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# Regional Trade Agreements and the Environment

DEVELOPMENTS IN 2010

Clive George, Ysé Serret

JEL Classification: F13, F18, N50, Q56

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## Abstract

# REGIONAL TRADE AGREEMENTS AND THE ENVIRONMENT: DEVELOPMENTS IN 2010

by

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This report provides an update on recent developments in the field of Regional Trade Agreements and the environment. Issues arising in the implementation of RTAs with environmental considerations are examined as well as experience in assessing their environmental impacts. It is the fourth update prepared under the aegis of the Joint Working Party on Trade and Environment. The report covers developments over the period from late 2009 to December 2010 and is based on publicly available information.

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*Keywords:* Regional trade agreements, free trade agreements, environmental provisions, trade and environment, trade policy.

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## *Table of contents*

|   |    |
|---|----|
| 1. Background .....   | 4  |
| 2. Overview of recent developments in Regional Trade Agreements .....   | 4  |
| 3. Recent Regional Trade Agreements with substantive environmental content .....  | 6  |
| 3.1. The European Union-Montenegro and European Union-Serbia Stabilisation and Association Agreements.....                                  | 6  |
| 3.2. The Free Trade Agreement between Chinese Taipei and the Republic of Nicaragua.....   | 6  |
| 3.3. The New Zealand – Hong Kong (China) Closer Economic Partnership Agreement and its accompanying Environment Co-operation Agreement..... | 7  |
| 3.4. The Free Trade Agreement between the European Union and the Republic of Korea .....  | 8  |
| 4. Recent developments in implementing the environmental provisions of RTAs .....   | 9  |
| 5. Recent developments in assessing the impacts of RTAs.....  | 12 |
| 5.1. <i>Ex ante</i> impact assessments.....   | 12 |
| 5.2. <i>Ex post</i> impact assessments .....  | 14 |
| 6. Regional Trade Agreements Under Negotiation .....  | 15 |
| Annex. Summary Tables .....   | 16 |
| References .....  | 23 |

### **Tables**

|  |    |
|--|----|
| Table A1. Regional trade agreements notified since previous update: overview of environmental provisions ..... | 16 |
| Table A2. Regional trade agreements referenced in JWPTE updates .....  | 19 |
| Table A3. Canadian Environmental Assessments of RTAs.....  | 21 |
| Table A4. United States Environmental Reviews of RTAs .....  | 21 |
| Table A5. European Union Sustainability Impact Assessments of RTAs.....  | 22 |

### **Figures**

|  |   |
|--|---|
| Figure 1. Regional trade agreements notified to the WTO by date of notification..... | 5 |
|--|---|

## **Developments in Regional Trade Agreements and the Environment: 2010 Update**

### **1. Background**

Since 2007 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, 2008a, 2008b). The JWPTE regularly provides updates on environmental provisions in RTAs (OECD 2008c, 2009a and 2010a). This is the fourth of these updates, covering developments over the period from late 2009 to December 2010.

Issues related to the implementation of RTAs with environmental provisions have received increasing attention as more agreements are being signed (OECD, 2009b). The JWPTE organised several regional workshops where experts from both OECD and non-OECD countries discussed their experience with the negotiation and implementation of environmental provisions in trade agreements. The most recent is the workshop on “Regional Trade Agreements and the Environment: Monitoring Implementation and Assessing Impacts” held 1-2 June 2010 at OECD headquarters in Paris (OECD, 2010b).

This document provides an update on recent developments in environmental provisions in RTAs complemented by an examination of issues arising in their implementation and a review of developments in assessing their environmental impacts. It is based on publicly available information.

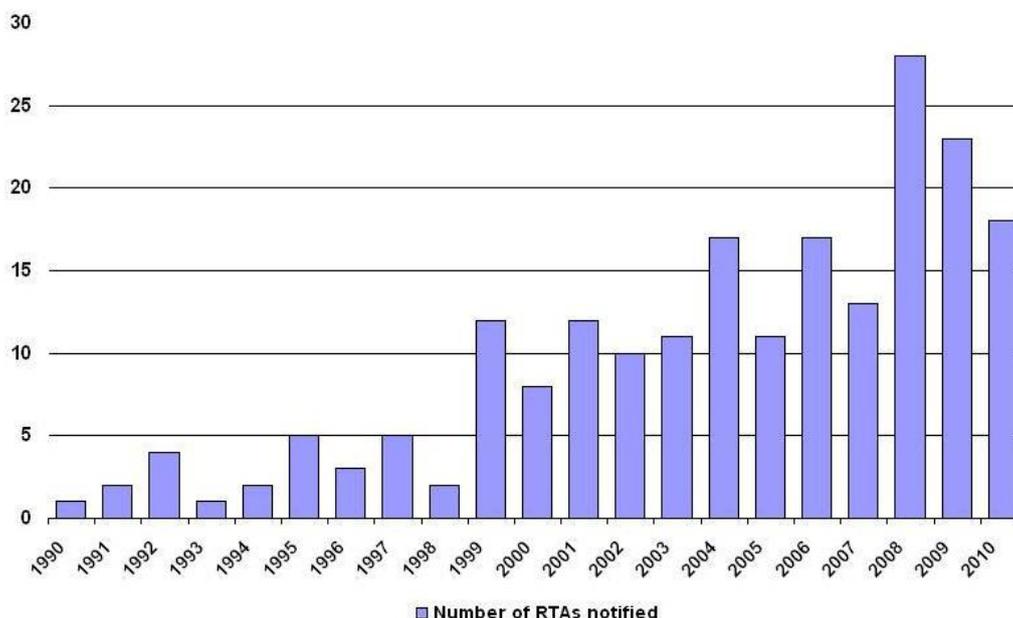
### **2. Overview of recent developments in Regional Trade Agreements**

The pace of notification of RTAs to the World Trade Organisation (WTO) continues to be rapid compared with the pre-1999 rate (Figure 1).<sup>1</sup> After a surge in 2008 the rate slowed somewhat in 2009, and again in 2010 (with 18 notifications). As of 31 July 2010, some 193 RTAs were in force (counting goods and services together).<sup>2</sup>

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1. A total of 21 RTAs were notified to the WTO between 1957 and 1989. See WTO RTA Database (<http://rtais.wto.org>)

2. [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm)

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

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

Two of the 18 notifications in 2010 were for relatively minor amendments to RTAs that had been in force for several years. The texts of two further RTAs have been released in the period prior to notification to the WTO, for New Zealand-Hong Kong, and European Union-Korea. Both of these agreements have been signed but not yet ratified, and their texts have been released for information purposes only. Table A1 in the Annex lists all of these agreements and summarises their environmental provisions.

Of the 16 RTAs that entered into force or were signed during the period, six (ASEAN-India, Chile-India, Chile-China services, India-Nepal, MERCOSUR-India, Panama-Honduras) do not consider environmental issues, other than in confirming the general exceptions of GATT Article XX. One includes only a general statement in the preamble (China-Pakistan). The main text of the Turkey-Serbia agreement includes environmental provisions that are limited to general exceptions to obligations under the agreement. Similar exceptions are included in the India-Korea agreement, along with a general provision for environmental co-operation in the tourism sector. The EFTA-Serbia agreement refers to environmental protection in the preamble, and discourages the relaxation of environmental standards in the chapter on investment.

The ASEAN-Korea agreement includes several provisions for environmental co-operation in an Annex on economic co-operation, in the areas of tourism (Article 5), the environmental industry (Article 11), mining (Article 11), energy (Article 16) and natural resources (Article 17). The provisions aim in particular at greater co-operation on energy efficiency, the development and use of renewable energy, groundwater modelling, disposal of mining wastes and water-resource management. The agreement does not establish any specific institutional arrangements for implementing these provisions.

The other five RTAs listed in Table A1 contain substantive environmental provisions with specific obligations for implementation. These are summarised in the following section.

### 3. Recent Regional Trade Agreements with substantive environmental content

#### 3.1. *The European Union-Montenegro and European Union-Serbia Stabilisation and Association Agreements*

The environmental provisions of the European Union-Serbia agreement are included in the Stabilisation and Association Agreement signed in 2008, rather than the subordinate Agreement on Trade and Trade-Related Matters that was notified to the WTO in 2010. They are similar to those in the European Union-Montenegro Stabilisation and Association Agreement, which was notified to the WTO after coming into force for goods in 2008 and for services in 2010.

As with all of the European Union's Stabilisation and Association Agreements, the association process for Montenegro and Serbia requires the country to bring all its legislation and corresponding institutional mechanisms for environmental conservation and protection up to the standard required for all Member States, for both domestic issues and international commitments. As a consequence, the environmental provisions focus mainly on technical co-operation and capacity-building, and are incorporated mainly into the co-operation chapter of the text. A specific Article on environmental co-operation deals with strengthening legislation and institutional mechanisms, and environmental issues are also covered under co-operation in transport, industrial products and energy.

A chapter on financial co-operation covers financial assistance from the European Union for undertaking the necessary reforms. Environmental protection is one of four areas singled out for special attention in the provision of financial support, in addition to the approximation of all legislation to European Union law.

#### 3.2. *The Free Trade Agreement between Chinese Taipei and the Republic of Nicaragua*

The recently notified RTA between Chinese Taipei and Nicaragua contains many environmental provisions similar to those in United States, Canadian and New Zealand agreements. These include an Article in the general provisions giving precedence to specific Multilateral Environmental Agreements (CITES, the Montreal Protocol and the Basel Convention), and trade-related environmental provisions in the chapters on Sanitary and Phyto-Sanitary measures, Technical Barriers to Trade, Investment, and Financial Services.

Part 7 of the agreement covers Labour and Environment, with a chapter devoted to each. The environment chapter recognises the right of each party to establish its own levels of environmental protection, but requires them to provide for high levels of protection in its laws and policies and strive to improve them. Subject to a reasonable exercise of discretion, each party is required to effectively enforce its environmental laws. Each party should also strive to ensure that the implementation of these laws is not relaxed as an encouragement for trade or investment. Non-mandatory provisions cover the use of voluntary mechanisms for enhancing environmental performance, including market-based instruments and corporate stewardship.

A joint Environmental Affairs Committee is established to oversee implementation of the environment chapter and to review progress. Provisions for public participation are established, both for the Committee and for the related work of each party. The environment chapter includes specific provisions for consultation between the parties in

the event of disputes, which are also subject to the general provisions of the agreement's dispute settlement chapter.

An Annex to the environment chapter sets out an environmental co-operation mechanism, working through national contact points. A non-prescriptive list of possible areas of environmental co-operation is defined, along with a provision for financial assistance as appropriate and mutually agreed. The national contact points are required to meet within six months of the agreement coming into force and then once every two years. Working through the contact points, the parties are responsible for establishing priorities, developing a work programme, examining and evaluating activities undertaken, and providing guidance on future improvements. The parties are required to develop performance measures to assist the contact points in examining and evaluating specific co-operative activities in relation to their intended goals.

Four types of funding are envisaged for environmental co-operation activities: activities jointly financed as agreed by the Parties; activities financed as agreed by one of the Parties; non refundable activities jointly financed as agreed by the Parties; activities financed by private institutions, foundations, or public international organisations.

### **3.3. *The New Zealand – Hong Kong (China) Closer Economic Partnership Agreement and its accompanying Environment Co-operation Agreement***

The main text of the New Zealand-Hong Kong (China) FTA (Closer Economic Partnership Agreement) includes trade-related environmental provisions in the chapters on government procurement, technical barriers to trade and regulatory standards. The FTA is accompanied by an associated Environment Co-operation Agreement signed on 29 March 2010.

The Environment Co-operation Agreement includes core elements covering the objectives and key commitments, including the right to regulate, and noting the inappropriateness of encouraging trade and investment by weakening the effectiveness of environmental regulation, or by using environmental regulation for trade protectionist purposes.

Each party is required to appoint a contact point within the six months of entry into force of the agreement, to establish and co-ordinate a co-operation programme and facilitate communication on implementation. A meeting of the parties is to take place within a year of entry into force, and regularly thereafter as deemed necessary. The resources for co-operative activities are to be determined on a case-by-case basis.

Provisions for public consultation are non-mandatory. Those for the settlement of disputes are consultative, with no recourse to arbitration by any third party.

Potential areas for co-operation include air pollution control and monitoring, environmental education, public participation, waste management, environmental management of chemicals and water-quality management.

### **3.4. *The Free Trade Agreement between the European Union and the Republic of Korea***

The European Union-Korea Free Trade Agreement, signed on 6 October 2010 but subject to ratification, is the first of a new generation of European Union RTAs, both in terms of tackling trade issues that go beyond those addressed in previous agreements, and in the inclusion of a dedicated Trade and Sustainable Development chapter. This covers environmental and labour issues, and includes its own mechanisms for dialogue with civil society and for dispute settlement.

Responsibility for supervising and facilitating the implementation and application of the trade agreement is assigned to a Trade Committee, meeting annually or at the request of either party. Among six specialised committees to be established under the auspices of the Trade Committee, a Committee on Trade and Sustainable Development is established to oversee implementation and monitoring of the environmental and labour commitments of the chapter, and to administer co-operation activities.

The environmental provisions of the Trade and Sustainable Development chapter include a commitment to effectively implement all multilateral environmental agreements to which each country is a party. The right to regulate is confirmed, but each party is required to aim for a high level of environmental protection, and to refrain from derogating from its environmental standards or failing to enforce its environmental laws, in a manner that affects trade or investment between the parties.

An Annex to the Trade and Sustainable Development chapter sets out an indicative list of areas of co-operation. These include trade-related aspects of the climate change regime, biodiversity including biofuels, deforestation and illegal logging, sustainable fishing practices, environmental regulation, fair trade, eco-labelling and corporate social responsibility. The parties also agree to co-operate on social or environmental aspects of trade and sustainable development in the World Trade Organisation (WTO), the International Labour Organisation (ILO), the United Nations Environment Programme (UNEP) and other international fora.

Each side is required to set up a civil-society advisory group (or groups), to include representatives of environmental, labour and business organisations. Representatives from the advisory groups are to meet annually in a joint civil society forum, to discuss sustainable development aspects of the trade relations between the European Union and Korea.

If the chapter's dispute-settlement mechanism cannot settle a difference through consultation, an independent panel of experts is convened. The panel should consult both of the civil society advisory groups and competent international organisations, as appropriate. Recommendations made in the panel reports are made available to the advisory groups. The implementation of the recommendations of the panel of experts is monitored by the Committee on Trade and Sustainable Development.

In addition to the provisions of the Trade and Sustainable Development chapter, the agreement stipulates that measures to facilitate trade shall not prejudice the fulfilment of legitimate policy objectives, including protection of the environment. A memorandum of understanding between the parties confirms that new regulations relating to environmental protection (as well as zoning and urban planning) are not subject to scheduling under the provisions for liberalising services and investment, in so far as they constitute non-discriminatory and non-quantitative measures.

There is a provision on ex-post assessment, with a general commitment to reviewing, monitoring and assessing the impact of the implementation of the RTA on sustainable development. Each Party would conduct its own assessments, through its own participative processes and institutions. In addition, both Parties would jointly review impacts through the institutions and mechanisms set up in the agreement. Furthermore, the Annex on co-operation makes a specific reference to sustainability impact assessments carried out by the parties, and commits the parties to taking these into account in an exchange of views on the impacts of the RTA on sustainable development.

#### **4. Recent developments in implementing the environmental provisions of RTAs**

Arrangements for administering implementation of the environmental provisions in RTAs include the creation of institutional structures, cooperation activities, dispute settlement and mediation, monitoring and assessment, review and evaluation, public involvement, capacity building and funding (OECD, 2009b). These arrangements vary across the agreements, with different countries taking different approaches, as discussed below. In some agreements, the environmental commitments, including those for environmental co-operation, are subject to prescribed mechanisms for administering and monitoring implementation and for resolving disputes. Other agreements are less prescriptive, with a focus on cooperative activities.

The European Union takes a more far reaching approach in its Stability and Association Agreements with candidate countries for accession to the European Union, given the goal to approximate national legislation and practice to European Union standards. In other European Union agreements, implementation is strongly dependent on dialogue, transparent engagement with stakeholders, co-operative action and supporting programmes of technical and financial assistance. The European Union's new generation RTAs include mandatory mechanisms for administering and monitoring implementation and for resolving disputes, but they do not foresee suspension of trade concessions in an implementation phase as the focus is on cooperative approaches and on public accountability.

The environmental co-operation agreements associated with Canada's recent RTAs with Jordan and Panama include enforcement and complaint mechanisms whereby the public can submit a written question to either Party or request an investigation of alleged violations of environmental laws in the Party in which they reside. Both agreements also include formal dispute-settlement procedures, although these are separate from those for the commercial provisions of the RTA. The Canada-Panama and the Canada-Jordan Agreements both allow for dispute resolution through consultations up to the ministerial level, followed by review by an independent panel in certain cases. Neither RTA has yet reached the implementation stage. The implementing legislation for both the Canada-Panama and the Canada-Jordan Free Trade and parallel Environment Agreements was tabled in 2010.

The provisions in Canada's earlier Environmental Co-operation Agreement with Chile are similar to those for the North American Agreement for Environmental Cooperation (NAAEC), with a mechanism for public submissions on enforcement matters and a dispute-settlement process that includes an arbitral panel. A review of implementation from 2004–2009 was completed in 2010 (CEC, 2004). Activities in the 2008-10 co-operative work program have included training for ornithologists aimed at standardising techniques for identifying birds; capacity building for monitoring trade in

protected species; co-operation on practices used in the management of national parks; knowledge exchange and research on pulp and paper effluent regulations and their effects on ecosystems; and the development of a conservation strategy for an endangered bird species that breeds in Chile and migrates to Canada.

Dispute settlement in the Canada-Peru agreement relies on consultation, with no provision for an independent panel. The implementing legislation for the Canada-Peru Agreement on the Environment was adopted in 2009, and the two countries are now engaged in planning implementation and in the identification of environmental co-operation activities.

New Zealand's recent RTAs with China, Malaysia, the Philippines and Hong Kong (China) all include consultative mechanisms for resolving disputes on implementation. In the agreement with Malaysia, the mechanism allows for the establishment of an expert committee to advise on disputes, but with no powers of arbitration. All of the agreements include non-mandatory provisions for public participation.

Implementation of New Zealand's environmental co-operation agreements is the responsibility of the Ministry for the Environment. Examples of activities completed include a collaborative vehicle emissions and transport management study visit between Singapore, Thailand and New Zealand; a visit by Thai Officials to New Zealand to study water-allocation practices; a study tour to New Zealand for Chilean officials on developing geothermal resources for renewable energy; and an environment co-operation workshop covering environmental governance, wastewater management, marine conservation and geothermal energy.

The European Union's RTAs currently in force generally have less formal arrangements for implementing their environmental provisions than new generation RTAs. The European Union-Chile and European Union-CARIFORUM agreements both establish a number of special committees responsible for particular aspects of implementation, but there is no body dealing specifically with environmental issues. In both cases, responsibility for implementing the environmental provisions rests with a joint committee responsible for administering the entire RTA. On the other hand, there exist institutionalised structures (joint consultative committees) allowing interaction with and participation by social, environmental and economic stakeholders. By contrast, the recently signed European Union-Korea agreement, which has yet to be ratified, establishes a specific institutional mechanism for the implementation of its Trade and Sustainable Development chapter.

In general, except in so far as they focus on regulatory co-operation or policy dialogues, environmental co-operation provisions of the European Union's agreements have been implemented through the development assistance programmes managed by the European Commission's development assistance departments and the equivalent authorities of individual Member States. Typical environmental co-operation activities that have been implemented at the European Union level include the European Union Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT); the Horizon 2020 initiative for tackling pollution in the Euro-Mediterranean region; assistance with conservation in protected areas in Africa; support for integrated land use, rural development and sustainable agriculture in Ukraine, Moldova and Russia; and three major programmes in China on biodiversity, energy and environment, and integrated river-basin management.

United States trade agreements are required by Congress to include commitments on the implementation of Multilateral Environmental Agreements and the enforcement of environmental legislation. The following recent developments have taken place on the implementation of environmental provisions in United States agreements:

*Trans Pacific Partnership (TPP):* The fourth round of negotiations between Australia, Brunei Darussalam, Chile, New Zealand, Malaysia, Peru, Singapore, the United States, and Vietnam took place in Auckland, New Zealand, in December 2010. The participants held discussions on provisions that could possibly be included in an environment chapter. TPP negotiations are expected to extend into 2011.

*United States – Chile Environmental Cooperation Agreement:* The United States and Chile signed a new Work Plan in January 2010, highlighting issues for co-operation such as environmental governance, mining, cleaner production, aquaculture, public participation, environmental education, fisheries, and natural resources management. Both countries are currently in the process of implementing the plan's activities.

*United States – Morocco Joint Statement on Environmental Cooperation:* In February 2010, the United States and the Kingdom of Morocco signed a new Plan of Action for implementing their Joint Statement on Environmental Cooperation and are beginning to implement projects pursuant to the new Plan. Programme areas include institutional strengthening, biodiversity conservation, protected area management, improved private sector performance, public participation, and environmental education.

*United States – Singapore Memorandum of Intent on Environmental Cooperation:* The United States and Singapore held their biannual review of environmental cooperation in May 2010 and entered into a new Plan of Action to implement their Memorandum of Intent on Environmental Cooperation. The two governments anticipate that activities for the next two years will focus on issues related to air pollution, energy efficiency, fishing, and nuclear and radiation safety.

*United States – Oman Memorandum of Understanding on Environmental Cooperation:* The United States and the Kingdom of Oman are conducting consultations to agree upon a new Plan of Action to align cooperation projects with their joint memorandum of understanding. Possible areas of collaboration include capacity development, governance, public participation, and marine issues. A joint forum was arranged for January 2011.

*United States – Peru Environmental Affairs Council Meeting:* The Environmental Affairs Council (EAC) held its first meeting in February 2010 in Washington to review progress made toward implementing the United States-Peru Trade Promotion Agreement's (PTPA) Annex on Forest Sector Governance. The EAC also discussed implementation of the Environmental Cooperation Agreement and began developing an approach to monitor implementation of, and compliance with, PTPA obligations.

## 5. Recent developments in assessing the impacts of RTAs

### 5.1. *Ex ante* impact assessments

Canada, the United States and the European Union have all committed to undertaking ex-ante assessments of the impacts of proposed RTAs.<sup>3</sup> The Canadian Environmental Assessments and the United States Environmental Reviews aim primarily to assess environmental impacts in the home country, and also transboundary and global impacts. In doing so they may examine economic effects, and, where relevant, environmental effects in partner countries. The European Union's Sustainability Impact Assessments assess environmental, social and economic impacts in partner countries as well as Europe. The impact assessments (IA) that have been carried out in these programmes are listed in Tables A3, A4 and A5 of the Annex.

All of these studies involve a high degree of transparency and extensive stakeholder consultation among government officials, civil society groups and academic and professional institutes. The European Union studies consult stakeholders in partner countries as well as domestically. All use a combination of qualitative and quantitative analysis to give an indication of the significance of potential impacts, and to identify options for mitigation and enhancement.

Canada's assessments generally provide an initial environmental assessment (EA), in which most of the analysis is carried out, and a final EA which reports any subsequent changes. Among recent assessments, the final EA for the Canada-Kuwait RTA confirms the findings of the initial EA. The impacts in Canada are not expected to be significant. The principal potential environmental impact identified was a possible effect from increased Kuwaiti investment in the extraction of oil from Canada's oil sands. It was concluded that any such investment would be relatively small, and that the RTA would not undermine Canada's ability to adopt the necessary policies and regulations to avoid significant impact.

The final EA of the Canada-Colombia and Canada-Peru RTAs undertook additional analysis of possible impacts due to greenhouse-gas emissions and nutrient loads in rural watersheds attributable to the RTA negotiations, following public comments on the initial EA. For both effects, it was concluded that the RTAs would not expand Canada's overall trade volumes sufficiently to have a significant impact.

Colombia and Peru have also been the subjects of recent United States impact assessments of its RTAs with the two countries. The principal issues examined for both countries included impacts on migratory birds, wildlife trade and the CITES Convention, invasive species, tuna fishing and dolphins, shrimp fisheries and turtles, marine and coastal ecosystems, and potential regulatory impacts. An additional concern in Peru was the possible impact of foreign investment on the region's biological diversity, particularly in relation to the Camisea Natural Gas pipeline from gas fields in the Peruvian Amazon across the Andes.

Both environmental reviews concluded that the expected changes in trade flows would not have any significant environmental impacts in the United States.

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3. *Ex ante* trade impact assessments have also been carried out by UNEP and several international NGOs. The UN Economic Commission for Latin America and the Caribbean (ECLAC) has recently undertaken several ex-ante studies of RTAs in support of the Chilean government.

Environmental impacts in Peru and Colombia were not assessed, but it was noted that the RTAs could have several positive environmental consequences.

Colombia and Peru also feature in the European Union's recent sustainability impact assessment of the European Union-ANDEAN multi-party trade agreement. In line with the findings of the Canadian and United States studies, the expected changes in trade flows were too small to have a significant impact in Europe, since trade between the parties is only a small proportion of the European Union's total trade. Larger effects were expected in the ANDEAN countries, where imports and exports were expected to increase by between 3% and 10%. Potentially significant impacts included deforestation and reduced biodiversity from expansion of agriculture and timber industries, and increased discharge of pollutants from manufacturing, agriculture and mining. Recommendations for mitigating the potentially adverse impacts included phased tariff reduction in key sectors; monitoring and reporting on European companies' compliance with corporate social responsibility in the mining, oil and gas sectors; education and technical assistance in the fields of sustainable forestry management, environmental protection, industrial restructuring and sanitary and phytosanitary controls; and co-operation and support in enhancing regulation.

Whereas the Canadian and United States impact assessments are carried out by the government authorities, the European Union's IA are undertaken for the European Commission by independent consultants. The European Commission services therefore publish position papers giving their reaction to the studies, both in terms of assessed impacts and suggested policy recommendations to enhance, prevent or mitigate them. In some cases, that reaction is provided several months after the SIAs are published, and in exceptional cases the Commission services may thus already refer to negotiated outcomes (e.g. position paper on the European Union-ANDEAN study). However, position papers have been published for other recent studies that were completed earlier, for instance for the planned European Union-Central America Association Agreement.<sup>4</sup>

Ex-ante assessments of the European Union's RTAs have also been carried out by European Commission staff under the Commission's general Impact Assessment procedures for all major policy and legislation. The impacts of Europe's Stabilisation and Association Agreements with Bosnia-Herzegovina, Croatia, Macedonia, Albania, Serbia, Montenegro, Kosovo and Turkey were examined together in an impact assessment of the EC's 2005 Enlargement Strategy Paper (Commission of the European Communities, 2005). Those of the European Union's other RTAs that have been recently proposed were examined in an impact assessment of the EC's Market Access Strategy Paper (Commission of the European Communities, 2007). Both of these studies focused mainly on economic issues, with only a broad analysis of environmental impacts. No significant adverse impacts were identified.

The recent Communication on Trade, Growth and World Affairs (COM(2010)612) commits the Commission to carry out impact assessments on all new trade initiatives with a potentially significant economic, social or environmental impact on the European Union and its trade partners, including developing countries. Furthermore, it also announces that, to help monitor the impacts of existing trade agreements, the Commission will carry out *ex post* evaluations on a more systematic basis.

4. For further information on SIA studies see: <http://ec.europa.eu/trade/analysis/sustainability-impact-assessments/assessments/>

## 5.2. *Ex post impact assessments*

Reviews of implementation of the environmental provisions of trade agreements have been undertaken by the United States Government Accountability Office (GAO, 2009), by the Organisation of American States (OAS, 2009 and 2011), and by a joint working party on behalf of the Commission of the Trans-Pacific Strategic Economic Partnership Agreement (TPSEP) (OECD, 2010b). The GAO review examined implementation of the United States-Jordan, United States-Singapore, United States-Chile and United States-Morocco trade agreements. The TPSEP review of the associated Environmental Co-operation Agreement covered its objectives, commitments, co-operation activities, institutional arrangements, consultation and information disclosure.

The GAO review found several examples of planned actions being implemented. Jordan had established a Ministry of Environment, Chile had created the new position of Minister of Environment, Singapore had amended its National Endangered Species Act, and Morocco had created a new Framework Law on Environmental Protection. Both Jordan and Chile had implemented many of the planned activities, although in Chile the impact was limited by lack of funds. According to the GAO, very few of the activities planned in Singapore and Morocco had been implemented, because of limited assistance and funds.

The TPSEP review found good progress toward meeting the objectives, with no reported instances of non-compliance with commitments (although no monitoring had taken place). Several bilateral and a few plurilateral co-operation programmes had been established with successful outcomes. Institutional arrangements had been put in place that exceeded requirements, with the creation of a Secretariat and the establishment of a website. No requests for information disclosure had been received, and there had been no cause to invoke the consultation provisions.

Reviews of CAFTA-DR by the OAS aim to monitor the impact of the Agreement on the achievement of long-term goals. These include compliance with the obligations of the environment chapter of the agreement, improved environmental protection and conservation, transparency and public participation in decision-making, and improved compliance with environmental legislation. A first evaluation was completed in 2009, covering institutional strengthening, biodiversity and conservation, market-based conservation and private-sector environmental performance. Field visits, interviews and surveys were conducted with the participation of key stakeholders, including indigenous peoples. A second evaluation was completed in 2010, using a set of indicators and a performance measurement framework for giving quantitative results. A key issue raised in the evaluation report was the large number of implementing agencies, which presents challenges for inter-agency communication and coordination.

The *ex post* assessments of the North American Free Trade Agreement (NAFTA) organised by the Commission for Environmental Co-operation (CEC) under the North American Agreement on Environmental Co-operation (NAAEC) draw mainly on the academic community through research papers and symposia occurring throughout the life of the agreement<sup>5</sup>.

A ten-year review of the implementation and effectiveness of the NAAEC has been undertaken by an independent committee appointed by the Council of the CEC (CEC,

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5. For further information on the CEC studies see: <http://www.cec.org/Page.asp?PageID=924&SiteNodeID=588>

2004). Its key messages were that the CEC has played an important role through which the three parties have benefited significantly, but with a need for greater engagement of the environment ministers of the three countries, and more effective outreach to key stakeholders. The main findings of the review were evidence of convergence of environmental standards, and that the trade agreement had not produced a “race to the bottom” as had been forecast by some commentators. The review refers to several CEC studies that have identified areas where increased trade had led to environmental effects, such as a close link between NAFTA freight truck transport and increased air pollution at border crossings. The review noted that such impacts relate to the bigger issue of the environmental implications of economic growth, more broadly, for which trade institutions have limited leverage. It was not possible to compare the impact assessment findings with any formal predictions, as no *ex ante* assessment had been done.

## 6. Regional Trade Agreements under Negotiation

Recent developments among pending regional trade agreements with environmental provisions include the following.

- Awaiting ratification: Canada-Panama Free Trade Agreement and parallel agreements on labour co-operation and the environment; Canada-Jordan; Canada-Colombia Free Trade, Labour Co-operation and Environment Agreements.
- Under negotiation: Canada and the European Union completed the fifth round of negotiations toward a Comprehensive Economic and Trade Agreement (CETA); a fourth round of negotiations took place between Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, the United States and Vietnam on the Trans Pacific Partnership; Canada and Ukraine completed the first round of negotiations on a bilateral free trade agreement in May 2010; New Zealand and India completed the third round of negotiations including discussions on their respective approaches to trade and environment; Canada and India completed the first round of negotiations in November 2010; negotiations between New Zealand and Korea, including on trade and environment; negotiations between the European Union, Colombia and Peru on a multiparty trade agreement, which has been initialled but not yet signed, including a chapter on trade and sustainable development.
- Exploratory discussions between Canada and Morocco and between Canada and Turkey.

Proposals have been tabled for the inclusion of chapters on trade and sustainable development in future European Union regional trade agreements. Negotiations are ongoing for proposed trade agreements with Ukraine, Singapore, India, China, Libya, MERCOSUR and the Central American region.

## Annex. Summary Tables

Table A1. Regional trade agreements notified since previous update: overview of environmental provisions

| Trade Agreement               | Date of notification  | Date of entry into force         | Reference to Environmental considerations                         | Environmental co-operation and capacity building | Public participation | Dispute-settlement mechanisms | <i>Ex ante/ex post</i> assessments   | Reference to specific environmental issues  | Other implementation issues | Official text   |
|-------------------------------|---|----------------------------------|---|--|----------------------|-------------------------------|--|---|-----------------------------|---|
| ASEAN-India                   | 19-Aug-2010   | 01-Jan-2010                      | -   | -  | -                    | -                             | -  | -   | -                           | <a href="http://www.asean.org/22563.htm">http://www.asean.org/22563.htm</a>   |
| ASEAN-Korea Republic          | 15-Jun-2010   | 01-May-2009(S)<br>01-Jan-2010(G) | Included in Annex on Economic Co-operation                        | Covered in an Annex                              | -                    | -                             | -  | Tourism, environmental technology, mining, energy efficiency, renewable energy, water resources | -                           | <a href="http://www.fta.go.kr/pds/fta_korea/asean/20100413_asean.pdf">http://www.fta.go.kr/pds/fta_korea/asean/20100413_asean.pdf</a>   |
| Chile-China (services)        | 18-Nov-2010   | 01-Aug-2010                      | -   | -  | -                    | -                             | -  | -   | -                           | <a href="http://fta.mofcom.gov.cn/chile/xieyi/xieyizhengwen_en.pdf">http://fta.mofcom.gov.cn/chile/xieyi/xieyizhengwen_en.pdf</a>   |
| Chile-India                   | 13-Jan-2009   | 17-Aug-2007                      | -   | -  | -                    | -                             | -  | -   | -                           | <a href="http://www.direcon.cl/documentos/alcance_parcial/PTA%20Text%20final%20Ingles.pdf">http://www.direcon.cl/documentos/alcance_parcial/PTA%20Text%20final%20Ingles.pdf</a>   |
| EFTA-Serbia                   | 24-Nov-2010   | 01-Oct-2010                      | Preamble, environmental standards mentioned in investment Chapter | -  | -                    | -                             | -  | -   | -                           | <a href="http://www.efta.int/free-trade/free-trade-agreements/serbia.aspx">http://www.efta.int/free-trade/free-trade-agreements/serbia.aspx</a>   |
| European Union-Korea Republic | Signed 6-Oct-2010 but not yet ratified, text released for information only. | -                                | SD in Preamble and objectives, Chapter on SD                      | Covered in an Annex                              | In SD chapter        | In SD chapter                 | <i>Ex ante</i> SIA carried out possibility of <i>ex post</i> implied in SD chapter | MEAs, Environmental Goods and Services, levels of protection                                    | Committee on trade and SD   | <a href="http://trade.ec.europa.eu/doclib/press/index.cfm?id=443&amp;serie=273&amp;langId=en">http://trade.ec.europa.eu/doclib/press/index.cfm?id=443&amp;serie=273&amp;langId=en</a>   |
| European Union-               | 16-Jan-   | 01-Jan-                          | SD in Preamble  | Article on                                       | -                    | -                             | <i>Ex ante</i> under   | Industrial  | Sub-Committee               | <a 631="" 859="" 875"="" 887="" data-label="Page-Footer" href="http://eur-&lt;/a&gt;&lt;/td&gt; &lt;/tr&gt; &lt;/tbody&gt; &lt;/table&gt; &lt;/div&gt; &lt;div data-bbox=">OECD TRADE AND ENVIRONMENT WORKING PAPER 2011/01 © OECD 2011</a> |

| Trade Agreement                                      | Date of notification   | Date of entry into force | Reference to Environmental considerations   | Environmental co-operation and capacity building                           | Public participation | Dispute-settlement mechanisms | <i>Ex ante/ex post</i> assessments | Reference to specific environmental issues | Other implementation issues     | Official text  |
|--|------------------------|--------------------------|---|--|----------------------|-------------------------------|------------------------------------|--|---------------------------------|--|
| Montenegro (Stabilisation and Association Agreement) | 2008(G) 18-Jun-2010(S) | 2008(G) 01-May-2010(S)   |   | environmental co-operation, others refer to environment                    |                      |                               | EC's general IA procedures         | modernisation, transport, energy           | on co-operation                 | <a href="http://lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:108:0001:0002:EN:PDF">lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:108:0001:0002:EN:PDF</a>   |
| European Union-Serbia (Trade Agreement)              | 31-May-2010            | 01-Feb-2010              | Included in European Union-Serbia Stabilisation and Association Agreement signed 29-Apr-2008                                  | as European Union-Montenegro   | -                    | -                             | As European Union-Montenegro       | As European Union-Montenegro               | As European Union-Montenegro    | <a href="http://ec.europa.eu/enlargement/pdf/serbia/key_document/interim_agreement_trade_en.pdf">http://ec.europa.eu/enlargement/pdf/serbia/key_document/interim_agreement_trade_en.pdf</a>  |
| India-Korea Rep                                      | 23-Jun-2010            | 01-Jan-2010              | Conservation and protection in Preamble, limitations on market access in services schedules, general exceptions on investment | Co-operation on tourism  | -                    | -                             | -                                  | -  | -                               | <a href="http://www.fta.go.kr/pds/fta_korea/india/eng/ALL_OF_CEPA_E.pdf">http://www.fta.go.kr/pds/fta_korea/india/eng/ALL_OF_CEPA_E.pdf</a>  |
| India-Nepal  | 02-Aug-2010            | 27-Oct-2009              | -   | -  | -                    | -                             | -                                  | -  | -                               | <a href="http://commerce.gov.in/trade/nepal.pdf">http://commerce.gov.in/trade/nepal.pdf</a>  |
| MERCOSUR-India                                       | 23-Feb-2010            | 01-Jun-2009              | -   | -  | -                    | -                             | -                                  | -  | -                               | <a href="http://commerce.gov.in/trade/international_ta_indmer.asp">http://commerce.gov.in/trade/international_ta_indmer.asp</a>  |
| New Zealand-Hong Kong (China)                        | signed 29-Mar-2010     | 01-Jan-2011              | SD in Preamble, separate environmental co-operation agreement, general exceptions   | Regulatory co-operation in main text, Environmental Co-operation Agreement | Optional             | Consultation and negotiation  | -                                  | Air and water quality, waste, chemicals    | Regular meetings of the parties | <a href="http://www.mfat.govt.nz/downloads/trade-agreement/hongkong/NZ-HK%20CEP-final-copy1.pdf">http://www.mfat.govt.nz/downloads/trade-agreement/hongkong/NZ-HK%20CEP-final-copy1.pdf</a><br><a href="http://www.mfat.govt.nz/downloads/trade-agreement/hongkong/NZ-HK-eca.pdf">http://www.mfat.govt.nz/downloads/trade-agreement/hongkong/NZ-HK-eca.pdf</a> |
| Chinese Taipei -                                     | 09-Jul-2009            | 01-Jan-                  | Preamble,   | Covered in Annex   | Covered              | Consultation on               | -                                  | biodiversity –                             | Environmental                   | <a href="http://eweb.trade">http://eweb.trade</a>  |

| Trade Agreement | Date of notification             | Date of entry into force         | Reference to Environmental considerations   | Environmental co-operation and capacity building | Public participation   | Dispute-settlement mechanisms | Ex ante/ex post assessments | Reference to specific environmental issues | Other implementation issues  | Official text   |
|-----------------|----------------------------------|----------------------------------|---|--|------------------------|-------------------------------|-----------------------------|--|--|---|
| Nicaragua       |                                  | 2008                             | enforcement and improvement of environmental law, general exceptions, environment Chapter | to environment chapter                           | in environment chapter | disputes                      |                             | intellectual property rights               | Affairs Committee, outline program of work, development of measures to evaluate progress | gov.tw/kmi.asp?xdurl=kmif.asp&cat=CAT4032   |
| Pakistan-China  | 18-Jan-2008(G)<br>20-May-2010(S) | 01-Jul-2007(G)<br>10-Oct-2009(S) | Preamble  | -  | -                      | -                             | -                           | -  | -  | <a href="http://fta.mofcom.gov.cn/topic/enpakistan.shtml">http://fta.mofcom.gov.cn/topic/enpakistan.shtml</a>   |
| Panama-Honduras | 16-Dec-2009                      | 09-Jan-2009                      | -   | -  | -                      | -                             | -                           | -  | -  | <a href="http://www.mici.gob.pa/normativa.php">http://www.mici.gob.pa/normativa.php</a>   |
| Turkey-Serbia   | 10-Aug-2010                      | 01-Feb-2010                      | General exceptions  | -  | -                      | -                             | -                           | -  | -  | <a href="http://rtais.wto.org/rtadocs/627/TOA/English/TR-SERBIA%20STA%20main%20text1.doc">http://rtais.wto.org/rtadocs/627/TOA/English/TR-SERBIA%20STA%20main%20text1.doc</a> |

Table A2. Regional trade agreements referenced in JWPTTE updates

|                              | Date of entry into force   | Update for 2008 | Update for 2009 | Update for 2010 (this report) |
|------------------------------|----------------------------|-----------------|-----------------|-------------------------------|
| Australia-Chile              | 06/03/09                   | x               | x               |                               |
| Australia-New-Zealand-ASEAN  | 01/01/10                   |                 | x               |                               |
| ASEAN-India                  | 01/01/10                   |                 |                 | x                             |
| ASEAN-Korea                  | 01/01/10(G)<br>01/05/09(S) |                 |                 | x                             |
| Canada-Colombia              | -                          | x               | x               |                               |
| Canada-EFTA                  | 01/07/09                   | x               | x               |                               |
| Canada-Jordan                | -                          | x               | x               |                               |
| Canada-Peru                  | 01/08/09                   | x               | x               |                               |
| Chile-Colombia               | 08/05/09                   |                 | x               |                               |
| Chile-Turkey                 | -                          |                 | x               |                               |
| Chile Panama                 | 07/03/08                   | x               |                 |                               |
| Chile-India                  | 17/08/07                   |                 |                 | x                             |
| China-Peru                   | 01/03/10                   |                 | x               |                               |
| China-Singapore              | 01/01/09                   |                 | x               |                               |
| China-Pakistan               | 01/01/07(G)<br>10/10/09(S) |                 |                 | x                             |
| EFTA-Albania                 | -                          |                 | x               |                               |
| EFTA-Serbia                  | -                          |                 | x               |                               |
| European Union-Cameroon      | 01/10/09                   |                 | x               |                               |
| European Union-CARIFORUM     | 01/11/08                   | x               | x               |                               |
| European Union-Côte d'Ivoire | 01/01/09                   |                 | x               |                               |
| European Union-Korea         | -                          |                 |                 | x                             |
| European Union-Montenegro    | 01/01/08(G)<br>01/05/10(S) |                 |                 | x                             |
| European Union-Serbia        | 01/02/10                   |                 |                 | x                             |
| India-Korea                  | 01/01/10                   |                 |                 | x                             |
| India-MERCOSUR               | 01/06/09                   |                 |                 | x                             |
| India-Nepal                  | 27/10/09                   |                 |                 | x                             |
| Japan-Philippines            | 11/12/08                   |                 | x               |                               |
| Japan-Switzerland            | 01/09/09                   |                 | x               |                               |
| Japan-Vietnam                | 01/10/09                   |                 | x               |                               |
| Japan ASEAN                  | 01/12/08                   | x               |                 |                               |

|                                     | Date of entry into force | Update for 2008 | Update for 2009 | Update for 2010 (this report) |
|-------------------------------------|--------------------------|-----------------|-----------------|-------------------------------|
| Japan Brunei                        | 31/07/08                 | x               |                 |                               |
| Japan Indonesia                     | 01/07/08                 | x               |                 |                               |
| New-Zealand-Malaysia                | 01/08/10                 |                 | x               |                               |
| New-Zealand-Philippines             | 01/10/09                 |                 | x               |                               |
| New Zealand China                   | 01/10/08                 | x               |                 |                               |
| New Zealand-Hong Kong (China)       | 01/01/11                 |                 |                 | x                             |
| Panama-Costa Rica                   | 23/11/08                 |                 | x               |                               |
| Panama-Honduras                     | 09/01/09                 |                 |                 | x                             |
| Pakistan Malaysia                   | 01/01/08                 | x               |                 |                               |
| Peru-Singapore                      | 01/08/09                 | x               | x               |                               |
| Chinese Taipei-El Salvador Honduras | 01/01/08                 | x               |                 |                               |
| Chinese Taipei-Nicaragua            | 01/01/08                 |                 |                 | x                             |
| Turkey-Georgia                      | 01/11/08                 |                 | x               |                               |
| Turkey-Montenegro                   | 01/03/10                 |                 | x               |                               |
| Turkey Albania                      | 01/05/08                 | x               |                 |                               |
| Turkey-Serbia                       | 01/09/10                 |                 |                 | x                             |
| United States-Oman                  | 01/01/09                 | x               | x               |                               |
| United States-Peru                  | 01/02/09                 | x               | x               |                               |

**Table A3. Canadian Environmental Assessments of RTAs**

| Country                               | Status  | Date        |
|---------------------------------------|---------|-------------|
| Singapore                             | Initial | Before 2005 |
| Central America Four (CA4)            | Initial | Before 2005 |
| Free Trade Area of the America (FTAA) | Initial | Before 2005 |
| Korea                                 | Initial | Sep 2007    |
| China FIPA initial                    | Initial | Mar 2008    |
| Chile government procurement chapter  | Final   | Jun 2008    |
| Caricom                               | Initial | Dec 2008    |
| Dominican Republic                    | Initial | Dec 2008    |
| India                                 | Initial | Jan 2009    |
| Bahrain                               | Initial | Feb 2010    |
| Jordan                                | Initial | Feb 2010    |
| Panama                                | Initial | Feb 2009    |
| Madagascar                            | Final   | Mar 2009    |
| Colombia and Peru                     | Final   | Apr 2009    |
| Kuwait                                | Initial | Apr 2010    |

Source: [www.international.gc.ca/trade-agreements-accords-commerciaux/env/](http://www.international.gc.ca/trade-agreements-accords-commerciaux/env/), [www.international.gc.ca/consultations/closed-anterieures.aspx](http://www.international.gc.ca/consultations/closed-anterieures.aspx)

**Table A4. United States Environmental Reviews of RTAs**

| Country   | Status  | Date   |
|-----------|---------|--------|
| Jordan    | Final   | Dec 02 |
| Chile     | Final   | Jun 03 |
| Singapore | Final   | Jun 03 |
| CAFTA-DR  | Interim | Aug 03 |
| Panama    | Final   | Jun 04 |
| Australia | Final   | Jul 04 |
| Morocco   | Final   | Jul 04 |
| Bahrain   | Final   | Sep 04 |
| UAE       | Interim | May 05 |
| Thailand  | Interim | Nov 05 |
| Oman      | Final   | Jun 06 |
| Korea     | Interim | Dec 06 |
| Peru      | Final   | Oct 07 |
| Colombia  | Final   | Mar 08 |

Source: <http://www.ustr.gov/trade-topics/environment/environmental-reviews>

**Table A5. European Union Sustainability Impact Assessments of RTAs**

| Country                                    | Status | Date           |
|--|--------|----------------|
| Chile                                      | Final  | December 2002  |
| Gulf Co-operation Council (GCC)            | Final  | May 2004       |
| Africa Caribbean Pacific (ACP)             | Final  | October 2006   |
| Euro-Mediterranean Free Trade Area (EMFTA) | Final  | November 2007  |
| Ukraine                                    | Final  | December 2007  |
| Korea                                      | Final  | June 2008      |
| China                                      | Final  | August 2008    |
| MERCOSUR                                   | Final  | March 2009     |
| India                                      | Final  | May 2009       |
| ASEAN                                      | Final  | June 2009      |
| Central America                            | Final  | September 2009 |
| ANDEAN                                     | Final  | October 2009   |
| Libya                                      | Final  | October 2009   |

Source: <http://ec.europa.eu/trade/analysis/sustainability-impact-assessments/assessments/>

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