology transfer, addressing matters such as: (a) specific projects aimed at supporting sanitary, phytosanitary, environmental and food quality measures, taking into account the legislation in force for both Parties, in compliance with WTO rules and other competent international organisations;
Article 28: Co-operation on the environment	1. The aim of co-operation will be encourage conservation and improvement of the Environment, prevention of contamination and degradation of naturel resources and the Ecosystems, and rational use of the latter in the interests of sustainable development. 2. In this connection, the following are particularly significant: *a)* the relationship between poverty and the environment; *b)* the environmental impact of the Economic activities; *c)* environmental problems and land-use management; *d)* projects to reinforce Chile's environmental structures and policies; *e)* exchanges of information, technology and experience in areas including environmental standards and models, training and education; *f)* environmental education and training to involve citizens more; and *g)* technical assistance and joint regional research programmes.
Article 44: Social co-operation	4. The Parties will give priority to measures aimed at: *a)* promoting programmes of land management with special attention to areas with higher social and environmental vulnerability;
Article 49: Regional co-operation and regional integration	1. This co-operation will be an important element in the Community's support for the promotion of regional integration among the Southern Cone countries of Latin America. *a)* developing regional co-operation on the environment;

ASIA, PACIFIC AND MIDDLE EAST

Asia-Pacific Economic Co-operation Forum (APEC)

Framework of Principles for Integrating the Economy and Environment in APEC [adopted at 1994 Environment Ministers Meeting, Vancouver, approved at 1994 Ministerial Meeting, Jakarta]	Principle: Role of APEC APEC members should, in promoting regional co-operation, make the best use of existing multilateral and bilateral fora, and activities of APEC to attain sustainable development. These fora and activities have contributed to the implementation of Agenda 21 in the fields of environmental priority setting, accumulation of scientific knowledge, and enhancement of capacity building. APEC members should seek appropriate ways and means by which APEC can add concrete value to these ongoing activities, avoiding duplication of functions. Meetings of APEC ministers responsible for the environment should be held on an *ad hoc* basis as the necessity arises. APEC members should consider ways to better incorporate sustainable development into the work of APEC Working Groups and Committees, where relevant, including consideration of these issues at the levels of Senior Officials Meetings and APEC Ministerial Meetings. APEC members should achieve the integration of the EConomy and environment considerations through conscious efforts to incorporate environmental concerns into decision making for sustainable development at all levels.

ASEAN Kuala Lumpur Accord on Environment and Development[2]

Paragraphs 1 – 3	We, The ASEAN Ministers for the Environment hereby agree: 1. To initiate efforts leading towards concrete steps pertaining to environmental management, including: • the formulation of an ASEAN strategy for sustainable development and a corresponding action programme, • the harmonisation of environmental quality standards, • the harmonisation of transboundary pollution prevention and abatement practices, • the undertaking of research and development and the promotion of the use of clean technologies. 2. To initiate efforts leading towards concrete steps pertaining to natural resource management, including : • the harmonisation of approaches in natural resource assessment • the development of joint natural resource management programmes, • the development and harmonisation of procedures aimed at obtaining a better reflection of the state of natural wealth in the context of the System of National Accounts. 3. To initiate efforts enabling the inclusion of environmental factors into the Economic calculations and thus providing a better base for international the Economic co-operation.

Agreement between Singapore and Japan for a New-Age Partnership (JSEPA)

Implementing Agreement Chapter 8 Science and Technology Article 31 Areas and Forms of Co-operation under Chapter 8	Pursuant to Article 116 of the Basic Agreement: *a)* the following are specified as areas of Co-operative Activities: *i)* life sciences; *ii)* environment; and *iii)* advanced technology suitable to provide a basis for industrial development; and *b)* the following are specified as forms of Co-operative Activities: *i)* exchange of information and data; *ii)* joint seminars, workshops and meetings; *iii)* visits and exchange of scientists, technical personnel or other experts; and *iv)* implementation of joint projects and programmes.

Agreement between the Government of Japan and the Government of Malaysia for an Economic Partnership

Article 139 Basic Principles	The main objectives of this Chapter are as follows: *g)* to promote sustainable development; and

Article 140 Fields of Co-operation	The fields of co-operation under this Chapter shall include: *g)* environment; and
Implementing Agreement Section 8 Co-operation in the Field of Environment Article 40 Basic Principles	Pursuant to Chapter 12 of the Basic Agreement, the Governments, recognizing the importance of strengthening capacity to protect the environment and promote sustainable development, and the critical role of multilateral environmental agreements, shall co-operate in the field of environment.
Implementing Agreement Section 8 Co-operation in the Field of Environment Article 41 Areas and Forms of Co-operation	Pursuant to Article 141 of the Basic Agreement: *a)* the areas of co-operation under this Section shall include: *i)* conservation and improvement of the environment; and *ii)* promotion of sustainable development; and *b)* the forms of co-operation under this Section may include: *i)* exchanging information on policies, laws, regulations and technology; *ii)* promoting the holding of seminars; *iii)* encouraging and facilitating visits and exchanges of experts; *iv)* encouraging trade and dissemination of environmentally sound goods and services; *v)* encouraging exchange of information for the identification of investment opportunities and the promotion and development of business alliances; and *vi)* other forms of co-operation which the Governments mutually agree upon.

New Zealand – Thailand Closer Economic Partnership

Arrangement on Environment between New Zealand and the Kingdom of Thailand (AoE) Preamble	Sharing a common aspiration to conserve and enhance environmental quality, to promote closer and greater co-operation, and to improve the capacities and capabilities of both countries, including non-government sectors, to tackle environmental issues effectively;
Section 2: Co-operation	2.1 The Participants recognise the importance of co-operation in order to help achieve their aspiration to conserve and enhance environmental quality and the Shared Understandings of this Arrangement, and to strengthen their broader bilateral relationship. 2.2 Taking account of the prevailing laws and regulations in their respective countries, and subject to national priorities and available resources, the Participants will jointly decide co-operative environmental activities in areas of mutual interest and concern. 2.3 Co-operative activities may be in areas of environmental expertise and technology and natural resource management including but not limited to waste management, wetlands management, eco-tourism, water resources/watershed management, environmental remediation, climate change-related technologies, extended producer responsibility, biodiversity conservation, national park/reserve management, marine and coastal resources management, public participation in environmental management and environmental education. 2.4 These activities may be implemented through a variety of means, such as the exchange of best practice and information, joint projects, exchanges, visits, workshops and dialogue, including in relation to international environmental forums and matters. The funding of co-operative activities will be decided by the Participants on a case-by-case basis.
Section 3: Institutional Arrangements	3.1 The Participants establish an Environment Committee comprising senior officials of their government agencies responsible for environmental matters. The Committee will meet within the first year of the date of entry into effect of this Arrangement and subsequently thereafter as mutually decided by the Participants. Unless the Participants decide otherwise, the venue for meetings will alternate between the two countries. 3.2 Each Participant will designate a national focal point at officials' level to facilitate communication between the Participants concerning this Arrangement. 3.3 The Environment Committee and national focal points may exchange information and coordinate activities under this Arrangement between meetings using email, video conferencing or other means of communication.

	3.4 The functions of the Environment Committee will include: *a)* establishing an agreed work programme of co-operative activities; *b)* overseeing and evaluating the co-operative activities; *c)* serving as a channel for dialogue on matters of mutual interest; *d)* reviewing the operation and outcomes of the Arrangement; and *e)* providing a forum for resolving differences. 3.5 In carrying out its work the Environment Committee may consult or seek the advice of non-government sectors or relevant experts in each country and may decide to invite their attendance at meetings of the Committee. 3.6 Each Participant will provide an opportunity for the members of its public or domestic non-government sectors to submit views or advice to it on matters relating to the operation of this Arrangement.
	3.7 Where any differences arise between the Participants over the interpretation or application of this Arrangement, the Participants will endeavour to resolve the differences through consultation within the Environment Committee. If a Participant seeks a meeting of the Environment Committee to assist in resolving any such differences, the Environment Committee will meet as soon as practicable and no later than 90 days following the request. 3.8 The Ministers responsible for this Arrangement in each country will meet at least once within the first two years of the operation of this Arrangement and otherwise as mutually decided with a view to reviewing the operation of this Arrangement and resolving any differences not able to be resolved within the Environment Committee. The Ministers may seek a report of the Environment Committee to assist in their deliberations.

AFRICA

Common Market for Eastern and Southern Africa (COMESA)	
Article 4: Specific Undertakings	In order to promote the achievement of the aims and objectives of the Common Market as set out in Article 3 of this Treaty and in accordance with the relevant provisions of this Treaty, the Member States shall: 6. In the field of economic and social development: *a)* co-operate in the development and management of natural resources, energy and environment;
Article 122: Scope and Principles of Co-ordination	1. The Member States agree to take for their mutual benefit, concerted measures to foster co-operation in the joint and efficient management and sustainable utilisation of natural resources within the Common Market. 2. The Member States recognise that the Economic activity is often accompanied by environmental degradation, excessive depletion of resources and serious damage to natural heritage and that a clean as well as an attractive environment is a prerequisite for long-term the Economic growth. 3. The Member States undertake, through a regional conservation strategy, to co-operate and coordinate strategies for the protection and preservation of the environment against all forms of pollution including atmospheric and industrial pollution, pollution of the water resources, and pollution from urban development. 4. The Member States undertake to co-operate and adopt common policies for the control of hazardous waste, nuclear materials, radioactive materials and any other materials used in the development or exploitation of nuclear energy. 5. Action by the Common Market relating to the environment shall have the following objectives: *a)* to preserve, protect and improve the quality of the environment; *b)* to contribute towards protecting human health; and (c) to ensure the prudent and rational utilisation of natural resources. 6. Action by the Common Market relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements shall be a component of the Common Market's policy in all the fields of Common Market activity.

Article 123: Co-operation in Management of Natural Resources	1. The Member States agree to take concerted measures to foster co-operation in the joint and efficient management and sustainable utilisation of natural resources within the Common Market for the mutual benefit of the Member States. In particular, the Member States shall: *a)* take necessary measures to conserve their natural resources; *b)* co-operate in the management of their natural resources for the preservation of the Ecosystems and arrest environmental degradation; and (c) adopt common regulations for the preservation of shared land, marine and forestry resources. 2. The Member States agree to take necessary measures to conserve and manage forests through the: *a)* adoption of common policies for the conservation and management of natural forests, industrial plantations and nature reserves; *b)* exchange of information on natural forests and industrial plantations development and management; *c)* joint promotion of a common forestry practice within the Common Market; *d)* joint utilisation of forestry training and research facilities; *e)* adoption of common regulations for the preservation and management of all catchment forests within the Common Market; and (f) the establishment of uniform regulations for the utilisation of forestry resources in order to reduce the depletion of the natural forests and avoid desertification within the Common Market. 3. The Member States shall take measures to engage in Api-Agro-Forestry Systems. 4. The Member States agree to co-operate in the management of their fresh water and marine resources, through the: *a)* establishment and adoption of common regulations for the better management and development of marine parks, reserves and controlled areas; *b)* adoption of common policies for the conservation, management and development of fisheries resources; and *c)* establishment of uniform fisheries investment guidelines for inland and marine waters. 5. The Member States undertake to accede to international conventions or agreements that are designed to improve the policies of development, management and protection of their natural resources.
Article 124: Co-operation in the Management of the Environment	1. The Member States undertake to co-operate in the management of the environment and agree to: *a)* develop a common environmental management policy that would preserve the Ecosystems of the Member States, prevent, arrest and reverse the effects of environmental and industrial pollution, declining bio-diversity, loss of genetic diversity and land degradation; *b)* develop special environmental management strategies to manage forests, terrestrial and marine resources, water resources, atmospheric emissions, water and hazardous toxic substances; *c)* accede to the UNCED Agreements relating to the Conventions on climatic change and biodiversity; *d)* accede to the UNEP Convention for Eastern and Southern Africa on water and marine resources; and *e)* take measures to control trans-boundary, air and water pollution arising from mining, fishing and agricultural activities. 2. For the purposes of paragraph 1 of this Article, the Member States undertake to: *a)* adopt common environmental control regulations, incentives and standards; *b)* develop capabilities for the assessment of all forms of environmental degradation and pollution and the formulation of regional solutions; *c)* encourage the manufacture and use of biodegradable pesticides, herbicides and packaging materials; *d)* discourage the excessive use of agricultural chemicals and fertilisers; *e)* adopt sound land management techniques for the control of soil erosion, desertification and bush encroachment; *f)* promote the use of ozone and environmental friendly chemicals; *g)* promote the utilisation and strengthen the facilities of training and research institutions within the Common Market;

	h) adopt common standards for the control of atmospheric industrial and water pollution arising from urban and industrial development activities; *i)* exchange information on atmospheric, industrial and other forms of pollution and conservation technology; *j)* adopt common regulations for the management of shared natural resources; *k)* adopt measures and policies to address the existing unsatisfactory demographic profiles such as high growth rates and fertility rates, high dependency ratio and poor social conditions in order to mitigate their adverse impact on environment and development; and *l)* adopt community environmental management criteria.
Article 125: Prevention of Illegal International Trade in Toxic and Hazardous Wastes	1. The Member States undertake to co-operate and adopt common positions against illegal dumping of toxic and undesirable wastes within the Common Market from either a Member State or third country. 2. The Member States undertake to co-operate in sharing technological know-how on clean technologies and low-waste production systems for the energy and productive sectors. 3. The Member States undertake to accede to international environmental Conventions that are designed to improve the environmental policies and management. To this end, the Member States agree to accede to the Montreal Protocol on the Environment. 4. The Member States agree to include environmental management and conservation measures in trade, transport, agricultural, industrial, mining and tourism activities in the Common Market.
Article 126: Wildlife Development and Management	1. The Member States undertake to develop a collective and coordinated approach to sustainable development and management rational exploitation and utilisation and the protection of wildlife in the Common Market. In particular, the Member States shall: *a)* adopt common policies for the conservation of wildlife, natural reserves, national parks and marine parks; *b)* exchange information on wildlife development and management; *c)* exchange information on anti-poaching activities and suspected poachers and where feasible, carry out joint anti-poaching programmes; *d)* establish wildlife ranches in arid and semi-arid regions of the Common Market as a compliment to agricultural and livestock production; *e)* develop common anti-poaching regulations and ensure the effective supervision of the implementation of such regulations; *f)* carry out joint-breeding programmes of selected wildlife species and domesticated animals so as to infuse disease resistance and hardness qualities in the domesticated animals; *g)* encourage joint utilisation of training and research facilities; *h)* utilise proceeds from wildlife for the development and conservation of national parks and the development of adjacent areas; and *i)* establish uniform trophy hunting prices so as to reduce depletion of wildlife stocks in the Member States. 2. The Member States undertake to accede to international conventions or agreements that are designed to improve their policies for development, management and protection of wildlife and national parks.

West African Economic and Monetary Union (WAEMU)

Article 4 [unofficial translation from French]	Without prejudice to the defined objectives of the Treaty of the WAEMN, the Union pursues, under the conditions established by the present Treaty, the realization the following objectives: To coordinate national sectoral policies by implementing common actions and eventually common policies, particularly in the following fields: human resources, regional planning, transport and telecommunications, environment, agriculture, energy, industry, and mines.

1. Due to its length, the North American Agreement on Environmental Co-operation (NAAEC) is not reproduced here. It can be viewed at *www.cec.org*.
2. Concrete examples of environmental co-operation initiatives in the region include the ASEAN Agreement on Transboundary Haze Pollution, the first legally binding ASEAN regional environmental accord to have entered into force; the ASEAN Declaration on Heritage Parks; and the ASEAN Regional Centre for Biodiversity Conservation (ARCBC), which serves as the central focus for networking and institutional linkage among ASEAN members countries and between ASEAN and European Union partner organisations.

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Environment and Regional Trade Agreements

Regional Trade Agreements (RTAs) have increased significantly in number over the past few years. They have become so widespread that practically all WTO members are now parties to one or more RTAs. The number of RTAs which include environmental provisions is also increasing. However, these provisions, and the experience related to their negotiation and implementation, have not been examined in depth yet.

This study contributes to filling this gap. It provides an overview of approaches to environmental issues in RTAs and summarises country experiences in their negotiation and practical application. Regional and bilateral trade arrangements are surveyed, including customs unions and free trade agreements. The study is based on the analysis of RTA texts, and on literature examining their actual implementation, as well as on first-hand comments and input from experts from both OECD and non-OECD countries.

The study includes chapters on environmental impact assessment of trade agreements; environmental co-operation; environmental standards and enforcement of environmental laws; procedural guarantees, enforcement and dispute settlement mechanisms; parties' right to adopt or maintain environmental regulations; and opportunities for public participation in the context of RTAs. The study ends with a summary of OECD and non-OECD countries' key experiences with the negotiation and implementation of different types of environmental provisions in RTAs.

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