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UPDATE ON ENVIRONMENT AND REGIONAL TRADE AGREEMENTS:
DEVELOPMENTS IN 2007

OECD Trade and Environment Working Paper No 2008-02

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Abstract

This document provides an update on developments in the field of regional trade agreements and environment in late 2006 and 2007. 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 includes an overview of provisions on environment in trade agreements signed since end 2006.

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Background

In June 2007, the OECD published “Environment and Regional Trade Agreements”, a study prepared under the aegis of the Joint Working Party on Trade and Environment (JWPTE). It analyses the ways in which governments deal with environmental issues in the context of regional trade agreements (RTAs), describes key provisions on environment in RTAs and examines countries’ experience related to their negotiation and implementation. The study covers developments until end 2006.

This document provides an update on developments in the field of RTAs and environment in late 2006 and 2007. 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. It also includes information on recent Trade Promotion Agreements (TPAs), which were not covered by the first study, and on ongoing negotiations, on which information is publicly available.

Overview of recent developments

Two OECD countries have recently concluded trade agreements which include environmental provisions: the United States and Japan. Table 1 provides an overview of these agreements¹.

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

Trade Agreements	Status (as of Nov. 2007)	Environmental considerations	Website (final text or information)
<i>Agreements signed by the United States</i>			
US-Peru Trade Promotion Agreement	Signed 12 April 2006, currently pending ratification by the US Congress	Preamble, Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 9 (Government Procurement), Chapter 18 (Environment), Chapter 21 (Dispute Settlement), Chapter 22 (Exceptions)	www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/Section_Index.html .
US-Korea Free Trade Agreement	Concluded 1 April 2007, currently pending ratification by the US Congress	Preamble, Chapter 8 (Sanitary and Phytosanitary Measures), Chapter 17 (Government Procurement), Chapter 20 (Environment), Chapter 22 (Institutional Provisions and Dispute Settlement), Chapter 23 (Exceptions)	www.ustr.gov/Trade_Agreements/Bilateral/Republic_of_Korea_FTA/Final_Text/Section_Index.html .
US-Panama Trade Promotion Agreement	Concluded 19 December 2006, currently pending ratification by the US Congress	Preamble, Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 9 (Government Procurement), Chapter 17 (Environment), Chapter 20 (Dispute Settlement), Chapter 21 (Exceptions)	www.ustr.gov/Trade_Agreements/Bilateral/Panama_FTA/Final_Text/Section_Index.html .

¹ The overview covers those trade agreements that have been recently concluded as of November 2007. The list does not claim to be exhaustive.

US-Colombia Trade Promotion Agreement	Concluded 23 February 2006, currently pending ratification by the US Congress	Preamble, Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 9 (Government Procurement), Chapter 18 (Environment), Chapter 21 (Dispute Settlement), Chapter 22 (Exceptions))	www.ustr.gov/Trade_Agreements/Bilateral/Colombia_FTA/Final_Text/Section_Index.html .
US-Oman Free Trade Agreement	Pending implementation	Preamble, Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 17 (Environment), Chapter 20 (Dispute Settlement), Chapter 21 (Exceptions))	www.ustr.gov/Trade_Agreements/Bilateral/Oman_FTA/Final_Text/Section_Index.html .
Agreements signed by Japan			
Japan-Chile Strategic Economic Partnership Agreement	Signed 27 March 2007; entered into force 3 September 2007	Preamble, Chapter 6 (Sanitary and Phytosanitary Measures), Article 87 (Environmental Measures), Article 100 (Expert Report))	www.mofa.go.jp/region/latin/chile/joint0703/agreement.pdf
Japan-Thailand Economic Partnership Agreement	Signed 3 April 2007; entered into force 1 November 2007	Article 68 (General Exceptions), Article 111 (Environmental Measures), Article 153 (Fields of Cooperation))	www.mofa.go.jp/region/asia-paci/thailand/epa0704/agreement.pdf
Japan-Brunei Darussalam Economic Partnership Agreement	Signed in June 2007	Preamble, Article 71 (Environmental Measures), Article 93 (Environmental Aspects), Article 102 (Fields of Cooperation))	www.mofa.go.jp/region/asia-paci/brunei/epa0706/agreement.pdf
Japan-Indonesia Economic Partnership Agreement	Signed in August 2007	Article 74 (Environmental Measures), Article 102 (Environmental Aspects), Article 134 (Basic Principles))	www.mofa.go.jp/region/asia-paci/indonesia/epa0708/agreement.pdf
Japan-Philippines Economic Partnership Agreement	Signed in September 2006; approved by Japanese Diet in December 2006	Article 27 (Cooperation in relation to Export), Article 66 (General Exceptions), Article 102 (Environmental Measures), Article 144 (Basic Principles))	www.mofa.go.jp/region/asia-paci/philippine/epa0609/main.pdf

Among non-OECD members, Chile and China entered into a Free Trade Agreement in November 2005 (www.direcon.cl/documentos/China2/tlc_chile_china_ing_junio_2006.pdf). Article 108 of that Agreement refers to the intention of the Parties to enter into an agreement on environmental co-operation. In September 2007, the National Commission on the Environment of Chile and the State Environmental Protection Administration of China signed a Memorandum of Understanding (MoU) on Environmental Cooperation. Box 1 provides a summary.

Box 1. Chile-China MoU on Environmental Co-operation

In the Preamble, the Parties refer to “the need to find cost-effective and long-term solutions in addressing environmental issues through international cooperation and the importance of coordinating joint activities of the two Parties” and to their “common concern and responsibilities to enhance cooperation in the field of environmental protection – towards the promotion of sustainable development with its three components, environmental protection, economic growth and social development”.

The objective of the MoU is to promote cooperation between the Parties in the field of environmental protection, on the basis of equality and mutual benefit, subject to the legislation and to the availability of human and financial resources of the Parties.

The following areas have been identified by the Parties as mutually high priority areas of cooperation:

- Air pollution control and monitoring;
- Water quality management policy and water treatment technologies;
- Marine and coastal ecological conservation and pollution control;
- Improvement of environmental awareness, including environmental education and public participation;
- Other areas as mutually agreed upon.

Cooperation between the Parties may be conducted in the following forms:

- Exchange of relevant environmental information and documentation;
- Exchange of visits of experts, scholars and delegations;
- Jointly organized seminars, workshops and meetings attended by scientists, experts, regulators and others concerned;
- Other forms of cooperation as mutually agreed upon.

To implement the MoU the Parties agree to encourage environmental protection organizations, enterprises and municipalities as well as research institutions on both sides to establish and develop direct contacts with each other in the field of environmental protection and sustainable development.

Any dispute between the Parties arising out of the interpretation or implementation of this MOU will be settled amicably through consultations between the Parties.

The Parties further agree that nothing in the MoU shall affect the obligations of the Parties deriving from any treaties, conventions, regional or global agreements related to environmental protection.

Examples of environmental provisions in recent trade agreements

Agreements signed by the United States

All the trade agreements recently concluded by the US (with Peru, Korea, Panama, Colombia and Oman) include environmental provisions in the body of the agreement, following a similar pattern. They include a reference to the environment in the Preamble, a detailed chapter on the environment, environmental considerations in provisions on government procurement, binding dispute settlement mechanisms with respect to environmental obligations, environmental exceptions to trade disciplines, and a chapter on sanitary and phytosanitary measures (SPS). All the agreements are accompanied by an Environmental Co-operation Agreement (ECA).

Examples of provisions in the body of the agreement include:

- *Reference to the environment and environmental protection in the Preamble*

Under the US-Peru TPA, Parties are resolved to “IMPLEMENT this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their cooperation on environmental matters”.

- *A detailed chapter on the environment*

Chapter 18 of the US-Colombia TPA provides: “Recognizing that each Party has sovereign rights and responsibilities with respect to its natural resources, the objectives of this Chapter are to contribute to the Parties’ efforts to ensure that trade and environmental policies are mutually supportive, to promote the optimal use of resources in accordance with the objective of sustainable development, and to strive to strengthen the links between the Parties’ trade and environmental policies and practices, which may take place through environmental cooperation and collaboration.”

The chapter contains detailed provisions on the Level of Protection (Art. 18.1), Environmental Agreements (Art. 18.2), Enforcement of Environmental Laws (Art. 18.3), Procedural Matters (Art. 18.4), Mechanisms to Enhance Environmental Performance (Art. 18.5), Environmental Affairs Council (Art. 18.6), Opportunities for Public Participation (Art. 18.7), Submissions on Enforcement Matters (Art. 18.8), Factual Records and Related Cooperation (Art. 18.9), Environmental Cooperation (Art. 18.10), Biological Diversity (Art. 18.11), Environmental Consultations and Panel Procedure (Art. 18.12), Relationship to Environmental Agreements (Art. 18.13), Definitions (Art. 18.14), Covered [Multilateral Environmental] Agreements (Annex 18.2).

- *Environmental considerations in provisions on government procurement*

The US-Panama TPA provides in its Chapter 9 relating to the procurement of goods and services that “nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures: [...] (b) necessary to protect human, animal, or plant life or health; [...]”. It further states in that: “The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.” (Article 9.14 Exceptions).

- *Binding dispute settlement mechanisms with respect to environmental obligations*

All RTAs signed by the US contain various mechanisms to resolve disputes arising in relation with commitments under the Environment Chapter, although recourse to formal dispute settlement mechanisms under the Dispute Settlement chapter is generally limited to disputes linked to the (binding) obligation to enforce environmental laws (e.g., Article of US ...FTA). In the more recent agreements (e.g., the FTA with Korea), the whole Environment chapter is subject to formal dispute settlement. According to Article 20.4 of the US-Korea FTA: “If the Parties have failed to resolve the matter within 60 days of the delivery of a request for consultations under paragraph 1, the complaining Party may request consultations under Article 22.7 (Consultations) or refer the matter to the Joint Committee

pursuant to Article 22.8 (Referral to the Joint Committee) and, as provided in Chapter Twenty-Two (Institutional Provisions and Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.“ According to Article 20.5: “Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with paragraphs 1 through 3.”

- *Environmental exceptions to trade disciplines*

The US-Korea FTA contains a General Exceptions clause (Art. 22) that provides: “1. For purposes of Chapters Two through Seven (National Treatment and Market Access for Goods, Textiles and Apparel, Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis. 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. 2. For purposes of Chapters Eleven, Fourteen, and Fifteen¹ (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand 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.”

- *Sanitary and phytosanitary measures (SPS)*

Chapter 8 of the US-Korea Free Trade Agreement (FTA) reads: “The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties’ territories, enhance the Parties’ implementation of the SPS Agreement, and provide a Committee for helping to address bilateral sanitary and phytosanitary matters.” This chapter further defines the Scope, and the Rights and Obligations of Parties, provides for a Committee on Sanitary and Phytosanitary Measures, and contains an article on Dispute Settlement.

Some of these agreements also include new features. The US-Peru TPA for example includes an Annex on Forestry Sector Governance (see Box 2).

Box 2. US-Peru TPA Annex on Forest Sector Governance

The US-Peru TPA includes a groundbreaking Annex on Forest Sector Governance. Recognizing the environmental and economic consequences of trade associated with illegal logging, and illegal trade in wildlife, this Annex provides for concrete steps that the Parties will take to enhance forest sector governance and promote legal trade in timber products.

Peru has committed to increase the number and effectiveness of personnel devoted to enforcing laws, regulations, and other measures related to the harvest of, and trade in, timber products, and specifically the number of enforcement personnel in national parks and concessions, as well as in indigenous protected areas.

Peru has committed also to impose criminal and civil penalties at levels sufficient to deter actions that impede sustainable management of forest resources. This includes substantially increasing criminal penalties and

suspending the right to export products as to which a violation of the law, regulation or other measure has been established.

Peru will also improve the administration and management of forest concessions by reviewing annual operating plans, increasing transparency associated with such plans, and conducting site verifications prior to issuing plans. The Parties shall cooperate on enforcement matters, including in respect of audits and site-verifications in Peru related to production and export of timber products that are shipped to the United States.

The United States will work with Peru to address capacity building needs through the Environmental Cooperation Agreement (ECA), which provides a framework for undertaking environmental capacity building in Peru. The Parties will work together to implement the provisions in the Annex through:

- Strengthening the capacity to develop, implement and enforce environmental and forest sector laws;
- Strengthening capacity to improve forest sector governance and combat illegal logging;
- Protection of wildlife and endangered species;
- Promoting incentives to encourage environmental protection;
- Promotion of clean production technologies; and,
- Building capacity to promote transparency and public participation in forest sector governance issues.

Source: USTR, www.ustr.gov/assets/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/asset_upload_file20_13228.Pdf.

Agreements signed by Japan

Since late 2006, Japan has signed Economic Partnership Agreements with Chile, Thailand, Brunei Darussalam, Indonesia, and the Philippines. Some of these agreements (Japan-Chile, Japan-Thailand and Japan-Brunei) refer to the environment in the preamble. All the agreements include environmental provisions in the body of the text. Examples include:

- *Reference to environment in the preamble*

In the Japan-Chile agreement, Parties are “Convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing pillars of sustainable development and that the strategic economic partnership can play an important role in promoting sustainable development.”

- *Environmental aspects*

Article 102 of the Japan-Indonesia agreement provides that: “1. Each Party, in pursuit of sustainable development and taking into account its obligations under those international agreements concerning environment to which it is a party, confirms the importance of avoiding or minimizing, in an economically efficient manner, harmful environmental impacts of all activities related to energy and mineral resources in its Area. 2. Each Party shall: (a) take account of environmental considerations, in accordance with its laws and regulations, throughout the process of formulation and implementation of its policy on energy and mineral resources; (b) encourage favourable conditions for the transfer and dissemination of technologies that contribute to the protection of environment, consistent with the adequate and effective protection of intellectual property rights; and (c) promote public awareness of environmental impacts of activities related to energy and mineral resources and of the scope for and the costs associated with the prevention or abatement of such impacts.”

- *Environmental exception clauses*

Article 68 of the Japan-Thailand agreement provides that “Nothing in this Chapter shall be construed to limit the authority of a Party to take measures it considers appropriate, for protecting health, safety or the environment, or for preventing deceptive practices.”

- *Commitments to maintain environmental standards*

All of the recently signed agreements contain an article on Environmental Measures, such as Article 71 of the Japan-Brunei Darussalam agreement: “Each Party recognises 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 of investments in its Area.”

- *Environmental cooperation*

According to Article 153 of the Japan-Thailand agreement, Parties have agreed to “promote cooperation between the Governments of the Parties and, where necessary and appropriate, encourage and facilitate cooperation between parties” such as in the fields of “agriculture, forestry and fisheries” and “science, technology, energy and environment”.

- *Sanitary and phytosanitary measures*

The Japan-Chile agreement is the only agreement among the above mentioned that contains a chapter on Sanitary and Phytosanitary Measures (Chapter 6), with Articles concerning Scope, Reaffirmation of Rights and Obligations, Enquiry Points, Working Group on SPS Measures, and Non-Application of Chapter 16 (Dispute Settlement Procedures).

Agreements under negotiation with possible environmental content

A range of countries are currently negotiating trade agreements, and a few of them provide information on their websites about progress in the negotiations. This section summarises information related to environmental content in agreements under negotiation by New Zealand.

New Zealand’s general approach to environment in trade agreements is guided by a Cabinet-mandated directive to pursue trade and environment policies in the context of 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 (www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/WTO/0-environment-framework.php).

A background paper on the negotiations of the New Zealand-Gulf Cooperation Council (GCC) FTA states that the “aim of the FTA, at this stage, would be to cover substantially all trade, including goods, services and investment, and other issues including trade and labour, trade and environment, government procurement and intellectual property” (www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Gulf-Cooperation-Council/index.php).

With regard to the New Zealand-China FTA currently under negotiation, the Ministry of Foreign Affairs and Trade confirms that “New Zealand also seeks outcomes on labour and environment, consistent with the Government’s 2001 framework” (www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/China/index.php).