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Developments in 2009

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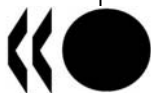
ENVIRONMENT AND REGIONAL TRADE AGREEMENTS: DEVELOPMENTS IN 2009

OECD Trade and Environment Working Paper N° 2010-01

by Peter Gallagher and Ysé Serret

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Abstract

This document is a third update on developments in the field of regional trade agreements and environment covering the period late 2008 to December 2009. It complements the 2007 publication “Environment and Regional Trade Agreements” prepared under the aegis of the Joint Working Party on Trade and Environment.

It is based on publicly available information and refers to agreements which have been signed by the Parties, though not all have entered into force yet.

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DEVELOPMENTS IN REGIONAL TRADE AGREEMENTS AND THE ENVIRONMENT: 2009 UPDATE

1. Background

1. The OECD published a study on “Environment and Regional Trade Agreements” in 2007 under the aegis of the Joint Working Party on Trade and Environment (JWPTE). As a follow-up, a first update on developments in the field of Regional Trade Agreements (RTAs) and the environment in 2007 was presented to the group [COM/TAD/ENV/JWPTE/RD(2007)40/FINAL] and a 2008 update was published as a working paper early 2009 [COM/TAD/ENV/JWPTE(2008)41/FINAL].

2. This document is the third update, and covers developments up to October 2009. It presents ways in which governments deal with environmental issues in the context of regional trade agreements (RTAs) and describes key provisions on the environment in RTAs.

3. The paper is based on publicly available information and refers to agreements that have been signed by the Parties, though not all have yet entered into force. It also includes information on recent Trade Promotion Agreements (TPAs) and on ongoing negotiations for which information is publicly available.

2. Overview of recent developments

4. The pace of notification of RTAs to the World Trade Organization (WTO) continues to be rapid compared with the pre-1999 rate.¹ However, the rate slowed in 2009 with 16 notifications, compared with 27 for 2008.

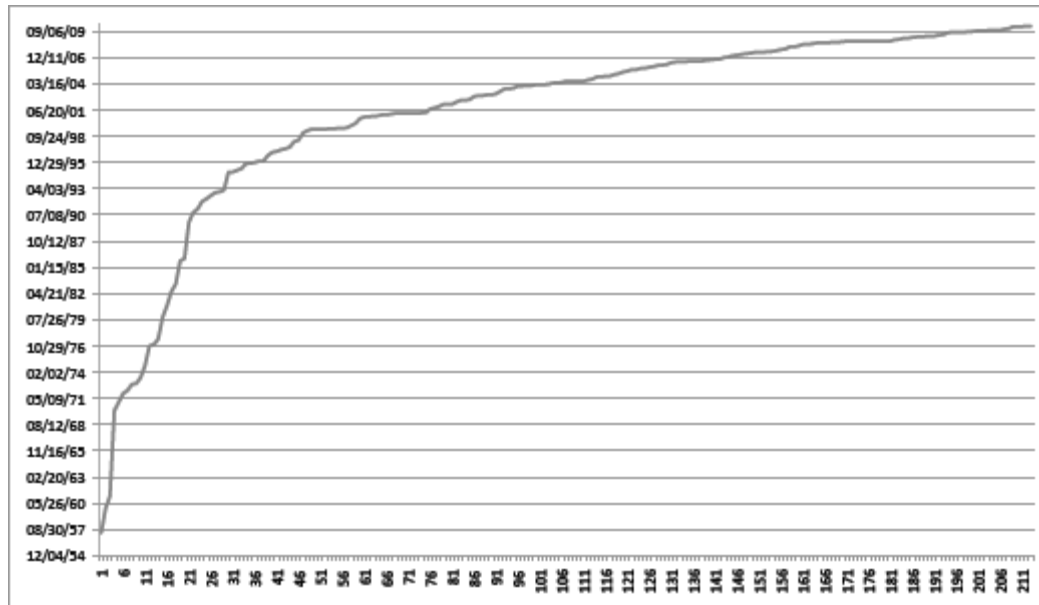
5. Although most of the RTAs to which OECD Member countries are parties that entered into force or were opened for ratification in 2009 contained at least some reference to the environment, this review suggests that only four agreements that entered into force or were signed during the period covered contained substantive provisions with obligations for the parties that were subject to review or enforcement:

1. The *Canada-Jordan Agreement on Environment*, which was signed parallel to the Canada-Jordan free trade agreement;
2. The *Canada-Peru Free Trade Agreement*²;
3. The *New Zealand-Philippines Memorandum of Agreement on Environmental Cooperation* which was signed in parallel with the ASEAN-Australia-New Zealand Free Trade Agreement; and
4. The *New Zealand-Malaysia Agreement on Environmental Cooperation*, which was signed in parallel with the Malaysia-New Zealand Free Trade Agreement.

¹ See table 2 in the Annex. Note that this table is compiled from several sources in addition to the WTO RTA Database and therefore includes some RTAs that were open for ratification in 2009 but not notified to WTO in the period covered (November 2008 - October 2009).

² The Canada-Peru FTA, which entered into force on 1 August 2009, was listed in COM/TAD/ENV/JWPTE(2008)41/FINAL. It contains an integral Chapter (17) on the Environment which incorporates a parallel Agreement on the Environment between Canada and Peru.

Figure 1. Regional trade agreements notified to the WTO by date of notification



Source: WTO RTA Database (<http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>).

6. The next sections examine these four agreements in further details, as well as the United-States-Oman FTA and the United-Peru Trade Promotion Agreement, while summary tables presenting recent trade agreements and their environmental provisions are provided in the Annex.

7. Many agreements notified by OECD Member countries to the WTO in the past year included a reference to the environment among the exceptions to obligations under the agreement. Representative examples can be found in the Canada-EFTA Free Trade Agreement that entered into force in July 2009³ or the New Zealand – Malaysia FTA signed in October 2009.⁴

8. Other agreements include brief reference to the environment in a list of matters on which the Parties might undertake future—typically unspecified—co-operation. The latter provisions is found for example in Article 18.2 of the Australia-Chile FTA.⁵

9. Besides, some agreements, such as the New Zealand - Malaysia FTA⁶, the Australia-New Zealand-ASEAN FTA⁷, the Japan-Philippines agreement⁸ and the Japan-Switzerland agreement⁹, make reference to

³ “The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.” (Chapter VI, Article 22)

⁴ “The Parties understand that the measures referred to in Article XX(b) of GATT 1994 and Article XIV(b) of GATS include measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.” (Chapter 17, Article 17.1.2)

⁵ This article provides that cooperation should reflect the commitments of both Parties to strengthening environmental protection and the promotion of sustainable development, in the context of strengthening trade and investment relations between them. In addition, in the Preamble of the Chile–Australia FTA, both countries declare that they are resolved to implement the Agreement in a manner consistent with sustainable development and environment protection and conservation.

⁶ Chapter 10 on Investment and Environment stipulates that “Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns” (Chapter 10, Article 10.15).

environmental standards in the Investment Chapter. Environmental provisions are also sometimes included in the chapter on Technical Barriers to Trade like in the New-Zealand - Malaysia FTA¹⁰ or in Standards, Technical Regulations and Conformity Assessment Procedures Chapter (Australia-New Zealand-ASEAN FTA).

10. It can be noted that a number of agreements notified by the EU to the WTO do not contain a specifically-devoted chapter on trade and environment. This is the case notably with the extensions of earlier "stabilization and association agreements" with Albania and Croatia and the addition of protocols concerning iron and steel, rules of origin and financial co-operation to earlier agreements with the Former Yugoslav Republic of Macedonia (FYRM). Those agreements are to be seen in the context of EU relations with candidates and potential candidates for accession to the EU. In the case of candidate countries (Croatia and FYRM), accession to the EU will entail incorporation into national laws or direct application of EU environmental directives and regulations. In the case of potential candidates (Albania), the stabilization and association agreement foresees a general process of regulatory approximation of Albanian laws to EU regulations, and environmental cooperation actions will focus on such areas covered by EU regulations.

11. There are no substantial environmental provisions in the agreements notified by the EU in 2009 with Cameroon and Côte d'Ivoire. However, these agreements are interim trade agreements pending the completion of negotiations on broader regional Economic Partnerships (EPA), which could in the end include substantial environmental provisions.¹¹ Furthermore, the provisions on sustainable development and environment in the Cotonou agreement apply.

3. Canada-Jordan Agreement on the Environment

12. Canada and Jordan signed a Free Trade Agreement in June 2008 along with a parallel Agreement on the Environment, and principles-based Environment Chapter within the FTA. The Environment Agreement establishes joint mechanisms for collaboration (a Committee on Environment).

13. A notable feature of the provisions in the FTA is specific language on the legal precedence of obligations under certain multilateral environmental agreements.

Key provisions of the Environment Agreement

14. The Environment Agreement commits both sides to pursue high levels of environmental protection and to continue to develop and improve their environmental laws and policies. It commits the Parties to:

- comply with, and effectively enforce, their domestic environmental laws;
- not weaken domestic environmental laws to encourage trade or investment;
- ensure that proceedings are available to remedy violations of environmental laws;

⁷ Chapter 11 in Investment stipulates that "Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment do not constitute expropriation of the type referred to in Paragraph 2(b)" (Annex on Expropriation and Compensation).

⁸ The agreement stipulates that it would be "inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion in its Area of investments by investors of the other Part" (Article 102).

⁹ The Japan-Switzerland agreement also calls for the promotion of trade in environmental products and environment-related services.

¹⁰ See Chapter 7 on Technical Barriers to Trade (Articles 7.2 (b), 7.4.4, 7.8.1 (c) and 7.8.3).

¹¹ For example, Article 60 of the EC-Cameroon Agreement ("Sustainable Development") notes that the Parties recognize that sustainable development is an overall objective of the EPA and agree to conclude negotiations on a set of potential commitments on sustainable development.

- increase public awareness of environmental laws and policies by ensuring that information regarding environmental laws and policies is available to the public;
- ensure that environmental impact assessment processes are in place; and
- encourage the use of voluntary best practices of corporate social responsibility (CSR) by enterprises.

Environment-related cooperation activities

15. The Agreement on Environment also provides for environmental co-operation activities that support the objectives and obligations of this Agreement. Related areas of activity could include co-operation on enforcement and compliance, promotion of CRS, and environmental technologies.

Enforcement of environmental standards

16. Both countries are obliged under the Agreement on Environment to enforce their domestic environmental laws effectively through appropriate government actions and to ensure that they do not derogate from these laws to encourage trade or investment.

Complaints procedures and dispute resolution

17. The Environment Agreement requires parties to make arrangements for public enquiries to either Party regarding any obligation under the Agreement, or any co-operative activities developed pursuant to the Agreement. It also commits the parties to make every attempt, through consultations and the exchange of information, with an emphasis on co-operation, to address any matter arising under the Agreement. If the Parties fail to resolve the matter, Ministerial-level consultations may be requested. A Party will also be able to request that an independent Review Panel be convened if it considers that there is a persistent pattern of failure by the other Party to effectively enforce its environmental laws or if it considers that the other Party has relaxed its laws to attract trade or investment.

Other environment-related provisions in the Free Trade Agreement

18. The FTA contains a principles-based Environment Chapter with provisions similar to those outlined in Section 4 describing the Canada-Peru Agreement on the Environment. The Preamble in the FTA also highlights the importance of environmental conservation and protection and the promotion of sustainable development.

19. Article 5 of Chapter 1 (Initial provisions) reaffirms the Parties' commitments to Multilateral Environmental Agreements (MEAs) and provides for specific MEAs (specified in Annex 1-5 e.g. CITES, the Montreal Protocol on Substances that Deplete the Ozone Layer etc, but also extensible by agreement) to prevail in the event of an inconsistency between an FTA obligation and the obligations in the MEAs. The FTA also permits the Parties to take measures necessary to protect human, animal and plant life or health that may be inconsistent with trade or investment obligations.

Preliminary environmental assessment

20. Canada has a policy of conducting environmental assessments of trade negotiations it embarks upon. The environmental assessment of the Canada-Jordan FTA negotiations were conducted according to the procedures in elaborated in Canada's (2001) "Framework for Conducting Environmental Assessment of Trade Negotiations."⁶

21. Following an initial assessment that the proposed FTA was unlikely to result in any significant environmental impacts in Canada, an interim assessment was not required and only a final assessment was published. The initial assessment concluded that:

- An FTA between Canada and Jordan has the potential to expand opportunities for Canadian companies in Jordan, and the broader Middle East and North African region.
- Tariff reductions in the context of an FTA with Jordan are expected to generate commercial benefits for Canadian exporters in a variety of sectors, including forest products, agriculture and agri-food, and machinery.
- Given the relatively low levels of trade between Canada and Jordan and the overall size of the Jordanian economy, even a dramatic increase in exports to Jordan would have a modest impact in relation to overall Canadian trade and production levels.
- Any environmental impacts resulting from Canadian export and production increases are expected to be of minimal significance.
- Tariff reductions are also expected to result in increased Canadian imports from Jordan, notably in the apparel sector, although these would continue to constitute a very small share of Canada's global imports in this sector.
- No environmental impacts are expected to derive from FTA-related increases of imports from Jordan.

22. The final Canadian government assessment, following consultations with its Environmental Assessment Advisory Group, the Canadian Provinces and a public web-based consultation, was that even dramatic increases in bilateral Canada-Jordan trade flows would be modest relative to Canada's overall economic activity. Consequently, environmental impacts in Canada are not expected to be significant. Moreover, environmental impacts in Canada, if any, would be addressed and managed by existing environmental-management programs in sectors that stand to gain from the FTA, such as forest products and agriculture.

4. Canada-Peru Agreement on the Environment

23. The Agreement on the Environment between Canada and Peru, signed on May 28, 2009, in conjunction with the Canada-Peru Free Trade Agreement, commits both Parties to pursue high levels of domestic environmental protection, to continue to strive to develop and improve their environmental laws and policies and to promote transparency and public participation. It also creates a framework for undertaking environmental cooperative activities.

24. The Free Trade Agreement also includes environmental provisions and an Environment Chapter that:

- recognize the need to implement the FTA in a manner consistent with environmental protection and conservation and the sustainable use of their resources;
- reaffirm the Parties' commitments to Multilateral Environmental Agreements (MEAs);
- provide for specific MEAs (e.g. the Montreal Protocol on Substances that Deplete the Ozone Layer) to prevail in the event of an inconsistency between an FTA obligation and the obligations in the MEA;

- require that the countries not weaken their domestic health, safety or environmental measures to encourage investment;
- allow the Parties to take certain necessary measures to protect human, animal and plant life or health, which may be inconsistent with trade or investment obligations, provided that they are not done in an arbitrary or discriminatory fashion and are not disguised restrictions on trade.

25. The Agreement on Environment commits the Parties to:

- ensure that their laws and policies provide for high levels of environmental protection;
- effectively enforce their domestic environmental laws;
- not relax their domestic environmental laws in order to encourage trade or investment;
- ensure that proceedings are available to provide sanctions or remedies for violations of their environmental laws;
- promote the awareness of environmental laws and policies by ensuring that information regarding environmental laws and policies is available to the public;
- ensure that procedures for environmental impact assessment are maintained;
- promote trade and investment in environmental goods and services;
- encourage the use of voluntary best practices of corporate social responsibility (CSR) by enterprises;
- promote the conservation and sustainable use of biological diversity; and,
- respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities.

26. The Agreement contains dispute resolution and complaints mechanisms that allow any Canadian or Peruvian to submit a written question to either country regarding any obligation under the Agreement. It also commits each country to ensure that any person residing or established in such country can request its competent authorities to investigate alleged violations of its environmental laws. In addition, the Agreement establishes a dispute resolution mechanism to address any matter that may arise under the Agreement.

27. The implementation of the Canada-Peru Agreement on the Environment is overseen by a Committee on the Environment, made up of government officials from both countries. The countries are to decide on priority areas and create a work program of environment-related cooperative activities. The activities may be carried out through technical (e.g., training) or financial cooperation.

5. New Zealand-Philippines Memorandum of Agreement on Environmental Cooperation

28. Adopted at the same time as the ASEAN-Australia-New Zealand Free Trade Agreement and in conjunction with a Memorandum on Labor Cooperation, the New Zealand-Philippines MOA on Environmental Cooperation comprises a framework for facilitating co-operation without rigorous obligations relating to disputes. It has a “rolling” three-year life and may be renewed or renegotiated through bilateral diplomatic channels.

29. The Memorandum of Understanding (MoA) provides for consultation and co-operation on environmental technologies and policies including through a joint committee established by the agreement that each party “may” open to submissions from stakeholders.

30. The parties agree to enforce their own environmental laws and regulations and agree that it would be inappropriate to weaken environmental standards in order to encourage investment or, conversely, to use environmental laws or standards for protectionist purposes.

31. There is a provision for either Party to consult with the other on any issues that may arise in relation to the operation of the Memorandum with a view to their resolution. A timeframe of 90 days is established for a meeting to "assist in the resolution of any such matters". The MOA also allows for the possibility of Ministers being involved in resolving any issues.

32. Taking account of their national priorities and available resources, New Zealand and the Philippines undertake to co-operate on mutually agreed environmental issues including concerns such as:

- sustainable management of the environment;
- air quality management;
- water quality management;
- toxic chemicals and hazardous and solid wastes management;
- restoration of degraded watershed, river basins and wetlands;
- the conduct of research dealing with major river basins; and
- Concerns affecting or dealing with climate change.

6. New Zealand-Malaysia Agreement on Environmental Cooperation

33. The Malaysia – New Zealand Free Trade Agreement (FTA) was signed in Kuala Lumpur on 26 October 2009.

34. An Agreement on environmental co-operation establishes a set of shared commitments which include recognition that it is inappropriate to set or use environmental laws, regulations, policies and practices for trade protectionist purposes and that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws, regulations, policies and practices. Either country may consult with the other on any issues that may arise in relation to the operation of the Agreement with a view to their resolution. A timeframe of 90 days is established for a meeting to “assist in the resolution of any such matters”.

35. The Environment Agreement establishes a framework for co-operation with the intention of working together in environmental areas of common interest including, but not limited to: environmental expertise and technology; waste management; wetlands management; eco-tourism; water resources and watershed management; environmental remediation; climate-change-related technologies; extended producer responsibility; biodiversity conservation; the management of national parks and nature reserves; sustainable forest management; marine and coastal resources management; public participation in environmental management; and, environmental education.

36. The non-government sector and other organisations may also be invited to participate in identifying potential areas for co-operation and in conducting co-operative activities.

7. Environment in the United States-Oman Free Trade Agreement

37. Environmental considerations are also included in the United States-Oman Free Trade Agreement, which entered into force on 1 January 2009. This agreement is examined in detail below to provide a second example of a recent agreement with environmental provisions recently concluded in the Middle East North Africa Region (MENA).

38. The environmental provisions in the United States-Oman FTA (Chapter 17)¹² are similar to the environmental provisions in other FTAs the United States has reached with MENA-region countries including the 2006 United States-Bahrain FTA.¹³ The agreement embodies the familiar obligation to sustain and improve environmental standards, chiefly by each Party enforcing its own laws and by cooperating, including in the MEAs, to improve standards and access to environmental technologies.

39. Under the United States-Oman FTA, each party must ensure that its environmental protection laws provide for high levels of protection, and must strive to improve those laws, provide appropriate and effective remedies and sanctions for violations of environmental protection laws, provide opportunities for public participation, and promote public awareness.

Preliminary assessment

40. As required by the Trade Act of 2002, the Office of the United States Trade Representative (USTR) reported to Congress in April 2005 on the probable environmental effects on the United States of the U.S.-Oman FTA prior to completing the FTA negotiations. The report concluded that that the FTA was unlikely to result in any significant economically driven environmental effects in the United States — especially given that bilateral trade represented less than half of one percent of U.S. international trade and that most exchanges were already duty-free or subject to duties of 5% or less. The USTR report said that an agreement would have positive impacts for the environment in Oman by reinforcing Oman's efforts to effectively enforce its own environmental laws, accelerating economic growth and development through trade and investment, and disseminating environmentally beneficial technologies.¹⁴

Private rights of action

41. Some of the most detailed obligations in the agreement concern possible private rights of action under national laws. Parties agree that trade or investment should not be encouraged by weakening or reducing domestic legal protections. Accordingly, they agree to ensure that judicial, quasi-judicial, or administrative proceedings are available to sanction or remedy violations of environmental laws. The Agreement stipulates that such proceedings must be fair, open, and equitable; comply with due process of law; and provide access to persons with a recognizable legal interest.

42. Specifically, under Article 17.3 each Party must provide appropriate and effective private access to remedies, in accordance with its law, which may include rights such as: (c) the right to sue another person under that Party's jurisdiction for damages under that Party's environmental laws; (d) the right to seek sanctions or remedies such as monetary penalties, emergency closures, or orders to mitigate the consequences of violations of its environmental laws; (e) the right to request the competent authorities to take appropriate action to enforce the Party's environmental laws in order to protect the environment or to avoid environmental harm; or (f) the right 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 or from tortious conduct that harms human health or the environment.

¹² http://www.ustr.gov/sites/default/files/uploads/agreements/fta/oman/asset_upload_file400_8844.pdf

¹³ <http://www.ustr.gov/trade-agreements/free-trade-agreements/bahrain-fta/final-text>

¹⁴ <http://www.ustr.gov/sites/default/files/Oman%20interim%20review.pdf>

43. The parties agree to pursue co-operative environmental activities and provide for environmental consultations, but neither party would have recourse to dispute settlement for any matter arising under the Environment chapter except on the matter of each party's commitment to enforce its respective domestic laws (Article 17.8 (5)).

44. A separate mechanism on disputes dealing with environmental claims could result in an annual assessment of up to USD15 million (under chapter 20), payable into a fund set up and run by the Joint Committee for "appropriate environmental initiatives."

Enhancing standards

45. Several types of measures to enhance environmental policies and performance are specified, supported by the FTA's Joint Committee (under chapter 18) and also a specialized "Subcommittee on Environmental Affairs" to be formed at the request of either party. Detailed provisions (Article 17.6) deal with opportunities for public participation, including opportunities for the public to make submissions to the Joint Committee. The parties also commit to working in multilateral fora to improve environmental standards and their application.

46. The United States and Oman have also adopted the text of a Memorandum of Understanding between the parties concerning environmental co-operation, including exchanges of experts or students and a Joint Forum of government officials, open to public participation, that would meet regularly to arrange and administer the various shared activities.¹⁵ According to the MOU, each government intends to name a Principal Co-ordinator to serve as an overall point of contact regarding the activities of the Joint Forum and implementation of the Plan of Action.

47. Areas of co-operation selected for joint action under the MOU include:

- protecting coastal environmental zones and estuaries and preventing the over-exploitation of living and nonliving marine resources;
- integrating ecotourism with protection of flora and fauna, including sea turtles and other migratory or endangered species;
- strengthening capacity to establish a Cleaner Production Center and promoting the growth of the environmental technology business sector;
- capacity building in chemical management and risk assessment, as well as in inspecting and monitoring hazardous waste facilities; and
- sharing experience in the review and preparation of contingency mechanisms for oil spills and other environmental disasters.

8. Renegotiation of the United States-Peru Trade Promotion Agreement

48. As reported in COM/TAD/ENV/JWPTE(2008)41/FINAL, the United States adopted a new "template" for the inclusion of environmental provisions in its bilateral trade agreements following a bipartisan agreement between the Congress and the Whitehouse in May 2007.

49. The new "template" stipulates that future United States bilateral trade agreements must, among other things, require U.S. partners to implement seven MEAs, including the Montreal Protocol on Ozone Depleting Substances, the Convention on International Trade in Endangered Species (CITES), the

¹⁵ http://www.ustr.gov/sites/default/files/uploads/agreements/fta/oman/asset_upload_file622_8819.pdf

Convention on Marine Pollution, and the Ramsar Convention on Wetlands. The Administration agreed to include provisions restricting the rights of Parties to future FTAs to derogate from the provisions of these MEAs. It also agreed that FTA environmental obligations would be enforced on the same basis as the commercial provisions of the agreements, with access to the same remedies, procedures and sanctions (including trade sanctions).

50. A condition of the Administrations' agreement with Congress on this new approach was that the United States would seek to renegotiate the 2005 Trade Promotion Agreement with Peru.

Revision of the U.S.- Peru TPA

51. The original U.S. Trade Promotion Agreement (TPA) with Peru¹⁶ was reached following an environmental review covering all of the countries of the proposed United States-Andean Free Trade Agreement. According to the review, the agreement was not expected to have a negative impact on the ability of U.S. government authorities to enforce or maintain environmental laws or regulations and only small indirect effects on the U.S. environment through economic growth in the Andean countries and subsequent effects on habitat for wildlife. The environmental review anticipated "positive environmental consequences in Colombia, Ecuador and Peru by reinforcing efforts to effectively enforce environmental laws, accelerating economic growth and development through trade and investment and disseminating environmentally beneficial technologies".¹⁷

52. The environmental provisions of the TPA negotiated with Peru in 2005, therefore, were similar to those of other FTAs agreed by the United States at the time. Chapter 18 required the United States and Peru to effectively enforce their own domestic environmental laws subject to dispute settlement procedures of the Agreements. The provisions included an environmental co-operation agreement that would provide a framework for undertaking environmental capacity building in Peru and establish an Environmental Cooperation Commission. The TPA required both countries to commit to establish high levels of environmental protection, to engage in mutual support of multilateral environmental agreements, and to not weaken or reduce environmental laws to attract trade or investment. It recognized the importance of protecting biodiversity and procedural guarantees to ensure environmental protection and required each side to create a public participation process.

53. In June 2007, following the adoption of the new "template" for FTAs, the U.S. Government and the Government of Peru renegotiated the TPA to include stronger commitments by both parties to effectively enforce their own domestic environmental laws, and to adopt, maintain, and implement laws and all other measures to fulfil obligations under the seven covered multilateral environmental agreements (MEAs).¹⁸ They agreed that all obligations in the environment chapter would be subject to the same dispute-settlement procedures and enforcement mechanisms as all other obligations in the agreement. Also, they adopted a new Annex on Forest Sector Governance (Annex 18.3.4 of the amendment to Chapter 18) that addresses environmental and economic consequences of trade associated with illegal logging and illegal trade in wildlife. The Annex requires concrete steps in the two countries to enhance forest-sector governance and to promote legal trade in timber products.

9. Regional Trade Agreements Under Negotiation

54. Some pending regional trade agreements with environmental provisions include:

¹⁶ For details of the agreement see the USITC report "U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects" Investigation No. TA-2104-20, available from <http://www.usitc.gov/publications/332/pub3855.pdf>

¹⁷ Interim Environmental Review U.S.-Andean Free Trade Agreement Office of the U.S. Trade Representative February 2005, available from <http://www.ustr.gov/sites/default/files/Interim-Environmental-Review.pdf>

¹⁸ The U.S. Congress voted to adopt the revised agreement in November 2007.

- Canada has concluded negotiations towards a Free Trade Agreement between Canada and Panama in August 2009
- Canada has concluded a first round of negotiations for a Trade and Development Agreement with the Caribbean Community (CARICOM) in November 2009
- New Zealand has concluded (but not yet signed) the Hong Kong China - New Zealand Closer Economic Partnership Agreement together with a side instrument on environment - the New Zealand-Hong Kong China Environmental Cooperation Agreement.
- New Zealand has concluded (but not yet signed) the New Zealand-Gulf Cooperation Council Free Trade Agreement, and is in the process of negotiating bilateral arrangements on environment with individual member states.
- The European Union and South Korea are engaged in negotiations for a Free Trade Agreement to be signed in 2010.¹⁹
- The European Union and Canada opened negotiations for an Economic Integration Agreement in May 2009.²⁰
- South Korea and Colombia launched formal negotiations in November 2009 to seal a Free Trade Agreement

55. Recent evolutions also include the decision made by the United States, in October 2009, to engage the Trans-Pacific Strategic Economic Partnership Agreement (TPP) with the aim of commencing negotiations to join TPP.

¹⁹ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=443>

²⁰ http://www.bilaterals.org/IMG/pdfEU-Canada_FTA_EC_negotiating_mandate_apr09_es.pdf

ANNEX

Table 1. Overview of recent trade agreements and their environmental provisions

Agreement	Status as at October 2009	Environmental provisions	Explanatory documents	Official texts
Australia-Chile Free Trade Agreement	Signed 30 July 2008; entered into force 6 March 2009	Preamble, Chapter 10 (Investment), Chapter 15 (Government Procurement), Chapter 18 (Cooperation), Chapter 22 (General Provisions and Exceptions)	http://www.dfat.gov.au/geo/chile/fta/index.html	<u>Texts:</u> http://www.dfat.gov.au/geo/chile/fta http://www.direcon.cl/pdf/TLC_Chile_Australia_Spanish_version.pdf/Australia-Chile_FTA_complete.pdf <u>Annexes:</u> http://www.austlii.edu.au/au/other/dfat/treaties/notinforce/2008/6/index.html http://www.direcon.cl/index.php?accion=tlc_australia
Chile-Turkey Free Trade Agreement	Signed 14 July 2009. Not entered into force yet		http://www.sice.oas.org/TPD/CHL_TUR/CHL_TUR_e.ASP	
Chile-Colombia Free Trade Agreement	Signed 27 November 2006; entered into force May 2009	Preamble, Chapter 1 (Initial Provisions), Chapter 7 (Technical Barriers to Trade), Chapter 9 (Investment), Chapter 13 (Government Procurement), Chapter 18 (Environment), Chapter 21 (Exceptions)	http://www.sice.oas.org/TPD/CHL_COL/CHL_COL_e.ASP	http://rc.direcon.cl/sites/rc.direcon.cl/files/docs/acuerdos/COL_ALC_Texto_Completo.pdf

Agreement	Status as at October 2009	Environmental provisions	Explanatory documents	Official texts
Agreement Establishing the ASEAN-Australia- New Zealand Free Trade Area (AANZ FTA) & Memorandum of Agreement on Environmental Cooperation	Signed 27 February, 2009; open for ratification	Memorandum of Agreement on Environmental Cooperation associated with the AANZFTA. The AANZFTA includes a number of references to the environment: Chapter 6 on Standards, Technical Regulations and Conformity Assessment Procedures (Articles 6.2.2 and 6.8.2(d); Chapter 11 on Investment (Annex); Chapter 15 on General Provisions and Exceptions (Articles 15.1.1 and 15.1.2)	http://www.asean.fta.govt.nz/	Texts: http://www.asean.fta.govt.nz/assets/Agreement-Establishing-the-ASEAN-Australia-New-Zealand-Free-Trade-Area.pdf http://www.asean.fta.govt.nz/assets/Downloads/Instruments/moa-environment-nz-philippines.pdf
New-Zealand-Malaysia Free Trade Agreement and Associated Agreement on Environmental Cooperation	Signed in October 2009; expected to enter into force in early 2010	Agreement on Environmental Cooperation associated with the New-Zealand FTA. The FTA includes a number of references to the environment: Preamble; Chapter 7 on Technical Barriers to Trade (Article 7.2 (b) and 7.4.4, articles 7.8.1 8(c) and 7.8.3); Chapter 10 on Investment (Article 10.15); Chapter 17 on General Exceptions (Articles 17.1.1 and 17.1.2).	http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Malaysia/index.php	Texts: http://www.mfat.govt.nz/downloads/trade-agreement/malaysia/mnzfta-text-of-agreement.pdf http://www.mfat.govt.nz/downloads/trade-agreement/malaysia/mnzfta-environment-agreement.pdf
Canada-European Free Trade Association (EFTA) Free Trade Agreement	Signed 26 January 2008; entered into force 1 July 2009.	Preamble, Chapter 6 (Exceptions and Safeguards)	www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/efata-aele.aspx?lang=en#2	Texts: http://www.sice.oas.org/Trade/CAN_EFTA_FTA/CAN_EFTA_text_e.pdf

Agreement	Status as at October 2009	Environmental provisions	Explanatory documents	Official texts
Canada - Jordan Free Trade Agreement & Canada Jordan Agreement on the Environment	Signed June-2008. Open for ratification [Expected early 2010]	Chapter 10 of the FTA incorporates an associated 'Agreement on Environment (see the body of this document for more detail)	http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/andean-andin/can-peru-perou.aspx?lang=en	<p>Texts: Agreement on the Environment: http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/JordanEnvironmentAgreement-eng.pdf</p> <p>The FTA: http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/jordan-jordanie/agreement-toc-tdm-accord.aspx?lang=eng</p>
Canada-Peru Free Trade Agreement, including an Agreement on the Environment	Signed 29 May 2008; entered into force 1 August, 2009	<p>Canada-Peru Agreement on the Environment signed in conjunction with the FTA.</p> <p>The FTA includes a number of references to the environment: Preamble, Chapter 1 (Initial Provisions and General Definitions), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Technical Barriers to Trade), Chapter 8 (Investment), Chapter 11 (Financial Services), Chapter 14 (Government Procurement), Chapter 17 (Environment), Chapter 20 (Administration of the Agreement), Chapter 21 (Dispute Settlement), Chapter 22 (Exceptions)</p>	www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/peru-perou-table.aspx	<p>Texts: Agreement on the environment: www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Canada-Peru_Environment-en.pdf</p> <p>The FTA: http://www.sice.oas.org/TPD/AND_CAN/Final_Texts_CAN_PER_e/index_e.asp</p>
Canada-Colombia Free Trade Agreement, including an Agreement on the Environment	Concluded 7 June 2008, to enter in force in 2010	<p>Trade-related environmental provisions contained in the FTA: Chapter 17 (Environment)</p> <p>The FTA includes a parallel Agreement on the Environment containing key environmental obligations and a framework to undertake environmental cooperation activities.</p>	http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/andean-andin/can-colombia-colombie.aspx	<p>Texts: http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/EN%20Colombia%20Environment%20Agreement%20formatted_.pdf</p>

Agreement	Status as at October 2009	Environmental provisions	Explanatory documents	Official texts
Agreement between Japan and the Republic of the Philippines for an Economic Partnership	Signed 9 September 2006; entry into force 11 December 2008	Article 102 (in the Investment chapter) stipulates that "Each Party recognizes that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion in its Area of investments by investors of the other Part"	http://www.mofa.go.jp/policy/economy/fta/philippines.html	Texts: http://www.mofa.go.jp/region/asia-paci/philippine/epa0609/index.html
Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership	Signed 25 December 2008; entry into force 1 October 2009	Chapter 12, Article 111 includes "environment" among subjects of potential inter-governmental cooperation.	http://www.mofa.go.jp/region/asia-paci/vietnam/index.html	Texts: http://www.mofa.go.jp/region/asia-paci/vietnam/epa0812/agreement.pdf Annexes: http://www.mofa.go.jp/region/asia-paci/vietnam/epa0812/index.html
Agreement on Free Trade and Economic Partnership Between the Swiss Confederation and Japan	Signed 19 February, 2009; entry into force: 1 September 2009	The Agreement includes in its preamble a statement concerning environmental protection and sustainable development. Article 9 of Chapter 1 of the Agreement concerns the promotion of environmental products and environmental-related services. Article 101 of Chapter 9 (Investment), stipulates that is it inappropriate to encourage investment activities by relaxing domestic health, safety or environmental measures or lowering labour standards.	http://www.seco.admin.ch/themen/00513/02655/02731/02970/index.html?lang=en	Texts: http://www.seco.admin.ch/themen/00513/02655/02731/02970/index.html?lang=en
Memorandum of Agreement on Environmental Cooperation between the Government of New Zealand and the Government of the Republic of the Philippines	Entry into force: 01-Oct-2009	A 'side-agreement' associated with ANZ FTA establishes commitments that recognize that it is inappropriate to set or use environmental laws, regulations, policies and practices for trade protectionist purposes and that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws, regulations, policies and practices	http://www.asean.fta.govt.nz/labour-and-environment/	Texts: http://www.asean.fta.govt.nz/assets/Downloads/Instruments/moa-environment-nz-philippines.pdf

Agreement	Status as at October 2009	Environmental provisions	Explanatory documents	Official texts
Free Trade Agreement Between the Republic of Turkey and Georgia	Signed in November 2007; entry into force November 2008	Article 16 (General Exceptions), protection of the 'environment' is one of the bases.	http://rtais.wto.org/rtadocs/636/AnnexAndRelatedDocs/English/full%20text%20of%20the%20FTA%20btw%20Turkey%20and%20Georgia.zip	<p>Texts: http://rtais.wto.org/rtadocs/636/TOA/English/main%20text.doc Annexes: http://rtais.wto.org/rtadocs/636/AnnexAndRelatedDocs/English/full%20text%20of%20the%20FTA%20btw%20Turkey%20and%20Georgia.zip</p>
Free Trade Agreement Between the People's Republic of China and the Republic of Peru	Signed 9 May, 2009. Entered into force 1 March, 2010	Article 157 on Mining and Industrial Cooperation provides for cooperation including an exchange of information and experience on mining environmental issues.	http://www.dfat.gov.au/geo/cfile/fta/index.html	<p>Texts: http://fta.mofcom.gov.cn/bilu/annex/bilu_xdwb_en.pdf Annexes: http://fta.mofcom.gov.cn/bilu/annex/bilu_fujian_en.rar</p>
Free Trade Agreement between the Republic of Turkey and Montenegro	Signed 26 November, 2008. Entered into force 1 March, 2010	Article 31 (General Exceptions) refers to the possibility of exceptions to restrictions "justified on the grounds of the protection of the environment"		<p>Texts: http://www.dtm.gov.tr/dtmadmin/upload/AB/SerbestTicaretDb/Montenegro.pdf</p>
Free Trade Agreement Between the EFTA States and the Republic of Serbia	Signed 17 December, 2009	In addition to a Preambular reference to the preservation and protection of the environment, Article 25.2 on Investment stipulates that it is "inappropriate to encourage investment by relaxing health, safety or environmental standards."		<p>Texts: http://www.efta.int/legal-texts/free-trade-relations/serbia.aspx</p>
Free Trade Agreement Between the Republic of Albania and the EFTA States	Signed 17 December, 2009	In addition to a Preambular reference to the preservation and protection of the environment, Article 24.2 on Investment stipulates that it is "inappropriate to encourage investment by relaxing health, safety or environmental standards."		<p>Texts: http://www.efta.int/legal-texts/free-trade-relations/albania.aspx</p>

Table 2. WTO list of notified RTAs by date of entry into force

Agreement	Entry into force	Referenced in the JWPTE 2008 update
Peru – China	01/03/2010	✓
Turkey - Montenegro	01/03/2010	✓
EC - Cameroon	01/10/2009	✓
Japan - Viet Nam	01/10/2009	✓
Japan - Switzerland	01/09/2009	✓
Canada - Peru	01/08/2009	COM/TAD/ENV/JWPTE(2008)41/ FINAL
Peru - Singapore	01/08/2009	✓
Canada - EFTA	01/07/2009	COM/TAD/ENV/JWPTE(2008)41/ FINAL
Chile - Colombia	08/05/2009	✓
Australia - Chile	06/03/2009	✓
US - Peru	01/02/2009	COM/TAD/ENV/JWPTE(2008)41/ FINAL
China - Singapore	01/01/2009	✓
EC - Côte d'Ivoire	01/01/2009	✓
US - Oman	01/01/2009	✓
Japan - Philippines	11/12/2008	✓
Panama - Costa Rica (Central America)	23/11/2008	✓
EC - CARIFORUM States EPA	01/11/2008	COM/TAD/ENV/JWPTE(2008)41/ FINAL
Turkey - Georgia	01/11/2008	✓

REFERENCES

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Foreign Affairs and International Trade Canada: Negotiations and Agreements:
<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/index.aspx>

Ministry of Foreign Affairs of Japan: <http://www.mofa.go.jp/region/asia-paci/index.html>

New Zealand Ministry of Foreign Affairs and Trade: <http://www.asean.fta.govt.nz/>

State Secretariat for Economic Affairs (Switzerland):
<http://www.seco.admin.ch/themen/00513/00515/01330/index.html?lang=en>

United States Congressional Research Service: <http://www.fas.org/sgp/crs/row/index.html>

United States International Trade Commission: <http://www.usitc.gov/>

United States Trade Representative: <http://www.ustr.gov/trade-agreements/free-trade-agreements>

WTO Regional Trade Agreements Database: <http://rtais.wto.org/>