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Implementing Regional
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Environmental Provisions: A
Framework for Evaluation

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Abstract

IMPLEMENTING REGIONAL TRADE AGREEMENTS WITH ENVIRONMENTAL PROVISIONS: A FRAMEWORK FOR EVALUATION

by

Peter Gallagher and Ysé Serret

This document sets out a framework for evaluating the implementation of environmental provisions in Regional Trade Agreements. The checklist approach to the evaluation of countries' experience of implementation complements the OECD's Checklist for Negotiators (2008). Among the issues addressed are institutional arrangements, co-operation, capacity building, public participation, resolution of differences and assessment.

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Background and objective

The OECD Joint Working Party on Trade and Environment (JWPTE) has been analysing the way in which the increasing number of regional and bilateral trade agreements deal with environmental issues (OECD, 2007 and 2008a).

The JWPTE also regularly provides updates on the environmental provisions of RTAs and their implementation (OECD 2008b, 2009, 2010 and 2011a) and organises regional workshops [Paris (2006), Tokyo (2007), Santiago (2008)] where experts from both OECD and non-OECD countries discuss their experience with the negotiation and implementation of environmental provisions in trade agreements (OECD, 2008c and 2008d).

RTAs constitute a dynamic, fast-moving field. As more agreements are being signed, the JWPTE is carrying out further work on RTAs and the environment to add to its existing body of work. This document sets out a framework for evaluating the implementation of environmental provisions in regional trade agreements. It complements the Checklist for Negotiators of Environmental Provisions in Regional Trade Agreements (OECD, 2008e).

This document is a revised version of the paper prepared for the JWPTE meeting in June 2011. An earlier version of the document served as a background document for the OECD workshop on “Regional Trade Agreements: Implementation Issues” held on 1-2 June 2010 at OECD Headquarters, Paris (OECD, 2011b).

Given its focus on implementation aspects of RTAs and the environment, a field in rapid evolution where little information is publicly available, the paper may not capture all recent developments.

Learning from experience

The number of RTAs has been steadily increasing since the Uruguay Round of multilateral trade negotiations in the World Trade Organisation (WTO) was completed in 1994. After a surge in 2008 the rate slowed somewhat in 2009, and again in 2010 (with 18 notifications). As of 1 May 2011, some 200 RTAs were in force (counting goods and services together).¹

The Checklist for Negotiators of Environmental Provisions in Regional Trade Agreements provides useful guidance to negotiators on the different models for specifying the scope, content and institutional arrangements of environmental provisions in the text of an RTA. With a large number of RTAs in force and more than a decade of experience in the implementation of provisions on the environment, taking stock of this experience and providing guidance on future implementation issues, such as the question of “what works and what does not?” could be valuable.²

1. http://www.wto.org/english/tratop_e/region_e/region_e.htm

2. A logically prior question is “works for what”? What are the criteria that discriminate between “works well” and “doesn’t work”? Should the criterion of choice be: “works to improve environmental outcomes”? Or perhaps: “minimises adverse environmental consequences of RTA-led trade”? Or even: “minimises conflict between trade and environment policies”?

There have been many *ex ante* assessments of the need for environmental provisions in RTAs. These *ex ante* assessments have become extensive formal studies, incorporating large data surveys and economic modelling, but rarely physical modelling.³ Many governments also conduct *ex-ante* investigations of the environmental impacts of an RTA,⁴ in the process surveying the concerns of civil society and experts about the potential adverse effect resulting from increased trade and the opportunity not only to mitigate the harm but also to improve the environment at the regional level.

However, *ex post* analysis is still rare. Within the OECD, a discussion on methods for undertaking *ex post* assessments was initiated before the surge in RTA negotiations, and no further work was envisioned on this issue following the workshop held in 1999 due to the complexity of the issue and the political stakes, especially in the absence of definite objective measurements of outcomes.⁵

Given the significant data requirement involved in the creation of appropriate baselines and, especially, the absence of widely accepted metrics for environmental outcomes, it is perhaps not surprising that there have been very few comprehensive *ex post* assessments of environmental provisions associated with an RTA carried out to date. A notable exception is the review of the North American Agreement on Environmental Cooperation (NAAEC).⁶ More recent initiatives include the 2009 review of four free-trade agreements by the US Government Accountability Office (GAO).⁷

An alternative to undertaking a full blown assessment, which is less complex, less data-intensive, and less expensive, is to apply a framework for reviewing implementation experience with an RTA. Such a framework could involve:

- Examining the implementation of the environmental provisions by each of the Parties to an agreement — that is, assessing the steps taken by the Parties in fulfilment of the relevant provisions of the agreement. This need not require an *ex post* assessment of the environmental consequences of those provisions, but could include an assessment of whether, and to what extent, the Parties have met their commitments and obligations under the agreement.
- Examining whether, and to what extent, the objectives of the agreement have been met (i.e. have the results that were expected been delivered or is reasonable progress toward such results apparent).
- Examining of lessons learned from implementing an agreement and how these may inform decisions about future implementation, and that may inform any negotiations for future agreements.

3. The EU's Sustainability Impact Assessments provide an example.

4. OECD (2008e) notes that the New Zealand and Canadian and United States laws also mandate *ex-ante* assessments. Other governments, such as Chile, Colombia and Peru have also participated in extensive assessments at the initiative of their partner in the RTA negotiation.

5. *[I]t was acknowledged by all that more work on developing and improving data and methodologies is needed. As a result of this, and the diversity of approaches and methodologies available, it was considered premature to attempt to develop detailed, multilateral guidelines on environmental assessments of trade agreements (OECD, 1999). See also OECD (2000).*

6. See CEC (2004 and 2008).

7. See GAO (2009).

- Comparing the experiences of Parties to different agreements that would allow some global “overview” of the general experience of implementation and lessons learned.

The Checklist for Negotiators includes a list of issues related to implementation that are useful to structure an evaluation framework. Using the same concepts and approaches for the negotiation of agreements and the evaluation of their implementation ensures some consistency.

As a starting point, it is useful to examine the differences in the scope and ambition of environmental provisions including:⁸ legal basis and nature of the mandate; requirement for prior environmental assessments of the agreement; type of the obligations; existence of provisions for *ex post* assessment; provision of funding and availability of monitoring and dispute settlement procedures.

What does “implementation” include?

Different approaches can be used to incorporate environmental provisions in RTAs. In some trade agreements, particularly early ones, the environment is merely mentioned in the preamble of the agreement. While environmental issues are sometimes addressed in separate side-agreements, there is a growing trend to address them in relevant sections of the main text of the trade agreement and to include specific chapters on trade and environment in the agreements. In some recent EU agreements, environmental and social issues are combined in a separate sustainable-development chapter. The way environmental considerations are incorporated in RTAs can be important when it comes to implementation.

The environmental provisions in RTAs may also vary in substance. The checklist for negotiators identifies some of the elements of RTAs with environmental provisions that give rise to implementation actions. This non-exhaustive list includes: co-operation activities, environmental laws and standards, dispute settlement, institutional arrangements, budget, public participation and performance reviews.

Not all RTAs include all of these elements of implementation, however, and there are many variations in specific provisions and the priority accorded to each element according to the scope and ambition of environment-related provisions in the agreement.

Many agreements contain provisions on the environment such as preambular references to shared objectives, including environmental sustainability.⁹ These provisions are not necessarily without force, since in some circumstances even a preambular statement of objectives may be relevant to treaty interpretation and thereby determine the scope of a dispute-settlement action.

In addition, a number of RTA’s reproduce the “exceptions” provisions in GATT Article XX that include exceptions to the trade liberalization provisions of the RTA where necessary to achieve an environmental objective (e.g. conservation of a scarce

8. See Annex I for more details.

9. For example, Canada’s 2008 free trade agreement with EFTA (Norway, Iceland, Switzerland) contains the following preambular provision: “RECOGNISING the need for mutually supportive trade and environmental policies in order to achieve the objective of sustainable development; ...”

natural resource).¹⁰ These clauses contribute to the definition of the scope of the agreement.

A checklist review of implementation provisions

The following checklist approach to the evaluation of countries' experience of implementation takes as a point of departure the elements listed in the Checklist for Negotiators (OECD, 2008e). These elements are updated and expanded to take into account the issues that have greater relevance to implementation than to negotiation:

- institutional arrangements
- co-operation
- capacity building
- public participation
- resolution of differences
- monitoring and assessment
- commitments, environmental laws and standards
- voluntary and private action
- environmental goods and services

Institutional arrangements

Most RTAs with environmental provisions that commit the parties to work together, through co-operation or capacity-building activities, or through engagement on enforcement of and compliance with environmental laws, also provide for the designation of national contact points to facilitate communication and the establishment of governance bodies to oversee and manage the relationships. The forms and functions of such bodies vary among RTAs depending on the number of parties and the nature and purpose of the ongoing engagement.

Some questions for evaluation could include:

- What provisions (if any) does the agreement include on institutional arrangements?
- What actions have the parties taken in relation to these provisions? Have national contact points been identified? Has an oversight or governance body been established? How frequently has the governance body met?

10. The Canada-EFTA Agreement is an example. Article 22 provides: "For purposes of the Chapter on Trade in Goods, Article XX of the GATT 1994 is incorporated into and made part of this Agreement. 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."

- Does the agreement specify the functions of an oversight or governance body? Which functions has the governance body carried out? Which (if any) functions has it not carried out? Is there any reason to amend the functions?
- Do the institutional arrangements provide adequate support and guidance for the effective implementation of the agreement? Are there any changes that might make implementation more effective or efficient?

Co-operation activities

Co-operation between Parties to the RTA

Most regional trade agreements with environmental provisions require co-operation between the Parties to achieve the objectives of the agreements, and in particular for technical assistance transfers.¹¹ Forms of co-operation may include the development of common actions; the exchange of information and experts; the joint organisation of events; and the facilitation of partnerships, including with the private sector.

Some questions for evaluation could include:

- Have the Parties identified their respective priorities for co-operation and agreed on joint priorities or areas of common interest?
- Have the Parties specified the appropriate form of co-operative activities for different components of the environmental agreement and the entities responsible for implementation?
- Does the framework for co-operation activities allow for some flexibility to adapt to changes in national and international context (e.g. new laws and institutions)?
- Is funding available for private co-operative activities including those involving civil society and non-government organisations?
- Are there specific provisions relating to the assessment of co-operation projects? What has been the outcome of the agreement in terms of co-operative activities?
- Has co-operation been co-ordinated, including to avoid duplication of efforts with domestic development-focussed agencies and other international donors?
- How is information about co-operative activities and funding for co-operation disseminated to the public?

Co-operation in Multilateral Environment Agreements

Several countries have used the opportunity of an FTA to establish a basis for enhanced bilateral co-operation under the Multilateral Environment Agreements (MEAs). The agreement between Japan and Mexico, for example, in the section on co-operation refers to “promotion of capacity and institutional building to foster activities related with the Clean Development Mechanism under the Kyoto Protocol...” Also, one aim of New Zealand’s Framework for Integrating Environment Standards and Trade Agreements is to establish a set of principles to guide and inform New Zealand’s policy in multilateral

11. Co-operation activities, technical assistance and funding are also often provided under a separate instrument (e.g. a co-operation agreement), as in the case of the European Union.

trade and environment fora, and in bilateral negotiations. These principles include, among others, the promotion of greater coherence between multilateral environment and trade agreements, including regional trade agreements. The United-States – Chile agreement provides another example of an RTA with provisions related to co-operation in MEAs.¹²

Some questions for evaluation could include:

- Have the parties collaborated in the MEAs since reaching agreement and were the subjects of MEA collaboration related to the content of the agreement?
- Did this co-operation mark a new level of joint activity or were the parties already collaborating closely in MEAs before the entry into force of the agreement?

Support for capacity-building

The majority of RTAs with environmental provisions are North-South agreements, and recognition of the need for assistance is expressed in many of them. The JWPTE reviewed in 2007 the funding related to the implementation of co-operation provisions of nine agreements involving Canada, the European Union and the United States.¹³ Since then, the European Union has negotiated full or interim Economic Partnership Agreements (EPAs) with some ACP¹⁴ countries and regions that include chapters on environmental co-operation and explicit agreements on co-operation (Box 1), as well as agreements with other partners. Such agreements identify the areas of co-operation and commit the Parties to pursuing them. Funds for co-operation or capacity-building are then mobilised by donors on the basis of their financial instruments and availabilities.

Some of the largest RTAs with environmental provisions, or linked side-agreements, create joint institutions or programmes to promote, implement, monitor and assess environmental co-operation. Notable examples are the Commission on Environmental Cooperation (CEC) created under NAAEC, the joint commissions created by the Canada-Chile Agreement on Environmental Cooperation, and the United States-CAFTA-DR Environmental Cooperation Program. The funding of these institutions or programs facilitates the monitoring of implementation, as well as the development of the human-resource capacity to implement and monitor the agreement. Most RTAs with environmental provisions, or associated side-agreements, however, have much simpler institutional provisions that encompass the administration of the provisions on environmental co-operation.

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12. The Preamble of the United States-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 agreement between Canada and Chile also notes the parties' desire to support and build on international environmental agreements through collaboration (OECD, 2007).
13. See OECD (2007).
14. The African, Caribbean and Pacific Group of States (ACP).

Box 1. Examples of explicit agreements on co-operation

The Economic Partnership Agreement (EPA) between the EU and the Cariforum states: “Subject to the provisions of Article 7, the Parties agree to co-operate, including by facilitating support in the following areas:

- technical assistance to producers in meeting relevant product and other standards applicable in markets of the EC Party;
- promotion and facilitation of private and public voluntary and market-based schemes including relevant labeling and accreditation schemes;
- technical assistance and capacity building, in particular to the public sector, in the implementation and enforcement of multilateral environmental agreements, including with respect to trade-related aspects;
- facilitation of trade between the Parties in natural resources, including timber and wood products, from legal and sustainable sources;
- assistance to producers to develop and/or improve production of goods and services, which the Parties consider to be beneficial to the environment; and
- promotion and facilitation of public awareness and education programmes in respect of environmental goods and services in order to foster trade in such products between the Parties.”

Source: Extracted from Article 190 of the EU-CARIFORUM EPA Agreement (*Official Journal of the EU: L 289//65* of 30 October 2008)

Some questions for evaluation could include:

- What capacity building activities are currently being carried out?
- How is co-operation on implementation or capacity building funded? Does the agreement provide for funds to be allocated or is funding assigned through (an)other mechanism(s)?
- Does the agreement (or other mechanism) specify the terms and amounts of funding? What discretion is there on the application of funds? Is funding tied to specific programmes or activities, or available for more general use?
- Have specific funding commitments been met and at what levels? How are the funding commitments monitored? Are funded programs subject to public assessment or assessment by a joint institution of the agreement?

Public participation

Several RTAs provide for public access to implementation processes for environmental provisions, including by allowing for citizen submissions to joint committees on environmental matters or the publication of documents on disputes. Although providing for public access is common in the agreements, the degree of public access seems to vary greatly, in particular according to existing laws, regulations, practices, tradition and joint institutions between the parties (Box 2).

Box 2. Examples of public consultation mechanisms in RTAs

Some agreements and environmental side-agreements provide structures facilitating public participation and consultation mechanisms with civil society:

- The NAAEC environmental side agreement (Articles 14 and 15) provides for the public to make allegations that a party is failing to enforce its own environmental laws and for the creation and deliberation on a factual record by the CEC related to the claim. The claims and any factual records may then be published.¹
- The Canada-Chile Agreement on Environmental Cooperation (CCAEC) also provides for public access and consultation structures. Five submissions have been received since the agreement entered into force in 2004 but none has been considered sufficiently substantial to require the Council to develop a factual record.²
- The European Union-Korea Free Trade Agreement, provisionally applied by the European Union since 1 July 2011, pending completion of ratification procedures, provides for several mechanisms for public consultation and discussion, including through the establishment of Domestic Advisory Groups comprising independent representative organisations of civil society, and of a Civil Society Dialogue Mechanism involving organizations from both the European Union and Korea (Articles 13.12 and 13.13 of the Agreement)

Other agreements leave the processes in the hands of each party:

- The Arrangement on Environment between New Zealand and the Kingdom of Thailand (Section 3) provides that: “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.”
- The side-agreement on environment attached to the Trans-Pacific Strategic Economic Partnership (Trans-Pacific SEP) between Brunei, Chile, New Zealand and Singapore, is still less specific on the institutions of environmental co-operation: “Each government may consult with its public and/or non-government sectors, and invite relevant experts or organisations to provide information to meetings under the Agreement.”

In other RTAs, the public is invited to make submissions on the operations of the agreement (including the environment provisions) to a non-specialized joint commission with responsibility for the overall administration of the agreement.

1. CEC has received 73 submissions under Article 14, resulting in 16 factual records, which include determinations by the CEC Secretariat and responses by government parties. See www.cec.org/citizen/status/index.cfm.

2. can-chil.gc.ca/English/Resource/Reports/2006rpt_CCCEC.cfm

Some questions for evaluation could include:

- Are there specific provisions for public participation such as public submissions? Do the provisions comprise obligations on the parties?
- Are the parties obliged to issue public reports on the implementation of the environmental provisions of the agreement? Are these reports subject to public comment? Are the parties obliged to publish responses to submissions?
- Are the parties to the agreement required to seek or consider submissions from their own citizens or firms or from the citizens or firms of other parties concerning the agreement?
- What actions have the parties undertaken to implement the provisions on public participation?

Consultation and resolution of differences

Some mechanisms exist to address the need to settle disputes among the parties such as those concerning the provisions on environment embodied in the RTAs and side-agreements. Citizens or firms of each party may have access to the disputes procedures. The United States-Chile FTA provides an example of comprehensive provisions establishing these private rights (see Article 19.8).

Some countries use binding dispute-settlement processes, while others use a range of options from binding treaty status outcomes with prescriptive consultative mechanisms (e.g. New Zealand-China, New Zealand-Philippines, P4 partners) to non-binding arrangements (e.g. New Zealand-Thailand).

Some questions for evaluation could include:

- Does the agreement provide for specific dispute-settlement procedures relating to the environmental provisions? Do these include conciliation procedures as well as adjudicated procedures?
- If the agreement provides for joint institutions to resolve disputes such as panels or standing rosters of experts, have these been established? How many disputes have been notified to, or resolved by, the joint institutions of the agreement?
- Do private individuals or firms have access to the domestic institutions or regulatory agencies of the parties to seek remedies in accordance with their domestic laws or in accordance with obligations under the agreement? Have any requests been made to domestic institutions or regulatory agencies of the parties to seek any remedies?

Monitoring and assessment

Ex ante assessment of the environmental effects of RTAs often contributes to the preparation of an agreement. The European Union's Sustainability Impact Assessments provides an example, as well as *ex ante* assessments mandated in New Zealand, Canada and the United States.

Some agreements include provisions to review the environmental impacts identified through *ex ante* impact assessments during the implementation phase. The reviews of the North American Agreement on Environmental Cooperation (NAAEC) by the Commission for Environmental Cooperation (CEC, 1998 2004 and 2008) are an example of a comprehensive *ex post* assessment of an RTA side agreement.¹⁵ A number of FTAs also contain explicit provisions relating to the *ex post* monitoring of the overall environmental impacts of FTAs.¹⁶ Recent initiatives include the review of four free-trade agreements by the US Government Accountability Office (GAO, 2009).

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15. The text of the NAAEC is located at: www.cec.org/Page.asp?PageID=1226&SiteNodeID=567<http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=567>. Articles 10.1 (b) and 10.6 (d) speak to assessments, the former within four years and the latter on an on-going basis. The four-year review (conducted in 1998) is required under 10.1 (b) and is located at: www.cec.org/Storage/60/5224_NAAEC-4-year-review_en.pdf. A ten-year review conducted at the request of Council can be found at: http://www.cec.org/Storage/54/4690_TRAC-Report2004_en.pdf.
16. See for instance Article 13.10 of the European Union-Korea Agreement.

Some questions for evaluation could include:

- Have any *ex ante* impacts assessments of the RTAs been undertaken? Were processes to monitor findings during implementation built into the agreement?
- Does the agreement provide for specific provisions relating to the *ex post* monitoring of environmental impacts? Are there some areas excluded from review?
- Have any *ex post* assessments analysing the actual effects of the agreement been carried out? Was it an independent review?
- Have the assessments raised some specific issues and ways to improve them?

Commitments, environmental laws and standards

Regional trade agreements with environmental provisions sometimes include commitments or obligations that require the parties to recognise (and give effect to) particular principles or abjure from particular actions. Some examples include commitments not to weaken or fail to enforce environmental laws in order to secure a trade advantage; and commitments not to use environmental standards as disguised barriers to trade.

Some RTAs recognize that the parties to an agreement have the autonomy to determine their own levels of domestic environmental protection. The Australia-United States free trade agreement is an example. The EU's Economic Partnership Agreements (EPAs) with developing countries in Africa the Caribbean and the Pacific make almost identical provisions. Similar provisions not tied explicitly to trade obligations can be found in the RTA side-agreements negotiated by the United States and Canada: NAAEC, Canada-Chile, Canada-Costa Rica (OECD, 2007).

Box 3. Examples of reference to environmental laws and standards in RTAs

The Australia-United States free trade agreement states in Article 19.1 "Recognizing the right of each Party to establish its own levels of environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its laws provide for and encourage high levels of environmental protection..."

The EPA agreement with CARICOM provides in Article 6 "Recognising the right of the Parties and the Signatory CARIFORUM States to regulate in order to achieve their own level of domestic environmental and public health protection and their own sustainable development priorities, and to adopt or modify accordingly their environmental laws and policies, each Party and Signatory CARIFORUM State shall seek to ensure that its own environmental and public health laws and policies provide for and encourage high levels of environmental and public health protection and shall strive to continue to improve those laws and policies."

New types of provisions have been introduced in recent RTAs, such as those focusing on the implementation of MEAs or addressing specific issues such as trade in forest products (as is found in the United States-Peru FTA, for example).

Some questions to review implementation experience could include:

- What (if any) specific commitments are included in the agreement?
- Have the parties undertaken any specific actions in relation to these commitments?
- Have any issues arisen for any party or among the parties in relation to these commitments?
- How is the compliance of Parties with their own laws to be monitored? Who would be responsible for it?
- Is there a list of exceptions or ‘non-compliant’ laws, regulations or government agencies exempted from the relevant provision of the agreement?
- Is there a public submission procedure on compliance?
- Have any claims of non-compliance been made? How were they dealt with?

Commitment to raise environmental standards

Agreements to enforce own environmental standards often also include an agreement to raise standards.¹⁷ Some questions for evaluation could include:

- Does the agreement provide for Parties to report on improvements in environmental standards?
- Have there been any reports on improvements in environmental standards?¹⁸

Harmonization of standards

RTAs to achieve regional economic integration sometimes attempt to create harmonized environmental standards. Examples can be found in COMESA, MERCOSUR and among the parties to the NAAEC (OECD, 2007).¹⁹

At least one agreement includes language committing the parties to adopt stronger environmental laws in particular sectors. This is, for example, the case of the ASEAN member compliance with the legislative requirements embodied in the Regional Haze Action Plan.²⁰

17. Article 19.1 of the Australia-United States and Article 17.1 of the USA-CAFTA-DR agreements cited above continues: “[each Party shall ensure that its laws provide for and encourage high levels of environmental protection]... and shall strive to continue to improve their respective levels of environmental protection, including through such environmental laws and policies”.

18. For instance in the context of periodic reviews of the agreement.

19. For example, Article 6 of the Framework Agreement on the Environment of MERCOSUR commits the Parties, among other objectives, to “*Seek to harmonize environmental legislation, taking into account the differing environmental, social and economic realities of the MERCOSUR countries*”. See http://untreaty.un.org/unts/144078_158780/7/1/14094.pdf.

20. See OECD (2007).

Some questions for evaluation could include:

- Does the agreement provide for joint action to enhance environmental standards or regulations? Have there been any joint actions?
- Do the provisions for harmonization concern objective standards and outcomes? Are they related to procedures?

Promotion of voluntary and private action

In addition to the obligation to enforce environmental laws, some agreements include reference to voluntary instruments and mechanisms that can contribute to enhancing the environmental performance of Parties (Box 4).

Some questions for evaluation could include:

- Does the agreement encourage voluntary and private action to enhance environmental standards or regulations?
- Who is responsible for monitoring voluntary action? What type of actions have the Parties reported? What is their scope?

Box 2. Examples of promotion of voluntary and private action and reference to corporate social responsibility

For example, in the United States agreement with countries in the Central American region (CAFTA-DR), Article 17.4 provides for “[M]echanisms that facilitate voluntary action to protect or enhance the environment”, such as:

- Partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations;
- Voluntary guidelines for environmental performance; or,
- 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.

Almost identical language occurs in other agreements involving the United States, such as its FTA with Morocco.

The Agreement on Environment between Canada and Peru that is linked to their free trade agreement makes reference to “corporate social responsibility” to enhance environmental performance in Article 6 “Recognizing the substantial benefits brought by international trade and investment, the Parties shall encourage voluntary best practices of corporate social responsibility by enterprises within their territories or jurisdictions, to strengthen coherence between economic and environment objectives”.

Reference is made to the principles of “corporate stewardship” in The United States-Chile FTA. Article 19.10 states: “Each Party should encourage “enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both Parties”.

Promoting the development of environmental goods and services

The promotion of trade in environmental goods is another element to be considered in this framework. Article V of the USA-CAFTA-DR Environmental Cooperation Agreement, for example, includes among its work program and priority areas for co-operation facilitating technology development and transfer and training to promote the use, proper operation and maintenance of clean production technologies [subparagraph (g)], and developing and promoting environmentally beneficial goods and services [subparagraph (h)]. The agreement between Japan and Mexico for the Strengthening of the Economic Cooperation provides another illustration. Article 147 on co-operation in the field of environment makes reference to co-operation activities including “exchange of information on policies, laws, regulations, and technology related to the preservation of the environment, and the implementation of sustainable development”. Chapter 4 of the CARIFORUM agreement also stipulates the parties’ resolution to “conserve, protect and improve the environment” and “to promote trade in environmental technologies, renewable- and energy-efficient goods and services”.

Some questions for evaluation could include:

- What provisions (if any) on environmental goods and services (including technologies) are included in the agreement? What actions have the parties undertaken in relation to these provisions?
- If the agreement includes provisions to promote or liberalise trade in environmental goods and services, what changes (if any) have occurred in the volume and value of trade in particular environmental goods and services among the parties?

Annex I

Detailed checklist reviewing the differences in the scope and ambition of environmental provisions in RTAs.

1. The legal and policy basis of the mandate for negotiations and the specificity of the mandate with respect to environmental objectives:
 - Is the mandate legislative, or a policy objective of government? Is it a published mandate?
 - Is the mandate specific to this agreement or did it express laws or policies that apply in general to RTA negotiations by the Parties?
 - Do all Parties to the agreement have similar mandates?
2. The requirement (if any) for prior environmental assessments in the region and the relationship of the agreement to the findings in the assessments:
 - Did any of the parties undertake a prior environmental assessment to identify the environmental risks or benefits of changes in trade, production or investment patterns following the agreement?
 - Was the assessment open to public submission or comment? Did the assessment use or develop ‘baseline’ data?
 - Did specific provisions in the agreement address the findings of the assessment?
3. The nature of preliminary agreement between the parties (if any) on the scope of the environmental provisions and their legal effect:
 - Did negotiations on the scope or implementation of the agreement lead to agreement on the scope or implementation of environmental provisions?
 - Are there substantive obligations (in addition to preambular or aspirational provisions) on environment?
 - Do the provisions cover procedural guarantees (means of making, applying or reviewing regulation)?
 - Are the environmental provisions enforceable within the agreement *e.g.* by dispute settlement action?

4. The form of the obligations (whether by inclusion or by reference *e.g.* to existing MEA obligations) and the breadth of exceptional procedures (if any) that allow deviation from the provisions:
 - Are the obligations in the agreement specified in the text of the agreement or are they defined by reference to international agreements (MEAs)?
 - Do the environmental provisions exceed or extend standards or objectives embodied in the MEAs?
 - Are there broad exceptions to the obligations on environment?
5. The existence of provision for *ex post* assessment or review including measurement against *ex ante* objectives, evaluations by joint commissions, public enquiries, parliamentary oversight etc:
 - Is there provision for public or expert review of the assessment?
6. The provision, in association with the agreement, of funding for environmental activities, initiatives, monitoring within the region:
 - Are there provisions such as co-operation, monitoring, assessment or the creation of individual or joint institutions that would require funding? Is the requirement for individual funding or joint funding? Are there specific obligations on Parties concerning the timing and amount of funding?

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