

Legal Approach to Environment in Recent Free Trade Agreements in Asia*

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1. Introduction

1.1. Why is it important to consider the relationship between trade and environment?

The increasing global economic inter-dependence and the process of trade liberalisation are leading to a growing pressure on the environment and the use of natural resources. The relationship between trade and environment is a complex and highly debated issue, but is fundamental in order to achieve sustainable development. The relationship between trade and environment generally revolves around three main aspects :

- The environmental impact of trade and trade policies ;
- The potential effects of environmental measures on trade flows and ;
- The use of trade measures to achieve environmental policy aims.

It is widely recognised that trade and environment can be mutually supportive. However, such a mutually supportive relationship should not be assumed automatic, but rather regarded as policy-driven. There are fundamental differences across countries in terms of policies, rules and institutional mechanisms, both in the trade and environment arena, aimed at enhancing the mutual supportiveness between trade and environment. In addition, there often is a North-South divide on several issues related to trade and environment.

One essential condition for making sure that trade and environment are mutually supportive is to ensure that the trade liberalisation process is paralleled with the development and strengthening of effective and non-protectionist environmental legislation, at national, regional and international levels. Environmental policies could, in turn, provide an incentive for technological innovations, open up new markets, promote economic efficiency and, consequently, improve productivity. At the same time, one should also ensure that trade rules do not unnecessarily constrain but rather support and promote the ability of countries to develop and implement adequate and non-protectionist environmental measures, at both national and international levels.

Trade agreements have an important role to play in actively supporting sustainable and environmentally-friendly trade flows. This is valid at the multilateral level but even more so at the regional and bilateral levels where the identification of positive synergies among trading partners as well as convergence and/or co-operation should be easier than is the case at the international level.

1.2. The relationship between trade and environment in the context of free trade agreements

Over the last few years, a growing number of free trade agreements (FTAs) have been concluded not only in the Asian region but globally. The increasing interest in bilateral and regional agreements is partly related to concerns over the unproven institutional capability of the newly established World Trade Organisation to move forward the trade liberalisation agenda in a manner acceptable to all of its member countries. Despite the enthusiasm generated by the Fourth WTO Ministerial Conference held in Doha, in November 2001, the failure of the Fifth WTO Ministerial Conference held in Cancun Mexico in September 2003 has contributed to raising the profile of bilateral and regional agreements as an alternative avenue for trade negotiations. This sentiment has grown particularly since some of the major global trade players such as the United States have openly indicated their intention to seek further trade liberalisation through bilateral agreements.¹⁾ Whether FTAs already in existence and or currently under negotiation would substitute or supplement the mechanisms of the WTO is a question for debate. What is clear, however, is that the FTAs would have significant impacts on global trade liberalisation and the building of trade rules at the regional and global level, including in areas where multilateral negotiations are in the deadlock, including rules on the relationship between trade and environment.

The integration of trade-related environmental concerns into FTAs is necessary for a balanced approach to trade and investment liberalisation with the need for environmental conservation. This paper reviews approaches to the integration of trade and environment in recent FTAs concluded in Asia, with a view to identifying substantive provisions, procedural and institutional mechanisms that have been used in the various agreements. In addition, the paper aims at looking at the extent to which the approach to trade and environment in Asian FTAs differs with that under the World Trade Organisation. Trade and environment regimes in existing agreements will be considered in terms of their implications for future FTAs as well as for future course of action in the context of the WTO.

1) United States Trade Representative Robert B Zoellick has indicated that The United States' trade strategy includes advances on multiple fronts, including aggressively pursuing bilateral and regional trade agreements. Robert B Zoellick "America will not wait for the won't-do countries", *Financial Times*, September 22, 2003, Monday London Edition 1 Pg. 23. Certain observers regard the US policy of pursuing bilateral deals as a strategy to keep development goals out of U. S. trade policy, and avoid pressure for reform in agriculture and other policy areas where the majority of WTO member countries are calling for reform.

2. Trade and the environment in the context of the WTO

The protection of the natural environment was first recognised by the multi-lateral trading system (MTS) as a legitimate public policy objective when the original General Agreement on Tariffs and Trade (GATT) was signed in 1947. However, it was only after the 1992 World Summit on Environment and Development in Rio de Janeiro that the relationship between trade and environmental policies became more explicit during the Uruguay Round. It is in this post-GATT perspective that the word environment was explicitly mentioned in the Preamble to the Agreement Establishing the World Trade Organization and in the provisions of several Agreements of the WTO.

By the late 1990s a wider perspective on environmental issues and sustainable development had emerged in the WTO context. Environment and sustainable development increasingly gained importance in WTO agreements and a Committee on Trade and Environment was established.

2.1. Environmental provisions in WTO agreements²⁾

The Agreement Establishing the World Trade Organization

The Preamble to the Marrakesh Agreement establishing the World Trade Organization enounces that the relations among member countries in the field of trade and economic endeavour should be conducted with a view to "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance them and for doing so in a manner consistent with their respective needs and concerns at different levels of economic development."

GATT's Article XX

Article XX of the 1994 GATT provides a general exception that allows member countries to take measures that would otherwise be inconsistent with their WTO obligations. Under the present normative set-up of the WTO, GATT Article XX

2) Part of the review of environmental provisions in WTO agreements as presented here draws on: Monica Araya, "Summary of Environmental Issues in the WTO and Americas Contexts", Session on "Trade and Environment", Advanced Training Course for Government Officials, Multilateral and Regional Trade Issues for the Americas: The Doha Development Agenda and the FTAA Process, Organization of American States, World Trade Organization & Georgetown University, Washington, DC, June 10-21, 2002.

(b) and Article XX (g) are the most relevant provisions with regard to environment and trade. Article XX (b) enables the adoption of measures necessary to protect human, animal or plant life or health. Article XX (g) covers exceptions relating to the conservation of exhaustible natural resources.

The Article states that nothing in the GATT :

“...shall be construed to prevent the adoption or enforcement by any contracting party of measures :

- (b) necessary to protect human, animal or plant life or health ;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption ; ...”

The “chapeau” (the introductory paragraph) of Article XX cautions that such measures should not be applied “in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade . . .”

Environmental provisions are contained in a number of other agreements of the WTO, including the Agreement on Technical Barriers to Trade (TBT) ; the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) ; the Agreement on Agriculture ; the Agreement on Subsidies and Countervailing Measures ; the Agreement on Trade-Related Intellectual Property Rights (TRIPS) ; the General Agreement on Trade in Services (GATS) ; and the Agreement on Government Procurement.

Agreement on Technical Barriers to Trade

The Technical Barriers to Trade Agreement (TBT) tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles to producers and exporters. The agreement, however, enables every WTO member to take :

“measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment . . . at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade . . .”

In order to prevent too many different standards, the agreement encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result.

The *Committee on Technical Barriers to Trade* receives notifications on environ-

mental measures related to a variety of issues such as energy, genetically modified organisms, organic issues, pesticides, fertilizers, and hazardous wastes.

Agreement of the Application of Sanitary and Phytosanitary Measures (SPS)

The Sanitary and Phytosanitary Measures Agreement or SPS sets out the basic rules that permit governments to maintain appropriate sanitary and phytosanitary protection, while reducing possible arbitrariness of decisions. The SPS Agreement requires that sanitary and phytosanitary measures be “applied only to the extent necessary to protect human, animal or plant life or health”. Measures to ensure food safety and to protect the health of animals and plants should be based as far as possible on scientific principles and should not be maintained without sufficient scientific evidence (Article 2.2). Safety measures should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail, and should not be applied “in a manner which would constitute a disguised restriction on international trade” (Article 2.3). The SPS allows countries to some extent apply the “precautionary principle” to deal with scientific uncertainty. The *Committee on Sanitary and Phytosanitary Measures* addresses notifications of measures relating to the protection of human, animal or plant life or health.

Agreement on Agriculture

The preamble to the agreement indicates that commitments under the reform programme of trade in agriculture should be made having regard to non-trade concerns, including food security and the need to protect the environment. Additionally, certain environmental programs are exempt from the removal of subsidies. Annex 2 of the Agreement lists domestic support measures that are not subject to reduction commitments and includes several measures relevant to the environment, including research in connection with environmental programmes, infrastructural works associated with environmental programmes and payments under environmental programmes.

Agreement on Subsidies and Countervailing Measures

This Agreement includes among non-actionable subsidies, pursuant to certain conditions, environmental subsidies in the form of “assistance (up to 20% of firms’ costs) to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms (Article 8.2(c)). This protection was introduced for a period of five years (until the end of 1999) and has not been renewed.³⁾

3) See Committee on Subsidies and Countervailing Measures, “Minutes of Special Meeting”, ✓

The November 2001 Decision on "Implementation-related issues and concerns" notes a proposal to treat developing country measures trying to achieve legitimate development goals, such as "development and implementation of environmentally sound methods of production" as non-actionable subsidies, and agrees that this issue should be addressed during the course of the negotiations.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The TRIPS Agreement establishes minimum levels of protection that each government has to give to the intellectual property of other WTO members. The TRIPS Agreement has been subject of hot debate over the last years, in particular regarding the issue of patenting of human, animal and plant life as well as drug patenting. The Agreement has a number of provisions pertaining to human, animal and plant health and life. Article 27 : 2 allows Members to "exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law." Article 27 : 3[b] authorises Members to exclude from patentability "plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes."

General Agreement on Trade in Services (GATS)

The GATS Agreement contains, in its Article XIV (b), a provision similar to the general exception under Article XX of the GATT :

"subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures : (...) (b) necessary to protect human, animal or plant life or health ; (...)"

A separate Decision on Trade in Services and the Environment likewise commits the CTE to examine the relationship between services trade and the environment including the issue of sustainable development as well as the relevance of inter-governmental agreements on the environment and their relationship to the Agreement.

\ 20 December 1999, WT/G/SCM/M/22 ; and Committee on Subsidies and Countervailing Measures, "Minutes of Regular Meeting", 1-2 November 1999, WT/G/SCM/M/24.

Agreement on Government Procurement

The Agreement on Government Procurement (a plurilateral agreement annex to the WTO Final Agreement) also contains a general exception in its Article XXIII.2 which states that "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures : necessary to protect . . . human, animal or plant life or health . . .".

2.2. Environmental institutions in the WTO : The Committee on Trade and Environment

The WTO's Committee on Trade and Environment (CTE) was created following the adoption of the Ministerial Decision on Trade and Environment in Marrakesh on 15 April 1994. The Decision on Trade and Environment was based on the premise that there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other.

The CTE was conceived as a mechanism for coordinating the policies in the field of trade and environment within the WTO, without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members. Accordingly, the CTE was established with the following mandate :

- a) to identify the relationship between trade measures and environmental measures in order to promote sustainable development ; and
- b) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.

The CTE is open to the entire membership, and a number of intergovernmental organizations have observer status in its meetings. At the Fourth Ministerial Conference in Doha, Ministers instructed the CTE, in pursuing work on all items of its work programme, to focus particularly on three issues : the effects of environmental measures on market access, the relevant provisions of the TRIPS Agreement, and labeling requirements for environmental purposes. The CTE reported on its work on these issues to the Fifth Ministerial Conference.⁴⁾

4) World Trade Organization—Committee on Trade and Environment, Report to the 5th Session ✓

2.3. Doha : A turning point for the environment in multilateral trade negotiations

The Declaration of the Fourth Session of the WTO Ministerial Conference (the so-called Doha Declaration) held in Doha, Qatar in November 2001 marked a turning point in the evolution of the trade and environment inter-face within the WTO. The Doha Ministerial was the first time that at the multilateral level, the environment was part of the negotiating agenda agreed to by WTO members. While the Doha Declaration presented significant opportunities to move forward environmental concerns into the WTO, it was self-limiting in several ways. For instance, although the Declaration instructs the CTE to work on the identification of issues that require clarification with recommendations on the desirability of future negotiations, the Declaration stresses that the outcome of this work as well as the negotiations carried out shall not add to or diminish the rights and obligations of members under existing WTO agreements, nor alter the balance of these rights and obligations. This results in significant limitations on the outcome of any negotiations.

Nevertheless, the Doha Declaration is still regarded as a step forward in the trade and environment relationship at the multilateral level. The main environmental issues, as keyed to the Doha Declaration are as follows:⁵⁾

- A. The relationship between WTO rules and the specific trade obligations in multilateral environmental agreements (MEAs), and procedures for information exchange and observer status with MEA Secretariats (para. 31).
- B. The reduction or elimination of tariff and non-tariff barriers to environmental goods and services (para. 31).
- C. WTO disciplines on fishery subsidies, and the need for clarification and improvement (para. 28).
- D. The effect of environmental measures that impede market access, and those situations in which the elimination of restrictions and distortions would benefit trade, environment, and development (para. 32).
- E. Labeling requirements for environmental purposes (para. 32).
- F. The relationship between the TRIPS Agreement and the Convention on Biological Diversity (paras. 19, 32).
- G. Reviewing the environmental and development aspects of the negotiations

⁵⁾ of the WTO Ministerial Conference in Cancun—Paragraphs 32 and 33 of the Doha Ministerial Declaration, WT/CTE/8 11 July 2003.

5) For a detailed analysis of the sectoral issues in the Doha Declaration see Steve Charnovitz, "WTO and the Doha Agenda: Reform of Trade and Environmental Mechanisms and Rules", at <http://www.gets.org/pages/harmony/>

with the objective of having sustainable development appropriately reflected (para. 51).

- H. Cooperation between the WTO and relevant international environmental and development organizations (para. 6).
- I. Agriculture negotiations where so-called non-trade concerns will be taken into account in the negotiations (para. 13).

At Doha, negotiations were agreed to on :

- the relationship between WTO rules and the specific trade obligations in multilateral environmental agreements (MEAs), and procedures for information exchange and observer status with MEA Secretariats (para. 31) ;
- the reduction or elimination of tariff and non-tariff barriers to environmental goods and services (para. 31) ;
- WTO disciplines on fishery subsidies, and the need for clarification and improvement (para. 28) ;
- Agriculture negotiations where so-called non-trade concerns will be taken into account in the negotiations (para. 13).

At the Fifth Ministerial Conference in September 2003, WTO member countries were due to decide whether negotiations should be held on the effect of environmental measures that impede market access, and those situations in which the elimination of restrictions and distortions would benefit trade, environment, and development (para. 32) ; labeling requirements for environmental purposes (para. 32) ; and the relationship between the TRIPS Agreement and the Convention on Biological Diversity (paras. 19, 32).

2.4. Trade and environment at Cancun

The 5th WTO Ministerial Conference held on 10-14 September 2003 in Cancun, Mexico ended without consensus. The Cancun Ministerial was dominated by agriculture and the "Singapore Issues" (Investment, transparency in government procurement, competition and trade facilitation) with environment low on the agenda. At the Fourth Ministerial in Doha, ministers agreed to launch negotiations on certain aspects of the trade and environment linkage. These negotiations aimed at clarifying the relationship between the multilateral trade and environment regimes, and cover also information exchange between WTO committees and MEA secretariats, as well as the liberalisation of trade in environmental goods and services. In Cancun, WTO member countries came close to consensus (in the second revision of the Draft Cancun Ministerial Declaration submitted by the conference chairperson on September 13) on the issue of inviting the secretariats of the multilateral environmental agreements

(MEAs), invited thus far, and of the United Nations Environment Programme (UNEP) and the United Nations Conference on Trade and Development (UNCTAD) to be observers in the Trade and Environment Committee Special Session, in accordance with its current practice, and for the duration of the negotiations. Talks among heads of delegations also seem to have come close to consensus on the issue of patenting of animals and plants, the Convention on Biological Diversity and traditional knowledge. Eco-labeling was among those more difficult issues. With the collapse of the negotiations, all these issues for negotiations remain at the stage of Doha.

3. The momentum of free trade agreements in Asia⁶⁾

For most of the period prior to 1999, the Asian region had stayed on the fringe of the vast movement towards concluding regional and bilateral trade agreements. With a few exceptions such as the ASEAN Free Trade Area (AFTA) adopted in 1992 among member countries of the Association of Southeast Asian Nations (ASEAN)⁷⁾ and the South Asian Preferential Trade Agreement (SAPTA) concluded in 1995 by the South Asian Association for Regional Cooperation (SAARC),⁸⁾ FTAs in the sense of Article XXIV of the 1994 General Agreement on Tariffs and Trade (GATT),⁹⁾ which is part of the WTO agreement, were almost

6) Regional and bilateral agreements reviewed in this paper :

Asia-Pacific Economic Cooperation (APEC); ASEAN Free Trade Area (AFTA) (28 January 1992); SAPTA : South Asian Preferential Trade Agreement (7 December 1995); Agreement between New Zealand and Singapore on a Closer Economic Partnership (ANZSCEP) (14 November 2000); Japan-Singapore Economic Agreement for a New Age Partnership (JSEPA) (13 January 2002); European Free Trade Area (EFTA)—Singapore FTA (26 June 2002); Singapore-Australia Free Trade Agreement (SAFTA) (17 February 2003); United States—Singapore Free Trade Agreement (USSFTA) (6 May 2003); Republic of Korea—Republic of Chile Free Trade Agreement (15 February 2003).

7) Member countries of ASEAN are Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Vietnam, Laos, Myanmar and Cambodia.

8) Member countries of SAARC are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

9) According to GATT Article XXIV :

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not

Figure 1. Web of FTAs concluded or under negotiation in the Asia-Pacific region (Not-exhaustive)

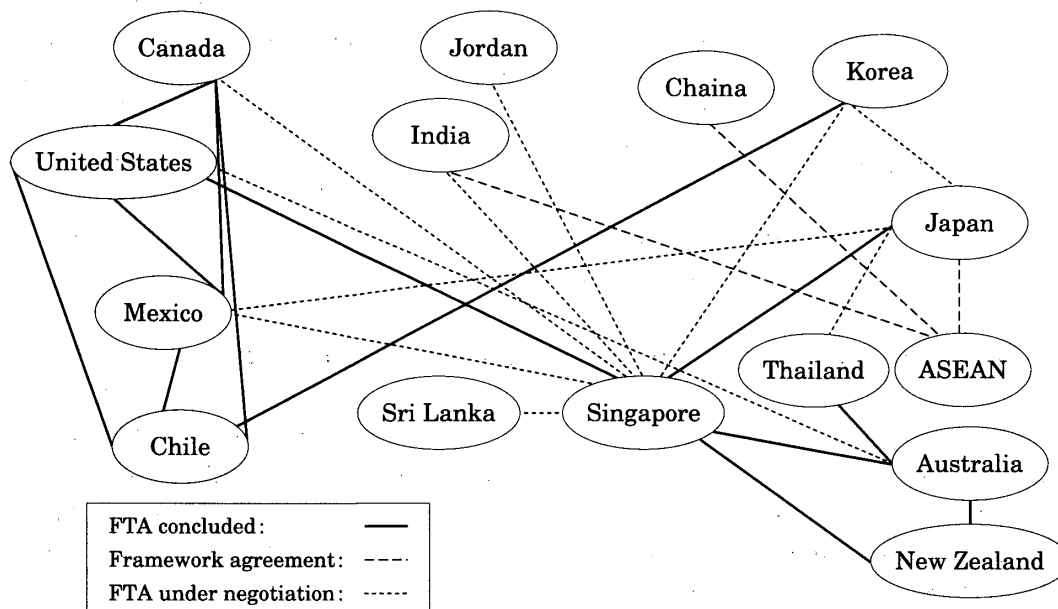
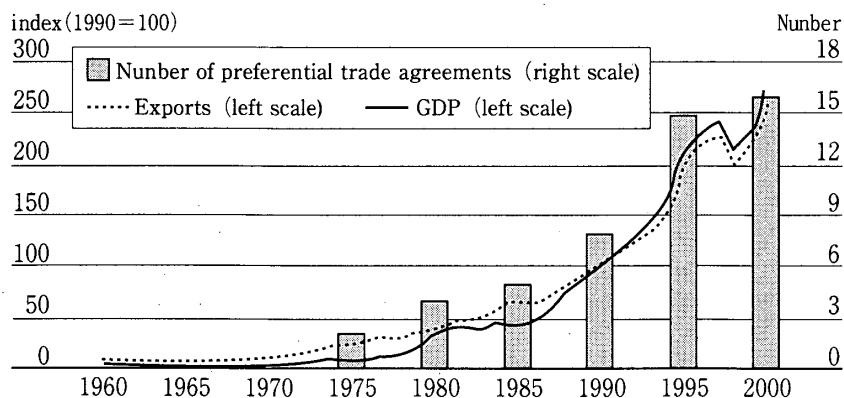


Figure 2. Asian and Pacific Merchandise Exports, GDP, and Number of Preferential Trade Agreements, 1960-2000



Sources : International Monetary Fund, 2001, Direction of Trade Statistics CD-ROM, October, World Bank, World Development Indicators 2001 : World Bank website, : www.worldbank.org ; World Trade Organization website : www.wto.org.

Asian Development Bank, 2002, Figure 3.2.

- included in the union ;
- (b). A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

inexistent in the region. It was only in 1999 and 2000 that government-level negotiations and studies began to gather momentum. Since then, several bilateral agreements have been concluded among countries in the region as well as with countries from other regions. Several proposals for FTA are now under negotiation, involving not only individual countries, but also regional groupings such as ASEAN. Figure 1 presents a web of some of the FTAs already concluded or under negotiation in the Asia-Pacific region. The increase in the number of FTAs has been parallel to the increase in imports and exports (Figure 2).

4. Trade and environment in FTAs concluded in Asia

In most FTAs concluded in Asia, parties go well beyond their WTO commitments in terms of tariff concessions. However, while negotiators within the WTO are increasingly moving towards issues other than tariffs, i.e. environmental protection, intellectual property rights, labour standards and competition policies, with the exception of the recent bilateral agreements such as the US—Singapore agreement, FTAs in Asia have mostly concentrated on issues related to trade liberalization per se. For example, AFTA seeks to eliminate tariff and non-tariff barriers among member countries through progressive tariff reductions, elimination of import duties and trade facilitation measures. It provides for binding commitments towards trade liberalization but has none but one single exception covering environment.¹⁰⁾ Likewise, SAPTA aims to promote and sustain mutual trade and the economic cooperation among the Contracting States but has no provision related to environment. Similarly, APEC, though not a FTA as such but rather a forum that promotes trade and investment liberalization on non-binding basis, concentrates on matters which will help improve the economic prosperity for its member countries.

This approach to the environment as a non-core issue—environment is often referred to as a general exception clause labeled following Article XX of the 1994 GATT—was a common feature of early regional and bilateral trade agreements in Asia. With few exceptions, the so-called “new-age” FTAs (Japan—Singapore ; Australia—Singapore ; New Zealand—Singapore) have expanded in coverage beyond the issues of tariff reductions, towards electronic commerce, trade facilitation, broadcasting etc. but not towards environment. These agreements seek trade and investment expansion as a prime objective.

10) “Nothing in this Agreement shall prevent any Member State from taking action and adopting measures, which it considers necessary for the protection of its national security, the protection of public morals, the protection of human, animal or plant life and health, and the protection of articles of artistic, historic and archaeological value”, Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Article 9, General Exceptions.

The low profile of environmental issues in the negotiations for FTAs is related to the fact that FTAs are a new phenomenon in Asia. As such, they are primarily viewed as opportunities for a faster pace of liberalization of trade and investment, than would have happened in the context of multilateral negotiations. The limited inclusion of environment into FTAs is related to another concern—the effects of environmental policies on trade. In many developing economies, this concern is often driven by perceived green protectionism in more developed countries, in which environmental standards are used as non-tariff barriers and disguised restriction on trade. Such concerns have partly resulted from cases of restriction against Asian goods in northern markets on the grounds of environment or health safeguards.

Since the establishment of the Dispute Settlement Body of the WTO, only a handful of dispute cases related to environment have been decided.¹¹⁾ Among these figure landmark cases involving Asian countries: the Shrimp/Turtle Case (*United States—Import Prohibition of Certain Shrimp and Shrimp Products*),¹²⁾ in which India, Pakistan, Malaysia and Thailand challenged a U. S. law which prohibited imports of shrimps from countries where the government did not obligate fishing boats to install “TED” (turtle exclusion devices) in order to prevent incidental catching and killing of sea turtles when harvesting shrimps. The decision of the Appellate Body held that the environmental policy incorporated in U. S. law fell under Article XX (g), and was exempted from the GATT disciplines. However, the Appellate Body condemned U. S. law for the reason that the United States did not do enough to negotiate with East Asian countries to reach an agreement whereby this issue could have been resolved through an international agreement, and also because the United States applied its import measures in a differentiated

11) Under the GATT system, some of the cases on dispute under article XX of the GATT that involved Asian countries include the case brought by the United States against Thailand on *Thailand Restrictions on Importation of and Internal Taxes on Cigarettes*. Adopted on 7 November 1990, BISD 37S/200. Under the 1966 Tobacco Act, Thailand prohibited the importation of cigarettes and other tobacco preparations, but authorized the sale of domestic cigarettes; moreover, cigarettes were subject to an excise tax, a business tax and a municipal tax. The US complained that the import restrictions were inconsistent with GATT Article XI: 1, and considered that they were justified neither by Article XI: 2 (c), nor by Article XX (b). It also argued that the internal taxes were inconsistent with GATT Article III: 2. Thailand argued, *inter alia*, that the import restrictions were justified under Article XX (b) because the government had adopted measures that could only be effective if cigarette imports were prohibited and because chemicals and other additives contained in US cigarettes might make them more harmful than Thai cigarettes. The Panel found that the import restrictions were inconsistent with Article XI: 1 and not justified under Article XI: 2 (c). It further concluded that the import restrictions were not “necessary” within the meaning of Article XX (b). The internal taxes were found to be consistent with Article III: 2.

12) Appellate Body Report and Panel Report adopted on 6 November 1998. WT/DS58. Case brought by India, Malaysia, Pakistan and Thailand.

manner.¹³⁾

Environment-related grounds have also been used in a number of other cases against exports from Asian goods, which have resulted in consultations among concerned parties under the WTO dispute settlement mechanisms¹⁴⁾. The use of environmental measures as a ground for prohibiting imports has likely contributed to generating a cautious approach to the issue of environmental exceptions in many Asian countries, which in turn affected the way environment was dealt with in FTAs.

In the next sections, the relationship between trade and environment in the context of FTAs concluded in Asia is examined on the following aspects: trade and environment models, technical co-operation on the environment, relationship between trade agreements and multilateral environmental agreements (MEAs), environmental review and environmental reporting, procedural and institutional mechanisms, and dispute settlement.

4.1. Trade and environment models in Asia

There are three common models for integrating environmental concerns into an FTA:

- A. the inclusion of environmental provisions in the preamble and/or text of the agreement (common to most FTAs);
- B. the inclusion of a specific chapter on environment (e.g. United States—Singapore Agreement, United States—Jordan Agreement) and;
- C. the adoption of an environmental side agreement (e.g. North American Free Trade Agreement—NAFTA).

13) The Panel considered that the ban imposed by the US was inconsistent with GATT Article XI (which limits the use of import prohibitions or restrictions), and could not be justified under GATT Article XX (which deals with general exceptions to the rules, including for certain environmental reasons). Following an appeal, the Appellate Body found that the measure at stake did qualify for provisional justification under Article XX (g), but failed to meet the requirements of the chapeau (the introductory paragraph) of Article XX (which defines when the general exceptions can be cited). The Appellate Body therefore concluded that the US measure was not justified under Article XX of GATT

14) These include a request for consultations dated 18 October 2002, from the Permanent Mission of the Philippines to the Permanent Mission of Australia and to the Chairman of the Dispute Settlement Body, regarding certain measures affecting the importation of fresh pineapple fruit. The measure in question required that fresh pineapple fruit from the Philippines, the Solomon Islands, Sri Lanka, and Thailand, among other requirements, be de-crowned and subjected to pre-shipment methyl bromide fumigation as conditions for importation into Australia. The Philippines request for consultation was later joined by another request from Thailand dated 5 November 2002.

In Asia, FTAs concluded have followed either model A or B. None of the agreements concluded to date has followed the NAFTA approach of a side environmental agreement (model C).

It should be noted that the relationship between trade and environment should not only be approached in terms of the effect of environmental measures on trade in goods and services and investment and vice-versa, within a single FTA, but also in terms of the relationship between the FTA in question and other agreements, in particular the relationship with regional or multilateral environmental agreements (MEAs). Technical cooperation on environmental matters appears to be a featuring element in several agreements. In certain cases, technical cooperation on environment was subject to specific side agreements, even when the main agreement only had few substantive provisions on environment.

A. Environmental provisions

a. General provisions relating to environment and sustainable development

General provisions related to environmental protection and sustainable development are enounced in the preamble or the objectives of agreements when parties aim at broader goals beyond trade and investment liberalization. The preamble to the Marrakesh Agreement establishing the WTO, mentioned above, is one such example.

In the context of FTAs concluded in Asia, environment and sustainable development are addressed in the provisions of the preamble or in the text of the agreements with respect to various aspects. The objectives of sustainable development and environmental protection are prominent in the United-States-Singapore Free Trade Agreement. The Agreement states in its preamble that "... economic development, social development, and environmental protection are interdependent and mutually reinforcing components of sustainable development, and that an open and non-discriminatory multilateral trading system can play a major role in achieving sustainable development". The agreement further reaffirms "... the importance of pursuing [trade liberalization] in a manner consistent with the protection and enhancement of the environment, including through regional environmental cooperative activities and implementation of multilateral environmental agreements to which they are both parties".

The Republic of Korea—Chile FTA also includes clear language with regard to sustainable development. The Parties state that the "... Agreement should be implemented with a view toward raising the standard of living, creating new work opportunities, and promoting sustainable development in a manner consistent with environmental protection and conservation".

However, the US—Singapore and the Korea—Chile agreements stand as exceptions in this regard. The objectives of sustainable development and environ-

mental protection are hardly mentioned in the preamble and objectives of most FTAs concluded in Asia. Rather, preambles are confined to stressing objectives of trade and investment liberalization and furthering cooperation among parties.

b. General exceptions relating to environmental protection and the conservation of natural resources

General exceptions similar to those set under the WTO (GATT 1994 Article XX) are found in a number of FTAs (Singapore—Australia FTA; EFTA—Singapore FTA; JSEPA, US—Singapore FTA; AFTA and Framework Agreement on the ASEAN Investment Area). Some of these agreements virtually reproduce the WTO provisions in this matter, whereas some others go beyond what is provided for under Article XX.

ASEAN Free Trade Agreement

The general exceptions in the Agreement on the CEPT Scheme of the ASEAN FTA, which is the main mechanism for AFTA, are provided for under Article 9 which states :

“Nothing in this Agreement shall prevent any Member State from taking action and adopting measures, which it considers necessary for the protection of its national security, the protection of public morals, the protection of human, animal or plant life and health, and the protection of articles of artistic, historic and archaeological value”.

The provisions of Article 9 of AFTA covers exceptions related to the protection of human, animal or plant life and health (Article XX. b. of the GATT), but it does not include the provisions related to the conservation of exhaustible natural resources (Article XX. g. of the GATT). The Framework Agreement on the ASEAN Investment Area adopted on the 7th of October 1998 features a similar approach.

Japan—Singapore

The general exceptions in the Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership (JSEPA) reproduce Article XX of the GATT 1994 as such. These exceptions are found in several chapters of the agreement, including Chapter 2, article 19 (trade in goods) ; Chapter 7, article 69 (trade in services) ; Chapter 8, article 83 (investment).

United States—Singapore

GATT 1994 Article XX and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis* for provisions on national treatment and market access, rules of origin, customs procedures, textiles, and technical

barriers to trade (Article 21.1). One additional feature of the US—Singapore Agreement is that it provides an understanding of the provisions of GATT Article XX (b) to include “environmental measures necessary to protect human, animal, or plant life or health” and Article XX (g) to apply to “measures relating to the conservation of *living and non-living* exhaustible natural resources”, which would enable this disposition to cover, inter alia, air and water, as these are now understood to be exhaustible natural resources.

Republic of Korea—Chile

The chapter on Investment (Chapter 10) contains a general exception that states: “Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that an investment activity in its territory is undertaken in a manner sensitive to environmental concerns (article 10.18).

B. Chapter on environment

The United States—Jordan FTA¹⁵⁾ was the first time ever that a trade agreement included in its corpus a specific chapter addressing issues of trade and environment and trade and labor. The US-Jordan agreement has produced “cascade effect” at least for other agreements concluded between the United States and third countries. Such has been the case of the US-Singapore Agreement.

United States—Singapore

In the context of Asia, the US—Singapore FTA has set a major precedent in addressing environmental issues within an FTA by including a chapter on environment (Chapter 18). The agreement was modeled after the US-Jordan FTA. It also contains a number of environmental provisions in other chapters, including in the chapter on investment. Chapter 18 of the US—Singapore FTA precludes Parties from failing to effectively enforce their environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties (Article 18.2.a). The chapter provides for enforcement mechanisms, including through judiciary means and sanctions for violations.

15) The U.S.-Jordan Free Trade Agreement (FTA) was signed on October 24, 2000 and entered into force on December 17, 2001. The US-Jordan Free Trade Agreement (FTA) is the first trade accord to which the US is party that includes provisions prohibiting the reduction of domestic environmental and labour regulations for trade enhancing purposes. The North America Free Trade Agreement (NAFTA) between the US, Canada and Mexico includes both environmental and labour side agreements, but at the difference of the US-Jordan Agreement, these do not appear directly in the NAFTA text and as such are not subject to the same disciplines.

Sanctions and remedies are set in the form of compliance agreements, penalties, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.

Republic of Korea—Chile

The Korea—Chile Agreement does not have a chapter explicitly dealing with environment in a way similar to the United States—Singapore Agreement or the Chile—United States Agreement. However, the Korea—Chile Agreement contains two chapters that deal respectively with sanitary and phytosanitary measures (Chapter 8) and standards-related measures (Chapter 9). Chapter 8 applies to sanitary and phytosanitary measures, which may, directly or indirectly, affect trade between the Parties. This chapter draws upon the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The chapter on standards-related measures sets among its objective to guarantee the protection of human health or safety, animal or plant life or health, or the environment. It is interesting to note that environmental provisions contained in the United States—Chile Free Trade Agreement concluded a few months after the Korea—Chile Agreement are by far more ambitious than provisions in chapter 8 and 9 of the Korea—Chile Agreement.¹⁶⁾ The same applies to the Chile—Mexico FTA signed earlier on 1 October 1998.

4.2. Technical co-operation on the environment

Technical co-operation on the environment is one of the areas in which FTAs concluded in Asia have gone beyond what is provided for under GATT and WTO agreements.

ASEAN Free Trade Agreement

The AFTA Agreement does not have any specific mechanism for environmental cooperation. However, ASEAN has a number of cooperation programmes and projects in the field of environment. These plans and programmes include sectoral as well as multisectoral cooperation initiatives: ASEAN Environmental Programmes (e.g. ASEAN Sub-regional Environmental Programmes since 1977), ASEAN

16) The United States—Chile Free Trade Agreement was signed on 6 June 2003. The agreement includes a chapter on environment. The environment provisions include commitments by each Party concerning effective enforcement of its environmental laws, establishing and maintaining high levels of environmental protection, and not weakening environmental laws to encourage trade or attract investment. The FTA establishes an Environment Affairs Council (Council) to implement the Environment Chapter of the FTA, and to serve as a high-level forum to discuss environmental issues and concerns, with opportunities for public input into meetings of the Council. If either Party fails to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, the other Party can seek enforcement through dispute settlement procedures, including the use of monetary assessments backed by the suspension of trade benefits.

Strategic Plan of Action on the Environment (1999-2004), ASEAN Plan of Action for Energy Cooperation (1999-2004).

The ASEAN Senior Officials on the Environment (ASOEN) is the key institution responsible for formulation, implementation, and monitoring of regional programmes and activities on environment. It has three subsidiary working groups: Working Group on Nature Conservation and Biodiversity; Working Group on Coastal and Marine Environment; Working Group on Multilateral Environment Agreements.

The fact that environment is dealt with as a sectoral area of regional cooperation leaves it aside the trade-environment relationship. As a result, there is no direct inter-linkage between trade and environment in the sense of disciplines of mutual effect. However, it can be said that both in terms of policy framework and institutional mechanisms to achieve environmental policy goals, the ASEAN model has its advantages, when considering environmental protection in its own merit.

Japan—Singapore

The Japan-Singapore Agreement contains a chapter on co-operation in the field of science and technology, including life sciences and environment. Modalities of cooperation are specified in an Implementation Agreement. Article 31 (b) of the Implementation Agreement lists the forms of cooperative activities which are:

- (i) exchange of information and data;
- (ii) joint seminars, workshops and meetings;
- (iii) visits and exchange of scientists, technical personnel or other experts; and
- (iv) implementation of joint projects and programmes.

United States—Singapore

The United States-Singapore Agreement commits parties to pursue cooperative environmental activities, including those pertinent to trade and investment and to strengthening environmental performance, such as information reporting, enforcement capacity, and environmental management systems. These are to be undertaken under a Memorandum of Intent on Cooperation in Environmental Matters to be entered into between the Government of Singapore and the United States (Article 18.6). Public involvement, including through the use of public-private-partnerships are expected to play a role in cooperative environmental activities.

4.3. Relationship with Multilateral Environmental Agreements

The reference to multilateral environmental agreements (MEAs) is not frequent in FTAs concluded in Asia, although the issue has received much attention in discussions at the policy level. The submission by Japan¹⁷⁾ to the

WTO CTE has been viewed as one of the best papers that analytically addressed the question of the linkage between trade agreements and MEAs.¹⁸⁾ Yet, reference to the relationship with MEAs has not been prominent in FTAs concluded by Japan, including the Japan-Singapore agreement. Japan's paper points out the complexity of MEAs which contain many trade measures beyond those that are specific trade obligations.

Again, the United States—Singapore Agreement is the most far reaching agreement in addressing the issue of the relationship between trade obligations set in an FTA and MEAs. The Preamble to the US-Singapore Agreement reaffirms the importance of pursuing the objectives of the agreement “in a manner consistent with the protection and enhancement of the environment, including through regional environmental cooperative activities and implementation of multilateral environmental agreements to which they are both parties”. Article 18.8 related to the relationship to environmental agreements is more specific in its wording: “The Parties recognize the critical role of multilateral environmental agreements in addressing some environmental challenges, including through the use of carefully tailored trade measures to achieve specific environmental goals and objectives.” However, the US-Singapore agreement though underlying the issue in the text of the agreement does not set any substantive obligations in respect to the relation between the Agreement and MEAs. Rather, parties take note of the agreement by WTO Members to negotiations on the relationship between existing WTO rules and specific trade obligations set out in MEAs¹⁹⁾ and decide that the United States and Singapore “shall consult on the extent to which the outcome of those negotiations applies to this Agreement”.

4.4. Environmental review and environmental reporting

Environmental reviews have been introduced as a means of assessing the environmental impacts, both positive and negative of trade agreements. Such environmental reviews can be carried out *a priori*—before the agreement is adopted or *a posteriori*—after the agreement has entered into force.

17) “The relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements”, Submission by Japan (TN/TE/W/ 10, Oct. 3, 2002) accessible at: <http://www.mofa.go.jp/policy/economy/wto/meas0210.html> With respect to discussions at the WTO level, the Japanese submission concludes that trade measures recommended by a Conference of MEA parties, but not specifically required in the MEA, ought not to be covered in the WTO negotiations.

18) Steve Charnovitz, 2000, “Expanding the MEA Mandate in the Doha Agenda”, Draft Project Paper, Achieving Harmony in Trade and Environment, A Project by the Global Environmental & Trade Study (GETS) <http://www.gets.org/gets/harmony/projectpapers.html>

19) The mandate for such negotiations is set forth in paragraph 31 of the Ministerial Declaration, adopted on 14 November 2001 in Doha.

While Singapore has concluded five FTAs with New Zealand, Japan, the European Free Trade Association, Australia and the United States, the agreement with the United States is the only one that has involved a formal and open process of environmental review. The US-Singapore Agreement went through environmental impact reviews released in US by the Environmental Protection Agency (EPA) and in Singapore by the Ministry of the Environment.

The reason for this partly lies in US regulatory requirements for integrating environmental concerns into trade agreements: As a requirement of section 4(a)(ii) of the US Executive Order 13141 *Environmental Review of Trade Agreements*,²⁰⁾ reviews of the environmental effects of trade agreements entered into by the US are mandatory. According to the Order, “[t]rade agreements should contribute to the broader goal of sustainable development,” and “[e]nvironmental reviews are an important tool to help identify potential environmental effects of trade agreements, both positive and negative, and to help facilitate consideration of appropriate responses to those effects whether in the course of negotiations, through other means, or both.”

The US Trade Act enacted in August 2002, of which Executive Order 13277 (2002) delegates certain authorities and assigns certain functions to the US Trade Representative, provides that the President shall conduct environmental reviews consistent with Executive Order 13141 and its relevant guidelines, and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Under the US environmental review process, a Draft Environmental Review is prepared and released during the course of negotiations to provide policymakers and negotiators with information concerning potentially significant environmental issues and seeks public comments. A Final Environmental Review is released after the trade agreement is concluded, describing the environmental review process and the US Government’s conclusions regarding the agreement’s potential environmental impacts.

Requirements of environmental reviews similar to the US requirements under the 2002 Trade Act and Executive Order 13141 have currently been adopted in no other country for the FTAs examined in this paper. It is considered that such a process of review would a priori ensure that potential environmental impacts of the

20) Executive Order 13141 *Environmental Review of Trade Agreements* was signed on November 16, 1999 under the Clinton Administration. The Order institutionalizes the use of environmental reviews as policy tool to assess potential environmental effects of trade agreements, both positive and negative, and to help facilitate consideration of appropriate responses where effects are identified. Agreements that require environmental review are: (i) comprehensive multilateral trade rounds; (ii) bilateral or plurilateral free trade agreements; and (iii) major new trade liberalization agreements in natural resource sectors. The Order provides for opportunity for public input.

proposed FTA are assessed and understood so as to enable appropriate mitigation strategies.

4.5. Procedural and institutional mechanisms

• Environmental Institutions

Most agreements have set up some institutional mechanisms relating to the environment, in particular environmental cooperation. Environmental institutions generally operate on the basis of action plans that are adopted separately from the main agreement. Under ASEAN, environmental institutions include the ASEAN Senior Officials on the Environment (ASOEN), the Meeting of the ASEAN Environment Ministers and the ASEAN Secretariat. The cooperation programs and projects of ASOEN are guided by the ASEAN Strategic Plan of Action on the Environment. These institutions operate parallel to institutions dealing with trade. While the approach of having parallel institutions pursuing equally important mandates may contribute to enhancing the profile of environment in overall cooperation, it may result in weak functional linkage, thus leaving the question of harmonization unsolved. Yet, whether such an approach is preferable to an institutional structure with a small committee on environment within an institution primarily devoted to trade is a question for debate.

In the case of APEC, there is no separate working group in APEC specifically for environmental issues. Environmental issues are highlighted as subjects for existing working groups such as those on energy and human resource development. The importance of environmental issues on the agenda of APEC is however growing. Environment or Sustainable Development Ministers from APEC countries have started meeting more regularly and identified three environmental areas for priority in the APEC work program: creating sustainable cities, clean production, and protection of the marine environment.

The Chapter on the Environment under the United States—Singapore Agreement provides for the establishment of a Joint Committee, which supervises the implementation of the Agreement, including on environmental issues. The Agreement instructs the Committee to consider at its first meeting the review performed by each Party of the environmental effects of the Agreement and provide the public an opportunity to emit views on those effects.

• Dispute Settlement

The usual practice in regional and bilateral agreements in Asia has been a cooperative and non-litigious approach, through which such agreements provide a mechanism for cooperation while specific aspects of implementation are defined unilaterally at the national level. For the matter of dispute settlement, most agreements recourse to a dispute settlement body similar to that of the WTO, through the selection of a panel.

Conclusion

- In most FTAs concluded in Asia, parties go well beyond their WTO commitments in terms of tariff concessions. However, while negotiators within the WTO have been increasingly shifting their agendas towards issues other than tariffs i.e. environmental protection, intellectual property rights, labour standards and competition policies, with the exception of the recent bilateral agreements such as the US—Singapore agreement, FTAs in Asia have essentially concentrated on issues related to trade liberalization per se.
- Environment is generally addressed as part of general exceptions in these agreements. In this respect, most agreements have followed to approach under Article XX of the GATT 1994; concerning exceptions related to the protection of human, animal and plant, and the conservation of exhaustible natural resources.
- Most ongoing negotiations towards the conclusion of FTAs do not reflect the current evolution with regard to the linkage between trade and environment as set in the Doha Declaration. Obligations remain confined to the traditional approach of listing environment as one area of cooperation and the inclusion of general exceptions in line with GATT Article XX. There however, is an emerging trend insome of the so-called “new age agreements” that go beyond the traditional confinement of FTAs to trade and investment liberalization. The “new age agreements” are taking a more integrative approach to trade and environment, both in terms of substantive provisions and procedural provisions. In certain areas, these agreements have even gone beyond what is provided for under the WTO in balancing trade and environmental obligations.
- One striking point of FTAs involving important environmental provisions is that such FTAs are those concluded only among countries of high income and high levels of environmental standards (e.g. United States—Singapore). Environmental provisions similar to those contained in the US—Singapore agreement are not found in agreements involving a range of countries at varying levels of development such as ASEAN or in bilateral agreements among the developing countries (e.g. Korea—Chile, as compared to United States—Chile FTA). Agreements such as the United States—Singapore FTA may therefore not be a panacea.
- In East Asia, several agreements are being considered, revolving around Japan, the Republic of Korea, and China, plus ASEAN. These will account for a large share of trade within the Asia-Pacific region and are likely to involve significant environment implications. The extent to which these

agreements ensure that the process of trade liberalization is paralleled with the development and strengthening of effective and non-protectionist environmental rules has become even more important since the Fifth WTO Ministerial Meeting failed to bring significant progress in this field. In particular, mechanisms for *ex ante* and *ex post* review of free trade agreements need to be given urgent priority. In addition, the process of negotiating FTAs, including the composition of joint study groups should be made more participatory so as to allow greater involvement of environmental and civil society organizations.

- Finally, the experience with FTAs to date provides a further indication that environmental protection requires a global approach with a strengthening of international institutions devoted to environmental protection. The inclusion of environmental protection in FTAs could be regarded as complement to that, or even a driving force for moving the environment further into the WTO agenda, but should not be considered as an alternative to a multilateral approach. FTAs can therefore be used especially for facilitating cooperation and capacity building as bilateral and regional frameworks provide more flexibility for such purposes than global organisations.

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Annex 1 : Summary of Environmental Measures in Selected Free Trade Agreements in Asia

	AFTA	SAPTA	New Zealand— Singapore	Japan—Singapore	United States—Singapore	Korea—Chile
Year of Signature	1992	1993	2000	2001	2003	2003
Does it involve ex ante environmental review?	No	No	No	No	Yes	No
Does it have a side Environmental Agreement?	No	No	No	No, but an Implementation Agreement includes environment as one area for cooperation	No. But provides for a Memorandum of Intent on Cooperation in Environmental Matters to be entered into between the Government of Singapore and the United States	No
Other non-binding agreements	No	No	No	No	No	No
Formal Mechanism for Civil Society Participation	No	No	No	No	Yes Citizens can start complaints for lack of enforcement of domestic environmental laws. Specific article (18.5) on public participation in discussions related to the implementation of the chapter on environment.	Yes Non-governmental organisations of both parties are allowed to participate in and express their opinions and comments on the process of standard-related measures.
Are sanctions available as an enforcement mechanism?	No	No	No	No	Yes. The chapter on environment provides for sanctions and remedies such as: compliance agreements, penalties, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.	No
Institutional Arrangement	A ministerial-level Council and the Secretary-General of the ASEAN Secretariat	No	No	Joint Committee on Science and Technology to cover environment	Joint Committee will be created which, inter alia, shall consider the review performed by each Party of the environmental effects of this Agreement and shall provide the public an opportunity to provide views on those effects.	Fair Trade Commission under which a Committee on Sanitary and Phytosanitary Measures and a Committee on Standards-Related Measures are established

	AFTA	SAPTA	New Zealand— Singapore	Japan—Singapore	United States—Singapore	Korea—Chile
Environmental Cooperation				Targeted Program for cooperation on environment under Chapter 8 Science and Technology of the Implementation Agreement	Memorandum of Intent on Cooperation in Environmental Matters to be entered into between the Government of Singapore and the United States	Committee on Sanitary and Phytosanitary Measures and Committee on Standards-Related Measures to promote technical cooperation in the respective areas
Environmental Provisions within Free Trade Agreement.	Yes	No	Yes	Yes	Yes	Yes
Preamble	Yes	No	Yes	No	Yes	Yes
Does it have a chapter on Environment?	No	No	No	No	Yes. Chapter 18	No environmental chapter per se, but two chapters deal respectively with sanitary and phytosanitary measures (Chapter 8) and standards-related measures (Chapter 9).
Exception similar to GATT's Art. XX?	Yes. Article 9 : General Exceptions in Agreement on the CEPT Scheme of the ASEAN FTA, which is a main mechanism for AFTA	Yes In several chapters including on trade in goods, trade in services, investment	Yes Article 71	No	GATT 1994 Article XX and its interpretive notes are incorporated into and made part of the Agreement, <i>mutatis mutandis</i> for provisions on national treatment and market access, rules of origin, customs procedures, textiles, technical barriers to trade.	Yes
Articles on Multilateral Environmental Agreements	No	No	No	No	Yes Preamble Article 18.8	No