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Environment and Regional Trade Agreements: Emerging Trends and Policy Drivers

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Abstract

Environment and Regional Trade Agreements: Emerging Trends and Policy Drivers

by Clive George

This report examines trends in the use of environmental provisions in Regional Trade Agreements and identifies factors which may explain the presence or absence of these provisions. The report builds on work of the OECD Joint Working Party on Trade and Environment (JWPTE) and includes results of an informal survey of delegates.

Analysis of the environmental provisions in RTAs reveals an encouraging upward trend. While basic provisions remain the most common types found in RTAs, the incidence of more substantive provisions has increased significantly in recent years. Among these, environmental co-operation has been the most common type.

Several factors may have contributed to this evolution. These include countries extending their political mandates for RTAs, for example to include provisions for compliance with multilateral environmental agreements (MEAs), as well as a general accumulation of experience with the use of environmental provisions.

JEL classification: F13, F18, N50, Q56

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Executive Summary

There has been a steady increase in the number of regional trade agreements (RTAs) that include environmental provisions. These provisions have allowed groups of countries to increase environmental co-operation and to negotiate environmental commitments that go beyond what has been possible multilaterally. In 2007, the OECD Joint Working Party on Trade and Environment (JWPTE) published an in-depth study on experience in the negotiation and implementation of environmental provisions in RTAs. Subsequently the JWPTE has published annual updates on recent developments.

This report draws together the results of that work and other information, in order to examine the overall direction and evolution in the treatment of environmental provisions in RTAs, and identify factors which may explain their presence or absence.

Analysis of the environmental provisions in RTAs since the 2007 JWPTE study reveals an encouraging upward trend. Two basic provisions, one associated with GATT Article XX or GATS Article XIV, and the other in the form of a reference to the environment or sustainable development in the Preamble, remain the most common types, included in about 80% and 50% respectively of the RTAs that have been reviewed. However, the incidence of all the more substantive provisions covered by the analysis has increased significantly in recent years, from around 30% of those entering into force up to 2010, rising to over 50% in 2011 and close to 70% in 2012. Among these, environmental co-operation has been the most common type throughout the period analysed.

Several factors may have contributed to this evolution. First, the United States and the European Union have both extended their political mandates for the RTAs in which they are involved, to include provisions for compliance with multilateral environmental agreements (MEAs), leading other countries to follow in their path. Second, other amendments to countries' political mandates have strengthened actions to achieve those objectives rather than introduce new requirements or new objectives. This may have contributed to the observed trend. Lastly, accumulating experience appears to have played a role.

Environment and Regional Trade Agreements: Emerging Trends and Policy Drivers

Introduction

The number of Regional Trade Agreements (RTAs) has significantly increased over the past decade.[1] Although it is generally agreed that trade rules should, ideally, be negotiated multilaterally through the World Trade Organisation (WTO), it is nonetheless widely recognised that RTAs can provide useful models and experiences for dealing with environmental issues. In consequence there has been a steady increase in the number of RTAs that include environmental provisions, through which groups of countries have been able to increase co-operation and to negotiate environmental commitments that go beyond what has been possible multilaterally.

In 2007, the OECD Joint Working Party on Trade and Environment (JWPTE) published an in-depth study on experience in the negotiation and implementation of environmental provisions in RTAs (OECD, 2007a). The study presented an overview of the types of environmental provisions, analysed the ways in which they have been incorporated, examined countries' main motivations for including such provisions, reviewed the reasons why some other countries have resisted them, and discussed the potential benefits.

Subsequently the JWPTE has published annual updates on recent developments (OECD, 2008a, 2009, 2010a, 2011, 2012, and 2013), and has organised a series of regional workshops where experts from both OECD and non-OECD countries have discussed their experiences of negotiating and implementing environmental provisions in RTAs (OECD, 2007b, 2008b, and 2010b). This report draws together the results of that work and other information in order to revisit the findings of the 2007 study. It examines the overall direction and evolution in the treatment of environmental provisions in RTAs, and identifies factors which may explain their presence or absence.

While a degree of commonality is identified in the analysis of countries' motivations, it should be noted that there is no 'one-size-fits-all' for including environmental provisions in RTAs. Cross-country differences arise in relation to factors such as the durability of provisions, alternative approaches to dispute settlement, the risks and benefits of setting precedents, and the need for coherence with other areas of government policy. The prime aim of the report is to identify overall trends and the reasons for them, in the context of different approaches adopted by individual countries.

[1] See the WTO database, http://www.wto.org/english/tratop_e/region_e/region_e.htm

Background

The 1987 report of the World Commission on Environment and Development, *Our Common Future*, established widespread recognition that many environmental issues are transnational or global in nature, and can only be tackled through international action (World Commission on Environment and Development, 1987). This recognition was reinforced through the Rio Earth Summit of 1992 and the follow-up conferences at Johannesburg in 2002 and at Rio de Janeiro in 2012 (United Nations, 1992, 2002). The Rio Declaration agreed at the 1992 conference states in its Principle 4 that 'in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it' (United Nations, 1992). From this it may be inferred that environmental considerations should form an integral part of any international action to promote economic development, including trade agreements.

The 1992 Rio conference also recognised that while environmental considerations may, in certain circumstances, be used to justify restrictions on trade, trade liberalisation can itself make a positive contribution to sustainable development. It was therefore agreed in the Rio Declaration's Principle 12 that 'trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade' (United Nations, 1992).

These two principles, which have been reaffirmed at subsequent conferences, were further elaborated in Agenda 21 (the plan of action agreed at the 1992 conference). Chapter 2, paragraph 2.3 of Agenda 21 declares that the international economy should provide a supportive international climate for achieving environment and development goals by: (a) Promoting sustainable development through trade liberalisation; (b) Making trade and environment mutually supportive.

OECD (2007a) identified four primary reasons (or policy drivers) for governments to deal with environmental issues in RTAs, which are closely related to these two principles:

- To contribute to the overarching goal of sustainable development;
- To ensure a level playing field among Parties to the agreement;
- To enhance co-operation in environmental matters of shared interest;
- Pursuing an international environmental agenda.

The second driver relates to the Rio Principle 12, in that weak environmental rules or ineffective enforcement in one country can create competitive advantages over its trade partners. The other three relate to Principle 4. All four involve economic as well as environmental considerations, through the economic dimension of sustainable development, the inherently economic significance of a level playing field, the economic aspects of environmental co-operation, and the economic costs associated with global environmental degradation and its mitigation. The concept of 'levelling the playing field' is addressed in several ways: through cooperation on environmental matters of shared interest (often to build capacity to deal with environmental issues); through non-discrimination provisions (related to Rio Principle 12); through non-derogation provisions obliging parties to a trade agreement to effectively enforce their environmental laws; and through (usually) hortatory provisions encouraging high levels of environmental protection.

After the 1992 Rio conference much of the effort on trade and environment focused on action at the multilateral level, through the completion of the Uruguay Round, the formation of the WTO and the launch of the Doha Round in 2001. However, only limited progress was made at the multilateral level, and much of the effort on trade liberalisation shifted to the bilateral or regional level. In consequence, the incorporation of environmental provisions in RTAs has assumed increasing importance (through the first of the policy drivers) in the global effort to achieve sustainable development.

Trends in the inclusion of environmental provisions in RTAs

Since 2008 the JWPTE has published annual updates reviewing the environmental provisions in RTAs notified to the WTO in the previous year (OECD, 2008a, 2009, 2010a, 2011, 2012, 2013). This information together with information reported to the JWPTE is used as the basis for the following analysis.[2] The RTAs that have been examined in these updates are listed in Table A1 of the Annex, giving their date of entry into force and an indication of the types of environmental provision included. Where appropriate, the RTAs examined in the 2008 and 2009 updates have been re-visited to provide the same information as is covered in the updates for 2010, 2011 and 2012.

The types of environmental provisions considered are:

- A reference in Preamble
- General and specific exceptions based on GATT Article XX or GATS Article XIV for protection of human, animal and plant life
- A commitment to uphold environmental law, and not weaken it to attract trade or investment
- More substantive environmental provisions,[3] such as:
  - environmental co-operation
  - public participation
  - dispute settlement
  - coverage of specific environmental issues
  - specific provisions on Multilateral Environmental Agreements (MEAs)
  - implementation mechanism
- Associated ex ante impact assessment.

The information given in Table A1 of the Annex is summarised in Table 1 below, as yearly totals for the number of RTAs that include each type of provision. Table 2 shows the same information as a percentage of the RTAs entering into force in the period.

2 Those RTAs that are not covered in the cited 2008-2012 Update papers are excluded from the analysis.

3 The analysis presented here covers only the incidence of these provisions, and not their specific content.

Table 1. Number of RTAs including environmental provisions

Year of entry into force	Number of RTAs reviewed	Noted in preamble	GATT or GATS exceptions	Uphold environmental law	Substantive environmental provisions	Co-operation	Public participation	Dispute settlement	Specific environmental issues	MEAs	Implementation mechanism	*Ex ante* impact assessment
to 2007	9	2	9	1	2	2	0	1	1	0	1	0
2008	14	6	9	4	5	8	2	2	6	0	3	2
2009	18	12	12	6	5	6	4	4	4	3	6	6
2010	15	4	10	4	6	8	0	3	6	0	2	1
2011	11	9	10	4	6	7	4	4	5	3	5	3
2012	10	7	10	7	7	7	4	5	6	6	5	4
total	77	40	60	26	31	38	14	19	28	12	22	16

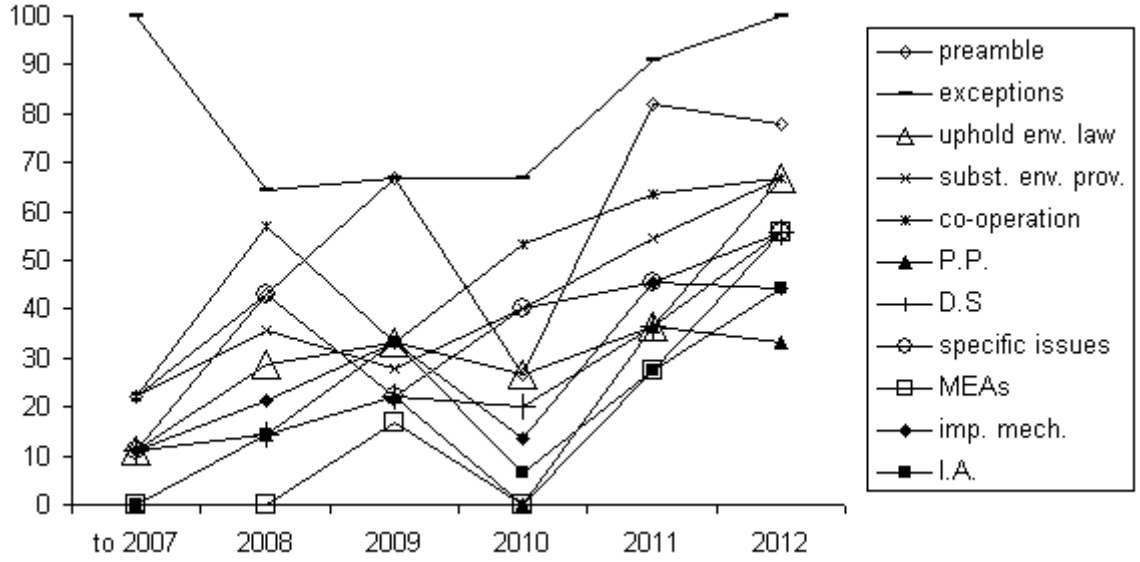
Table 2. Percentage of RTAs including environmental provisions

Year of entry into force	Number of RTAs reviewed	Noted in preamble	GATT or GATS exceptions	Uphold environmental law	Substantive environmental provisions	Co-operation	Public participation	Dispute settlement	Specific environmental issues	MEAs	Implementation mechanism	*Ex ante* impact assessment
to 2007	9	22	100	11	22	22	0	11	11	0	11	0
2008	14	43	64	29	36	57	14	14	43	0	21	14
2009	18	67	67	33	28	33	22	22	22	17	33	33
2010	15	27	67	27	40	53	0	20	40	0	13	7
2011	11	82	91	36	55	64	36	36	45	27	45	27
2012	9	78	100	67	67	67	33	56	56	56	44	44
total	77	52	78	34	40	49	18	25	36	16	29	21

As can be seen in Table 1 the numbers of RTAs for each type of provision are relatively small. They are therefore subject to significant random variations, as well being dependent on the types of countries involved. It should also be noted that the numbers include only those RTAs that have been assessed in the JWPTE annual updates, which are not fully comprehensive of all trade agreements in force. Nonetheless they suggest an encouraging upward trend, as shown graphically in Figure 1.

The majority of RTAs covered by the updates which entered into force before 2007 included basic environmental provisions implementing the exceptions of GATT Article XX or GATS Article XIV, for the protection of human, animal and plant life (OECD, 2007a). This has remained the most common type of environmental provision throughout the subsequent years, appearing in about 80% of the RTAs that have been reviewed. The second most common type has been another basic provision, in the form of a reference to the environment or sustainable development in the Preamble (appearing in about 50% of the RTAs.

Figure 1. Percentage of RTAs including environmental provisions



Source: Author. Note: P.P = Public Participation. D.S. = Dispute Settlement.
I.A = Impact Assessment (*ex ante*).

The incidence of more substantive environmental provisions, when grouped together, remained fairly constant up to 2010 at around 30% of RTAs entering into force. It then rose to over 50% in 2011 and close to 70% in 2012. Among these more substantive provisions, environmental co-operation has been the most common type throughout the period, rising from a little over 20% in the early years to nearly 70% in 2012. All of the other substantive issues have shown a general upward trend, from around 10% in the early years to around 40% in 2012.

The incidence of *ex ante* impact assessments associated with RTAs has averaged around 20% overall, varying according to which countries have been involved in the RTAs. Canada, the European Union and the United States have been undertaking impact assessments for all their RTAs since before 2007, while no other countries have yet taken this step.

Trends in environmental provisions by country

In Table A2 of the Annex the RTAs that have been examined in the JWPTE updates are listed in country order. It should be noted that environmental provisions in RTAs differ according to each country's approach, which is affected by priorities and political preferences.

Among the OECD countries the US exhibits a particularly comprehensive range of provisions, with all its RTAs including all of the provisions covered by the analysis. It is highly likely that the strong political mandate set down by Congress (see section on political commitments below) has played an important part in this. In effect, the inclusion of these provisions is non-negotiable. The environmental provisions in the RTAs of other OECD countries show a similarly close correlation with the political commitments discussed below.

Most of Japan's RTAs have included provisions on environmental co-operation. The agreement with Peru, which entered into force in 2012, marks a significant step forward with provisions that are more substantive than those included previously.

Canada, New Zealand and the EU have all included a range of substantive provisions in most of their RTAs, in line with their political mandates. The main exceptions are the EU's agreements with Cameroon and Côte d'Ivoire, both of which were interim agreements for trade in goods only, prior to completion of negotiations. The EU's agreement with Korea marks a significant step forward, with the inclusion of a comprehensive chapter on trade and sustainable development, which has been applied in all subsequent negotiations. This follows full implementation of the 2006 revision of Europe's Sustainable Development Strategy. New Zealand's agreement with Hong Kong also appears to mark a step forward, though not so clearly associated with any change in the mandate. Similarly, the Canadian RTAs indicate a gradual progression towards a wider range of substantive provisions, including more recently the addition of an independent review panel, which can be called upon when required to assess the implementation of the core effective enforcement and non-derogation provisions.

The European Free Trade Association (EFTA) early RTAs included little more than the basic environmental provisions, but here too a significant step forward occurred in the agreement with Hong Kong, which entered into force in 2012. This, too, appears to be directly associated with a change in the political mandate.

Chile has continued to have success in negotiating environmental provisions in its RTAs. Some examples are: with Colombia, where both countries have an environment chapter; with Malaysia, where there is an article of environment co-operation in the homonymous chapter, and the same occurs with Turkey; and with Panama, where there is an environmental co-operation agreement signed alongside the FTA.

Korea and China both indicate a significant step forward with environmental provisions in their recent RTAs. With Chinese Taipei the experience is more mixed, with a range of substantive provisions in its 2008 agreement with Nicaragua, but very little in its RTA with El Salvador and Honduras (also 2008).

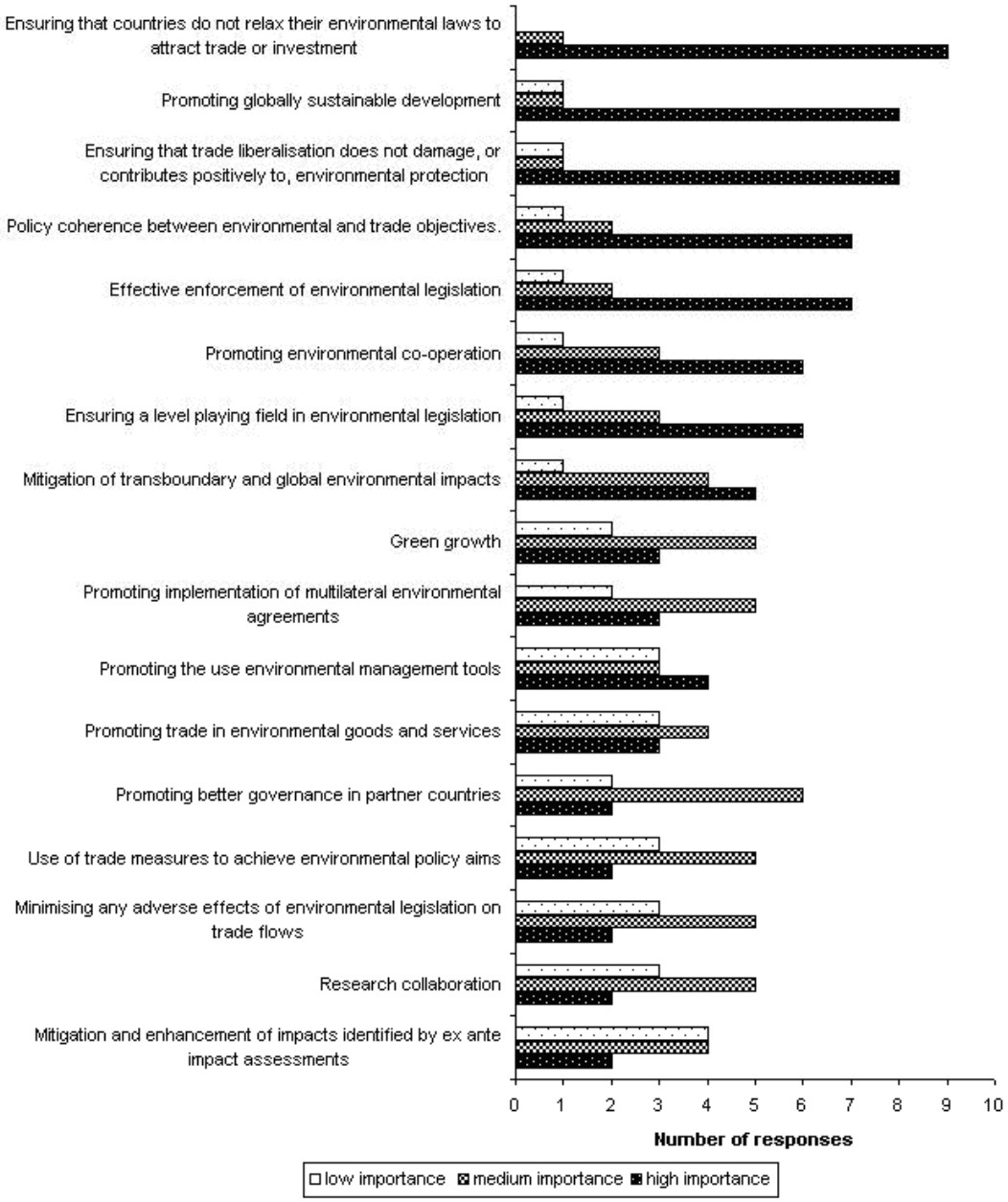
At the other end of the scale, the RTAs negotiated by Peru, Russia and Turkey contain only the GATT and GATS exceptions. India had no environmental provisions in its RTAs up to 2010, but exhibits a small step forward with the inclusion of the exceptions in its most recent agreement (with Malaysia). The agreements between Pakistan and Malaysia (2008) and between Panama and Honduras (2009) are less recent, with no environmental provisions.

Factors influencing the negotiation of environmental provisions

As part of this study ten of the delegations to the OECD JWPTE completed a questionnaire regarding the main factors that influence the negotiation of environmental provisions in RTAs. The questionnaire identified a range of possible objectives that have been discussed in JWPTE documents, each of which relates to one of the policy drivers discussed above. Countries were asked to rank their own jurisdiction's main objectives for the inclusion of environmental provisions in RTAs from the suggested list. Ten responses representing 31 OECD member countries were received. While the results (Figure 2) cannot be considered as representing the views of all the OECD countries, they give an indication of the types of factor that are considered to be important. Three of the respondents each identified an additional objective: to promote public awareness of

environmental laws, regulations, policies and practices; to signal prioritisation and importance of environmental matters, and; to ensure environmental standards are not used as trade barriers.

Figure 2. Main objectives for environmental provisions in RTAs



Source: Author, based on responses from the questionnaire.

The relative importance of each of the objectives, as perceived by the respondents as a whole, was then translated into a score. The results are shown in Table 3.

Table 3. Objectives of environmental provisions ranked by perceived importance

Objective	Policy driver	Score*
Ensuring that countries do not relax their environmental laws to attract trade or investment	2	19
Promoting globally sustainable development	1	17
Ensuring that trade liberalisation does not damage, or contributes positively to, environmental protection	4	17
Policy coherence between environmental and trade objectives.	1	16
Effective enforcement of environmental legislation	4	16
Promoting environmental co-operation	3	15
Ensuring a level playing field in environmental legislation	2	15
Mitigation of transboundary and global environmental impacts	4	14
Green growth	1	11
Promoting implementation of multilateral environmental agreements	4	11
Promoting the use of environmental management tools	4	11
Promoting trade in environmental goods and services	4	10
Promoting better governance in partner countries	4	10
Use of trade measures to achieve environmental policy aims	4	9
Minimising any adverse effects of environmental legislation on trade flows	1	9
Research collaboration	3	9
Mitigation and enhancement of impacts identified by *ex ante* impact assessments	4	8

Score = (no. of high responses x 2) + (no. of medium responses)

Source: Author, based on response from the questionnaire.

When asked about precedents that may have triggered the inclusion of environmental provisions in RTAs, most considered that both the North American Free Trade Agreement (NAFTA) and WTO activity on trade and environment had set strong precedents. Two respondents attached equal importance to both, while four considered that NAFTA had set the stronger precedent, and three felt that WTO activity had been more important, along with precedents set in RTAs other than NAFTA. Three respondents identified the Rio Declaration and subsequent UN agreements as important factors.

Delegations were asked how influential several other factors had been in the negotiation of environmental provisions (Table 4). All but one of the respondents considered that civil society pressure had been fairly significant or highly significant. A majority also attached fairly high or high importance to the relative ease with which environmental issues could be addressed through RTAs compared with WTO negotiations, including faster progress, a higher level of public interest and greater opportunities for innovation. Private sector pressure was another factor considered to be fairly important by a majority of respondents. Half the respondents attached fairly high or high importance to the relative simplicity of political economy issues in RTAs compared with WTO negotiations, while half felt that this was not an important factor.

Table 4. Other influential factors

Importance:	Number of respondents high	medium	low	Score
Civil society pressure (environmental NGOs etc.)	2	7	1	11
Environmental issues can be pursued more easily in RTAs than in the WTO	3	3	4	9
Greater opportunities for innovation in RTAs	2	5	3	9
Faster progress with RTAs than in the WTO	2	4	4	8
Private sector pressure	1	6	3	8
The level of interest expressed by the public and by environmental NGOs is higher for RTAs	1	5	4	7
Political economy issues simpler than in the WTO	2	3	5	7

Score = (no. of high responses x 2) + (no. of medium responses)

Source: Author, based on response from the questionnaire.

All but one of the respondents attached a high level of importance to having a strong political mandate for environmental provisions in RTAs. However, opinions differed on the relative importance of different types of mandate (Table 5). Overall the most important factor was considered to be endorsement or support from the head of state, closely followed by parliamentary endorsement or its equivalent. All but two of the respondents considered that having a strong political mandate in partner countries was an important or highly important factor in the negotiation of environmental provisions.

Table 5. Importance of political mandate

Importance	Number of respondents high	medium	low	Score
Endorsement/support from head of state	6	1	3	13
Parliamentary endorsement or equivalent	5	2	3	12
Political mandates in partner countries	4	4	2	12
Legally binding treaty status	4	1	5	9
Legislation	2	3	5	7
Support from regional organisations	1	5	4	7

Score = (No. of high responses x 2) + (no. of medium responses).
Source: as for Table 4.

Finally, delegations were asked what they considered to be the most significant emerging trends in relation to environmental provisions in RTAs. The following trends were identified:

- increasing recognition of interaction between trade and environmental aspects, and the mutual supportiveness of the two areas;
- new thinking about more effective ways to achieve trade and environment policy objectives;
- increasing number of countries including comprehensive environmental provisions in FTAs;
- green growth is likely to be addressed in future RTAs or updates of existing ones;

- strong focus on sectoral aspects such as biodiversity, fisheries, timber, wildlife, renewable energies, climate change, environmental labelling;
- sustainable management of natural resources including in the forestry and fisheries industries;
- disciplines on environmentally harmful behaviour (e.g. illegal, unregulated and unreported fishing);
- reform of environmentally harmful subsidies (e.g. fisheries, fossil fuels);
- issues related to non-product related process and production methods, life cycle assessment, and border carbon measures;
- environmentally friendly trade and industrial activities for sustainable development;
- public participation, including issues such us transparency, environmental consciousness and education;
- more countries expected to join the discussion on whether to include environmental goods and services in RTAs, and to determine their own lists of goods and services;
- experimenting with approaches to improve coordination among like-minded countries faced with rapidly proliferating RTAs/FTAs (e.g. to address limited resources to implement obligations, differing policy objectives);
- use of *ex ante* assessments of the economic and environmental impacts of trade agreements to inform trade and environment policy and negotiating mandates;
- use of *ex post* assessments and reviews of performance to inform implementation practice.

Political commitments for environmental provisions in RTAs

Several jurisdictions have introduced legislation or policy for the inclusion of environmental considerations in RTAs, consistent with one or more of the four policy drivers introduced above. The United States, for example, has enacted a legal requirement to include certain environmental provisions in RTAs. The European Union has adopted a different approach, by addressing the relationship between trade and environment in its sustainable development strategy. The following sections review these commitments, with reference to the four policy drivers by number: (1) to contribute to the overarching goal of sustainable development; (2) to ensure a level playing field among Parties to the agreement; (3) to enhance co-operation in environmental matters of shared interest; and (4) pursuing an international environmental agenda.

Australia

Australia's current policy for environment and trade is outlined in the Government's Trade Policy Statement (Australian Government, 2011). The Australian Government recognises that trade policy might legitimately be deployed to help achieve environmental and other non-trade objectives. Although the policy statement does not explicitly include such objectives, it states that trade policy measures should not be used as an avenue for introducing disguised protectionist measures (*policy driver 2*). Australia also seeks to preserve the right to make laws in important public policy areas. In particular, it will not

support provisions in trade agreements that constrain Australia's ability to regulate legitimately on social, environmental or other similar important public policy matters.

Canada

Canada's current policy for environment and trade is summarised in its 2011 Trade Policy Review Report to the WTO (World Trade Organisation, 2011). The policy's main focus is to ensure that the parties to an agreement will maintain high levels of environmental protection and effectively enforce their environment laws, and not relax them to attract trade or investment (*policy driver 2*). Additional aims are strengthening the capacity, integrity and transparency of national environmental systems, promoting sustainable development, protection of a party's right to regulate in the public interest, and providing opportunity to engage strategically on key environmental issues (*policy drivers 1, 3 and 4*).

In implementing the policy, Environment Canada and the Department of Foreign Affairs, Trade and Development have a co-lead in negotiating environmental provisions in RTAs. Environment Canada has the lead in implementing them. Other agencies may also be involved for particular issues, such as Natural Resources Canada, Parks Canada, Fisheries and Oceans, and Aboriginal and Northern Affairs Canada. Canada undertakes Environmental Assessments of all its RTA negotiations, with the primary aim of ensuring no significant adverse effects on the Canadian environment.

Chile

Chile's early efforts to include environmental provisions in its trade agreements have been seen as particularly noteworthy (OECD, 2007a). These efforts have continued, particularly in Chile's RTAs with Colombia, Turkey, Malaysia and Panama, which include substantive environmental provisions. Trade policy formulation is under the responsibility of the Executive. The General Directorate of International Economic Affairs (DIRECON), in the Ministry of Foreign Affairs, has the lead role in trade negotiations. Other Ministries are involved in the formulation of trade policy; in the case of environment negotiations, the Ministry of Environment has a key role.

EFTA

The issue of coherence between the economic, social and environmental aspects of a country's development, on one side, and trade policy, on the other, is an important consideration of the EFTA States. Environmental provisions in the EFTA Convention (between EFTA members themselves) are limited to a statement in the Preamble and exceptions based on GATT Article XX and GATS Article XIV (EFTA, 2010a). However, EFTA has developed its own approach regarding the inclusion of environmental provisions in RTAs with third countries. EFTA has developed a set of model provisions, including a model chapter on Trade and Sustainable Development, which reflect the relevance of environmental and labour considerations in conjunction with trade and economic development.[4] The model provisions were presented to EFTA Ministers in June 2010 (EFTA, 2010b). These provisions have since been taken up both with new and existing FTA partners.

[4] See EFTA website, http://www.efta.int/free-trade/free-trade-agreements.aspx, accessed May 2013.

European Union

The European Union is the prime example of an economically integrated region. Its predecessor, the European Community, was notified to the WTO as an RTA in 1957 and entered into force the following year. Extensive harmonisation of environmental legislation is required of Member States, as embodied in the environmental chapter of the *acquis communautaire*.

The legal mandate for inclusion of environmental provisions in the EU's RTAs is provided in the EU Treaty (Official Journal of the EU, 2012) which defines sustainable development as an overarching principle that guides the EU internal and external action. In addition, Article 11 of the EU Treaty explicitly states that environmental protection requirements must be integrated into the definition and implementation of EU policies and activities, in particular with a view to promoting sustainable development. This is further elaborated in the EU Sustainable Development Strategy, as revised in 2006 (Council of the European Union, 2006). This includes the aim of actively promoting sustainable development world-wide, to ensure that the EU's internal and external policies are consistent with global sustainable development and international commitments (*policy drivers 1 and 4*). As one of the actions to achieve this 'the EU should be working together with its trading partners to improve environmental and social standards and should use the full potential of trade or co-operation agreements at regional or bilateral level to this end' (*policy drivers 2 and 3*). Additionally, the 2010 Communication on Trade, Growth and World Affairs (European Commission, 2010) emphasises that EU trade policy should continue to 'support green growth and climate change objectives' and to 'support and promote green growth around the globe in other areas, such as energy, resource efficiency and biodiversity protection' (*policy driver 4*).

As discussed in OECD (2011) and OECD (2012), the RTA between the EU and South Korea was the first of a new generation of RTAs implementing the 2006 Strategy through a comprehensive chapter on Trade and Sustainable Development, covering labour and environmental issues that are important in a trade context. The same approach has been applied in subsequent negotiations (e.g. Central America, Colombia and Peru, Singapore and Ukraine).

As an additional action in implementing the trade aspects of its Sustainable Development Strategy, the EU has undertaken Sustainability Impact Assessments (SIA) of all its RTA negotiations since 2002, covering environmental impacts in its trading partners and globally as well as in the EU. The introduction of Trade and Sustainable Development chapters in recent EU RTAs has facilitated co-operative action on environmental issues identified in these SIAs.

Japan

The Japanese Ministry of the Environment has issued a general policy statement on Harmonizing Environment and Trade Policies, based on a report of the 1995 Advisory Group on Global Environmental Problems.[5] The statement identifies the need for Japan to make a positive contribution to the protection of the environment of the Asia-Pacific region, and to avoid negative environmental effects in its economic co-operation and development investments with other countries. Environmental co-operation with other countries in the region is identified as a means of pursuing this aim (*policy driver 3*).

5 http://www.env.go.jp/en/earth/iec/hetp/index.html, accessed May 2013

As noted in OECD (2012), the Economic Partnership Agreement between Japan and Peru goes further than the fairly general statements on environmental co-operation in previous RTAs involving Japan. The Japan-Peru agreement includes specific details on environmental co-operation in two Joint Statements, one on Trade and Environment, and the other on Biodiversity, Access to Genetic Resources and Traditional Knowledge.

New Zealand

New Zealand seeks environmental provisions in its FTAs and RTAs that are of formal treaty status and signed within the framework of each agreement.[6] Guidance for the negotiation of environmental issues in the context of trade agreements is provided in the 2001 Framework for Integrating Environment Standards and Trade Agreements. The Framework establishes five principles that are intended to give effect to four objectives:

- Promote sustainable development at the international level (*policy driver 1*);
- Construct trade and environment policies in a mutually-supportive way;
- Trade agreements should give governments the flexibility they need to regulate for the environment in accordance with national circumstances;
- Environmental policy is not used as a rationale for disguised trade protectionism (*policy driver 2*).

The five principles are:

i. The government's objectives for sustainable development are reflected in all its international negotiations;

ii. Promote greater coherence between multilateral environment and trade agreements and greater cooperation between the institutions which service them;

iii. The government's ability to regulate as it sees fit for the protection of New Zealand's environment is not compromised or encumbered;

iv. Ensure the WTO shows proper respect for internationally-agreed rules for the protection of the environment;

v. Promote a sustainable international trading system which maximises opportunities for all countries to participate in the global economy, through:

   – seeking standards that focus on the environmental objective which is being promoted rather than seeking to prescribe unnecessarily the method by which the objective should be reached;

   – respecting the right of other governments to determine their own domestic regulations where these impact only on the environment tin their own jurisdictions and do not result in breaches of international rules;

   – working to eliminate export subsidies and other payments which encourage increased production;

   – opposing the use of environmental standards as a form of economic protectionism from lower priced international competition; opposing the use of

6 http://www.mfe.govt.nz/laws/trade/trade.html, accessed May 2013

measures that discriminate between products on the basis of their respective national origins.

The New Zealand Ministry of Foreign Affairs and Trade is the lead agency for negotiating free trade agreements. The Ministry for the Environment provides support in the negotiation of environment provisions and associated environment agreements, and in encouraging partner countries to improve market access for environmental goods and services. The Ministry for the Environment is also responsible for implementing the environmental agreements once they come into force, to ensure that respective obligations are met, and to undertake co-operative activities that address priorities of mutual interest.

United States

The principal negotiating objectives for US RTAs were specified by Congress in the 2002 Trade Act (OECD 2007a). The overall environmental objectives are:

- To ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimising the use of the world's resources; and
- To seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labour laws as an encouragement for trade.

Negotiating objectives on environmental matters that are specified in the 2002 Trade Act include:

- To ensure that a Party to a trade agreement with the United States does not fail to effectively enforce its environmental laws in a manner affecting trade (*policy driver 2*);
- To strengthen the trading partners' capacity to protect the environment through the promotion of sustainable development (*policy driver 3*);
- To seek market access for US environmental technologies, goods, and services (*policy driver 2*); and
- To ensure that environmental policies and practices of the Parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against US exports or serve as disguised barriers to trade (*policy driver 2*).

In its FTAs with Colombia, Korea, Panama, and Peru, the United States and these governments agreed on additional environmental provisions.

- They agreed to incorporate a specific list of multilateral environmental agreements (MEAs) (*policy driver 4*). The list includes (with abbreviated titles) the Convention on International Trade in Endangered Species (CITES), Montreal Protocol on Ozone Depleting Substances, Convention on Marine Pollution, Inter-American Tropical Tuna Convention (IATTC), Ramsar Convention on Wetlands, International Whaling Convention (IWC), and Convention on Conservation of Antarctic Marine Living Resources (CCAMLR).
- They also agreed to alter the non-derogation obligation for environmental laws from a "strive to" to a "shall" obligation, with allowance for waivers permitted under law as long as it does not violate the MEA.

- The FTA environment chapters in these Agreements also are enforceable on the same basis as the commercial provisions of the agreements - the same remedies, procedures, and sanctions. Previously, U.S. environmental dispute settlement procedures focused on the use of fines, as opposed to trade sanctions, and were limited to the obligation to effectively enforce environmental laws.
- In connection with the Peru FTA, the United States agreed to work with the Government of Peru on comprehensive steps to address illegal logging, including of endangered mahogany, and to restrict imports of products that are harvested and traded in violation of CITES.

Switzerland

Switzerland's Sustainable Development Strategy recognises that the economic globalisation process is associated with significant challenges to the environment, and also to development and the fight against poverty (Government of Switzerland, 2012a). Action 8b of the Strategy's Action Plan therefore includes a statement that, while promoting continued deregulation and economic integration through the WTO and bilateral free-trade agreements, the Federal Council "is particularly committed to ensuring that such constructs contribute to sustainable economic growth by factoring in social and ecological aspects" (*policy driver 1*).

International environmental policy is one of Switzerland's foreign policy priorities, as laid down in the Federal Constitution (Government of Switzerland, 2012b). The aim of the policy is to contribute to the protection and sustainable use of the global environment. In particular, it is recognised that Switzerland has a direct economic interest in conserving and in gaining access to natural resources in other countries as well as to strive for higher levels of environmental protection, through multilateral standards and cooperation.

Trade policy is regarded as relevant for Switzerland's environmental policy. Environmental issues must consequently be considered in international trade and economic agreements, with the aim of, inter alia, promoting the investment in and the dissemination of goods and services beneficial to the environment, including environmental technologies, and contribute to improve the levels of environmental protection (*policy drivers 2 and 3*). To this end Switzerland contributed actively in developing the EFTA model provisions on trade and sustainable development. In future and existing free trade agreements, be it bilaterally or in the context of EFTA, Switzerland aims to include and implement the EFTA model provisions on sustainable development.

Policy drivers, benefits and barriers

As noted in in the previous section, each of the four policy drivers remains clearly visible in policy statements. However, there are variations between jurisdictions in terms of which of the drivers appear to have been influential. In Australia the focus of policy statements is mainly on policy driver 2 (level playing field); in Japan on driver 3 (co-operation); in Canada, Chile, New Zealand and Switzerland on drivers 1 (sustainable development), 2 and 3; in the United States on drivers 2, 3 and 4 (international environmental agenda); and in the EU on all four of the drivers.

All four of the policy drivers are also clearly visible in the content of the agreements that have been negotiated. These are generally in accordance with the parties' policy statements, and may go beyond the commitments made in those statements. In some cases

this is because other parties to an agreement have additional objectives, while in others it may be due to a degree of overlap between the policy drivers.

While the intended benefits of the first, third and fourth of the policy drivers (sustainable development, co-operation, and the international environmental agenda) are primarily environmental, those of the second driver (level playing field) are primarily economic. It was noted in OECD (2007a) that provisions associated with the environmentally oriented drivers may also have economic effects, which may be positive or negative, and which may differ between the parties. The study observed that it is difficult to draw any general conclusions, since the impacts will depend on a multitude of factors such as the characteristics of the countries involved and the nature and level of ambition of the provisions in question. This situation remains unchanged.

It is clear from the information gathered in the previous sections that significant progress has been made in incorporating effective environmental provisions into RTAs, but barriers still remain. Uncertainty in analysing the economic effects of environmental action remains one of them, leading to potential disagreements between the parties in the negotiation process. The use of in-depth impact-assessment studies might in principle help to resolve such issues, if it were possible to conduct them in such a way as to be regarded as impartial by all the parties. An alternative approach, as advocated and supported by the United Nations Environment Programme (UNEP), is to help build the capacity of partner countries to conduct their own studies.

Several other barriers to including environmental provisions in RTAs were also noted in OECD (2007a). These include:

- Fear of prejudicing multilateral positions.
- Fear that strong enforcement mechanisms will be used to create new barriers to exports.
- Avoidance of commitments in areas that are not on a country's own list of priorities.
- The need for substantive additional effort and resources.
- A view that trade agreements are not seen as a good place to deal with these issues.
- Obstacles to the rapid conclusion of an agreement, such as when ambitious targets for liberalising trade are a political priority.
- The much greater effort needed for legally binding, far-reaching commitments than agreeing on broad areas of environmental co-operation.

It may be argued that the first of these has diminished considerably through lack of progress multilaterally. The significant progress observed in this paper suggests that many of the others may also have diminished, quite possibly as a result of accumulating experience, which may suggest that the fears expressed in 2007 were unfounded.

It remains the case that significant additional effort and resources are needed to negotiate and implement substantive environmental provisions. However, experience with past RTAs may well have given confidence that the benefits outweigh the costs. This could be an important area for future research.

Discussion and conclusions

Analysis of the environmental provisions in RTAs since the 2007 JWPTE study has revealed an encouraging upward trend. Two basic provisions, one associated with GATT Article XX or GATS Article XIV, and the other in the form of a reference to the environment or sustainable development in the Preamble, remain the most common types. However, the incidence of all the more substantive provisions covered by the analysis has increased significantly in recent years.

Two of the principles agreed multilaterally at the Rio Earth Summit in 1992 (principles 4 and 12 dealing with sustainable development and non-discrimination) have been significant influences on trade and environment policies advanced by many OECD countries, albeit mostly in bilateral and plurilateral contexts. Several factors may have contributed to the upward trend in implementing these principles in RTAs. First, the US and the EU have both extended their political mandates for the RTAs in which they are involved, to include provisions for compliance with multilateral environmental agreements (MEAs). This has had a wider effect, with the introduction of similar provisions in several RTAs that do not involve either the US or the EU.

A second contributing factor may have come from other amendments to countries' political mandates, which, rather than introducing new requirements or new objectives, have strengthened the actions to achieve those objectives.

All the JWPTE delegates consulted consider that having a strong political mandate is of major importance in achieving substantive environmental provisions in RTAs. In most cases this mandate is written into law or official policy statements. In others, however, endorsement from the Head of State may have had a similar effect. The United States still has the strongest legal mandate for substantive environmental provisions in RTAs (making many of them effectively non-negotiable), and also the most comprehensive record for the introduction of such provisions.

Another factor contributing to the significant progress that has been observed may have come from accumulating experience. It is possible that much of the early resistance to environmental provisions may have come from fears that have since proved unfounded. Similarly, experience with environmental provisions in past RTAs may have given confidence that the benefits outweigh the costs of the effort and resources needed to negotiate and implement them.

A fuller understanding the factors contributing to the observed progress has been identified as a potentially important area for future research.

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Annex I

Table A1. Regional trade agreements referenced in JWPTE updates

	2008 update	2009 update	2010 update	2011 update	2012 update	Date of entry into force	No. of RTAs	notEd in preamble	GATT/GATS exceptions	uphold Environmental law	Substantive environmental provisions	Co-operation	Public participation	Dispute settlement	sPecific environmental issues	MEAs	Implementation mechanism	*Ex ante* impact assessment
Russia-Azerbaijan					x	17/02/93			x									
Russia-Moldova					x	30/03/93			x									
Russia- Tajikistan					x	08/04/93			x									
Russia-Belarus					x	20/04/93			x									
Russia-Kazakhstan					x	07/06/93			x									
Dominican Republic-Central America					x	04/10/01		x	x									
Chinese Taipei-Guatemala				x		01/07/06		x	x	x	x	x						
East African Community Customs Union					x	01/07/07			x		x	x		x	x		x	
Chile-India			x			17/08/07			x									
Total to 2007							*9*	*2*	*9*	*1*	*2*	*2*	*0*	*1*	*1*	*0*	*1*	*0*
Chinese Taipei-Nicaragua			x			01/01/08		x	x	x	x	x	x	x	x		x	
EU-Montenegro			x			01/01/08		x			x	x			x		x	x
Pakistan Malaysia	x					01/01/08												
Chinese Taipei-El Salvador Honduras	x					01/03/08						x						
Chile Panama	x					07/03/08		x		x	x	x	x				x	
Turkey Albania	x					01/05/08			x									
Japan-Indonesia	x					01/07/08			x			x			x			
Chile-Honduras					x	19/07/08			x									
Japan-Brunei	x					31/07/08		x	x			x			x			
New Zealand China	x					01/10/08		x	x		x	x			x			
EU-CARIFORUM	x	x				01/11/08		x	x	x	x	x		x	x			x
Turkey-Georgia		x				01/11/08			x									
Japan ASEAN	x					01/12/08			x									
Japan-Philippines		x				11/12/08				x								
Total 2008							*14*	*6*	*9*	*4*	*5*	*8*	*2*	*2*	*6*	*0*	*3*	*2*

	2008 update	2009 update	2010 update	2011 update	2012 update	Date of entry into force	No. of RTAs	notEd in preamble	GATT/GATS exceptions	uphold Environmental law	Substantive environmental provisions	Co-operation	Public participation	Dispute settlement	sPecific environmental issues	MEAs	Implementation mechanism	*Ex ante* impact assessment
US-Oman	x	x				01/01/09		x	x	x	x	x	x	x	x	x	x	x
EU-Côte d'Ivoire		x				01/01/09			x									x
Panama-Honduras			x			09/01/09												
US-Peru	x	x				01/02/09		x	x	x	x	x	x	x	x	x	x	x
Peru-Chile					x	01/03/09		x	x									
Australia-Chile	x	x				06/03/09		x	x			x					x	
Chile-Colombia		x				08/05/09		x	x	x	x	x			x		x	
India-MERCOSUR			x			01/06/09												
Canada-EFTA	x	x				01/07/09		x	x									
Canada-Peru	x	x				01/08/09		x	x	x	x	x	x	x	x	x	x	x
Peru-Singapore	x					01/08/09			x									
Japan-Switzerland		x				01/09/09		x		x								
EU-Cameroon		x				01/10/09		x	x	x								x
Japan-Vietnam		x				01/10/09						x						
China-Pakistan			x			10/10/09		x										
India-Nepal			x			27/10/09												
Colombia-Northern Triangle					x	12/11/09		x	x									
EU-Papua New Guinea/Fiji					x	20/12/09		x	x		x		x	x			x	x
Total 2009							*18*	*12*	*12*	*6*	*5*	*6*	*4*	*4*	*4*	*3*	*6*	*6*
India-Korea			x			01/01/10		x	x			x						
Australia-New-Zealand-ASEAN		x				01/01/10		x	x									
New Zealand-Philippines		x				01/01/10		x		x	x	x		x	x			
ASEAN-India			x			01/01/10												
ASEAN-Korea			x			01/01/10			x		x	x			x			
EU-Serbia			x			01/02/10		x			x	x			x		x	x
China-Peru		x				01/03/10						x			x			
Turkey-Montenegro		x				01/03/10			x									
Chile-Guatemala					x	23/03/10			x									
East African Community Common Market					x	01/07/10			x		x	x		x	x		x	
New Zealand-Malaysia		x				01/08/10			x	x	x	x		x	x			

	2008 update	2009 update	2010 update	2011 update	2012 update	Date of entry into force	No. of RTAs	notEd in preamble	GATT/GATS exceptions	uphold Environmental law	Substantive environmental provisions	Co-operation	Public participation	Dispute settlement	sPecific environmental issues	MEAs	Implementation mechanism	*Ex ante* impact assessment
Chile-China (services)			x			01/08/10												
Turkey-Serbia			x			01/09/10			x									
EFTA-Serbia		x	x			01/10/10		x	x	x								
EFTA-Albania		x		x		01/11/10		x	x	x								
Total 2010							*15*	*4*	*10*	*4*	*6*	*8*	*0*	*3*	*6*	*0*	*2*	*1*
New Zealand-Hong Kong (China)			x	x		01/01/11		x	x		x	x	x	x	x		x	
Turkey-Chile		x				01/03/11		x	x	x	x	x	x		x		x	
Turkey-Jordan				x		01/03/11			x									
EU-Korea			x	x		01/07/11		x	x	x	x	x	x	x	x	x	x	x
EFTA-Colombia				x		01/07/11		x	x									
EFTA-Peru				x		01/07/11		x	x									
India-Malaysia				x		01/07/11			x									
Japan-India				x		01/08/11		x				x						
Peru-Korea				x		01/08/11		x	x	x	x	x		x	x	x	x	x
China-Costa Rica					x	01/08/11		x	x		x	x		x	x		x	
Canada-Colombia	x	x				15/08/11		x	x	x	x	x	x	x	x	x	x	x
Total 2011							*11*	*9*	*10*	*4*	*6*	*7*	*4*	*4*	*5*	*3*	*5*	*3*
Peru-Mexico					x	01/02/12			x	x								
Japan-Peru				x		01/03/12		x	x		x	x				x		
US-Korea					x	15/03/12		x	x	x	x	x	x	x	x	x	x	x
New Zealand-Indonesia						17/04/12			x	x	x	x	x		x	x	x	
Panama-Peru					x	01/05/12			x									
EU- Eastern and Southern Africa States					x	14/05/12		x	x		x	x		x	x		x	x
US-Colombia					x	15/05/12		x	x	x	x	x	x	x	x	x	x	x
EFTA-Ukraine					x	01/06/12		x	x	x								
Canada-Jordan	x	x				01/10/12		x	x	x	x	x	x	x		x		x
EFTA-Hong Kong, China				x		01/10/12		x	x	x	x	x			x	x		
Total 2012							*10*	*7*	*10*	*7*	*7*	*7*	*4*	*5*	*6*	*6*	*5*	*4*

Note: the information in Tables A1 and A2 gives only a broad indication of the types of environmental provision in each of the RTAs, whose texts and any relevant side agreements employ a wide range of different formats.

Table A2. Regional trade agreements by country

	Date of entry into force	Noted in preamble	GATT/GATS exceptions	Uphold environmental law	Substantive environmental provisions	Co-operation	Public participation	Dispute settlement	Specific environmental issues	MEAs	Implementation mechanism
Australia-Chile	06/03/09	x	x			x					x
Australia-New-Zealand-ASEAN	01/01/10	x	x								
Canada-EFTA	01/07/09	x	x								
Canada-Peru	01/08/09	x	x	x	x	x	x	x	x	x	x
Canada-Colombia	15/08/11	x	x	x	x	x	x	x	x	x	x
Canada-Jordan	01/10/12	x	x	x	x	x	x	x		x	x
Chile Panama	07/03/08	x		x	x	x	x				x
Chile-Honduras	19/07/08		x								
Chile-Peru	01/03/09	x	x								
Chile-Colombia	08/05/09	x	x	x	x	x			x		x
Chile-Guatemala	23/03/10		x								
Chile-China (services)	01/08/10										
Chile-Turkey	01/03/11	x	x	x	x	x	x		x		x
China-Pakistan	10/10/09	x									
China-Peru	01/03/10					x			x		
China-Costa Rica	01/08/11	x	x		x	x		x	x		x
Chinese Taipei-Guatemala	01/07/06	x	x	x	x	x					
Chinese Taipei-Nicaragua	01/01/08	x	x	x	x	x	x	x	x		x
Chinese Taipei-El Salvador Honduras	01/03/08					x					
Colombia-Northern Triangle	12/11/09	x	x								
Dominican Republic-Central America	04/10/01	x	x								
East African Community Customs Union	01/07/07		x		x	x		x	x		x
East African Community Common Market	01/07/10		x		x	x		x	x		x
EFTA-Serbia	01/10/10	x	x	x							
EFTA-Albania	01/11/10	x	x	x							
EFTA-Colombia	01/07/11	x	x								
EFTA-Peru	01/07/11	x	x								
EFTA-Ukraine	01/06/12	x	x	x							
EFTA-Hong Kong, China	01/10/12	x	x	x	x	x			x	x	
EU-Montenegro	01/01/08	x			x	x			x		x
EU-CARIFORUM	01/11/08	x	x	x	x	x		x	x		
EU-Cameroon	01/10/09	x	x	x							
EU-Côte d'Ivoire	01/01/09		x								
EU-Papua New Guinea/Fiji	20/12/09	x	x		x		x	x			x
EU-Serbia	01/02/10	x			x	x			x		x
EU-Korea	01/07/11	x	x	x	x	x	x	x	x	x	x
EU- Eastern/Southern Africa States	14/05/12	x	x		x	x		x	x		x

	Date of entry into force	Noted in preamble	GATT/GATS exceptions	Uphold environmental law	Substantive environmental provisions	Co-operation	Public participation	Dispute settlement	Specific environmental issues	MEAs	Implementation mechanism
India-Chile	17/08/07		x								
India-MERCOSUR	01/06/09										
India-Nepal	27/10/09										
India-ASEAN	01/01/10										
India-Malaysia	01/07/11		x								
Japan ASEAN	01/12/08		x								
Japan-Indonesia	01/07/08		x			x			x		
Japan-Brunei	31/07/08	x	x			x			x		
Japan-Philippines	11/12/08			x							
Japan-Switzerland	01/09/09	x		x							
Japan-Vietnam	01/10/09					x					
Japan-India	01/08/11	x				x					
Japan-Peru	01/03/12	x	x		x	x				x	
Korea-India	01/01/10	x	x			x					
Korea- ASEAN	01/01/10		x		x	x			x		
Korea-Peru	01/08/11	x	x	x	x	x		x	x	x	x
New Zealand China	01/10/08	x	x		x	x			x		
New Zealand-Philippines	01/01/10	x		x	x	x		x	x		
New Zealand-Malaysia	01/08/10		x	x	x	x		x	x		
New Zealand-Hong Kong (China)	01/01/11	x	x		x	x	x	x	x		x
New Zealand-Indonesia	17/04/12		x	x	x	x	x		x	x	x
Pakistan-Malaysia	01/01/08										
Panama-Honduras	09/01/09										
Peru-Singapore	01/08/09		x								
Peru-Mexico	01/02/12		x	x							
Peru-Panama	01/05/12		x								
Russia-Azerbaijan	17/02/93		x								
Russia-Moldova	30/03/93		x								
Russia- Tajikistan	08/04/93		x								
Russia-Belarus	20/04/93		x								
Russia-Kazakhstan	07/06/93		x								
Turkey Albania	01/05/08		x								
Turkey-Georgia	01/11/08		x								
Turkey-Montenegro	01/03/10		x								
Turkey-Serbia	01/09/10		x								
Turkey-Jordan	01/03/11		x								
US-Oman	01/01/09	x	x	x	x	x	x	x	x	x	x
US-Peru	01/02/09	x	x	x	x	x	x	x	x	x	x
US-Korea	15/03/12	x	x	x	x	x	x	x	x	x	x
US-Colombia	15/05/12	x	x	x	x	x	x	x	x	x	x