



Environment in the Trans-Pacific Partnership:

A Legal Analysis

ICTSD



International Centre for Trade
and Sustainable Development

Policy Brief

Environment in the Trans–Pacific Partnership:

A Legal Analysis

ICTSD



International Centre for Trade
and Sustainable Development

Policy Brief

Published by

International Centre for Trade and Sustainable Development (ICTSD)
International Environment House 2
7 Chemin de Balexert, 1219 Geneva, Switzerland

Tel: +41 22 917 8492
ictsd@ictsd.ch

Fax: +41 22 917 8093
www.ictsd.org

Publisher and Chief Executive:
Director, Climate, Energy, and Natural Resources:
Programme Manager:

Ricardo Meléndez-Ortiz
Ingrid Jegou
Alice Tipping

Acknowledgements

This paper was produced under ICTSD's Programme on the Environment. The policy brief was commissioned following signature of the Trans-Pacific Partnership and drafted prior to the outcome of the 2016 US Presidential election which has raised uncertainty as to the agreement's ratification and entry into force. The legal analysis of the TPPs environment-related provisions remains pertinent.

ICTSD is grateful for the support of its core donors including the UK Department for International Development (DFID); the Swedish International Development Cooperation Agency (SIDA); the Netherlands Directorate-General of Development Cooperation (DGIS); the Ministry of Foreign Affairs of Denmark (Danida); and the Ministry of Foreign Affairs of Norway.

ICTSD welcomes feedback on this publication. This can be sent to Alice Tipping (atipping@ictsd.ch) or Fabrice Lehmann, ICTSD Executive Editor (flehmann@ictsd.ch).

Citation: ICTSD. 2016. *Environment in the Trans-Pacific Partnership: A Legal Analysis*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).

Copyright © ICTSD, 2016. Readers are encouraged to quote this material for educational and non-profit purposes, provided the source is acknowledged. This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License. To view a copy of this license, visit: <https://creativecommons.org/licenses/by-nc/4.0/> or send a letter to: Creative Commons, 171 Second Street, Suite 300, San Francisco, California, 94105, USA.

The views expressed in this publication do not necessarily reflect the views of the funding institutions.

ISSN 1816-6970

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	iv
ABSTRACT	v
1. INTRODUCTION	1
1.1 Outline of Paper	2
2. OVERVIEW OF THE TRANS-PACIFIC PARTNERSHIP'S ENVIRONMENTAL ASPECTS	3
2.1 General Environmental Commitments and Exceptions	3
2.2 Multilateral Environmental Agreements	4
2.3 Ozone Protection	5
2.4 Marine Pollution	6
2.5 Marine Capture Fisheries	7
2.6 Conservation and Trade	10
2.7 Additional Obligations	13
3. CONCLUSION	16
REFERENCES	17

LIST OF ABBREVIATIONS

APEC	Asia-Pacific Economic Cooperation
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CSR	corporate social responsibility
FAO	Food and Agriculture Organization of the United Nations
FTAAP	Free Trade Area of the Asia Pacific
GDP	gross domestic product
IISD	International Institute for Sustainable Development
IUU	illegal, unreported, and unregulated
MARPOL	International Convention for the Prevention of Pollution from Ships
MEA	multilateral environmental agreement
RFMO	regional fisheries management organisation
TPP	Trans-Pacific Partnership
TPSEP	Trans-Pacific Strategic Economic Partnership
UNCLOS	United Nations Convention on the Law of the Sea
WTO	World Trade Organization

ABSTRACT

The 12 Pacific Rim countries that have signed the Trans-Pacific partnership (TPP) are vulnerable to environmental stress, but also strategically well-positioned to address many of these issues through trade policy. Indeed, the TPP includes a comprehensive environment chapter that affirms the parties' "strong commitment to protecting and conserving the environment" and stipulates both general commitments and substantive obligations. For example, it reaffirms parties' commitments to a number of multilateral environmental agreements, takes an important step in advancing efforts to restore and sustainably develop fisheries, and is the first trade agreement to address fisheries subsidies. Whereas climate change is not explicitly referenced, energy efficiency, renewable energy, sustainable infrastructure development, and deforestation are listed as areas of interest for potential transnational cooperation.

Beyond the agreement's immediate implications for the TPP parties in the area of environment, the pact could have significant impacts on other countries, multilateral trade efforts, and sustainable development. First, the TPP likely sets the benchmark for environmental issues in future trade deals. Second, as the group includes both developed and developing countries it represents a diverse set of interests and concerns which could strengthen or otherwise expand existing alliances in other trade forums where countries negotiate issues in the trade-environment intersection. Third, there is considerable potential for additional countries in the region to join the TPP.

The objective of this paper is therefore to provide policymakers in the fields of trade and sustainable development with a brief overview of the highlights and the potential implications of the environmental aspects of the TPP. It does so by exploring and discussing the different sections of the environment chapter, and by highlighting the main innovations and potential impacts regarding trade and environmental issues.

1. INTRODUCTION

On 4 February 2016, 12 Pacific Rim countries—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam—signed the Trans-Pacific Partnership (TPP). The TPP is the largest trade agreement to be negotiated outside of the World Trade Organization (WTO) (ICTSD 2015a) and if it fully enters into force,¹ will bind a group of countries that represent approximately 800 million people, 40 percent of global gross domestic product (GDP), and one-third of global trade.² The TPP is considered an expansion of the Trans-Pacific Strategic Economic Partnership (TPSEP) between Brunei, Chile, New Zealand, and Singapore, which entered into force in 2006 (SICE 2016). The countries negotiating these various agreements have, within the context of Asia-Pacific Economic Cooperation (APEC), ultimately sought to create a free trade zone in the Asia-Pacific region (APEC n.d.a, n.d.b).³ The TPP contributes to this longer-term goal by reducing or otherwise eliminating many tariff and non-tariff trade barriers on “substantially all” goods and services traded between the parties (Office of the United States Trade Representative 2015a).

Significantly, and as discussed in more detail below, the TPP includes an environment chapter (Chapter 20) that affirms the parties’ “strong commitment to protecting and conserving the environment,” particularly as it pertains to addressing environmental challenges like “pollution, illegal wildlife trafficking, logging and fishing, and protection of the marine

environment,” (Office of the United States Trade Representative 2015a) and includes the parties’ general commitments and substantive obligations regarding the same. TPP countries are significant players in the global (legal and illegal) wildlife and fisheries trade, and timber and pulp production (WWF 2014). This makes these countries (and other countries in the Asia-Pacific region) particularly vulnerable to environmental issues, but also leaves them strategically well-positioned to address many of these issues through trade policy.

Beyond the agreement’s implications for the TPP parties, the TPP could have significant impacts on other countries, multilateral trade efforts, and sustainable development. First, the TPP likely sets the benchmark for environmental issues in future trade deals, particularly those involving the United States, as environmental (and other) standards were critical to the United States’ negotiating position (Office of the United States Trade Representative 2014). Second, the parties represent a diverse set of interests and concerns as the group includes both developed and developing countries. This could strengthen or otherwise expand existing alliances in other trade forums like the WTO where countries continue to negotiate changes to existing multilateral trade agreements, including in connection with the free trade of environmental goods and services and fisheries subsidies. Third, other countries in the Asia-Pacific region might have an interest in joining the TPP, especially if they do not have pre-existing free trade agreements with any of the

1 The TPP will enter into force 60 days after at least six of the original signatories, accounting for 85 percent of the combined gross domestic product of the original signatories in 2013, notify the depositary in writing of the completion of their applicable legal procedures. See Trans-Pacific Partnership, Art. 30.5. Entry into force will require the ratification of the TPP by the United States and Japan. See Fergusson, McMinimy, and Williams (2016).

2 See Office of the United States Trade Representative (2016). In contrast, the European Union represents approximately 500 million people, 24 percent of global gross domestic product, and 20 percent of global trade. See Eurostat Statistics Explained (2016); World Bank (n.d.); European Union (n.d.a).

3 Other economic integration efforts in the region include the proposed Free Trade Area of the Asia Pacific (FTAAP), which will include all members of APEC. The TPP, along with other regional undertakings, is laying the foundation for the FTAAP and contributing to the accomplishment of the Bogor Goals for free and open trade and investment in the Asia-Pacific region. See APEC (n.d.b).

TPP parties and it appears that the TPP will enter into force.⁴ The reduction in tariff and non-tariff barriers to trade will provide certain competitive advantages to countries that have ratified the agreement. Therefore, there is considerable potential for additional countries in the region to join the TPP.

1.1 Outline of Paper

The objective of this paper is to provide policy-makers in the fields of trade and sustainable development with a brief overview of the highlights and the potential implications of the environmental aspects of the TPP. In order to

do so, section 2 of this paper is divided into seven subsections: 2.1 outlines the parties' general environmental commitments and the environmental exceptions in the investment and government procurement chapters; 2.2 assesses the provisions related to MEAs; 2.3 to 2.6 provide an overview and analysis of the TPP's more substantive provisions related to ozone protection, shipping pollution, marine fisheries, and wildlife; and 2.7 examines some of the more procedural provisions and other environmental commitments of the TPP. Finally, the conclusion highlights the TPP's main innovations and potential impacts regarding trade and environmental issues.

4 Several non-TPP countries are considering or have otherwise expressed an interest in joining the TPP, including: Cambodia, Colombia, Indonesia, Philippines, South Korea, Taiwan, and Thailand. See Jun (2015); Taipei Economic and Cultural Office (2015); the Guardian (2015); VOA Cambodia (2016).

2. OVERVIEW OF THE TRANS-PACIFIC PARTNERSHIP'S ENVIRONMENTAL ASPECTS

Fuelled in large part by rapid economic and population growth, “[t]he Asia-Pacific region faces an array of environmental challenges, including wildlife trafficking, illegal logging, illegal fishing, and marine pollution—which threaten human health, habitat and biodiversity.”⁵ To address these concerns, and to prevent the lack of enforcement of domestic environmental regulations being used to attract trade and investment, the parties reached agreement on a suite of environmental commitments and obligations to “promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the [p]arties to address trade-related environmental issues, including through cooperation.”⁶

The TPP establishes commitments that aim to accomplish “similar levels of protection” (Office of the United States Trade Representative 2015b) across key environment areas in the Asia-Pacific region. The environment chapter includes provisions that not only identify the parties’ goals and general commitment to work cooperatively, but also impose enforceable substantive obligations across a number of environmental issues. The TPP’s chapters on investments and government procurement include exceptions to its substantive requirements to take into account the environmental concerns of the parties.

2.1 General Environmental Commitments and Exceptions

Article 20.3 outlines the general environmental commitments of the parties. These commitments do not impose substantive obligations on the parties, but the parties record their support for certain environmental objectives and principles. The parties recognised that “mutually supportive trade and environmental policies and practices” can advance sustainable development goals.⁷ Each party can establish its own environmental priorities and levels of domestic environmental protection,⁸ although each party should try to ensure that its policies “provide for, and encourage, high levels of environmental protection.”⁹ Importantly, and in an attempt to avoid a “race to the bottom,” the parties must enforce their environmental laws,¹⁰ and must not waive or derogate from their environmental laws in a manner that weakens or reduces environmental protection in order to encourage trade or investment between the parties.¹¹

The TPP’s chapters on investments and government procurement liberalise trade rules for foreign investments and foreign bidders on government contracts by, among other things, granting national treatment and most-favoured-nation status to the other parties. In both cases, the TPP explicitly allows the parties to adopt laws, regulations, and other rules necessary to protect the environment without violating the provisions of these chapters.¹²

5 Trans-Pacific Partnership, Art. 20.

6 Trans-Pacific Partnership, Art. 20.2(1).

7 Trans-Pacific Partnership, Art. 20.3(1).

8 Trans-Pacific Partnership, Art. 20.3(2).

9 Trans-Pacific Partnership, Art. 20.3(3).

10 Trans-Pacific Partnership, Art. 20.3(4)-(5).

11 Trans-Pacific Partnership, Art. 20.3(6).

12 Trans-Pacific Partnership, Art. 15.3, 9.16.

The exception in the government procurement chapter is drafted in a manner similar to Article XX of The General Agreement on Tariffs and Trade (GATT 1947)—the exceptions are enumerated and subject to the requirement that such measures “not [be] applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination... or a disguised restriction on international trade...”¹³ The investment chapter includes an exception using similar language, explicitly allowing governments to take environmental measures that might otherwise run contrary to some of the TPP’s rules against performance requirements being imposed on investments.¹⁴ The investment chapter also includes a broader provision clarifying that governments may take measures to ensure that investment activities respect environmental, health, and other regulatory objectives, so long as those measures are “otherwise consistent” with the other provisions of the investment chapter,¹⁵ and a provision reaffirming each party’s support for the development and implementation of corporate social responsibility (CSR) policies by companies operating within their territories.¹⁶ This CSR provision is in addition to a similar provision that was included in the environment chapter. (See *infra* subsection 2.7.)

2.2 Multilateral Environmental Agreements

TPP parties are parties to a range of multilateral environmental agreements (MEAs).¹⁷ In 2007, the United States Congress and Office of the United States Trade Representative identified seven MEAs for inclusion in free trade agreements in a Bipartisan Agreement on Trade policy (Office of the United States Trade Representative 2007). The seven MEAs are: the Convention on International Trade in Endangered Species

of Wild Fauna and Flora (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), the International Convention for the Prevention of Pollution from Ships (MARPOL), the Inter-American Tropical Tuna Convention, the Ramsar Convention on Wetlands, the International Whaling Convention, and the Convention on Conservation of Antarctic Marine Living Resources. However, only three MEAs are expressly referenced in the TPP: (1) CITES, (2) the Montreal Protocol, and (3) MARPOL. No specific reasons have been provided as to why only these MEAs were included in the TPP, but it may be because these are the only MEAs that all TPP parties have ratified.

The TPP’s treatment of the parties’ existing obligations under MEAs varies by agreement. Article 20.4 sets out the parties’ obligations with respect to MEAs, generally. The parties confirmed their commitment to implementing the MEAs to which they are a party, acknowledged the importance of these agreements in protecting the environment, and recognised the importance of cooperation in negotiating and implementing MEAs. Article 20.4 does not impose any substantive or enforceable obligations on the parties. In relation to CITES, each TPP party is required to implement its CITES obligations and effectively enforce its laws and regulations implementing those obligations.¹⁸ Failure to do so allows other TPP parties to bring a claim utilising the TPP’s dispute resolution mechanism (although parties are encouraged, in the first instance, to address any related disputes through CITES).¹⁹ In relation to the Montreal Protocol and MARPOL, the TPP requires each party to “maintain” existing domestic policies, specifically listed in the agreement’s annexes that implement the parties’ obligations under

¹³ Trans-Pacific Partnership, Art. 15.3(1).

¹⁴ Trans-Pacific Partnership, Art. 9.3(d).

¹⁵ Trans-Pacific Partnership, Art. 9.16.

¹⁶ Trans-Pacific Partnership, Art. 9.17.

¹⁷ MEA is an umbrella term for legally binding agreements between three or more countries relating to the environment.

¹⁸ Trans-Pacific Partnership, Art. 20.17(2).

¹⁹ Trans-Pacific Partnership, Art. 20.17(2), Footnote 23-24.

the two agreements.²⁰ The TPP does not require the parties to implement such policies in an effective manner, however. The TPP does not provide an independent mechanism to enforce the TPP parties' Montreal Protocol and MARPOL obligations but does provide an indirect mechanism to enforce these obligations, to the extent that a TPP party fails to implement its Montreal Protocol and MARPOL obligations and those failures affect trade or investment (and in the case of the Montreal Protocol, are also likely to adversely impact human health or the environment).²¹

2.3 Ozone Protection

Article 20.5(1) commits the parties to taking “measures to control the production and consumption of, and trade in” ozone depleting substances. A footnote to Article 20.5(1) explains which ozone depleting substances are covered, stating that, “for greater certainty... this provision pertains to substances controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer*...including any future amendments thereto, as applicable to it.”²²

A second footnote states that a party “shall be deemed in compliance” with Article 20.5(1) if the party “maintains the measure or measures listed in Annex 20-A implementing its obligations under the Montreal Protocol...”²³ In essence, TPP parties are obligated to maintain the domestic legislation and any regulations currently in place to implement their existing obligations under the Montreal Protocol. This means that the TPP, specifically Article 20.5(1) and its footnotes, does not create any new obligations for the parties with regard to ozone depleting substances, but merely references the parties' existing obligations under the Montreal Protocol. Further, under a literal reading of the TPP, parties are not necessarily even required to continue to meet any future or currently outstanding obligations

under the Montreal Protocol. The parties simply have to “maintain” their legislation set out in Annex 20-A to the agreement, on the assumption that the listed legislation effectively implements their obligations.

A third footnote to Article 20.5(1) creates an enforcement mechanism for violations of a party's obligations under the TPP with regard to ozone depleting substances. A party is not in violation of Article 20.5 simply by being in violation of its obligations under the Montreal Protocol. To establish a violation, a TPP party must (1) “demonstrate that the other [p]arty has failed to take measures to control the production and consumption of, and trade in” ozone depleting substances, and (2) that the failure to take those measures is both “likely to result in adverse effects on human health and the environment” and is done “in a manner affecting trade or investment between the [p]arties.”²⁴ Disputes under this section are subject to the procedures set out in the TPP's dispute settlement mechanism in Chapter 28.

In general, the TPP is not designed to enforce the Montreal Protocol's requirement directly. The Montreal Protocol contains its own enforcement mechanism and signatory countries have their own enforcement mechanisms for requirements set out in national law. Indeed, a violation of the Montreal Protocol's requirements alone is not sufficient to violate the TPP. Rather, to trigger the TPP's enforcement mechanism, a violation must also adversely impact human health or the environment *and* be done in a manner affecting trade or investment. While this limits the scope of the TPP's enforcement mechanism with regard to the Montreal Protocol rules, it is significant in that it creates the potential for sanctions in the form of trade measures to be applied to parties that violate their Montreal Protocol obligations in a manner that impacts trade.

20 Trans-Pacific Partnership, Art. 20.5(1), Footnote 3, 4, and Art. 20.6(1), Footnote 6, 7.

21 Trans-Pacific Partnership, Art. 20.5(1), Footnote 5; Trans-Pacific Partnership, Art. 20.6, Footnote 8.

22 Trans-Pacific Partnership, Art. 20.5(1), Footnote 4.

23 Trans-Pacific Partnership, Art. 20.5(1), Footnote 4.

24 Trans-Pacific Partnership, Art. 20.5(1), Footnote 5.

Finally, Article 20.5 contains a requirement that the parties make information about national programmes and activities publicly available and cooperate to “address matters of mutual interest related to ozone-depleting substances.”²⁵

2.4 Marine Pollution

Article 20.6(1) commits the parties to taking “measures to prevent pollution of the marine environment from ships.” Footnote 6 to this section explains that this obligation “pertains to pollution regulated by the *International Convention for the Prevention of Pollution from Ships*” as ratified in 1973 and subsequently amended in 1978 and 1997 (together MARPOL) and any future amendments applicable.²⁶ As such, Article 20.6 incorporates the types of marine pollutants covered by MARPOL.

As noted above, the absence of explicit incorporating language means that Article 20.6 does not create any new obligations regarding marine pollution but instead merely affirms the parties’ existing obligations. A second footnote to this section states that a party “shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 20-B implementing its obligations under MARPOL” and any subsequent amendments that produce at least the same level of protection.²⁷ This structure means that the requirements under Article 20.6 may not cover all of a party’s existing obligations under MARPOL since the parties only have to “maintain” the measures listed in Annex 20-B of the TPP, which may or may not fully implement its obligations under MARPOL.

Issues arising under Article 20.6 are subject to the dispute settlement procedures set out in the TPP’s general dispute settlement mechanism in Chapter 28, subject to certain caveats set out in footnotes to the Article. For a party to be in violation of the Article, a second party must demonstrate that the first party has “failed to take measures to prevent the pollution of the marine environment from ships in a manner affecting trade or investment between [p]arties.”²⁸ As with 20.5, this section’s enforcement mechanism requires more than a violation of MARPOL; it requires that any violation should also affect trade or investment between the parties. As noted with regard to the Montreal Protocol, the “affect trade or investment” language limits the scope of the TPP’s enforcement mechanism with regard to marine pollution. The language adds an additional layer of enforcement requirements for the parties, limiting the potential for trade sanctions to be applied to only those parties that violate their Montreal Protocol requirements in a manner that impacts trade. Parties are still subject to existing compliance requirements under MARPOL, such as the International Air Pollution Prevention Certificate or the International Oil Pollution Prevention Certificate, and under any existing statutory law enacted by the party.²⁹

Finally, Article 20.6 requires that the parties make publicly available information related to its marine pollution prevention programmes.³⁰ It further encourages the parties to cooperate to address “matters of mutual interest with respect to pollution of the marine environment from ships,” including accidental pollution, ship emissions, and increased protection of certain geographic areas.³¹

25 Trans-Pacific Partnership, Art. 20.5(2)-(3).

26 Trans-Pacific Partnership, Art. 20.6, Footnote 6.

27 Trans-Pacific Partnership, Art. 20.6, Footnote 7.

28 Trans-Pacific Partnership, Art. 20.6, Footnote 8.

29 In the case of the United States, see, e.g. Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1912; Merchant Shipping Act, 1995, c. 21, § 128, as amended by Merchant Shipping (Pollution) Act, 2006, c. 8, § 2.

30 Trans-Pacific Partnership, Art. 20.6(2).

31 Trans-Pacific Partnership, Art. 20.6(3).

2.5 Marine Capture Fisheries

Fish are the world's most traded food commodity (ICTSD 2015b). Yet, according to the UN Food and Agriculture Organization's (FAO) most recent report on the state of the world's fisheries, approximately 58.1 percent of fish stocks were fully fished and 31.4 percent were overfished (FAO 2016a, 56). The TPP parties have acknowledged that:

inadequate fisheries management, fisheries subsidies that contribute to overfishing and overcapacity, and illegal, unreported and unregulated (IUU) fishing can have significant negative impacts on trade, development and the environment and recognize the need for individual and collective action to address the problems of overfishing and unsustainable utilization of fisheries resources.³²

As such, pursuant to Article 20.16, the parties reached agreement on substantive obligations pertaining to the protection of marine capture fisheries, or those fisheries that involve the capture of wild fish or shellfish in the marine (i.e. oceans and seas) environment.³³ Measures include those related to fisheries management and conservation, cooperation, and most significantly, subsidies.

The TPP parties are significant global consumers, producers, and traders of fisheries products sourced from marine capture fisheries.³⁴ On a global scale, marine capture represents nearly 90 percent of all fish captures (FAO 2016a, 4). Eight TPP parties are ranked in the top 25 of the largest producers of marine

capture fisheries (FAO 2016a, 11). There are eight additional countries in the Asia-Pacific region (China, Ecuador, Indonesia, Myanmar, Philippines, the Republic of Korea, Taiwan (Province of China), and Thailand,) that are not parties to the TPP that are also ranked in the top 25 (FAO 2016a, 11). If the additional eight countries in the Asia-Pacific region adopted TPP rules, approximately 63 percent of global marine catches would be covered (FAO 2016a, 11). The rules could also cover a significant portion of the global fishing fleets, as Asia (broadly) accounts for nearly 75 percent of the global fleet of fishing vessels used in marine capture fishing (FAO 2016a, 53).

The importance of marine capture fisheries to TPP parties, and the new substantive obligations undertaken, justifies this section's more detailed examination.

2.5.1 Fisheries management and conservation, and cooperation

Parties are encouraged "to operate a fisheries management system that regulates marine wild capture fishing and that is designed to: (a) prevent overfishing and overcapacity; (b) reduce bycatch of non-target species and juveniles... and (c) promote the recovery of overfished stocks for all marine fisheries in which [p]arty's persons conduct fishing activities."³⁵ The development of these systems is to be based on the "best scientific evidence available" as well as on "internationally recognized best practices" as reflected in various multilateral agreements to which the parties (for the most part) already subscribe.³⁶ Relatedly, the parties are to "promote the long-term conservation of

32 Trans-Pacific Partnership, Art. 20.16(2).

33 The scope of Article 20.16 does not include other types of fisheries (e.g. aquaculture). See Trans-Pacific Partnership, Footnote 10.

34 Trans-Pacific Partnership, Art. 20.16(1).

35 Trans-Pacific Partnership, Art. 20.16(3).

36 Trans-Pacific Partnership, Art. 20.16(3). These international instruments include the UN Convention on the Law of the Sea (UNCLOS), UN Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, Code of Conduct for Responsible Fisheries, Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and IUU Fishing Plan of Action. See Trans-Pacific Partnership, Footnote 12.

sharks, marine turtles, seabirds, and marine mammals, through the implementation and effective enforcement of conservation and management measures.”³⁷

The parties are to work towards improving international cooperation to address IUU fishing.³⁸ They also agreed to cooperate to build capacity to implement the TPP’s fisheries obligations,³⁹ support the development and implementation of monitoring, compliance, and enforcement systems to (i) deter vessels engaging in IUU fishing activities, and (ii) address the trans-shipment of fish or fish products caught through IUU fishing activities,⁴⁰ and implement port state measures.⁴¹ They also agreed to “strive to” act in accordance with measures adopted by Regional Fisheries Management Organizations (RFMOs), and to “endeavor” not to undermine catch or trade documentation schemes run by RFMOs, including those of which they are not members.⁴² However, it is unclear to what extent this language would impose substantive and enforceable obligations on the TPP parties.

2.5.2 Fisheries subsidies

To address overfishing and to promote the sustainable development of the world’s fisheries, “successful reforms will require reduction or elimination of pernicious subsidies[.]” (World Bank 2009).

Article 20.16(5) of the TPP prohibits the granting or maintenance of subsidies for fishing that negatively affect fish stocks that are in an overfished condition, and that are provided to fishing vessels listed by their flag state or a relevant RFMO or arrangement for IUU fishing. Existing subsidies for fishing that negatively affect fish stocks that are in an overfished condition must be phased out within three years of the date of entry into force of the TPP for that particular party;⁴³ no phase-out period was established for subsidies provided to IUU fishing vessels, which suggests that these obligations apply immediately.⁴⁴ To the extent that a subsidy is not prohibited, TPP parties are to use their “best efforts” to refrain from introducing new, or extending, or enhancing existing subsidies.⁴⁵ TPP parties are to notify each other of the various types of subsidies that would be prohibited under Article 20.16(5) and, to the extent possible, information on any other fisheries subsidies that are granted or maintained, including for fuel.⁴⁶ To ensure that the TPP parties are continuously working to eliminate subsidies that contribute to overfishing and overcapacity, the TPP parties agreed to review which subsidies are prohibited at periodic meetings of the Environment Committee that is established under the TPP.⁴⁷ (See *infra* subsection 2.7.)

The scope of the prohibition on subsidies for overfished stocks is potentially quite broad,

37 Trans-Pacific Partnership, Art. 20.16(4).

38 Trans-Pacific Partnership, Art. 20.16(13).

39 Trans-Pacific Partnership, Art. 20.16(14)(a).

40 Trans-Pacific Partnership, Art. 20.16(14)(b).

41 Trans-Pacific Partnership, Art. 20.16(14)(c). “Port state measures are requirements established or interventions undertaken by port states with which a foreign fishing vessel must comply or is subjected to as a condition for use of ports within the port state.” See FAO (2016b).

42 Trans-Pacific Partnership, Art. 20.16(14)(d)-(e). “RFMOs are international organizations formed by countries with fishing interests in an area. Some RFMOs manage all the fish stocks found in a specific area, while others focus on particular highly-migratory species, notably tuna, throughout vast geographical areas.” See European Commission (n.d.).

43 Trans-Pacific Partnership, Art. 20.16(6).

44 Vietnam can request two additional years to implement the prohibition, to allow for the completion of a fisheries stock assessment that has already been initiated.

45 Trans-Pacific Partnership, Art. 20.16(7). See also Trans-Pacific Partnership, Footnote 20.

46 Trans-Pacific Partnership, Art. 20.16(9)-(12).

47 Trans-Pacific Partnership, Art. 20.16(8).

particularly as compared to the scope of the prohibition on subsidies to IUU vessels. Under the TPP, the negative effects of a subsidy are to be determined based on the best scientific evidence available.⁴⁸ Fish stocks are in an overfished condition “if the stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available,” as well as those fish stocks that are recognised as overfished by the jurisdiction in which the fishing is taking place or by a relevant RFMO.⁴⁹ The FAO defines overfished stocks similarly, but does not necessarily take into account national jurisdictions and RFMOs (FAO 2016a, 6). Whether a subsidy could have a negative effect and affect a fish stock that is overfished would presumably be determined by TPP parties before the subsidies are provided, or by a dispute settlement panel if another TPP party challenges a subsidy after it has been provided. No such flexibility is contemplated for subsidies provided to fishing vessels listed for IUU fishing; the prohibition applies to particular, identifiable vessels—those already listed by their flag states or a relevant RFMO. The obligation not to subsidise these vessels would presumably need to be implemented both as subsidiary programmes are designed and funds are disbursed, and as part of regular reviews of subsidy schemes by taking into account updated IUU vessel lists.

The broader international community, through the WTO, has been working to reach consensus on how to address fisheries subsidies since as early as 1997, although negotiations did not formally begin until the Doha Round of negotiations began in 2001 (von Moltke et al. 2007; WTO n.d.). Various negotiating texts and other proposals have been put forth by the Chairman of the Negotiating Group on

Rules (Chairman) and WTO members on a range of issues. The primary negotiating text was circulated for review by the Chairman in November 2007, but the scope was quite broad (including limits on subsidies for income and price support and infrastructure) and WTO members had “sharply-conflicting” views on the approach.⁵⁰ Since then, members have tried to make progress by focusing on a narrower set of subsidies, including: “the prohibition of subsidies provided to vessels engaged in IUU fishing; the prohibition of subsidies to fishing that targets overfished stocks; and improved transparency around fisheries subsidies” (ICTSD 2015c).

Although WTO members have been unable to reach an agreement on fisheries subsidies, the international community remains committed to doing so, and in September 2015, as part of the 2030 Agenda for Sustainable Development, UN member states adopted the goal of “prohibit[ing] certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminat[ing] subsidies that contribute to [IUU] fishing and refrain[ing] from introducing new such subsidies” by 2020 (United Nations n.d.). It is possible that the provisions agreed to in the TPP could help to reach agreement in the WTO. Recent proposals in the WTO appear to be advancing similar provisions agreed to in the TPP. The TPP parties are also WTO members, and represent a diverse set of interests and concerns. Their participation in the WTO negotiations could help strengthen or otherwise expand existing alliances in the negotiations. However, this still may not be sufficient to reach agreement. In the WTO, there are significantly more countries with diverse interests, and TPP members are negotiating within a framework of pre-existing trade rules that include a frequently used dispute settlement mechanism.

48 Trans-Pacific Partnership, Art. 20.16(5), Footnote 15.

49 Trans-Pacific Partnership, Art. 20.16(5), Footnote 16.

50 Negotiating Group on Rules, Draft Consolidated Chair Texts of the AD and SCM Agreements (30 November 2007), Annex VIII, Article I, TN/RL/W/2013.

2.5.3 Impacts on sustainable development

The TPP has been criticised for not going far enough to protect marine fisheries. Many of the fisheries provisions are voluntary and do not necessarily go beyond what is currently required under other international agreements, and the prohibition on subsidies is limited, targeting only those subsidies that affect fish stocks already in an overfished condition and certain fishing vessels. However, Article 20.16 is an important step in advancing efforts to restore and sustainably develop fisheries, and its impacts on sustainable development in the fisheries context are worth exploring.

The development and implementation of management plans is critical to rebuilding fisheries that have reached unsustainable levels (FAO 2014, 7). But more significantly, this is the first time fisheries subsidies have been addressed in a trade agreement.⁵¹ Because the TPP parties are such significant global consumers, producers and traders of fisheries products sourced from marine capture fisheries, as are several other countries in the Asia-Pacific region, the TPP has the potential to cover a significant percentage of global fish capture, underscoring the current and future potential of the TPP to influence the conservation of marine fisheries.

2.6 Conservation and Trade

The TPP's detailed obligations related to conservation also merit a deeper analysis, set out here. Article 20.17 addresses the illegal taking of, and trade in, wild fauna and flora, including illegal logging. Under this article, the parties agreed to adopt and maintain measures to fulfil their obligations under CITES

and committed to promoting conservation and combatting the illegal take of and trade in, wild fauna and flora. To do this, the parties agreed to share information and experiences, promote the legal trade in associated products, undertake joint activities on conservation issues, and endeavour to implement further CITES resolutions.⁵²

The parties further committed to taking appropriate measures to protect and conserve wild fauna and flora that have been identified to be at risk within their territories, maintaining or strengthening government capacity and institutional frameworks, including public participation, to promote sustainable forest management and wild fauna and flora conservation, and endeavouring to enhance public participation and transparency in these institutional frameworks, and strengthening cooperation and consultation with interested non-governmental entities.⁵³

Significantly, the parties agreed to take measures to combat the take of and trade in wild fauna and flora that were taken or traded in violation of their own laws or the laws of the jurisdiction where the taking or trade took place.⁵⁴ Each party must also endeavour to take measures to combat the trade of wild fauna and flora trans-shipping through its territory that were illegally taken or traded.⁵⁵ In essence, this enables TPP parties to potentially use trade measures, including sanctions, to deter trade in illegally sourced wildlife products. In theory, it also enables TPP parties to use the agreement, including its dispute settlement mechanism, to push other TPP parties to adopt these kinds of measures. However, the Article also clarifies that each party retains the right to exercise discretion in its implementation

51 Canada and the European Union have also recently negotiated a trade agreement. The parties agreed to work jointly to reach a multilateral agreement on fisheries subsidies, and to consider each other's requests to eliminate or minimise the adverse effects of a particular fisheries subsidy. See Comprehensive Economic and Trade Agreement, Article 7.4. These provisions are not subject to the agreement's dispute settlement mechanism. Comprehensive Economic and Trade Agreement, Article 7.9.

52 Trans-Pacific Partnership, Art. 20.17(2) and Art. 20.17(3).

53 Trans-Pacific Partnership, Art. 20.17(4).

54 Trans-Pacific Partnership, Art. 20.17(5).

55 Trans-Pacific Partnership, Art. 20.17(5).

of such measures, including the right to make decisions regarding the allocation of investigatory and enforcement resources.⁵⁶ This underlines the difficult balance between the agreement's ambitious objectives and parties' economic realities.

Similar to the enforcement mechanisms in Articles 20.5 and 20.6, the standards for bringing a claim for not implementing obligations under Article 20.17 are more limited than those provided under CITES. In order to establish a breach of a TPP party's obligation to "adopt, maintain, and implement" laws to fulfil its obligations under CITES, the challenging party must demonstrate that the failure "affect[s] trade or investment between the [p]arties."⁵⁷ Interestingly, compared to the Montreal Protocol and MARPOL provisions, the obligation here is to "fulfil" obligations under CITES, not merely to "implement" them. The obligation also stands alone, without the presumption of compliance if existing legislation is maintained. In the first instance, TPP parties are directed to address concerns regarding the fulfilment of other TPP parties' CITES obligations through consultations or other procedures under CITES.⁵⁸

Finally, in order to promote cooperation and information sharing between the parties, the parties must endeavour to identify opportunities to enhance law enforcement cooperation and information sharing, such as by creating and participating in law enforcement networks.⁵⁹

Given that all TPP parties are also parties to CITES and have domestic wildlife legislation,

either as CITES implementing legislation⁶⁰ or other legislation,⁶¹ it may appear that the effect of these provisions is limited. However, the TPP does provide an additional forum in which the obligations can be enforced if non-compliance affects trade and investment. Further, the TPP appears to offer broader protections to wild fauna and flora; CITES obligations are limited to certain species of flora and fauna, whereas the TPP's additional obligations cover all flora and fauna that are illegally taken or traded.⁶²

2.6.1 Impacts on sustainable development and biodiversity

Article 20.17 is potentially important to advancing sustainable development and protecting biodiversity, as five of the TPP parties rank among the world's top 10 most biologically diverse countries, and the Asia-Pacific region encompasses major consumer, transit, and export markets for threatened and endangered wildlife, used as luxury goods, food, medicines, pets, and trophies (Office of the United States Trade Representative n.d.b). For example, Vietnam is one of the world's largest recipients of rhino horn and the World Bank estimates that 80 percent of Peru's timber exports come from illegal logging (Goncalves et al. 2012). Illicit trade is a threat to biodiversity and the populations of endangered species as well as global security due to links to organised crime.

The parties also include significant timber producers, processors, and consumers. TPP parties account for approximately a quarter of global timber and pulp production, and timber-

56 Trans-Pacific Partnership, Art. 20.17(6).

57 Trans-Pacific Partnership, Footnote 23.

58 Trans-Pacific Partnership, Footnote 24.

59 Trans-Pacific Partnership, Art. 20.17(7).

60 See CITES Standing Committee, *National Laws*, SC65 Doc. 22, at Annex, p.1, 6, stating that Australia, Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States have legislation that adequately implements CITES ("Category 1"), with Chile having legislation that partially implements CITES ("Category 2").

61 Such as the Environment Protection and Biodiversity Conservation Act 1999 (Australia), Wild Animals and Birds Act (Singapore), Wildlife Act 1953 (New Zealand), Wildlife Conservation Act of 2010 (Malaysia), Endangered Species Act 1973 (US), and Protección de los Animals (Chile).

62 See Trans-Pacific Partnership, Art. 20.17(3).

producing countries, including TPP parties, reportedly lose as much as US\$6 billion per year to illegal logging (Office of the United States Trade Representative n.d.b), which has a significant negative impact on the environment, local livelihoods, and opportunities for economic development. The commitment to “maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management” and wildlife conservation⁶³ may encourage some TPP parties to improve their capacity to manage forests sustainably and conserve wildlife. The obligation to take measures to deter trade in products sourced illegally also engages TPP parties that import wildlife products in efforts to support their sustainable use.

However, commentators have expressed concern that the overall effects of the TPP could counteract the objectives of the conservation and trade provisions, by expanding demand for cash crops such as palm oil. Palm oil plantations have contributed to the disappearance of habitats for wildlife, including endangered species. By eliminating the palm oil tariffs currently imposed by major palm oil importing countries like Vietnam and Japan, it is argued that the TPP may encourage greater demand and therefore greater production in TPP countries, such as Malaysia (one of the biggest producers and exporters of palm oil in the world) (Beachy 2015; Bloomberg News 2015).

2.6.2 Strength of TPP requirements

Article 20.17 has been the subject of criticism as the qualifications used may make it hard to enforce the provisions. For example, beyond their existing obligations under CITES, the parties only need to “endeavour to implement, *as appropriate*, CITES resolutions that aim to protect and conserve species whose survival is threatened by international trade” (emphasis added).⁶⁴ An obligation to “endeavour,” and

only as parties deem “appropriate,” gives the parties considerable flexibility in achieving this obligation.

Further, the TPP does not provide a legally enforceable prohibition on illegal wildlife trade. The parties only committed “to combat” illegal trade in fauna and flora, and are not required to prohibit it. The measures actually required are generally limited, for example “exchange information and expertise” and “undertake, as appropriate, joint activities on conservation issues of mutual interest.”⁶⁵ Further, as discussed above, the parties retain “the right to make decisions regarding the allocation of administrative, investigatory and enforcement resources” in combatting illegal trade in wildlife.⁶⁶ The TPP does not have any secretariat or standards to assess whether a party carefully identified the reasons for choosing one enforcement strategy over another and, without an independent arbiter or panel, claims of enforcement discretion may be hard to challenge, although it would be open for the Environmental Committee to report on non-conformance. (See *infra* subsection 2.7.)

The TPP does suggest the use of stronger measures like sanctions “to combat” the illegal trade and take of fauna and flora, but does not mandate their use; parties agreed instead on a non-binding list of options: “[s]uch measures [to combat the trade of wild fauna and flora] shall include sanctions, penalties, or other effective measures... that can act as a deterrent to such trade.” Some commentators have reflected that sanctions, penalties, and effective measures should be used in addition to each other rather than as alternatives for better effectiveness (Sierra Club n.d.). Commentators also sought provisions requiring countries to adopt, maintain, and implement policies to identify illegally taken wildlife and a provision prohibiting the trade in illegally taken or previously illegally traded plants

63 See Trans-Pacific Partnership, Art. 20.17(4).

64 See Trans-Pacific Partnership, Art. 20.17(3).

65 See Trans-Pacific Partnership, Art. 20.17(3).

66 See Trans-Pacific Partnership, Art. 20.17(6), note 1.

and animals (except for bona fide scientific, enforcement purposes, or related, non-commercial purposes) (Wold 2016).

2.7 Additional Obligations

In addition to the above provisions, the environment chapter includes relatively short provisions regarding CSR, voluntary mechanisms to enhance environmental performance, trade and biodiversity, invasive species, the transition to a low emissions and resilient economy, environmental goods and services, and consultations and dispute resolution.

Corporate social responsibility. The parties are to encourage public and private enterprises operating within their territories to adopt CSR principles.⁶⁷ CSR compels enterprises to consider more than monetary profits by looking at the effects of their actions on suppliers, communities, and the environment (European Commission n.d.b). Environmentally focused CSR may include implementing recycling programmes, sourcing sustainable supplies, or investing in low-energy resources and buildings.

Voluntary mechanisms. TPP parties recognise the value of voluntary and flexible mechanisms (e.g. auditing and reporting, market-based incentives, information sharing) to achieve environmental goals.⁶⁸ Further, TPP parties agreed to encourage the improvement of voluntary mechanisms and their underlying environmental performance standards according to principles set out in Article 20.11(3). Such mechanisms should “[be] (a) truthful...and take into account scientific and technical information; (b) if available and applicable, [be] based on relevant international

standards, recommendations or guidelines, and best practices; (c) promote competition and innovation; and (d) ...not treat a product less favorably on the basis of origin.”⁶⁹ This could support initiatives like the International Organization for Standardization ISO 14000 standards on environmental management (ISO n.d.).

Biological diversity. The parties agree to promote the conservation and sustainable use of biological diversity and recognise both the importance of ensuring access to genetic resources, on mutually agreed terms, and of preserving the practices of local communities related to biological diversity.⁷⁰ Previous efforts to promote biodiversity have included the implementation of the Convention on Biological Diversity (CBD) to combat overexploitation of natural resources, habitat destruction, and climate change (CBD n.d.). All of the TPP parties, except the United States, have ratified the CBD, although the United States is a signatory to the convention. Additionally, the TPP parties recognise genetic materials, anything containing units of heredity, as a mutually beneficial resource for sustainable food and agriculture.⁷¹

Invasive species. The increased trade of plants and animals (and climate change) has contributed to the introduction of invasive, non-native species to new areas, which threatens human well-being and biodiversity because they can disrupt ecosystems and spread disease (EEA 2013). The TPP’s Environment Committee (established under Article 20.19) and Committee on Sanitary and Phytosanitary Measures (established under Article 7.5) are to share information to prevent, detect, control, and eradicate invasive species.⁷²

67 See Trans-Pacific Partnership, Art. 20.10. Enterprise means “any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization.” See Trans-Pacific Partnership, Art. 1.3.

68 See Trans-Pacific Partnership, Art. 20.11.

69 See Trans-Pacific Partnership, Art. 20.11(3).

70 See Trans-Pacific Partnership, Art. 20.13.

71 See Trans-Pacific Partnership, Art. 20.13.

72 See Trans-Pacific Partnership, Art. 20.14.

Transition to low emissions economy. The parties have committed to helping each other transition to a low emissions economy.⁷³ “Climate change” and “greenhouse gas emissions” are not explicitly referenced, and the parties are not required to address any particular issue in this regard. However, energy efficiency, renewable energy, sustainable infrastructure development, and deforestation are listed as areas of interest for potential transnational cooperation.⁷⁴

Environmental goods and services. The TPP seeks to increase the trade of environmental goods and services by requiring the parties to “endeavour” to address related tariff and non-tariff trade barriers. The TPP does not define environmental goods and services, but in other contexts, “goods” have been interpreted to include, for example, solar panels, carbon dioxide scrubbers, desalination equipment, and air quality monitors, and “services” have been interpreted to include, for example, environmental consulting, construction of energy efficient buildings, and the engineering of energy facilities.⁷⁵ All of the TPP parties have already expressed some degree of commitment to liberalising trade in environmental goods, as indicated by their publication of implementation plans under an APEC initiative to cut tariffs on those goods (Asia-Pacific Economic Cooperation n.d.c). Furthermore, half of the TPP parties (Australia, Canada, Japan, New Zealand, Singapore, and the United States) are participating in negotiations over a

WTO Environmental Goods Agreement focused on a list of around 350 tariff lines.⁷⁶

Environment Committee. The Environment Committee is responsible for implementing and overseeing the TPP’s environment chapter.⁷⁷ More specifically, the Environment Committee is to facilitate dialogue between the parties, report on the progress of implementation, and help the parties reach consensus on the interpretation of the TPP.⁷⁸

Dispute resolution. The dispute resolution provisions require that the disagreeing parties undertake consultation at the level of officials, senior officials, and ministers prior to invoking the dispute settlement provisions in Chapter 28.⁷⁹ If the matter is unable to be resolved, a party may request consultations under Article 28.5 of the agreement’s general dispute settlement system.⁸⁰ Consultations require all interested parties to meet formally and attempt to reach an agreement.⁸¹ If the consultation is unsuccessful a party may, under Article 28.7, request that a three-person panel be established to issue a final decision on the matter.⁸² Dispute resolution and settlement procedures like those provided for in the TPP are not new and have been used in many United States free trade agreements (CIEL n.d., 3). With some variations, all provisions related to the environment in the TPP are enforceable through these procedures,⁸³ as is the case in many, but not all, United States free trade agreements (CIEL n.d., 3).

73 See Trans-Pacific Partnership, Art. 20.15.

74 See Trans-Pacific Partnership, Art. 20.15.

75 See Office of the United States Trade Representative (n.d.a); ICTSD (2007).

76 See “Trade in Environmental Goods” section of WTO (2016).

77 See Trans-Pacific Partnership, Art. 20.19.

78 See Trans-Pacific Partnership, Art. 20.19.

79 See Trans-Pacific Partnership, Art. 20.20-.23.

80 See Trans-Pacific Partnership, Art. 28.5.

81 See Trans-Pacific Partnership, Art. 28.5.

82 See Trans-Pacific Partnership, Art. 28.7.

83 See Trans-Pacific Partnership, Chapter 20 Summary, under Dispute Settlement, which states that “[c]ommitments in the Environment chapter will be enforced through the same dispute settlement procedures and mechanisms available for disputes arising under other chapters of the TPP Agreement, including the availability of trade sanctions.”

Domestic and international coordination. Article 20.12 underscores the importance of cooperation by the parties. Accordingly, parties must designate a national contact point to work with other parties to exchange information and coordinate activities, such as conferences. To

encourage public participation, the parties are required to receive and review comments from their citizens concerning their implementation of the environment chapter. The submissions and the parties' responses must be made publicly available.⁸⁴

⁸⁴ See Trans-Pacific Partnership, Art. 20.9.

3. CONCLUSION

The TPP has been criticised by some for not going far enough to impose substantive, enforceable environmental obligations on the parties. Many of the environment provisions are aspirational, voluntary, and do not otherwise go beyond what is already required under current international and domestic law. As a result, some of these criticisms are valid to a certain extent. However, the environment chapter reflects what is likely to be the broadest and most comprehensive agreement that could be reached by consensus. This consensus was achieved by several countries that represent a broad and diverse set of interests, and resulted in an agreement on several important environmental matters, particularly in

connection with fisheries subsidies. Because the TPP affects a significant percentage of people, international trade, and global GDP, if the TPP is fully implemented, it has significant potential to positively affect sustainable development goals than would have occurred if there were no such agreement. Further, the TPP is likely a foundational legal structure that can be relied upon to develop future agreements. However, the success of the TPP will largely depend on how committed the TPP parties are to implementing various voluntary initiatives, and utilising its enforcement mechanisms to the extent that the parties are not implementing the more substantive obligations of the agreement.

REFERENCES

- APEC (Asia-Pacific Economic Cooperation). n.d.a. “1994 Leaders’ Declaration.” http://www.apec.org/Meeting-Papers/Leaders-Declarations/1994/1994_aelm.aspx
- APEC (Asia-Pacific Economic Cooperation). n.d.b. “Annex A - The Beijing Roadmap for APEC’s Contribution to the Realization of the FTAAP.” http://www.apec.org/meeting-papers/leaders-declarations/2014/2014_aelm/2014_aelm_annexa.aspx
- APEC (Asia-Pacific Economic Cooperation). n.d.c. “APEC Cuts Environmental Goods Tariffs.” http://www.apec.org/Press/News-Releases/2016/0128_EG.aspx
- Beachy, B. 2015. “Four Reasons Not to Trust the TPP to Save Endangered Animals.” <http://www.sierraclub.org/lay-of-the-land/2015/09/four-reasons-not-trust-tpp-save-endangered-animals>
- Bloomberg News. 2015. “TPP Trade Deal: Who Stands to Gain, Suffer in Asia-Pacific.” 5 October. <http://www.bloomberg.com/news/articles/2015-10-06/tpp-trade-deal-who-stands-to-benefit-suffer-in-asia-pacific>
- CBD (Convention on Biological Diversity). n.d. “History of the Convention.” <https://www.cbd.int/history/>
- CIEL (Center for International Environmental Law). n.d. “The Trans-Pacific Partnership and the Environment: An Assessment of Commitments and Trade Agreement Enforcement.” <http://www.ciel.org/wp-content/uploads/2015/11/TPP-Enforcement-Analysis-Nov2015.pdf>
- EEA (European Environment Agency). 2013. “Invasive Alien Species: A Growing Problem for Environment and Health.” 20 February. <http://www.eea.europa.eu/highlights/invasive-alien-species-a-growing>
- European Commission. n.d. “Regional Fisheries Management Organisations (RFMOs).” http://ec.europa.eu/fisheries/cfp/international/rfmo/index_en.htm
- European Union. n.d.a. “The Economy.” http://europa.eu/about-eu/facts-figures/economy/index_en.htm
- European Union. n.d.b. “Corporate Social Responsibility.” http://ec.europa.eu/growth/industry/corporate-social-responsibility/index_en.htm
- Eurostat Statistics Explained. 2016. “The EU in the World - Economy and Finance.” http://ec.europa.eu/eurostat/statistics-explained/index.php/The_EU_in_the_world_-_economy_and_finance
- FAO (Food and Agriculture Organization of the United Nations). 2014. *The State of World Fisheries and Aquaculture 2014*. Rome: FAO. <http://www.fao.org/3/a-i3720e.pdf>
- FAO (Food and Agriculture Organization of the United Nations). 2016a. *The State of World Fisheries and Aquaculture 2016*. Rome: FAO. <http://www.fao.org/3/a-i5555e.pdf>
- FAO (Food and Agriculture Organization of the United Nations). 2016b. “Port State Measures.” Rome: FAO. <http://www.fao.org/fishery/psm/en>

- Fergusson, I.F., M.A. McMinimy, and B.R. Williams. 2016. "The Trans-Pacific Partnership (TPP): In Brief." Congressional Research Service.
- Goncalves, M.P., M. Panjer, T.S. Greenberg, and W.B. Magrath. 2012. "Justice for Forests Improving Criminal Justice Efforts to Combat Illegal Logging." *World Bank Study*. Washington, DC: World Bank.
- ICTSD (International Centre for Trade and Sustainable Development). 2007. "EU, US Call for Eliminating Trade Barriers to Climate-Friendly Goods and Services." *Biores* 18 December. <http://www.ictsd.org/bridges-news/biores/news/eu-us-call-for-eliminating-trade-barriers-to-climate-friendly-goods-and>
- ICTSD (International Centre for Trade and Sustainable Development). 2015a. "The Trans-pacific Partnership Pact Clinched, Fisheries Subsidies Cuts Targeted." *Biores* 9(8). <http://www.ictsd.org/bridges-news/biores/news/trans-pacific-partnership-pact-clinched-fisheries-subsidies-cuts-targeted>
- ICTSD (International Centre for Trade and Sustainable Development). 2015b. "ACP Group Push for Fisheries Subsidy Reform at WTO, International Centre for Trade and Sustainable Development." *Biores* 26 March. <http://www.ictsd.org/bridges-news/biores/news/acp-group-push-for-fisheries-subsidy-reform-at-wto>
- ICTSD (International Centre for Trade and Sustainable Development). 2015c. "New Texts in WTO 'Rules,' Fisheries Talks Released Amid Broader Uncertainty." *Biores* 9(9).
- ISO (International Organization for Standardization). n.d. "ISO 14000 - Environmental Management." <http://www.iso.org/iso/iso14000>
- Jun, K. 2015. "South Korea Reiterates Interest in Trans-Pacific Partnership." *Wall Street Journal* 5 October. <http://www.wsj.com/articles/south-korea-reiterates-interest-in-trans-pacific-partnership-1444057143>
- Office of the United States Trade Representative. n.d.a. "Environmental Goods Agreement." <https://ustr.gov/trade-agreements/other-initiatives/environmental-goods-agreement>
- Office of the United States Trade Representative. n.d.b. "TPP Chapter Summary Environment." <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Environment.pdf>
- Office of the United States Trade Representative. 2007. "Trade Facts, Bipartisan Trade Deal." https://ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf
- Office of the United States Trade Representative. 2014. "The United States and Environmental Protections in the TPP." *Tradewinds Blog*. <https://ustr.gov/about-us/policy-offices/press-office/blog/2014/January/The-US-and-Environmental-Protections-in-the-TPP>
- Office of the United States Trade Representative. 2015a. "Summary of the Trans-Pacific Partnership Agreement." <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>
- Office of the United States Trade Representative. 2015b. "Chapter Summary: 20 (Environment)." <https://medium.com/the-trans-pacific-partnership/environment-a7f25cd180cb#.o1jfuqf4g>

- Office of the United States Trade Representative. 2016. "Trans-Pacific Partnership Minister's Statement." <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/February/TPP-Ministers-Statement>
- SICE. 2016. "Trans Pacific Partnership Agreement (TPP) - Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam." http://www.sice.oas.org/TPD/TPP/TPP_e.ASP
- Sierra Club. n.d. "TPP Text Analysis: Environment Chapter Fails to Protect the Environment." <https://www.sierraclub.org/sites/www.sierraclub.org/files/uploads-wysiwig/tpp-analysis-updated.pdf>
- Taipei Economic and Cultural Office. 2015. "U.S. Welcomes Taiwan's Interest in Joining TPP: Trade Official." http://web.roc-taiwan.org/usmia_en/post/2728.html
- The Guardian. 2015. "Indonesia will join Trans-Pacific Partnership, Jokowi tells Obama." 27 October. <https://www.theguardian.com/world/2015/oct/27/indonesia-will-join-trans-pacific-partnership-jokowi-tells-obama>
- United Nations. n.d. "Sustainable Development Goal 14.6." <https://sustainabledevelopment.un.org/sdg14>
- VOA Cambodia. 2016. "Analysts Urge Caution in Trans-Pacific Partnership with U.S." 3 February. <http://www.voacambodia.com/a/analysts-urge-caution-in-trans-pacific-partnership-with-us/3174872.html>
- von Moltke, A., J. Kurien, R. Grynberg, and N. Rochester. 2007. "Fisheries Subsidies." In *Trade and Environment: A Resource Book*, edited by A. Najam, M. Halle, and R. Meléndez-Ortiz. Geneva: International Institute for Sustainable Development (IISD), International Centre for Trade and Sustainable Development (ICTSD), and the Regional and International Networking Group (The Ring). http://www.iisd.org/pdf/2007/trade_and_env_12.pdf
- Wold, C. 2016. "Empty Promises and Missed Opportunities: An Assessment of the Environmental Chapter of the Trans-Pacific Partnership." <https://law.lclark.edu/live/files/20857-assessing-the-tpp-environmental-chapter>
- World Bank. n.d. "European Union." <http://data.worldbank.org/region/EUU>
- World Bank. 2009. *The Sunken Billions*. Washington, DC: World Bank.
- WTO (World Trade Organization). n.d. "The Rules Negotiations." https://www.wto.org/english/tratop_e/rulesneg_e/rulesneg_e.htm
- WTO (World Trade Organization). 2016. "Several WTO Members Call for Further Work on Trade and Climate Policy Coherence." https://www.wto.org/english/news_e/news16_e/envir_30jun16_e.htm
- WWF (World Wildlife Federation). 2014. "Natural Resource Trade and the Trans-Pacific Partnership: The Need for Conservation Measures." http://assets.worldwildlife.org/publications/748/files/original/TPP_WWF_Feb_2014.pdf?1418313668

Other recent publications from the ICTSD Environment Programme include:

- Trade Measures to Combat IUU Fishing: Comparative Analysis of Unilateral and Multilateral Approaches. By Gilles Hosch, 2016.
- Trade and Water: How Might Trade Policy Contribute to Sustainable Water Management? By Mike Muller and Christophe Bellman, 2016.
- Reducing Import Tariffs for Environmental Goods: The APEC Experience. By Rene Vossenaar, 2016.
- Mutual Recognition Agreement on Conformity Assessment: A Deliverable on Non-Tariff Measures for the EGA? By Mahesh Sugathan, 2016.

About ICTSD

The International Centre for Trade and Sustainable Development (ICTSD) is an independent think-and-do-tank, engaged in the provision of information, research and analysis, and policy and multistakeholder dialogue, as a not-for-profit organisation based in Geneva, Switzerland. Established in 1996, ICTSD's mission is to ensure that trade and investment policy and frameworks advance sustainable development in the global economy.