

# TRade and ENvironment Database (TREND)

## Codebook

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### **What count as a “norm”?**

- Except when otherwise expressly indicated in this codebook, a norm does not need to have a high degree of commitment (“must”, “shall”, “will”, etc.). Norms with low degree of commitment (“may”, “could”, “best efforts”, “encourage”, “recognize”, etc.) are included. A norm can also be an example of a broader measure (“areas of cooperation may include”, “such as...”).
- A norm can be explicitly limited to a single Party.
- Except when otherwise indicated, a norm can be found in any part of the agreements, including the preamble, annexes, parallel document, footnotes, exchanges of letters, reservations, etc.
- Norms do not include schedule for service liberalization, tariffs categories or tariffs schedules.
- Norms are not mutually exclusive. A single article, or even a single sentence, can qualify for several different norms.
- A single norm can be found in different parts of the same agreement.
- Norms included in regulation, treaties or judicial decision cited in the agreements are excluded, except for exceptions for goods and services
- Norms referring to WTO agreements are only found in section 8. It is considered that references to WTO agreements are only incorporating specific trade-related measures.

### **What count as the “environment”?**

- Except when otherwise indicated in this codebook, all norms are considered as “environmental norms”.
- Except when otherwise indicated in this codebook, general norms that implicitly apply to any issues-areas without being explicitly related to the environment are not considered as environmental norms.
- Environmental norms do not need to be exclusively related to the environment. They can also be related to other specific issue-areas.
- Environmental norms can apply in general to any environmental issues or be specific to an environmental issue, including *inter alia* biological diversity, desertification, endangered species, climate changes, ozone layer, acid rain, migratory species, hazardous wastes, pollution and pollutant, wildlife trade and pollution, among others.
- Environmental norms also include norms on “green economy”, “sustainable development”, “renewable energy”, “energy-efficiency”, “natural heritage”, “conservation of natural resources”, the “sustainable use or the sustainable management of natural resources”, “illegal forestry” and “illegal fishing”.
- For greater certainty, measures on technical barriers to trade adopted for health/life of plant/ animals are considered as environmental norms.
- Norms on “public interest”, “living standards”, “morality”, “population growth”, “sustained growth”, “sustained development of the economy”, “fair trade”, “traditional knowledge”, “rational use of resources”, “optimal use of resources” “plant varieties protection” (a form of intellectual property) “improved exploitation of resources”, “carriage of live animals”, “sanitary and phytosanitary measures”, “plant protection products” (pesticides), “efficient use of resources”, “efficient exploitation of resources” “social development”, “human health” or “corporate social responsibility” alone, without a reference to the environment, are not considered as environmental norms.
- Norms on agriculture, agricultural plant varieties, farming, livestock, aquaculture, pests, forestry, fisheries, water, energy, mining, biofuel, or other natural resources without references to the environment (such as their sustained used, their conservation, or the protection of their habitat) are not considered as environmental norms.
- Sanitary and phytosanitary measures are considered as being primarily related to agricultural and human health issues. Therefore, they are not considered as being environmental if they do not refer to the environment, except when otherwise indicated in this codebook.

- “Human environment” can be considered as related to the environment. However, if it is clear that the objective of the measure is human health rather than environmental protection, it is not considered as an environmental norm.
- Any norm included in a chapter devoted to the environment or a side agreement on the environment is presumed to be related to the environment, unless it is clearly not the case.

## 1. Principles

### 1.01 Preamble refers to the environment

- Limited to the preamble of the general/main trade agreement.
- Excludes more specific preambles of chapters or side agreements.
- Includes references to environmental agreements, summit or declarations, such as the Stockholm Declaration of the United Nations Conference on the Human Environment of 1972 or the Rio Declaration on Environment and Development of 1992.

*Australia-Chile Free Trade Agreement, Preamble: “[the Parties], resolved to: [...] implement this Agreement in a manner consistent with sustainable development and environmental protection and conservation [...]”.*

### 1.02 Common but differentiated responsibilities principle

- Not necessarily with these exact words.
- Could be on a specific environmental issue, such as climate change.
- Includes two necessary and joint elements. The first concerns the common responsibility of States for the protection of the environment. The second concerns the need to take into account the different circumstances, such as State’s contribution to the problem or its ability to prevent, reduce and control the threat.
- Simply acknowledging a development gap between the Parties is not sufficient. See 1.11 for development gap / different capabilities. Excludes the simple acknowledgement of a development gap between the Parties.

*EC-Columbia-Peru, art. 267(4): “4. The Parties reiterate their commitment to address global environmental challenges, in accordance with the principle of common but differentiated responsibilities.”*

### 1.03 Prevention principle

- The word “prevention” might not be used.
- “Prevention action” does not usually refer to the “preventive principle”. However, in the right context, the mention of the “prevention principle” might be sufficient.
- Refers to the responsibility (best efforts) of the State to ensure that activities within its jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of its national jurisdiction.
- References to “responsibilities with respect to natural resources” are not sufficient as the risk of damage to the environment of other states is not mentioned.
- As opposed to the precautionary principle (which is about uncertainty, rather than risks). See 1.04 for the precautionary principle.

*EC-Ukraine, art. 292: “The Parties shall ensure that environmental policy shall be based on the [...] the principles that preventive action should be taken [...]”.*

### 1.04 Precautionary principle

- Not limited to the terms “precautionary principle” as it might not be used. However, the mention of the “precautionary principle” is sufficient.
- Refers to a duty or the possibility to prevent harm by taking action when there is a lack of scientific certainty. In other words, insufficient scientific evidence shall not be used as a reason for postponing or rejecting measures.
- Calling Parties to take account of scientific information is not sufficient (see 3.1)

- As opposed to the prevention principle (which is about risks rather than uncertainty). See 1.03 for the prevention principle.
- Could be specifically for SPS or TBT measure. As an exception, it is always considered as environmental norm even if the environment is not explicitly mentioned.

*EU-Colombia-Peru (COPE), art. 278.: “[...] where there are threats of serious or irreversible damage, the lack of full scientific certainty should not be used as a reason for postponing protective measures.”*

*Group of Three, art. 14-14 (TBT Chapter) : “4. Cuando la Parte que lleve a cabo una evaluación de riesgo concluya que la evidencia científica u otra información disponible es insuficiente para completar esa evaluación, podrá adoptar un reglamento técnico de manera provisional fundamentado en la información pertinente disponible.”*

### 1.05 Polluter pays principle

- Not limited to the terms “polluter pays”.
- Could be on a specific environmental issue, such as climate change.
- Refers to the principle according to which the polluter should bear the cost of pollution. In other words, environmental externalities should be internalized.
- Includes mention of extended producer responsibility.

*EC-Ukraine, art. 292: “4. The Parties shall ensure [...] that environmental damage should as a priority be rectified at source and that the polluter should pay.”*

### 1.06 Damage rectified at source

- As opposed to the preventive action, which is found at 1.03, “preventive action” aims to avoid causing any damage at all, whereas “damage rectified at source” aims to correct whatever damage is caused before it spreads to other areas.

*COMESA, art. 122(6): “Action by the Common Market relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.”*

### 1.07 Sovereignty over natural resources

- Includes references to GA resolution 1803 of 1962.
- Always considered as an environmental norm even if the environment is not explicitly mentioned.
- Can be direct or indirect, for instance the sovereign right to exploit natural resources.
- Can take the form of a unilateral declaration.
- Excludes the definition of a State’s territory.

#### 1.07.01 Sovereignty over natural resources in general

*Colombia-Costa Rica, Anexo II – Lista de Costa Rica : “Costa Rica se reserva el derecho de adoptar o mantener cualquier medida con respecto a los recursos naturales, incluyendo conservación, administración, protección, exploración, extracción y explotación.”*

*Colombia-Panama, art. 9.2(1) : “Las Partes reafirman el derecho soberano de cada una de ellas sobre sus recursos naturales.”*

#### 1.07.02 Sovereignty over genetic resources

*Canada-Peru, Agreement on the Environment art. 5(3) : “3. The Parties reiterate their sovereign rights over their natural resources and recognize their authority and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources.”*

#### 1.07.03 Sovereignty over hydrobiological and fishery resources

- As opposed to the protection of fishery resources. See 10.04.1 instead.

*CARIFORUM EC EPA, Declaration of the CARIFORUM States Relating to Protocol I [...]: “The CARIFORUM States [...] maintain that following the exercise of their sovereign rights over fishery resources in the waters within their national jurisdiction [...], all catches effected in those waters*

*obligatorily landed in the ports of the CARIFORUM States for processing should enjoy originating status."*

#### **1.07.04 Sovereignty over other specific resources**

### **1.08 Regulatory sovereignty**

- Means a general statement on sovereignty over environmental regulation.
- It is a recognition, not an exception. As opposed to the exception allowing Parties to adopt trade restrictive measures.
- Not on specific environmental issues, but can be on a specific trade issue, eg TBT, SPS, etc.
- Includes the recognition of the prerogative for countries to establish their own levels of environmental protection, and to modify their environmental laws and policies accordingly.
- Includes the recognition of state's discretion with respect to prosecutorial and compliance matters and to make decisions regarding the allocation of resources to enforcement or to other environmental matters.
- Excludes reference to states' sovereignty over natural resources. See 1.07 instead.

#### **1.08.01 Sovereignty in determining level of protection according to State priorities**

- Includes general or specific trade issue, eg TBT, investment, etc.
- Includes setting a level of protection higher than the required minimum.

*Canada-Chile, Agreement on Environmental Cooperation art. 3: "Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities."*

*Bolivia-Chile, art. 4: "No obstante cualquier otra disposición de este capítulo, cada Parte podrá fijar el nivel de protección que considere apropiado en la prosecución de sus objetivos legítimos [including environmental protection]."*

#### **1.08.02 Sovereignty in the enforcement of environmental measures**

*Canada-Chile, Agreement on Environmental Cooperation art. 44(1): "A Party has not failed to "effectively enforce its environmental law" or to comply with Article 5(1) [enforcement obligations] in a particular case where the action or inaction in question by agencies or officials of that Party: (a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or (b) results from bona fide decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities;"*

#### **1.08.03 Sovereignty or independence of national tribunals in the application of environmental measures**

*CAFTA, art. 17.3(6): "For greater certainty, nothing in this Chapter shall be construed to call for the examination under this Agreement of whether a Party's judicial, quasi-judicial, or administrative tribunals have appropriately applied that Party's environmental laws."*

#### **1.08.04 Other norms on regulatory sovereignty**

### **1.09 Extraterritorial jurisdiction limit**

#### **1.09.01 No extraterritorial enforcement activities**

*Canada-Chile, Agreement on Environmental Cooperation art. 37: "Nothing in this Agreement shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party."*

#### **1.09.02 No right of action under a Party's domestic law**

*Canada-Chile, Agreement on Environmental Cooperation art. 38: "No Party may provide for a right of action under its law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement."*

## 1.10 Contribution of environnement to trade or development (Causal belief)

- General causal claim on the contribution of environmental protection for trade, economic growth, or economic development.
- Includes statements that the protection of the environment and trade are mutually supportive, liberalization, growth, or economic development, or that trade and environmental agreements ARE mutually supportive.
- Includes only causal claims (is, are...), not normative claims (should, could, must,...). For greater clarity, a claim that trade and environmental policies SHOULD be mutually supportive is found at 4.02.
- Excludes statements that the protection of the environment *should* constitute a central component of growth, trade or development (see 4.02), as this is a normative claim rather than the expression of a causal belief.
- Includes acknowledgment that trade and environment *already* affect one another. If action from a Party is required, it generally goes beyond a simple recognition and is found in 4.02. For instance, “reinforce the mutual supportiveness”, “ensure that the policies are mutually supportive” or “promote sustainable development through mutually supportive policies”.
- Includes statements specifying that the protection of the environment is a condition for growth, trade, liberalization or economic development.
- Excludes statements that the protection of the environment is a condition for *sustainable* development or that it is important to achieve *sustainable* development, if no specific mention is made of economic development, as it is tautological.

*EC-Korea, art. 13.1 (2): “The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. [...]”*

*Lomé IV, art. 6(2) : “The Contracting Parties recognize that priority must be given to environmental protection and the conservation of natural resources, which are essential conditions for sustainable and balanced development from both the economic and human viewpoints.”*

*Japan-Brunei, Preamble: “Parties are “Recognizing that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development [...]”*

### 1.10.01 Environmental protection as a precondition for trade or development

- Includes statements referring to the fact that environmental protection is essential for trade.

*Lomé IV, art. 6: “ With a view to attaining more balance and self-reliant economic development in the ACP States, special efforts shall be made under this Convention to promote rural development, food security for the people, rational management of natural resources, and the preservation, revival and strengthening of agricultural production potential in the ACP States. 2. The Contracting Parties recognize that priority must be given to environmental protection and the conservation of natural resources, which are essential conditions for sustainable and balanced development from both the economic and human viewpoints.”*

### 1.10.02 Reference to mutual supportiveness between environment and trade or development

- Refers to the acknowledgement from the parties that trade and environmental protection are mutually supportive.

*Canada-Peru, art. 1701(2): “The Parties recognize the mutual supportiveness between trade and environment policies and the need to implement this Agreement in a manner consistent with environmental protection and conservation and the sustainable use of their resources.”*

## 1.11 Recognition of a development gap or of different capabilities

- Recognition of the development gap or developing countries “special needs” on matters related to the environment (other than common but differentiated responsibilities).
- For specific or general environmental issues.

CARIFORUM EC EPA, art. 183.4: "The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, [...] with due regard to their respective level of development."

Central American Free Trade Agreement, annex 17.9(2): "The Parties expect that the ECA will enhance their cooperative relationship, noting the existence of differences in the Parties' respective natural endowments, climatic and geographical conditions, and economic, technological, and infrastructure capabilities."

### 1.12 Cost-benefit analysis

- Includes taking into account costs and benefits when designing environmental measures.

## 2. Level of environmental protection

This section concerns laws, standards, policies, decrees or any other rules adopted domestically by public authorities.

Public authorities includes international regulatory authorities such as the EU and the Andean Community that can adopt regulations directly applicable at the domestic level.

This section includes only norms applying in general to the environment. Not to specific environmental issue such as desertification, biodiversity, climate change, etc.

### 2.01 Maintain, or not to lower, level of protection

- This norm concerns the level of protection, not law enforcement. "Derogating to" or "waiving" measures are considered as being related to enforcement. See 5.01.
- As opposed to the prohibition to use environment measures as disguised restrictions to trade See 2.04.

#### 2.01.01 Inappropriate to encourage trade by relaxing environmental measures

- Can include investment but should not be specific to it.

Canada-Colombia, art. 1702 : "Neither Party shall encourage trade or investment by weakening or reducing the levels of protection afforded in their respective environmental laws."

Canada-Jordan, Agreement on the Environment Preamble : "RECOGNIZING that it is inappropriate to relax environmental laws in order to encourage trade."

#### 2.01.02 Inappropriate to encourage investment by relaxing environmental measures

- Can include trade but should not be specific to it.

CARIFORUM EC EPA, art. 73: "The EC Party and the Signatory CARIFORUM States shall ensure that foreign direct investment is not encouraged by lowering domestic environmental [...] standards."

#### 2.01.03 Maintain existing level of environmental protection

Central America-EC, art. 2 : "the objectives of this Agreement are to: (g) at least maintain [...] the level of [...] environmental standards."

### 2.02 Increased level of protection

- Excludes a mere recognition of the importance of strengthening Parties' capacity to protect the environment, as this capacity might not be related to environmental measures.
- Does not necessarily require higher protection ; "high levels" is sufficient.
- Does require "high" or "higher" to be defined.

#### 2.02.01 Laws and regulations should provide for high levels of environmental protection

Canada-Jordan, art. 10-1 : "The Parties recognize [...] the need to implement this agreement in a manner consistent with high levels of environmental protection and conservation."

New Zealand-Thailand, Arrangement on Environment, Section 1(1) : "The Participants reaffirm their [...] commitments, as global citizens, to high levels of environmental protection."



#### **2.02.02 Commitment to enhance, strengthen, improve levels of environmental protection**

*Canada-Chile, Agreement on Environmental Cooperation Preamble : "Reconfirming the importance of the environmental goals and objectives of the CCFTA, including enhanced levels of environmental protection."*

*Canada-Jordan, Agreement on the Environment Preable : "ENHANCE AND ENFORCE environmental laws and regulations, and to strengthen cooperation on environmental matters;"*

#### **2.03 Definition of environmental law, environmental governance, etc.**

- Includes definition of environmental measures.
- Does not include definitions of the environment itself.

*Canada-Korea, art. 17.17: "Environmental law means any law, statutory or regulatory provision, or other legally binding measure, of a Party, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through: (a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants; (b) the management of chemicals and waste and the dissemination of information related thereto; or (c) the conservation and protection of wild flora or wild fauna, including endangered species, their habitat, and protected natural areas, but does not include any measure directly related to worker health and safety, nor a measure the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources."*

#### **2.04 Not for protectionist purposes**

- Protectionist measures could involve higher level of environmental protection. Therefore, as opposed to 2.01 that is strictly about not lowering level of protection.
- Includes prohibition to adopt environmental measures that are discriminatory or unnecessary.
- Only includes environmental measures that specifically have a negative or adverse effect on trade. The sole acknowledgment that environmental measures *may* impact trade in an unspecified manner can be found in 15.
- As opposed to the exceptions in section 8. Norms in 2.04 are not exceptions. If the sentence on protectionist, discriminatory or unnecessary measure is immediately followed by a sentence allowing trade restriction for environmental purposes, then it is considered as an exception and are not found in this section.
- Excludes GATT chapeau and similar wordings.

*Agadir, art. 20: "All of the goods traded between the Member States must comply with [...] laws [...] for the protection of the environment, of the Member States but it is not allowable to use these measures as non-customs obstacles for commercial trade between the Member States."*

*Chile-Hong Kong, art. 14.2: 4. "The Parties agree that it is inappropriate to set [...] their environmental laws, regulations, policies and practices for trade protectionist purposes."*

*Algeria-Tunisia, art. 17 : « Toutes les marchandises et produits échangés entre les deux pays sont soumis aux [...] lois relatives à [...] la protection de l'environnement en vigueur dans les deux pays. Ces lois et mesures ne peuvent être utilisées indirectement comme restrictions et obstacles indirects limitant les échanges commerciaux entre les deux pays. »*

### **3. Law making and policy making**

This section concerns laws, standards, policies, decrees or any other rules adopted domestically by public authorities.

Public authorities includes international regulatory authorities such as the EU and the Andean Community that can adopt regulations directly applicable at the domestic level.

This section includes only norms applying in general to the environment. Not to specific environmental issue such as desertification, biodiversity, climate change, etc.

Policymaking includes environmental assessment.

As a reminder, measures dealing in general with any issue related to the trade agreement are excluded, unless the environment is explicitly mentioned as one their subject-matter.

### **3.01 Scientific knowledge when designing environmental measures or assessment**

- Not to be confused with the precautionary principle. See 1.04.
- Does not include SPS norms since it is specific. TBT measures are however included.

#### **3.01.01 Scientific knowledge when designing environmental measures**

- Refers to the Parties' obligation to use scientific knowledge or data when designing, preparing, adopting or implementing environmental measures.

*Economic Community of Central African States, art. 51 "Member States shall: b) ensure the proper application of science and technology to [...] the conservation of the environment;"*

*EC-Korea, art. 13.8: "The Parties recognize the importance, when preparing and implementing measures aimed at protecting the environment and social conditions that affect trade between the Parties, of taking account of scientific and technical information, and relevant international standards, guidelines or recommendations."*

*CETA, art. X.08: "Each Party shall, when preparing and implementing measures aimed at environmental protection which may affect trade or investment between the Parties, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist."*

#### **3.01.02 Scientific knowledge when making environmental risk assessment**

- As opposed to TBT exceptions, see 8.02 instead.
- The Parties' right to conduct risk assessment is found at 8.02.01.
- The obligation to take account of the environment in the adoption of SPS measure is found at 8.10.
- References to international standards, guidelines, recommendations, etc. are also found at 14.07.

*Central America-Chile, art. 9.05: "En la búsqueda de sus objetivos legítimos, cada Parte llevará a cabo evaluaciones del riesgo, y al hacerlo, tomará en consideración: (b) la evidencia científica o la información técnica disponibles;"*

*Panama-Taiwan, art. 9.05: " In pursuing its legitimate objectives, each Party conducting risk assessments shall take into account: (b) available scientific evidence or technical information;"*

### **3.02 Public participation in the adoption of environmental measures or assessment**

- Refers to the participation of the public, groups, NGO, citizens or stakeholders in the adoption of any environmental measures by their own government.
- Participation can take various form, such as the submissions of documents or comments. The obligation to hold public consultation is also included.
- This norm is about the adoption of domestic environmental measures, or environmental measures that affect trade between Parties. It excludes provisions concerning strictly the enforcement of measures (see section 5) or the implementation of the agreement (see section 11).
- It is not sufficient to have a "transparent" process, as the public might not necessary be able to participate.

#### **3.02.01 Public participation in the adoption of environmental measures**

*CETA, art. X.7:"Each Party [...] shall encourage public debate with and among non-State actors as regards the development and definition of policies that may lead to the adoption by public authorities of environmental laws and regulations."*

*Korea-EC, art. 13.9: "The Parties, in accordance with their respective domestic laws, agree to develop, introduce and implement any measures aimed at protecting the environment and labour conditions that affect trade between the Parties in a transparent manner, with due notice and*

*public consultation, and with appropriate and timely communication to and consultation of non-state actors including the private sector."*

### **3.02.02 Public participation in environmental impact assessment**

- Environmental impact assessment refers to the State's obligation to evaluate the impact of any projects on the environment.

*Canada-Jordan, art. 166(2): "Each Party shall ensure that its environmental assessment procedures provide for the disclosure of information to the public concerning proposed projects subject to assessment and, in accordance with its law, shall allow for public participation in such procedures."*

## **3.03 Publication of environmental measures**

- Includes norms specifying exactly what must be published.

### **3.03.01 Publication of environmental laws, regulations and administrative rulings**

*Canada-Costa Rica, art. 4: "Each Party shall ensure that its laws, regulations and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them. To the extent possible, each Party shall publish in advance any such law or regulation that it proposes to adopt so as to enable those interested to provide comments."*

### **3.03.02 Identification of measures, restrictions or prohibitions in terms of tariff**

*Costa-Rica-Mexico, art. 3-13: "5. Cada Parte identificará en términos de las fracciones arancelarias y de la nomenclatura que les corresponda conforme a sus tarifas respectivas, las medidas, restricciones o prohibiciones a la importación o exportación de bienes por razones de seguridad nacional, salud pública, preservación de la flora o fauna, del medio ambiente, sanidad fitopecuaria, normas, etiquetas, compromisos internacionales, requerimientos de orden público o cualquier otras regulaciones."*

## **3.04 Commitment to monitor the state of the environment**

- Includes the obligation of each Party to prepare or publish a report on the state of the environment (in general, not for specific issue-areas).
- Joint research, joint studies or other joint work of the Party on the state of the environment are found in 7.02.01.

*Canada-Chile Agreement on Environmental Cooperation, art. 2: "Each Party shall, with respect to its territory: (a) periodically prepare and make publicly available reports on the state of the environment"*

*NAFTA, art. 2: "Each Party shall, with respect to its territory: (a) periodically prepare and make publicly available reports on the state of the environment"*

## **3.05 Requirement to conduct environmental assessment**

- Related to the environmental assessment of projects or regulations.
- Excludes environmental impact assessment of the agreement. See 11.04.
- Excludes joint environmental assessment. See 7.02.04.

*Canada-Panama Agreement on the Environment, art. 6(1): "Each Party shall ensure that it maintains appropriate procedures for assessing the environmental impact of proposed projects which may cause significant adverse effects on the environment with a view to avoiding or minimizing such adverse effects."*

## **3.06 Commitment to invest in environmental research and science**

- Excluded if specific to an environmental issue-area.
- Includes references that the Parties should strengthen their capacity to protect the environment, and their capacity to assess environmental degradation.
- As opposed to 9.01 where capacity building refers to an unidirectional transfers of expertise or knowledge from one (generally) privileged country (usually a developed country) or

organization to a disadvantaged country (usually a developing country) or its nationals (including scientists and NGOs). Here a state is investing its own environmental capacity.  
*COMESA, art. 124: "For the purposes of paragraph 1 of this Article, the Member States undertake to: (b) develop capabilities for the assessment of all forms of environmental degradation and pollution and the formulation of regional solutions"*

### **3.07 Establish or support national standards bodies**

- Includes environmental standards.

*COMESA, art. 112: "The Member States, [...], agree to: (b) establish within their territories, national standards bodies, and develop their technical capacities so as to enable them to adequately carry out standardisation and quality assurance activities at the national level and to co-operate with other Member States."*

## **4. Interaction between non-environmental issues and the environment**

This section concerns policies, laws, standards, policies, decrees or any other rules or measures adopted by public authorities, individually or cooperatively, including via an intergovernmental regulatory organization (such as the EU and the Andean community).

It excludes coherence between international treaties, or between an international treaty and a State's action (see 14 instead).

Norms ask Parties to take into account the protection of environment when designing or adopting non-environmental measures. In other words, it is a commitment to "mainstream" environmental protection. As opposed to section 10, which directly involves environmental issues.

Includes commitments to avoid non-environmental measures that have adverse impacts on the effectiveness of environmental measures.

### **4.01 Coherence in general**

- This norm can only be implicitly related to the environment.
- Norms that specifically refer to coherence between trade or investment and the environment are found in 4.02.
- Includes coherence with economic activities or cooperation, as it is broader than just trade.
- Includes references to more precise sectors if those sectors are not explicitly named, e.g. "mainstreaming environmental concerns into sector policies".

*Lomé IV, art. 35: "The Parties agree to give priority in their activities to: - [...] a trans-sectoral approach that takes into account not only the direct but also the indirect consequences of the operations undertaken."*

*Albania- EC SAA, art. 86(2)2: "Policies and other measures shall be designed to bring about sustainable economic and social development of Albania. These policies should ensure that environmental considerations are also fully incorporated from the outset and that they are linked to the requirements of harmonious social development."*

### **4.02 Coherence with domestic trade and/or investment policies**

- As opposed to the expression of causal believe that trade and environment are mutually supportive. See 1.10 instead. Rather, this norm is a normative commitment (even weak) to design trade policies that are supportive with environmental protection.
- The provision should specifically and clearly refer to trade, investment or a direct synonym, eg commerce. Vague mentions of economic cooperation that can go beyond trade are found in 4.01.

*CARIFORUM-EC, art. 188: "1. The Parties and the Signatory CARIFORUM States commit to not adopting or applying [...] national trade or investment-related legislation or other related administrative measures as the case may be in a way which has the effect of frustrating measures intended to benefit, protect or conserve the environment or natural resources [...]"*

*Chile-Colombia, art. 18.1: "Los objetivos de este Capitulo son contribuir a las esfuerzos de las Partes para asegurar que las politicas comerciales y ambientales se apoyen mutuamente."*

*Central America-EC, art. 284 : "The Parties reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and to ensuring that this objective is integrated and reflected at every level of their trade relationship."*

#### **4.03 Interaction between energy policies and the environment**

- Excludes norms on renewable energy. See 10.14 instead.
- As opposed to 10.14, 4.03 is for taking environmental concerns into account when designing energy policies in general, whereas 10.14 is for producing green or renewable energy specifically.

*Brunei-Japan, art. 93: "Each Party shall endeavour to minimise, [...] harmful environmental impacts of all activities related to energy in its Area. [...] Each Party shall (a) take account of environmental considerations throughout the process of formulation and implementation of its policy on energy."*

*Lomé IV, art. 16: "Cooperation shall be aimed at encouraging improved exploitation of energy and mining resources by taking account of the energy component in the development of the different economic and social sectors and thus helping to improve living conditions and the environment, leading to the better conservation of biomass resources, particularly fuelwood."*

#### **4.04 Interaction between mining and the environment**

#### **4.05 Interaction between tourism and the environment**

- Includes mentions of sustainable tourism and ecotourism.

#### **4.06 Interaction between gender policies and the environment**

- Includes any statement linking gender or women to environmental protection as interacting issues.

*Lomé IV, art. 153: "Cooperation shall support the ACP States' efforts aimed at: [...] (e) paying particular attention to the crucial role women play in [...] environmental protection [...]"*

#### **4.07 Interaction between social issues and the environment**

- Include poverty, employment, labour, standard of living, social progress, etc.
- Economic and social development is not considered sufficiently precise to refer to poverty.

*EC-Chile, art. 28 (2): "The following are particularly significant: the relationship between poverty and the environment."*

*COMESA, art. 124(2) : "The Member States undertake to: (k) adopt measures and policies to address the existing unsatisfactory demographic profiles such as high growth rates and fertility rates, high dependency ratio and poor social conditions in order to mitigate their adverse impact on environment and development;"*

#### **4.08 Interaction between rural development and the environment**

*Cotonou Agreement, art. 32(1) : "1. Cooperation on environmental protection and sustainable utilisation and management of natural resources shall aim at: sustainable rural [...] development."*

*EC-Slovenia, art. 82(2): "2. Cooperation shall concern the following priority areas: – restoring ecological stability in the countryside;"*

#### **4.09 Interaction between urban development and the environment**

*Algeria-EC Euro-Med, art. 52(2): "2. Cooperation shall in particular focus on: the control and prevention of urban [...] pollution."*

*China-Singapore, art. 87(2) : "2. Noting that the flagship Sino-Singapore Tianjin Eco-city project is another key step forward in bilateral co-operation in regional development, both Parties agree to work closely with a view to developing the city as a model for sustainable development."*

*Cotonou Agreement, art. 31(2) : "1. Cooperation on environmental protection and sustainable utilisation and management of natural resources shall aim at: sustainable [...] urban development."*

#### **4.10 Interaction between land-use planning and the environment**

- Includes any provision linking land-use and the environment as interacting issues.
- Also includes any provision about land-use when in environmental context (article or agreement on the environment).

*Chile-EC, art. 28(2) : "In this connection, the following are particularly significant: (c) environmental problems and land-use management;"*

*EC-Slovenia, art. 82: "Cooperation shall concern the following priority areas: -land management, including construction and town planning."*

#### **4.11 Interaction between construction activities and the environment**

*EC-Hungary, art. 70(2): "2. Policies designed to bring about the economic and social development of Hungary, in particular policies relating to [...] the construction industry [...] should be guided by the principle of sustainable development. This entails ensuring that environmental considerations are fully incorporated into such policies from the outset. These policies shall also take into account the requirements of sustainable and harmonious social development."*

*EC-Lithuania, art. 92: "The Parties will cooperate in the housing and construction sector. This cooperation has the objective, amongst others, of modernizing and restructuring the housing and construction sector, taking into account the related aspects of health, safety, environment."*

#### **4.12 Interaction between agriculture and the environment**

- Excludes certain specific environmental issues that belong in 10 : fertilizers and pesticides (10.24), GMOs (10.20.02), organic foods (10.25).

*Brunei-Japan, art. 14: "[T]he Parties, recognising the importance of securing stable food supply and of sustainable development of agriculture, forestry and fisheries, shall cooperate in the field of agriculture, forestry and fisheries for mutual benefits of the Countries."*

*Bulgaria-EC, art. 78(1): "[...] - develop ecologically clean regions, technologies and crops, [...]"*

*CARICOM revised, Preamble: "Determined further to effect a fundamental transformation of the agricultural sector [...] and generally conducting agricultural production on a market-oriented, internationally competitive and environmentally sound basis;"*

*EC-Hungary, art. 70(2): "Policies designed to bring about the economic and social development of Hungary, in particular policies relating to industry including [...] agriculture [...] should be guided by the principle of sustainable development. This entails ensuring that environmental considerations are fully incorporated into such policies from the outset. These policies shall also take into account the requirements of sustainable and harmonious social development."*

#### **4.13 Interaction between indigenous communities or traditional knowledge and the environment**

- Includes any statement linking indigenous communities or traditional knowledge to environmental issues, including genetic resources, ecological knowledge or biodiversity.
- Only for this norm, a reference to natural resources (such as forestry, fisheries, or genetic resources) is considered sufficient to refer implicitly to environmental issues.
- "Local communities" is not considered sufficient to refer to indigenous communities.

#### **4.14 Interaction between human health and the environment**

*COMESA, art. 122: "5. Action by the Common Market relating to the environment shall have the following objectives: (b) to contribute towards protecting human health;"*

*EC-Estonia, art. 82(2): "2. Cooperation shall concern in particular: – protecting human health against environmental hazards."*

*Lomé IV, art. 154(3): "3. Cooperation in the health sector may provide support for: -support for training and information programmes and campaigns aimed at stamping out endemic diseases, improving environmental hygiene, combatting the use of narcotic drugs, the spread of transmitted diseases and other health scourges in the framework of integrated health systems,"*

#### **4.15 Interaction between industrial activities and the environment**

- Includes industrial pollution and safety of industrial plants.

*Bosnia and Herzegovina-EC SAA, art. 92: "Cooperation shall aim to promote the modernisation and restructuring of industry and individual sectors in Bosnia and Herzegovina. It shall also cover industrial cooperation between economic operators, with the objective of strengthening the private sector under conditions, which ensure that the environment is protected."*

*Algeria-EC Euro-Med, art. 52(2): "2. Cooperation shall in particular focus on: – the impact of industrial development on the environment, in particular the safety of industrial plant,"*

*Algeria-EC Euro-Med, art. 32(2): "2. Cooperation shall in particular focus on: – the control and prevention of urban, industrial and marine pollution,"*

*Colombia-US, Environmental Cooperation Agreement art. IV: "promoting the development, transfer, use, proper operation and maintenance of cleaner, more efficient production processes and technologies, including those that reduce toxic chemical emissions."*

#### **4.16 Interaction between transport and the environment**

- Excludes emission standards for vehicles. See 10.17 instead.

*Bosnia and Herzegovina- EC SAA, Protocol 3 on Land Transport art. 2(2): "In this connection, the scope of this Protocol shall cover in particular: - cooperation in developing a transport system which meets environmental need."*

#### **4.17 Interaction between other non-environmental issues and the environment**

- For instance, transition to market economy, food security, regional development, culture, etc.

### **5. Enforcement of domestic measures**

Enforcement refers to the identification and sanction of persons violating environmental measures. Implementation should be distinguished from enforcement. Norms in this section are not about the implementation of the trade agreement or the implementation of other international treaties.

This section includes only norms applying in general to the environment. Not to specific environmental issue such as desertification, biodiversity, climate change, etc.

#### **5.01 Commitment to enforce environmental measures**

- Refers to the general commitment of state to enforce their environmental measures.
- Failure to enforce includes derogating to or waiving environmental measures.
- Promoting compliance is not sufficient for enforcement, it is found in 15.
- Affirmations of environmental obligations under domestic law is not sufficient.
- Excludes norms on the judicial sovereignty. See 1.09 instead.
- Excludes norms on voluntary standards. See 6.02 instead.
- Excludes commitments to implement international agreements. See section 14.02 instead.

##### **5.01.01 Binding obligations**

- Includes shall, should, must, have to, etc.

*US-Chile, art. 19.2: "(a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties [...]"*

*NAAEC, art. 5: "With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action, [...]"*

*Brunei-Japan, art. 71: "[...] each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its Area."*

*Japan-India, art. 8(2): "Each Party shall take appropriate governmental action such as monitoring compliance with and investigating suspected violations of its environmental law and regulation."*

##### **5.01.02 Non-binding obligations**

- Includes best efforts, resolve, wish, etc.
- Includes norms in the preamble of the agreement.

*Canada-Panama Agreement on the Environment, Preamble: "Noting further their resolve to enhance and enforce environmental laws and regulations, strengthen their cooperation on environmental matters, and promote sustainable development;"*

*CETA, Preamble: "Determined to implement this Agreement in a manner consistent with the enhancement of the levels of labour and environmental protection and the enforcement of their labour and environmental laws and policies, building on their international commitments on labour and environment matters;"*

*Jordan-US, Preamble: "Wishing to promote effective enforcement of their respective environmental and labor law;"*

*EC- Korea, article 1.1: "The objectives of this Agreement are: [...] (h) to promote foreign direct investment without lowering or reducing environmental, labour or occupational health and safety standards in the application and enforcement of environmental and labour laws of the Parties."*

## 5.02 Specific governmental action for enforcement

- Refers to the commitment of state to take specific action to enforce their environmental measures.
- Includes examples of specific action.

*NAFTA, art. 5: "With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action, subject to Article 37, such as: (a) appointing and training inspectors; (b) monitoring compliance and investigating suspected violations, including through on-site inspections; (c) seeking assurances of voluntary compliance and compliance agreements; (d) publicly releasing non-compliance information; (e) issuing bulletins or other periodic statements on enforcement procedures; (f) promoting environmental audits; (g) requiring record keeping and reporting; (h) providing or encouraging mediation and arbitration services; (i) using licenses, permits or authorizations; (j) initiating, in a timely manner, judicial, quasi-judicial or administrative proceedings to seek appropriate sanctions or remedies for violations of its environmental laws and regulations; (k) providing for search, seizure or detention; (l) Or issuing administrative orders, including orders of a preventative, curative or emergency nature."*

*Japan-India, art. 8(2): "Each Party shall take appropriate governmental action such as monitoring compliance with and investigating suspected violations of its environmental law and regulation."*

## 5.03 Private access to remedies, procedural guarantees and appropriate sanctions

- Includes right to sue another person for damage, right to seek remedies to mitigate the consequences of violation to environmental law, right to seek injunction, etc.
- Includes norms related to the determination of appropriate and effective remedies or sanctions for a violation of environmental laws.
- This norm is explicitly (but not necessarily exclusively) on environment measures, or included in a section/chapter devoted to the environment or sustainable development.
- Excludes norms dealing in general with any issue-areas related to the trade agreement, unless the environment is explicitly mentioned as one subject-matter of the norms. However, norms found in a chapter exclusively on environment or in parallel agreement on the environment are always considered as environmental norms.
- Excludes norms on the judicial sovereignty. See 1.09 instead.

*NAAEC, article 5(2) and (3): "2. Each Party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its law to sanction or remedy violations of its environmental laws and regulations. 3. Sanctions and remedies provided for a violation of a Party's environmental laws and regulations shall, as appropriate: (a) take into consideration the nature and gravity of the violation, any economic benefit derived from the violation by the violator, the economic condition of the violator, and other relevant factors; and (b) include compliance agreements, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution."*



*Canada-Costa Rica, art. 5: "Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration in accordance with its law. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings: for the enforcement of the Party's environmental laws; and for the seeking of redress for another's violation of those laws."*

## **5.04 Public submission on enforcement of environmental measures**

### **5.04.01 Commitment to consider alleged violation brought by a citizen of any Party**

- Refers to the right of citizens to question a Party on the enforcement of its domestic environmental measures.
- Includes the right of citizens to send submissions asserting that a Party is failing to effectively enforce its environmental measures, requesting an investigation of alleged violations of environmental measure, or requesting appropriate action to enforce environmental measures.
- Submission can be sent directly to the Party or to an international body or secretariat.
- As opposed to public participation in the adoption of a measure (see 3.02) and treaty implementation (see 11).

*Canada-Costa Rica CCRAEC, art. 9: "Any person or non-governmental organization residing in or established in the territory of a Party may submit a written question to a Party indicating that the question is being submitted pursuant to this Article regarding that Party's obligations pursuant to Article 3(1) to effectively enforce its environmental laws. The Party in question will acknowledge such questions, in writing, and respond to such questions in a timely manner."*

*CAFTA, art. 17.7(1): "Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body ("secretariat") that the Parties designate."*

*Canada-Korea, art. 17.7(1): "1. Each Party shall, in accordance with that Party's domestic law, ensure that its authorities competent to enforce environmental law give due consideration to alleged violations of that law brought to their attention by interested persons residing or established in its territory."*

### **5.04.02 Commitment to consider alleged violation brought by foreigners**

- Refers to the right of foreigners to request a Party's competent authorities to investigate alleged violations of its environmental laws.

*Korea-US, art. 20.4: "1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration, in accordance with its law."*

## **5.05 Cooperation on enforcement**

- Includes cooperative bilateral and regional activities.
- Must be joint activities.

*Singapore-US, art. 18.6: "The Parties shall, as appropriate, pursue cooperative environmental activities, including those pertinent to trade and investment and to strengthening environmental performance, such as information reporting, enforcement capacity [...]"*

*Canada-Honduras, Annex II Environmental Cooperation: "The areas of cooperation under this Memorandum may include any or all of the following: [...] b. strengthening institutional capacity for the enforcement of domestic environmental laws, [...]"*

## **5.06 Factual report on enforcement**

- Refers to the capacity of a commission, secretariat, etc. (national or international) to conduct a factual report on the failure of a Party to enforce its environmental law.

- The commitment of government to “answer” questions on enforcement is not sufficiently independent.

*US-Peru, art. 18.9: “1. If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons. 2. The secretariat shall prepare a factual record if any member of the Council instructs it to do so. 3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission. 4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information: (a) that is publicly available; (b) submitted by interested persons; (c) submitted by national advisory or consultative committees; (d) developed by independent experts; or (e) developed under the ECA. [...]”*

## 6. Means to promote environmental protection

This section concerns norms that could be implemented independently by Parties or in cooperation. This section includes norms applying in general to the environment or to specific environmental issue such as desertification, biodiversity, climate change, etc.

### 6.01 Education or public awareness

- Refers to Parties’ efforts for the education or public awareness on matters related to the environment, including on environmental degradation and environmental law.
- Includes norms applying in general to the environment and to specific environmental issue.
- Ensuring that information regarding environmental laws and policies is available to the public is not sufficient to be considered. However, promoting awareness of these laws and policies is sufficient as it is active rather than passive.
- Can target a specific group, such as fisherman or students.
- Excludes measures not clearly aimed at the public. Vague norms on the promotion of a healthy environment or on the promotion of the compliance with the treaty’s obligations are found in 15.
- Norms on the promotion of best practices are found in 6.02.
- Excludes the promotion of voluntary measures by corporate actors. See 6.02 instead.
- Excludes engagement with the public for the adoption of domestic measures (see 3.02) and on enforcement (see 5).

*CETA, art. X.7: “Each Party shall promote public awareness of its environmental laws and regulations, as well as enforcement and compliance procedures, by ensuring the availability of information to stakeholders”.*  
*Brunei-Japan, art. 93(2): “Each Party shall (c) promote public awareness of environmental impacts of activities related to energy and of the scope for and the costs associated with the prevention or abatement of such impacts.”*

*Lomé IV, art. 36: “The protection of the environment and natural resources requires a comprehensive approach embracing the social and cultural dimensions. In order to ensure that this specific dimension shall be taken into account, attention shall be given to incorporating suitable educational, training, information and research schemes in projects and programmes.”*

*Lomé IV, art. 130: “The Contracting Parties undertake to promote shipping safety, security of crews and the prevention of pollution.”*

### 6.02 Voluntary measures, structure or mechanisms

- Includes any commitment from the Parties to promote or facilitate any types of voluntary measures by corporate actors (such as enterprises, businesses, stakeholders and NGOs) to, individually or collectively, surpass minimal levels of environmental protection required by law.
- The voluntary measures or mechanisms can have been developed by a national or international organism.
- The promotion of best practices is found here.

- Excludes the mere education of service providers or goods producers if it does not imply a measure, a structure or a mechanism. See 6.01 instead.

#### **6.02.01 Promotion of unspecified voluntary measures**

- Includes the promotion of best practices or the endorsement to develop voluntary and incentive-based mechanisms.

*Colombia-Peru-EC, art. 271: "The Parties recognise that flexible, voluntary, and incentive-based mechanisms can contribute to coherence between trade practices and the objectives of sustainable development. In this regard, and in accordance with its respective laws and policies, each Party will encourage the development and use of such mechanisms."*

*CAFTA Agreement on Environmental Cooperation, article V: "(f) the promotion of best practices leading to sustainable management of the environment;"*

#### **6.02.02 Promotion of specific voluntary measures**

- Includes norms referring to a precise voluntary measure.
- Private voluntary measures notably include corporate social responsibility (stewardship), ISO standards, industrial guidelines, certifications, performance goals, labels, codes of conduct, reporting and auditing, public-private partnerships, etc.

*Canada-Chile, Agreement on Environmental Cooperation art. 10: "2. The Council may consider, and develop recommendations regarding: (r) eco-labelling."*

*Chile-US, art. 19.10: "Each Party should encourage the enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both Parties."*

*Chile-US, Annex 19.2: "Cooperation under the Cooperation Agreement may include work in the following fields of activity: (c) developing public-private partnerships to achieve environmental objectives."*

*EFTA-Montenegro, Preamble: "[...] affirming their aim to encourage enterprises to observe internationally recognised guidelines and principles in this respect, such as the OECD Guidelines for Multinational Enterprises, the OECD Principles of Corporate Governance and the UN Global Compact."*

*Jordan-US, Joint Statement: "To improve environmental management by private firms, the United States provides technical assistance in Jordan on attaining ISO 14000 certification."*

*Colombia-US, art. 18.5: "2. As appropriate and feasible and in accordance with its law, each Party shall encourage: (a) the maintenance, development, or improvement of performance goals and standards used in measuring environmental performance; and (b) flexible means to achieve such goals and meet such standards."*

### **6.03 Economic instruments**

- Includes any commitment from the Parties to establish, use, or implement economic instruments for the protection of the environment.
- Economic instruments are set up by public authorities. They include inter alia cap and trade, exchange or trading permit/credit, green tax.
- Excludes norms on green subsidies (see 8.06) and intellectual property (see 8.04).

#### **6.03.01 Unspecified economic or market instruments**

- Includes market-based incentives.

*Morocco-US, art. 17.5: "Party shall encourage the development of such mechanisms, which may include: [...] (b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, enhancement, and protection of natural resources and the environment."*

#### **6.03.02 Specific economic or market instruments**

- Includes for example norms on the creation of a carbon market.

*Central America-EC, art. 50: "Cooperation shall in particular address: (d) in this context, cooperation shall seek to facilitate joint initiatives in the area of climate change mitigation and adaptation to its adverse effects, including the strengthening of carbon market mechanisms."*

## 7. Other cooperation on environmental matters

Except otherwise indicated, this section includes norms applying in general to the environment or to specific environmental issues such as desertification, biodiversity, climate change, etc.

### 7.01 Promote environmental goods and services

- Concerns commercial transactions between private entities.
- . See 9.02 instead.

#### 7.01.01 Encourage production of environmental goods and services

*Canada-Colombia, Agreement on the Environment Annex I: "The priority areas identified by the Republic of Colombia for consideration in the initial Work Program include, inter alia: (f) promotion of the production and trade of environmental-friendly goods and services;"*

*CARIFORUM EC EPA, art. 191(2)(e): "2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support in the following areas: (e) assistance to producers to develop and/or improve production of goods and services, which the Parties consider to be beneficial to the environment;"*

#### 7.01.02 Encourage trade or investment in goods and services

- Either a general commitment or specific measures to attain this objective.
- Includes commitment to increase public awareness to foster trade of environmental goods and services.
- Exclude norms on green markets (see 6.03) or green subsidies (see 8.06).

##### 7.01.02.01 General encouragement

*Canada-Colombia, Agreement on the Environment art. 2: "6. The Parties shall encourage the promotion of the trade and investment of environmental goods and services."*

*CAFTA-DR, art. 17.9(3): "The program of work may include long, medium and short-term activities related to: (h) the development and promotion of environmentally beneficial goods and services;"*

*Korea-US Environmental Cooperation Agreement, art. 8: "Consistent with its domestic laws and regulations, each Party shall endeavor to facilitate entry into and exit from its territory of personnel and equipment of the other country, engaged or used in projects and programs under this Agreement"*

*EC-Georgia, art. 231: "The Parties shall strive to facilitate the removal of obstacles to trade or investment concerning goods and services of particular relevance to climate change mitigation, such as sustainable renewable energy and energy efficient products and services."*

##### 7.01.02.02 Encouragement for specific goods and services

### 7.02 Joint scientific cooperation

- As opposed to the mere exchange of information between Parties that is not driven for research purposes (see 7.03), 7.02 MUST involve experts and/or scientific purposes.
- If the agreement does not describe the participants to a joint activity, the norm is found in 7.03 since it is not explicitly stated that they are experts, except for seminars and conferences which are automatically considered to be attended by experts.
- The actions undertaken MUST be joint.

#### 7.02.01 Conduct joint scientific research

- Includes joint studies, joint development of green technology, etc.
- Excludes commitment to invest in environmental research, see 3.06 instead.

*Bolivia-Chile, Sexto Procotolo Adicional art. IV: "Para los fines del presente Protocolo Adicional, la cooperación técnica y científica entre los países podrá adoptar las siguientes formas: a) Realización conjunta o coordinada de programas de investigación y/o desarrollo."*

#### **7.02.02 Specific means to conduct scientific cooperation**

- Includes exchange or visits of experts, scientists, researchers or scholars, or jointly organised activities attended by them.
- Includes exchange of information between experts, scientists, researchers or scholars.
- Includes mentions of technical cooperation

*Bolivia-Chile, Sexto Protocolo Adicional art. IV: "Para los fines del presente Protocolo Adicional, la cooperación técnica y científica entre los países podrá adoptar las siguientes formas: c) Envío de expertos g) Organización de seminarios y conferencias."*

*Brunei-Japan, art. 9: "(b) the forms of cooperation under this Section may include: (iv) encouraging and facilitating visits and exchange of experts;"*

#### **7.02.03 Creation of joint research institutions**

- Excludes commitments to invest in environmental research. See 3.06 instead.
- Involves a research purpose, as opposed to the creation of intergovernmental committee (see 12.01) or international secretariat (see 12.02).

*Bolivia-Chile, Sexto Protocolo Adicional art. IV: "Para los fines del presente Protocolo Adicional, la cooperación técnica y científica entre los países podrá adoptar las siguientes formas: f) Creación y operación de instituciones de investigación, laboratorios o centros de perfeccionamiento."*

#### **7.02.04 Joint environmental assessment and study or monitoring of environmental concerns**

- Includes joint development of environmental indicators, joint monitoring of environmental issues, joint report on the state of the environment, etc.
- Excludes individual monitoring of the state of the environment (see 3.04) and requirement to conduct individual environmental assessment (see 3.05).
- Excludes joint impact assessment of the trade agreement (see 11.04), but includes environmental impact assessments of other initiatives.
- Excludes monitoring of implementation of the agreement.

*Bolivia-MERCOSUR, Protocolo sobre integracion fisica adicional art. 9: "Las propuestas conjuntas contemplarán la realización de estudios de factibilidad técnico-económicos y ambientales."*

*Bosnia and Herzegovina-EC SAA, art. 108: "Cooperation could also centre on the development of strategies [...] to execute environmental impact assessment and strategic environmental assessment."*

*Bulgaria-EC, art. 81(2): "2. Cooperation shall concern: - effective monitoring of pollution levels;"*

### **7.03 Exchange of information**

- Excludes exchange of information in the context of international negotiations. See 7.05 instead.
- Excludes exchanges that are conducted with scientific objectives. See 7.02.2 instead.
- Excludes requests for consultation under a dispute settlement mechanism. See 13.04 instead. Other consultations are included.

#### **7.03.01 General obligation to exchange information related to the environment**

- Refers to any information sharing on environmental issues, laws, policies, standards, measures, practices or procedures.
- Can involve general or specific issues.
- Includes exchange of views on the trade impact of environmental regulations.
- Includes commitment to enhance communication channel.
- Includes sharing of experiences.
- Excludes the establishment of a contact point. See 11.01 instead.

- Excludes passive transparency or disclosure. There must be a concrete interaction between Parties, such as an “exchange”, a “request” or a “notification”. A general commitment to “make information available to all Parties” is found in 15.
- Excludes contact between non-State actors. See 11.03.03 instead.

*Brunei-Japan, art. 95: “2. The functions of the Sub-Committee shall be: (b) exchanging information on any matters related to this Chapter;”*

*Bulgaria-EC, art. 81(2): “2. Cooperation shall concern: - [...] systems of information on the state of the environment.”*

### 7.03.02 Specific means to exchange information

- Includes policy dialogues, study tours, visits, exchange of and workshops for officials or civil servants (not scientists), or any other jointly organized activity.
- Includes commitment to use specific means of communication

*Bulgaria-EC, art. 88(2): “2. To this end, any of the following measures may be undertaken: - exchange visits to explore the opportunities for cooperation and assistance, - the exchange of civil servants or experts,”*

*CAFTA, Agreement on Environmental Cooperation, art. IV(5): “Representatives of the Parties may meet between meetings of the Commission to analyze and promote the implementation of the Agreement and to exchange information on the progress of cooperative programs, projects and activities.”*

*China-New Zealand, Environmental Cooperation Agreement art. 3(6): “6. The Parties may exchange information and coordinate activities between meetings using email, video conferencing or other means of communication.”*

### 7.03.03 Early notification or exchange of information in case of natural disasters, environmental catastrophes or accidents

- Should also be found in the relevant child node in 10.

*EC-Montenegro SAA, art. 110: “The Parties shall cooperate in the field of nuclear safety and safeguards. Cooperation could cover the following topics: (b) encouraging the promotion of Agreements between Member States, or European Atomic Energy Community and Montenegro on early notification and exchange of information in cases of nuclear accidents and on emergency preparedness and on nuclear safety issues in general, if appropriate;”*

*EC-Slovenia, art. 81(2): “2. Cooperation, as appropriate to the Slovenian specific situation, shall cover the following: – early exchange of information in case of radiological emergencies;”*

*Israel PLO, Annex II art. II: “Israel and the Palestinian Authority shall respectively operate an emergency warning system in order to respond to events or accidents which may generate environmental pollution, damage or hazards. A mechanism for mutual notification and coordination in cases of such events or accidents shall be established.”*

### 7.03.04 Provision of information when taking measures to protect the environment

- The measure can be urgent or not.
- If the norm refers to a TBT measure adopted in case of emergency, it is found both here and in 8.02.03.

*Bolivia-Mexico, art. 9-14(5): “5. Cuando una Parte considere necesario hacer frente a un problema urgente relacionado [...] con la protección [...] del ambiente [...], podrá omitir cualesquiera de los pasos establecidos en el párrafo 2 ó 4, siempre que, al adoptar la medida de normalización: a) notifique inmediatamente a la otra Parte, de conformidad con los requisitos establecidos en el literal b) del párrafo 2, incluida una breve descripción del problema urgente;”*

*Canada-Chile, Agreement on Environmental Cooperation art. 2(3): “When a Party adopts a measure prohibiting or severely restricting the use of a pesticide or toxic substance in its territory, it shall notify the other Party of the measure, either directly or through an appropriate international organization.”*

*Canada-Chile, Agreement on Environmental Cooperation art. 20(2): “2. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual environmental measure*

that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement. 3. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any such actual or proposed environmental measure, whether or not the other Party has been previously notified of that measure."

#### **7.03.05 Communication between customs authorities on offenses related to environmental protection**

*Colombia-Israel, art. 11(4): "Information on offenses relating to the public health, public security or environmental protection of the Party whose Customs Authority received the information may be conveyed to the competent governmental authorities dealing with such matters. Such information shall be treated as confidential and shall enjoy any and all protection afforded to similar information under the laws of confidentiality and secrecy as provided for in the domestic law of the Party whose Customs Authority received them."*

### **7.04 Harmonization of domestic environmental measures**

- Includes laws, regulations, policies, decrees or any other norms adopted by public authorities.
- For the purpose of this norm, harmonization with one Party's regional standards (such as EU) is considered as harmonization with another country's standards. Otherwise, the implementation of international standards is not sufficient for harmonization.
- Can be general or focused on a specific issue.

#### **7.04.01 Harmonization of environmental measures**

- Bidirectional: both Parties work on adjusting their measures.
- Includes "efforts to make compatible".
- Includes the adoption of new, common or uniform regulations.
- Includes the harmonization of some SPS and TBT measures. However, an essential condition is that the norms refers explicitly to the environment (including life/health of plants/animals").

*Canada-Chile, Agreement on Environmental Cooperation art. 10(3): "3. The Council shall strengthen cooperation on the development and continuing improvement of environmental laws and regulations, including by: (b) without reducing levels of environmental protection, establishing a process for developing recommendations on greater compatibility of environmental technical regulations, standards and conformity assessment procedures in a manner consistent with the CCFTA."*

*CARICOM revised, art. 67(3): "1. COTED shall, in collaboration with competent agencies, develop a standardisation programme in furtherance of the objectives of this Chapter and consistent with the international obligations of the Member States. 3. The programme shall have the following objectives: (d) consumer and environmental protection."*

*CARIFORUM EC EPA, art. 119(3)(d): "[P]rogrammes to achieve and ensure equivalency between national/regional and international standards for sustainable tourism;"*

#### **7.04.02 Alignment of a Party's legislation to the other Party's**

- Unidirectional: only one Party adjusts its measures.
- Can be domestic or regional.

*Bosnia and Herzegovina-EC SAA, art. 108: "The Parties shall, in particular, establish cooperation with the aim of strengthening administrative structures and procedures to ensure strategic planning of environment issues and coordination between relevant actors and shall focus on the alignment of Bosnia and Herzegovina's legislation to the Community acquis."*

*Bulgaria-EC, art. 69: "The Parties recognize that an important condition for Bulgaria's economic integration into the Community is the approximation of Bulgaria's existing and future legislation to that of the Community. Bulgaria shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community."*



#### **7.04.03 Avoid exceptional national environmental standards**

- Aims to facilitate the harmonization of domestic measures.

*Bosnia and Herzegovina-EC SAA, art. 15: "2. In order to provide the industry with clear information and to encourage coordinated research, programming and production, exceptional national standards in this field shall be avoided."*

#### **7.04.04 Mutual recognition**

- Acceptance of another Party's environmental measure as equivalent to the Party's own.

*El Salvador-Honduras-Taiwan, art. 9.06(2): "2. A Party shall accept as equivalent to its own any technical regulations of the other Party, when in cooperation with the other Party, the importing Party determines that the technical regulations of the exporting Party adequately fulfill the legitimate objectives of the importing Party."*

#### **7.04.05 Harmonization not to be used as a false pretense to lower environmental protection**

- Often involves TBT measures, in which case it is also found in 8.02.

*Bolivia-Mexico, art. 9-08(2): "2. Sin perjuicio de los derechos que les confiera este capítulo y tomando en cuenta las actividades internacionales de normalización, las Partes harán compatibles, en el mayor grado posible, sus respectivas medidas de normalización, sin reducir el nivel de seguridad o de protección a la vida o la salud humana, animal o vegetal, del ambiente o de los consumidores."*

#### **7.04.06 Possibility to opt out of harmonized environmental norms**

- Can be provisional or not.

*EC-Amsterdam, 34: "In this context, harmonization measures answering these requirements shall include where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure."*

#### **7.04.07 Not the Party's intentions to harmonize their environmental standards**

*EU-Singapore, art. 13.1(4): "The Parties recognize that it is not their intention to harmonize their environmental standards."*

### **7.05 Negotiations of environmental agreements**

- Commitment to cooperate in the context of bilateral regional or multilateral environmental negotiation.
- Includes cooperation for negotiations taking place at the WTO Trade and Environment committee.
- Includes cooperation on agreements related to the environment.
- Includes negotiations taking place in the framework of the trade agreement if leads to agreement (rather than merely cooperation").
- Includes the negotiation of agreement concerning environmental protection but not exclusively focused on the environment.
- Includes commitment to collaborate to develop international environmental law.
- "Cooperation on environmental issues in other bilateral, regional and multilateral fora" is considered as referencing to negotiation. However, "cooperating with third Parties" is not sufficient. Such norms are found in 15.

*Bulgaria-EC, art. 81(3): 3. Cooperation shall take place notably through: - cooperation within the framework of the European Environment Agency once it comes into existence,*

*Korea-EC, art. 13.5: "1. The Parties recognize the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and they commit to consulting and cooperating as appropriate with respect to negotiations on trade-related environmental issues of mutual interest."*

### **7.06 Prohibit the export to the other Party of environmental good whose use or import is prohibited within that Party's territory**

### **7.07 Prohibit the import of environmental good from a Party where its use or export is prohibited by that Party**

### **7.08 Cooperate in the prevention of deceptive practices**

### **7.09 Vague commitments to cooperate**

- On the environment, sustainable management of natural resources, ecology, etc.
- Excludes provisions on specific environmental issue-areas.
- Includes activities conducted jointly via a committee.
- Could be in addition to more specific commitments.
- Excludes measures dealing in general with any issue-areas related to the trade agreement, unless the environment is explicitly mentioned as one subject-matter for cooperation.
- Excludes statements (often in a preamble) that one of the objectives of the chapter/agreement is to promote cooperation. The commitment that the cooperation should follow the conclusion of the agreement can be found in 7.09.
- Cooperation must be joint. A vague commitment to independently protect the environment is found in 15.
- Cooperation can include third Party. However, commitment to cooperate with third State is not sufficient to conclude that the Parties to the agreement shall cooperate. See 15 instead.

## **8. Specific trade-related measures**

### **8.01 General exceptions for trade in goods**

- Is considered as a general exception if it applies in general to any restriction on imports.
- In some cases, it could be found in a provision on definition.
- Excludes exceptions that are specific to TBT, SPS measures, agricultural products, etc.
- As a reminder, “animal/plant life or health is considered as environmental, but not sufficient for SPS.
- Excludes exceptions on services. See 8.08 instead.
- Excludes the precautionary principle. See 1.04 instead.

#### **8.01.01 Life (or health) of animal and/or plant**

- Can (or not) include a reference to humans.
- Again, exceptions on plant and animal life (or health) are here presumed to be an environmental norm.
- Flora and fauna is considered as synonymous as plant and animal.
- A norm providing for both a necessary and a non-necessary exceptions is found in 8.01.01.01 and 8.01.01.02 if it is unclear which one would apply. However, if the necessary exception is included in the non-necessary exception, then it becomes clear that a measure does not need to be necessary and should therefore only be found in 8.01.01.02.

##### **8.01.01.01 Necessary**

- Includes references to GATT art. XX b) or the complete art. XX.
- The term “required to” is considered as synonymous of “necessary”.
- Can include a reference to GATT/WTO agreements if no other exception is included in the agreement, as long as it mentions member states “rights” in addition to their obligations.

*Australia-New Zealand FTA, art. 12: “Provided that such measures are not used as a means of arbitrary or unjustifiable discrimination or as a disguised restriction on trade between the -Member States, nothing in this Agreement shall prevent the*

*adoption or enforcement by a Member State of measures: (g) necessary to protect its indigenous flora and fauna;"*

*China-New Zealand, art. 200: "1. For the purposes of this Agreement, Article XX of GATT 1994 and its interpretative notes [...] are incorporated into and made part of this Agreement, mutatis mutandis."*

#### **8.01.01.02 Not necessary**

- Includes references to article 30 of the EC Treaty article 30 and article 50 of the Montevideo treaty.
- Can include a reference to the entire EC Treaty or Montevideo treaty if no other exception is included in the agreement, as long as it mentions member states "rights" in addition to their obligations.
- "Justified on grounds of" does not mean "necessary" and is found here.  
*EC-South Africa, art. 27: "The Agreement shall not preclude prohibitions or restrictions on imports, exports, goods in transit or trade in used goods justified on grounds of [...] the protection of health and life of humans, animals or plants [...] Such prohibitions or restrictions shall not, however, constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail or a disguised restriction on trade between the Parties."*

#### **8.01.02 Conservation of natural resources**

- Can specify or not that the natural resources include living/biological resources.
- Can be necessary or not.
- Includes norms that refer to GATT art XX (g) or the complete art. XX.
- Can include a reference to the entire GATT/WTO agreements if no other exception are included in the agreement, as long as it mentions member states "rights" in addition to their obligations.

*China-New Zealand, art. 200: "The Parties understand that the measures referred [...] Article XX (g) of GATT 1994, as incorporated into this Agreement, applies to measures relating to the conservation of living and non-living exhaustible natural resources, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in goods or services or investment."*

#### **8.01.03 Protection of the environment**

- Includes related concepts, such as "integrity of ecosystem" and "pollution control".
- Includes exceptions for the protection of "animal and plant and the environment" or the "conservation of natural resources and the environment" exceptions (because the environment is considered as an addition).
- Excludes "environmental measures" necessary to protect human, animal or plant life or health, "environmental measures" for the conservation of natural resources since they are not considered as sufficiently different from 8.01.01. In those cases, the environment is not considered as an addition as opposed to the articles included here.

*Armenia-Estonia, art. 8: "In accordance with the provisions of the GATT-94 the Agreement shall not preclude the rights of either Party or its obligations foreseen by the other international agreements, to adopt the regulatory measures, customary in international practice in the field of foreign economic relations, if the measures are related to: [...] the environmental protection; [...] Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or concealed limitation of trade between the Parties."*

*SADC, art. 9(h): "relating to the conservation of exhaustible natural resources and the environment".*

#### **8.02 Technical barriers to trade**

- Includes norms on environmental marking or labelling that might be otherwise considered as technical barrier to trade.

- Includes provisional, urgent or temporary technical measures adopted for environmental reasons.
- Norms referring to the TBT agreement in general are found in 8.02.02, 8.02.03. Specific reference article 2.2 are only found in 8.02.02. Likewise, specific references to articles 2.10 and 5.7 are found in 8.02.03.
- Excludes general exceptions modeled (i.e.GATT article XX) that applied *inter alia* to TBT.
- Exchange of information on the adoption of TBT measure are found in 7.03.04.
- Excludes norms on TBT harmonization or compatibility, see. 7.04 instead.
- Obligation to publish TBT related to the environment are found in 3.03.01.
- Obligation to use scientific data in the elaboration of TBT measures are found in 3.01.01.
- If a norm only states that technical measures should not be adopted for protectionist purposes, it is found in 2.04.
- Obligations to take into account relevant work of international organizations is found in 14.07.
- The possibility to adopt more restrictive norms than the ones developed by international organizations is found in 14.07.03.

#### **8.02.01 Right to conduct a risk assessment**

- Refers to the Parties' right to conduct an assessment of risks while pursuing their legitimate objectives. The protection of the environment, conservation of resources or any similar goal needs to be part of the expressed legitimate objectives.
- Includes norms providing that risk assessment may or should take into account the environment.
- The norm is also found in 3.01.02 when it provides that scientific data should be used in the conduct of the risk assessment.

*Chile-Mexico, art. 8-06: "1. A Party may, in pursuing its legitimate objectives, conduct an assessment of risk. In conducting an assessment, a Party may take into account, among other factors relating to a good or service: (...) (f) environmental conditions."*

#### **8.02.02 Right to prepare, elaborate, adopt or apply TBT measures related to the environment**

- Norms providing that States can adopt TBT measures, while taking into account international standards or methods are also found in 14.05.
- Includes the right to apply the EU *acquis*.
- Includes all norms indicating that the TBT agreement should govern the rights and obligations of the Parties or that the Parties decide to act in accordance with it.
- Includes references to article 2.2 of the TBT agreement.

*EC-Ukraine, art. 582: "In particular, regarding mandatory marking or labelling, the Parties agree that: (a) they will endeavour to minimise their requirements for marking or labelling, except as required for the adoption of the EU *acquis* in this area and for marking and labelling for the protection of health, safety, or the environment, or for other reasonable public policy purposes;"*

*Bolivia-Mexico, art. 13.05: "Cada Parte podrá elaborar, adoptar, aplicar y mantener las medidas de normalización que permitan garantizar su nivel de protección de la vida o la salud humana, animal o vegetal, del ambiente[...]."*

*Canada-Peru, art. 1407: "5. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment."*

*Japan-Vietnam, art. 51(3): "Nothing in this Chapter shall limit the right of a Party to prepare, adopt, and apply technical regulations and standards, to the extent necessary, to fulfill a legitimate objective."*

*EC-Korea, Annex 2-C art. 7: "This is without prejudice to the right to adopt measures necessary for road safety, the protection of the environment or public health and the prevention of deceptive practices provided such measures are based on substantiated scientific or technical information."*

#### **8.02.03 Right to derogate from the regular adoption procedure of a TBT measure in case of emergency**

- Refers notably to the possibility to skip the public participation requirement in the preparation of a TBT measure in case of an environmental emergency.
- The obligation to warn or inform the other Party of the adoption of an emergency measure is found in 7.03.04.
- Includes all norms indicating that the TBT agreement should govern the rights and obligations of the Parties or that the Parties decide to act in accordance with it.
- Includes references to articles 2.10 and 5.7 of the TBT agreement.

*Canada-Peru, art. 608: "1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested Parties to participate at an early appropriate stage when amendments can still be introduced and comments taken into account, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise."*

### 8.03 Investment

- Investment activity includes the establishment and licensing of investor and investment.
- Not necessarily an "exception".
- A recognition that it is inappropriate to encourage investment by relaxing environmental measures is found at 2.01.

#### 8.03.01 General on investment

- As opposed to the commitment not to relax environment standard. See 2.01 instead.
- Includes exceptions modeled on GATT article XX that applied to a set of norms devoted to the protection or liberalization of investment.
- Includes norms providing that a Party can adopt environmental measure or conversely that nothing may prevent it.

*Panama-US, art. 10.11: "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 investment activity in its territory is undertaken in a manner sensitive to environmental concern."*

#### 8.03.02 Specific on establishment

- Establishment includes admission, acquisition, authorization and license to operate.
- Includes measures authorizing government to conduct environmental impact assessment of investment prior to their establishment.
- 8.03.02 and 8.03.03 are often present in different paragraphs of the same article.

*EC-Ukraine, art. 104: "6. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, the Parties may take into account legitimate public policy objectives, including considerations of health, safety, the protection of the environment and preservation of cultural heritage."*

*Chile-Mexico art. 9.07(6): "Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent a Party from adopting or maintaining measures, including environmental measures necessary to protect human, animal or plant life or health; or (c) necessary for the conservation of living or non-living exhaustible natural resources."*

#### 8.03.03 Specific on performance requirements

- A requirement that an investor use or transfer a technology is a performance requirement.
- 8.03.02 and 8.03.03 are often present in different paragraphs of the same article.

*CANADA BIT MODEL: "A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f)."*

#### 8.03.04 Specific on expropriation

- Often found in a footnote or an annex used to define the concept of indirect expropriation.

*CANADA BIT MODEL: "Except in rare circumstances, such as when a measure or series of measures are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation"*

*Colombia-Israel, art. 10.7(3)d) footnote 4: "A measure or a series of measures adopted to protect public purposes including inter alia, the protection of public health, safety and the protection of the environment, do not necessarily constitute an effect equivalent to nationalization or expropriation".*

#### 8.03.05 Foreign investment ban from specific sectors related to the environment

- Often found in a reservation that only applies to one Party.
- Can be found in the Parties' commitment chart on the liberalization of services.
- Specific sectors can for example be waste management, water, fisheries, etc.
- It should however be clear that they relate to the environment. For example, unspecific norms on fisheries with no mention of any environmental standards are excluded.

*Colombia-EFTA, Annex XV: "Foreign investment is allowed in all sectors of the economy except for investment projects in activities relating to national defense and the processing and disposal of toxic, hazardous or radioactive waste not produced in Colombia."*

#### 8.03.06 Right to maintain or adopt any measures in regards of investment in a specific sector

- Often found in a reservation that only applies to one Party.
- Keep in mind that they can be found in the Parties' commitment chart on the liberalization of services.
- Specific sectors can for example be waste management, water, fisheries, etc.
- It should however be clear that they relate to the environment. For example, unspecific norms on fisheries with no mention of any environmental standards are excluded.

*Japan-Peru, Annex 6: "Japan reserves the right to adopt or maintain any measure relating to the supply of services in this sub-sector [radioactive waste management]."*

#### 8.03.07 Exclusion of ISDS

- Includes norms excluding the possibility for an investor to sue a State for a measure taken in the legitimate public interest. The environment should however be clearly stated as a legitimate public interest.
- It can be found in a reservation or an annex.

*Australia – China, art. 9.11 (4): "4. Measures of a Party that are non-discriminatory and for the legitimate public welfare objectives of public health, safety, the environment, public morals or public order shall not be the subject of a claim under this Section."*

*Mexico Northern Triangle, Anexo 14-41: "No estarán sujetas a los mecanismos de solución de controversias dispuestos en la sección B o el capítulo XIX: [...] las resoluciones que adopte la Secretaría de Estado en los Despachos de Industria y Comercio en aplicación de los artículos 11 y 18 de la Ley de Inversión Extranjera referente a la salud, la seguridad nacional y la preservación del ambiente."*

### 8.04 Intellectual property and the environment

- Not necessarily an "exception".

#### 8.04.01 Exclusion of environmentally harmful inventions from patentability

- Includes references on exclusion as set out in TRIPS Articles 27.2

*Canada-Korea, art. 16.12.2: "Each Party may exclude from patentability: (a) inventions, the prevention within that Party's territory of the commercial exploitation of which is necessary [...]"*

*avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by that Party's domestic law;"*

#### **8.04.02 Use of geographical indications to protect the environment**

- Includes use of geographical indications to protect traditional knowledge, biodiversity or genetic resources.
- Does not include the mandatory disclosure of origin/sources of genetic resource since it is already at 10.11.01.
- Does not include the exclusion of plants, animals, plant varieties, methods for treatment, and essential biological processes from patentability (not considered as environmental).

*CARIFORUM-EC, art. 164: "(c) Identification of products that could benefit from protection as geographical indications [...]. In so doing, the EC Party and the Signatory CARIFORUM States shall pay particular attention to promoting and preserving local traditional knowledge and biodiversity through the establishment of geographical indications."*

#### **8.04.03 Other norms on intellectual property and the environment**

- Includes the explicit possibility to grant compulsory license on ground of environmental emergency.

### **8.05 Procurement and the environment**

- Not necessarily an "exception".
- Environment norms, including exceptions, that are specific to public procurement.
- Includes the affirmation or reaffirmation that the GPA's rights and obligations. The mere possibility to ratify or join the GPA is excluded.

#### **8.05.01 General exceptions**

- Includes exceptions modeled on GATT article XX that applied to a set of norms devoted to procurement.
- Includes references to the rights under GPA Article XXIII.2.

*Oman-US, art. 9.14: "1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures: (b) necessary to protect human, animal, or plant life or health."*

#### **8.05.02 Technical specification or restriction in tender procedure**

- Includes the Parties' capacity to add technical requirements in its tender procedure in order to promote the protection of the environment.

*Australia-Japan, art. (8): "For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment."*

*EC-Ukraine, article 104(6): "6. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, the Parties may take into account legitimate public policy objectives, including considerations of health, safety, the protection of the environment and preservation of cultural heritage."*

*Trans-Pacific Strategic EP, exchange of letters: "In respect of New Zealand, for greater certainty, procurement of goods and services by its entities listed in Annex 11.A may be subject to technical specifications to promote the conservation of natural resources and the environment."*

#### **8.05.03 Exclusion of specific sectors from procurement liberalization**

- It is often found in an annex and it generally takes the form of reservation applying to one Party.

#### **8.05.04 Cooperation on green public procurement**

- Refers to the Parties' intent to cooperate on green public procurement.  
*Colombia – Korea, art. 16-A: “(b) information exchange and joint work on [...] green public procurement.”*  
*EC-Korea, Annex 13: “(d) exchange of information and cooperation on [...] green public procurement.”*

#### **8.06 Subsidies and the environment**

- Not necessarily an “exception”.
- Includes green subsidies.
- Environment norms, including exceptions that are specific to subsidies.
- Does not include norms limited to agricultural subsidies without mention of the environment.
- Includes subsidies necessary for adapting existing facilities to new environmental requirements.
- Includes exceptions modeled on GATT article XX that applied to a set of norms devoted to subsidies.

*EFTA-Lithuania, Annex VI (c): “The EFTA States and Lithuania agree that the application of Article 18 shall be guided by the following criteria: (c) The following measures are examples of types of aid normally consistent with the provisions of Article 18: (vii) environmental aid, under the general principle that the polluter-pays-principle is observed; investment specifically designated to reduce pollution may be aided up to a rate of 25 per cent or at differentiated tax rates of equivalent effect; recognizing the existence of different qualities of legislation or standards in other countries and their potential impact on trade and competition, the degree of subsidizations for specific industries shall be kept under constant review;”*

#### **8.07 Safeguard measures on environmental grounds**

- Not necessarily an “exception”.
- In the context of this codebook, safeguard measures are temporarily trade restrictions in urgent, serious or exceptional circumstances.
- Includes safeguards measures on goods and services.

*EFTA-EC, art. 112: “1. If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Contracting Party may unilaterally take appropriate measures under the conditions and procedures laid down in Article 113. 2. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation.”*

*EC-Amsterdam, art. 130: “In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure.”*

#### **8.08 Obligation to respect the environment in outward processing zones**

- Refers to norms providing that goods need to respect the environment in order to be considered as originating from an outward processing zone.
- Those norms could refer to specific environmental issue or general ones.

*Korea-US, Annex 22-B: “The Committee shall establish criteria that must be met before goods from any outward processing zone may be considered originating goods for the purposes of this Agreement, including but not limited to: progress toward the denuclearization of the Korean Peninsula; [...] and the environmental standards [...] prevailing in the outward processing zone, with due reference to the situation prevailing elsewhere in the local economy and the relevant international norms.”*

#### **8.09 Services exception**

- Exception applicable to set of norms on service liberalization.
- Includes exceptions that are applicable to goods and services.
- Included only if the agreement covers service liberalization.

##### **8.09.01 Services on life or health of animal or plant**



- Can (or not) include a reference to humans.
- It is presumed to be an environmental norm
- Flora and fauna is considered as synonymous as plant and animal.
- It can be “necessary” or not.
- Includes references to GATS art. XIV or GATS’s rights and obligations.

#### **8.09.02 Services on conservation of natural resources**

- Could specified or not that the natural resources include living/biological resources.
- Could be necessary or not.

#### **8.09.03 Services on protection of the environment**

- Includes exceptions on services directly referring to the protection of the environment.  
*Central America-Dominican Republic, art. 10-08: “No obstante lo previsto en éste y otros capítulos del presente Tratado, las Partes podrán adoptar o aplicar medidas para: [...] proteger la vida y la salud de las personas, los animales, los vegetales y preservar el medio ambiente;”*  
*EFTA Services, art. 33.2: “The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment of foreign service suppliers on grounds of public policy, public security, public health or the environment.”*

#### **8.09.04 Norms on environmental services**

- Includes norms directly referring to the concept of environmental services.  
*Costa Rica-Singapore, Annex II: “Costa Rica reserves the right to adopt or maintain any measure with respect to environmental services.”*

#### **8.09.05 Exclusion of environmental sectors from the liberalization of services**

- Often found in a reservation that only applies to one Party.
- Can be found in a chart on the Parties’ commitment in regards to the liberalization of services.
- Excludes norms on investment even though they could appear on a liberalization chart of services. See 8.03.05 instead.

#### **8.09.06 Right to maintain or adopt any measures in regards of a specific sector of services**

- Often found in a reservation that only applies to one Party.
- Can be found in a chart on the Parties’ commitment in regards to the liberalization of services.
- The sector of services should be clearly linked with the environment.  
*Colombia-Northern Triangle, Anexo II: “Colombia se reserva el derecho de adoptar o mantener cualquier medida en los siguientes sectores: (f) servicios relacionados con el medio ambiente que se establezcan o se mantengan por razones de interés público;*

### **8.10 SPS measures and the environment**

- Includes the obligation to take into account relevant ecological and environmental conditions in the assessment of risks leading to the adoption of an SPS measure.
- Includes general references to the WTO’s SPS agreement or reference to its article 5.
- Includes the right to adopt environmental requirements related to SPS measures.  
*Belize-Guatemala, art. 21: “The Parties agree to act in accordance with the provisions of the Agreement on Technical Barriers to Trade (TBT) and the SPS Agreement of the WTO in the implementation of this Agreement.”*  
*Chile-Korea, art. 8.7: “2. The Parties shall, in assessing risks and determining a sanitary or phytosanitary measure, take into account available scientific evidence and other factors, such as: (c) the relevant ecological and environmental conditions;”*  
*India-Singapore, art. 5.11: “2. This Chapter shall not: (b) prevent a Party from adopting mandatory requirements to determine the level of protection it considers necessary to ensure the quality of its imports, or*

for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfil other legitimate objectives, at the levels it considers appropriate.”

### 8.11 Exception to the free movement of persons

- Includes exceptions modeled on GATT article XX that applied to a set of norms devoted to the movement of persons.

*Japan-Singapore, art. 95: “Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination [...], nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures: (b) necessary to protect human, animal or plant life or health;”*

## 9. Assistance

This section includes norms applying in general to the environment or to specific environmental issue such as desertification, biodiversity, climate change, etc.

Excludes norms dealing in general with any issue related to the trade agreement, unless the environment explicitly mentioned as one their subject-matter.

For greater clarity, it can include norms dealing with a subset of issue-areas (for example cooperation) as long as the environment is explicitly included in this subset. This explicit mention could be found in another article. Also, norms found in a chapter on environment or in parallel agreement on the environment are considered as environmental norms.

### 9.01 Technical assistance, training or capacity-building

- Refers to any unidirectional transfers of expertise or knowledge from one (generally privileged country (usually a developed country) or organization to a disadvantaged country (usually a developing country) or its nationals (including scientists and NGOs).
- Includes unidirectional advices and trainings on scientific, administrative, diplomatic matter, etc.
- Includes transfer of know-how or knowledge.
- Includes unspecified “support” from one country to another (assumed to be capacity building rather than financial support).
- As opposed to technology transfer. See 9.02 instead.
- Excludes norms on assistance in case of natural disaster.
- Includes norms on capacity-building related to the public participation in the process of environmental decision-making.
- Excludes “exchange of information” and “exchange of expertise” because these processes are bidirectional. See 7.03, instead.

#### 9.01.01 Technical assistance, training or capacity-building provided to another Party

- Refers to assistance between Parties.
- Excludes assistance provided to third countries. See 9.05 instead.

*Peru-US, annex 18.3.4 (4): “4. The Parties are committed to work cooperatively to implement the actions required under the preceding paragraph, including through capacity-building and other joint initiatives to promote the sustainable management of Peru’s forest resources.”*

*Chile-US, annex 19.3: “The United States will assist Chile in reducing contamination and pollution resulting from past mining practices by working with Chile to identify sources of pollution and explore cost-effective remediation methods; [...]”*

*CARIFORUM-EC, art. 138: “Subject to the provisions of Article 7 and 134, the Parties agree to cooperate, including by facilitating support, in the following areas: [...] e) awareness-raising and training activities;”*

#### 9.01.02 Technical assistance, training or capacity-building provided to non-state actors

- Includes NGO, businesses, the public, private institutions, etc.

*Cotonou Agreement, art. 31: "Co-operation on environmental protection and sustainable utilisation and management of natural resources shall aim at... building and/or strengthening the scientific and technical human and institutional capacity for environmental management for all environmental stakeholders."*

*CAFTA Agreement on Environmental Cooperation, art. 5: "The program of work developed by the Commission shall reflect national priorities for cooperative activities and shall be agreed upon by the Parties. The program of work may include long, medium and short-term activities related to: [...] (i) building capacity to promote public participation in the process of environmental decision-making. [...]"*

## **9.02 Technology transfer in the field of environment**

- As opposed to capacity building (see 9.01) or trade in environmental goods and services (see 7.01).

*Brunei-Japan, art. 93(2)(b): "2. Each Party shall:[...] (b) encourage favourable conditions for the transfer and dissemination of technologies that contribute to the protection of environment, consistent with the adequate and effective protection of intellectual property rights; and [...]"*

## **9.03 Funding mechanisms and financial assistance**

- Refers to financial aid, guaranties and loans to a governmental or a non-governmental actors of another country, usually a developing country (Party to the agreement or not), as well as funding machining.
- Includes funding provided by third Parties, private institutions, etc.
- Includes funding provided by a joint institution.
- Includes reference to an existing funding mechanism or the creation of a new funding mechanism.
- Includes financial assistance for specific projects.
- Includes the establishment of a fund to finance projects in the field of environment.
- Excludes funding in case of natural disaster.
- Excludes norms regarding the funding of joint institutions.
- Excludes monetary enforcement mechanism for failure to enforce. See 13.03.02 instead.

### **9.03.01 Funding of capacity-building, training, technical assistance and technological transfer**

- Includes grants, preferential loans or any other financial means.
- Excludes funding of non-state actors. See 9.03.04.

*EC Nice (Enlargement 2005), art. 30(2): "During the period 2007-2009, the Community shall provide Bulgaria with financial assistance in support of its efforts to decommission and to address the consequences of the closure and decommissioning of Units 1 to 4 of the Kozloduy Nuclear Power Plant."*

*EC Nice (Enlargement 2005), art. 30(2) "The assistance shall, inter alia, cover: measures in support of the decommissioning of Units 1 to 4 of the Kozloduy Nuclear Power Plant; measures for environmental upgrading in line with the acquis; measures for the modernisation of the conventional energy production, transmission and distribution sectors in Bulgaria; measures to improve energy efficiency, to enhance the use of renewable energy sources and to improve security of energy supply."*

### **9.03.02 Funding of cooperation activities**

- Must be joint activities.
- Includes financial cooperation, co-financing and financial assistance to implement joint activities.
- Excludes funding of non-state actors. See 9.03.04 instead.

*CAFTA Agreement on Environmental Cooperation, art. VIII: "2. The following funding mechanisms may be considered for environmental cooperation: (a) cooperative activities jointly financed as agreed by the Parties; (b) cooperative activities in which each institution, organization, or agency assumes the costs of its own participation; (c) cooperative activities financed, as appropriate, by private*

*institutions, foundations, or public international organizations, including through ongoing programs; or, (d) any combination of the above."*

*China-Switzerland, art. 12.6: "Recalling as decided in the Rio+20 Outcome Document the need for significant mobilisation of resources from a variety of sources and the effective use of financing, in order to give strong support to developing countries in their efforts to promote sustainable development, the necessary resources for the implementation of environmental cooperation shall be made available by the competent institutions and organisations as well as by the private sector of both Parties, subject to mutual agreement of the Parties, according to terms and conditions agreed on a project-by-project basis and taking into account the different levels of social and economic development of the Parties."*

*EC-Amsterdam, art. 161: "A Cohesion Fund set up by the Council in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure."*

#### **9.03.03 Each Party must fund its implementation of the agreement**

- Excludes funding of capacity building, training, technical assistance and technological transfer
- Excludes funding of cooperation activities

*EC Nice (Enlargement 2001), art. 175(4): "Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the environment policy."*

#### **9.03.04 Funding provided to non-state actors**

- Includes funding to NGO, international organizations or private institutions for capacity-building, training, technical assistance and technological transfer.
- Includes funding to NGO, international organizations or private institutions for cooperation activities

*EC-South Africa, art. 67: "Cooperation partners eligible for financial and technical assistance shall be national, provincial and local authorities and public bodies, non-governmental organisations and community-based organisations, regional and international organisations, institutions and public or private operators. Any other body could be made eligible if so designated by both Parties."*

### **9.04 Emergency assistance in case of natural disaster**

- Includes all type of assistance for disaster preparedness.
- Includes funding provided to a Party in case of natural disaster.
- Excludes funding provided to third countries in case of natural disaster. See 9.05 instead.
- Excludes emergency assistance provided to third countries. See 9.05 instead.
- Excludes joint activities related to prevention or management of natural disaster or preparedness to these disasters.

*Lomé IV, art. 255: "Assistance may be granted to ACP States taking in refugees or returnees to meet acute needs not covered by emergency assistance, to implement in the longer term projects and action programmes aimed at self-sufficiency and the integration or reintegration of such people. 2. Similar assistance, as set out in paragraph 1, may be envisaged to help with the voluntary integration or reintegration of persons who have had to leave their homes as a result of conflicts or natural disasters. In implementing this provision account shall be taken of all the factors leading to the displacement in question including the wishes of the population concerned and the responsibilities of the government in meeting the needs of its own people."*

*EC-Amsterdam, art. 100: "Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by exceptional occurrences beyond its control, the Council may, acting unanimously on a proposal from the Commission, grant, under certain conditions, Community financial assistance to the Member State concerned. Where the severe difficulties are caused by natural disasters, the Council shall act by qualified majority. The President of the Council shall inform the European Parliament of the decision taken."*

*Cotonou Agreement, art. 60 : "The scope of financing may include, inter alia, depending on the needs and the types of operation considered most appropriate, support to: measures which contribute to attenuate the debt burden and balance of payments problems of the ACP countries; macroeconomic and structural reforms*

*and policies; mitigation of adverse effects of instability in export earnings; sectoral policies and reforms; institutional development and capacity building; technical cooperation programmes; and humanitarian and emergency assistance including assistance to refugees and displaced persons, short-term rehabilitation measures and disaster preparedness.”*

#### **9.05 Capacity-building, training, technology transfer, technical, financial and emergency assistance to third countries.**

- Refers to countries that are not Party to the agreement.
- Refers to all type of assistance from Parties to third countries, including emergency assistance in case of natural disaster.

*EC-Lisbon, art. 188 (j): “The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union. Such operations shall be intended to provide ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's measures and those of the Member States shall complement and reinforce each other.”*

*Australia-US, Joint statement on Environmental Cooperation: “To further advance the collaboration and cooperation between the United States and Australia, the Governments intend to consult regularly to review ongoing cooperative activities, identify priority areas for potential future cooperative activities, and to the extent appropriate, review other matters related to this statement. In particular, the Governments intend to consider bilateral collaborative efforts to assist third countries build capacity in the areas described in Paragraphs 2, 3, 4 and 5 above.”*

### **10. Specific environmental issues**

Excluded if part of the definition of “environment” or “environmental law”.

Excluded if only refers to existing and specific agreements without adding anything else.

Excluded is related to the environment in general.

As opposed to section 4 about environmental concerns regarding specific but non-environmental issue-areas.

#### **10.01 Water**

- Excludes norms on wetlands (10.02), fisheries (10.04), marine parks (10.12) and mercury (10.24).

##### **10.01.01 Exclusion of water from the agreement**

- Explicitly mentions that water is not considered as a good or is excluded from the agreement.
- Statement that water is not a commodity.
- States have the capacity to regulate or prohibit water exports.
- Included even if not explicitly related to the environment.
- Only exclusion of water from trade rules are found in 10.01.01. If the purchase of water is an exception to procurement or other rules, it is found in the appropriate child node in section 8.

*CETA, art. X.08(1): “water in its natural state, such as water in lakes, rivers, reservoirs, aquifers and water basins, is not a good or a product and therefore, except for Chapter XX – Trade and Environment and Chapter XX – Sustainable Development, is not subject to the terms of this Agreement.”*

##### **10.01.02 Coral reefs**

##### **10.01.03 Seas and oceans**

- Includes commitment to prevent marine pollution, marine ecosystems, etc. Marine pollution includes ballast waste disposal.
- Includes reference to a specific sea.
- Excludes reference to marine resources or fisheries. See 10.04 instead.

*Algeria-EC Euro-Med, art. 52(2): "2. Cooperation shall in particular focus on: – the control and prevention of urban, industrial and marine pollution,"*

*CARICOM revised, art. 135(1): "1.COTED shall [...] promote, inter alia: (i) to ensure that the development of the transport sector does not impact adversely on the environment of the Member States and, in particular, the Caribbean Sea;"*

*EC-Egypt, art. 44(2): "Cooperation shall focus, in particular, on: quality of Mediterranean water and the control and prevention of marine pollution,"*

*CARIFORUM-EC EPA, art. 37(3): "3. The Parties recognise that the fisheries and marine ecosystems of the CARIFORUM States are complex, biologically diverse and fragile and that exploitation should take into account these factors through effective conservation and management of [...] related ecosystems."*

#### **10.01.04 Management of transboundary waterways**

- Includes "transboundary water pollution".

*Bulgaria-EC, art. 81(2): "2. Cooperation shall concern: - combating local, regional and transboundary air and water pollution - water quality, particularly of transboundary waterways (including the Danube and of the Black Sea)"*

*COMESA, art. 124: "(e) take measures to control trans-boundary, air and water pollution arising from mining, fishing and agricultural activities."*

#### **10.01.05 Management of rivers, basins and lakes**

- Not transboundary. If transboundary. See 10.01.04 instead.

*Israel PLO, Annex II art. II : "The Palestinian Authority shall take the appropriate measures to prevent the uncontrolled discharge in the Gaza Strip and the Jericho Area of sewage and effluence to water sources including underground and surface water and rivers."*

*Nicaragua-Taiwan, Annex 19.08(8): "The program of work may include long-, medium-, and short-term activities related to: (l) facilitating technology development, transfer and training on protection, conservation and preservation of basins and water bodies;"*

*East African Community, art. 111(2): "2. Action by the Community relating to the environment shall have the following objectives: to ensure sustainable utilisation of natural resources like lakes."*

#### **10.01.06 Protection of coastal areas**

*Chile-China, Memorandum de entendimiento sobre cooperacion ambiental, art. 2: "Las Partes han identificado como áreas de interés mutuo y prioritarias para la cooperación, las siguientes: 3. Conservación ecológica y control de la contaminación de las áreas marinas y costeras;"*

*Chile-Turkey, art. 37(8): "La cooperación en materia medioambiental podrá incluir, pero no estará limitada, a: (g) conservación ecológica del borde marino y costero y control de la polución;"*

*EC-Lebanon, art. 45(2): "2. Cooperation shall be centred upon: (d) environmental management of sensitive coastal areas;"*

#### **10.01.07 Aquifers, ground water, water table**

- Includes management of drainage basins / watershed management.

*EC-South Africa, art. 84(3): "3. The cooperative relationship will involve, inter alia, matters relating to [...] integrated water catchment management, including management of international river basins;"*

*Lomé III, art. 41(2): "The operations to undertaken, where necessary with research backing, shall cover, inter alia: 2) making an inventory of water-tables and of their replenishment capacity with a view to better predictability of water supplies, using surface and groundwater and improving management of these resources for the purpose of satisfying the needs of people and animals, and improving weather forecasting."*

*Oman-US, Annex Selected Areas for Environmental Cooperation: "Sharing research and strategies to promote [...] watershed management, and the replenishment of aquifers."*

#### **10.01.08 Water efficiency**

- Includes provisions about water saving and water conservation.  
*CARIFORUM EC EPA, art. 138(2)(a): "The Parties agree to cooperate [...] in the following areas: (a) projects related to environmentally-friendly products [...], including those related to appropriate water-saving."*  
*China-Peru, art. 164: "to promote sustainable rural development through [...] projects in areas of mutual interest such as: [...] the conservation and management of the water resource for agricultural use."*  
*Jordan-US, Joint Statement: "To promote water conservation, the United States funds public education programs in Jordan on water-saving and improved water management."*

#### **10.01.09 Other norms on water**

- For instance, vague mentions of water pollution, water management, water resources, etc.  
*Canada-Colombia Agreement on the Environment, Annex I: "The priority areas identified by the Republic of Colombia for consideration in the initial Work Program include, inter alia: (g) air, soil and water pollution prevention management and control;"*  
*Bulgaria-EC, art. 81(3): "3. Cooperation shall take place notably through: - improvement of the environmental management, inter alia water management."*  
*Israel PLO Annex II, art. II: "The Palestinian Authority shall take the appropriate measures to prevent the uncontrolled discharge in the Gaza Strip and the Jericho Area of sewage and effluence to water sources [...], and to promote the proper treatment of sanitary and industrial waste water."*

### **10.02 Wetlands**

#### **10.03 Contaminated land**

- Includes soil pollution or soil quality.
- Includes decontamination only if it is specific to land or soil. Nuclear decontamination are thus found in 10.21.02.  
*Canada-Colombia Agreement on the Environment, Annex I: "The priority areas identified by the Republic of Colombia for consideration in the initial Work Program include, inter alia: (g) air, soil and water pollution prevention management and control;"*  
*EC-Latvia, art. 79(1): "Such cooperation will promote the protection and sustainable use of natural landscapes and non-polluted soils."*  
*EC-Morocco Euro-Med, art. 48: "The Parties undertake to cooperate in areas including: (a) soil and water quality;"*  
*EC-San Marino, art. 16: "The Contracting Parties undertake to cooperate on matters relating to environmental protection and improvement with the aim of resolving the problems caused by contamination of water, soil and air, by erosion and by deforestation."*

#### **10.04 Fisheries**

- As a reminder, only if related to the environment

##### **10.04.01 Conservation of fishery resources**

- Includes obligation to protect marine resources.
- Includes sustainable management of fisheries.  
*Bosnia Herzegovina-EC SAA, art. 96 : "Cooperation shall take due account of priority areas related to the Community acquis in the field of fisheries, including the respect of international obligations concerning International and Regional Fisheries Organisation rules of management and conservation of fishery resources."*  
*Canada-Chile, Annex I - Canada: "In general, the Department grants such port privileges [...] only to fishing vessels from a country with which it has favourable fishery relations, based primarily on adherence by that country to Canadian and international conservation practices and policies."*

CARICOM revised, art. 60(1): "1. The Community [...] shall promote the development, management and conservation of the fisheries resources in and among the Member States on a sustainable basis."

#### **10.04.02 Sustainable trade in fishery products**

CARIFORUM-EC EPA, art. 45(f): "Building or strengthening the scientific and technical human and institutional capability at regional level for sustainable trade in fisheries products, including aquaculture;"

Central America-EC, art. 63(2)(c) : "[P]romoting trade in products derived from sustainably managed natural resources, including through effective measures regarding wildlife, fisheries and certification of legally and sustainably produced timber."

EC-Georgia, art. 239: "They may cooperate in, inter alia, the following areas: (m) trade-related measures to promote sustainable fishing practices and trade in sustainably managed fish products."

#### **10.04.03 Combat illegal fishing**

China-Peru, art. 163(2): "1. The objective of cooperation on fishery will be to [...] to facilitate [...] the conservation of natural resources, under the approach of responsible fishing. 2. The Parties will develop fishery through: (c) combat of illegal, unreported and unregulated fishing."

EC-Georgia, art. 234: "Taking into account the importance of ensuring responsible management of fish stocks in a sustainable manner as well as promoting good governance in trade, the Parties commit to: (f) cooperating in the fight against illegal, unreported and unregulated (IUU) fishing and fishing related activities with comprehensive, effective and transparent measures."

#### **10.04.04 Prevent pollution arising from fishing activities**

COMESA, art. 124: "1. The Member States undertake to co-operate in the management of the environment and agree to: (e) take measures to control trans-boundary, air and water pollution arising from mining, fishing and agricultural activities."

#### **10.04.05 Bycatch prevention**

Australia-Korea, art. 16.6: "Areas of cooperation may include exchange of information regarding fisheries, aquaculture and fish resources, including in relation to: (a) bycatch and the minimisation of adverse impacts of fishing on the marine environment;"

### **10.05 Forest**

- Only if related to the environment.

#### **10.05.01 Conservation of forests**

- Includes sustainable management of forests.

Brunei-Japan, art. 14: "[T]he Parties, recognising the importance of securing stable food supply and of sustainable development of agriculture, forestry and fisheries, shall cooperate in the field of agriculture, forestry and fisheries for mutual benefits of the Countries."

Chile-Colombia, art. 18.3: "Las Partes acuerdan impulsar actividades de cooperacion en areas de interes mutuo tales como: desertificacion y recuperacion de cobertura vegetal;"

#### **10.05.02 Sustainable trade in forestry products**

CARICOM revised, art. 61(2): "2. The Community shall effect the promotion and facilitation referred to in paragraph 1 by formulating policies and programmes for: (h) promoting commercialisation of natural forest products in a sustainable manner;"

CETA, art. X.04(1): "The Parties agree to carry out such dialogue, cooperation and exchange in the Bilateral Dialogue on Forest Products including on: (c) mechanisms to assure the [...] sustainable origin of forest products;"

#### **10.05.03 Combat illegal exploitation of forests**



*Korea-US Agreement on Environmental Cooperation, art. 2(2): "Development of joint initiatives to combat illegal logging and the transport [...] of illegally harvested timber and timber products."*  
*CETA, art. X.04(1): "The Parties agree to carry out such dialogue, cooperation and exchange in the Bilateral Dialogue on Forest Products including on: (c) mechanisms to assure the legal [...] origin of forest products;"*

#### **10.06 Endangered species and their illegal trade**

*Canada-Chile Agreement on Environmental Cooperation, art. 10(2): "2. The Council may consider, and develop recommendations regarding: (j) the protection of endangered and threatened species;"*  
*CAFTA, Agreement on Environmental Cooperation, art. V(d): "[T]he conservation and management of shared, migratory, and endangered species in international commercial trade and management of marine parks and other protected areas;"*

#### **10.07 Whales and seals**

*Bulgaria-EFTA, Annex II footnote 2: "Import ban for whale products is applied by Liechtenstein and Switzerland on the basis of the CITES Convention."*

#### **10.08 Migratory species**

*Israel PLO, Annex II art. II: "Israel and the Palestinian Authority shall cooperate in implementing agreed principles and standards concerning the [...] conservation of migratory species of wild animals."*

#### **10.09 Invasive or alien species**

*Colombia-US Environmental Cooperation Agreement, art. IV(2): "[P]romoting mechanisms to support the conservation and sustainable use of biological diversity such as the control of invasive alien species;"*

#### **10.10 Shared species**

*CAFTA Agreement on Environmental Cooperation, art. V(1): "[T]he conservation and management of shared, migratory, and endangered species in international commercial trade and management of marine parks and other protected areas;"*

#### **10.11 Genetic resources**

- Includes disclosure of origin or provider.
- Includes biological material.
- Related to patent application.

##### **10.11.01 Disclosure of the source of genetic material**

- As opposed to prior informed consent from the country of origin as the wording can be similar. See 10.11.02 instead.

*CARIFORUM-EC EPA, art. 150(4) : "4. The EC Party and the Signatory CARIFORUM States may require as part of the administrative requirements for a patent application concerning an invention which uses biological material as a necessary aspect of the invention, that the applicant identifies the sources of the biological material used by the applicant and described as part of the invention."*

*Costa Rica-China, art. 111(4): "4. Subject to future developments of domestic laws and the outcome of negotiations in multilateral fora, the Parties agree to further discuss the disclosure of origin or source of genetic resources."*

##### **10.11.02 Prior informed consent from the appropriate authority when accessing genetic resources**

*Colombia-US, Exchange of Letter: "The Parties recognize the importance of the following: (1) obtaining informed consent from the appropriate authority prior to accessing genetic resources under the control of such authority;"*

##### **10.11.03 Equitable sharing of benefits arising from use of genetic resources**

*Canada-Colombia Agreement on the Environment, art. 5(3): "The Parties [...] recognize their authority and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilization of those genetic resources."*

*Colombia-US, Exchange of Letter: "The Parties recognize the importance of the following: (2) equitably sharing the benefits arising from the use of traditional knowledge and genetic resources."*

#### **10.11.04 Other norms on genetic resources**

*Colombia-US, Exchange of Letter : "The Parties recognize that access to genetic resources or traditional knowledge, as well as the equitable sharing of benefits that may result from use of those resources or that knowledge, can be adequately addressed through contracts that reflect mutually agreed terms between users and providers."*

*Colombia-US, Exchange of Letter: "The Parties recognize the importance of the following: (3) promoting quality patent examination to ensure the conditions of patentability are satisfied."*

*China-Costa Rica, art. 111(1): "The Parties recognize the contribution made by genetic resources, traditional knowledge and folklore to scientific, cultural and economic development."*

*China-New Zealand, art. 165: "Subject to each Party's international obligations, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore."*

#### **10.12 Protected areas, parks and natural reserves**

- Includes norms on the conservation of habitat (unspecified).
- Could include norms on wildlife and poaching if explicitly related to areas (rather than species)
- Includes marine parks.
- Excludes wetlands. See 10.02 instead.

*Canada-Chile Agreement on Environmental Cooperation, art. 10(1)(i): "(i) the conservation [of] specially protected natural areas;"*

*Chile-US, Annex 19.3(3): "promoting sustainable management of environmental resources, including [...] protected wild areas;"*

*COMESA, art. 126(1): "In particular, the Member States shall: (a) adopt common policies for the conservation of wildlife, natural reserves, national parks and marine parks;"*

*CARICOM revised, art. 60(2): "(e) encouraging the establishment of protected aquatic habitats and associated terrestrial areas and fish populations for the sustainable development of fisheries resources of the Member States;"*

*COMESA, art. 123(4): "4. The Member States agree to co-operate in the management of their fresh water and marine resources, through the: (a) establishment and adoption of common regulations for the better management and development of marine parks, reserves and controlled areas;"*

#### **10.13 Biodiversity - others**

- Excluded if protected areas, marine ecosystem, endangered species, whales, migratory species, forest, fisheries, genetic resources, etc.
- Includes protection of fauna and flora, conservation of species or wildlife that is not endangered, protection of ecosystems, natural heritage, etc.
- Includes reference to other specific ecosystems, eg mountain ecosystem, grasslands, etc.

*Brunei-Japan, Joint Statement: "We shared the hope that the Bio-Diversity Centre in Kuala Belalong would be developed and utilised for research cooperation in the fields of biodiversity and conservation of the environment."*

*Bulgaria-EC, art. 81(2): "2. Cooperation shall concern: - the protection of forests and flora and fauna;"*

*Chile-US, Annex 19.3(2): "Improving Wildlife Protection and Management. To protect wildlife in Chile and the Latin American region, the Parties will work together to build capacity to promote the management and protection of biological resources in the region."*

*Canada-Peru, Agreement on the Environment, Annex I(m): "The priority areas identified by the Republic of Peru for consideration in the initial Work Program include, among others: Harmonization and rationalization of the knowledge and information management, including coastal desert ecosystems and Andean grassland ecosystems;"*

## 10.14 Climate change, energy

### 10.14.01 Promotion of renewable and clean energy

- Does not use “clean” as a keyword. Excludes clean technologies (see 10.06.3.2) as it does not directly refer to energy. The provision includes two elements : an explicit mention of energy AND the idea that it should be produced cleanly.
- As opposed to 4.03. 4.03 is for taking environmental concerns into account in the energy sector in general, whereas 10.06.1 is for producing green or renewable energy specifically.

#### 10.14.01.01 Promote renewable production of energy

- Includes solar energy, biofuels, wind power, etc.

*Bosnia Herzegovina-EC SAA, art. 108 : “Cooperation could also centre on the development of strategies to significantly reduce local, regional and trans-boundary air and water pollution, including waste and chemicals, to establish a system for efficient, clean, sustainable and renewable production and consumption of energy,”*  
*Brunei-Japan, Joint Statement: “4. Exchanging information in the following fields; iv. Renewable Fuel Production.”*

*Chile-Colombia, art. 19.5: “El objetivo de la cooperacion en el ambito energetico sera profundizar la integracion, complementacion y desarrollo energetico en las areas electrica, geotermica, de hidrocarburos y sus derivados, y combustibles alternativos.”*

#### 10.14.01.02 Promote cleaner fossil fuels

- As opposed to 10.14.01.01, non-renewable but used in the cleanest way possible.

*Brunei-Japan, Joint Statement: 4. Exchanging information in the following fields; vi. Clean Coal Technologies*

*Chile-US, Annex 19.3(2): “Increasing the use of cleaner fuels. The Parties will work to improve the environmental quality of fuels, especially diesel fuel and gasoline, used in their territories by providing joint training and technical assistance on a variety of fuels-related environmental issues.”*

#### 10.14.01.03 Promote energy efficiency

- Includes mentions of energy conservation or saving, or efficient management of energy.

- Refers to the consumption rather than the production of energy.

*Brunei-Japan, Joint Statement: “4. Exchanging information in the following fields; vii. Energy Efficiency and Savings.”*

*Bulgaria-EC, art. 79(2): “2. Cooperation shall include among others technical assistance when appropriate in the following areas: - the promotion of energy saving and energy efficiency,”*

## 10.14.02 Climate change mitigation and adaptation

### 10.14.02.01 Reduction of GHG emissions

- Excludes CFC or substances that deplete the ozone layer. See 10.15 instead.

*Brunei-Japan, Joint Statement: “4. Exchanging information in the following fields; v. CO2 Capture and Storage Technologies for Zero Emission Power Generation”*

*EC-Israel Euro-Med, art. 51: “The Parties consider that global warming and the depletion of fossil fuel sources are a serious threat to mankind. The Parties shall*

*therefore cooperate with a view to developing sources of renewable energy, to ensure the use of fuels with the purpose of limiting pollution of the environment and promoting energy conservation."*

*Korea-Peru, art. 19.8(2): "2. For promoting sustainable development, each Party, within its own capacities, shall adopt policies and measures on issues such as: (b) research, promotion, development and use of [...] technologies of carbon dioxide capture."*

#### **10.14.02.02 Other norms on climate change**

- Can focus on fighting the causes or reducing the effects, or both.
- Includes norms on global warming, greenhouse effect, etc.
- Includes use of clean technologies if used in a climate change context. If their objective is unspecified, it is found in section 15.
- Includes low-carbon technologies and clean development mechanism.

*China-Peru, art. 162(1): "1. The aims of cooperation on forestry matters and environmental protection will be, but not limited to, as follows: (c) improving the rehabilitation and sustainable management of forest with the aim of increasing carbon sinks and reduce the impact of climate change in the Asia-Pacific region;"*

*New Zealand-Thailand, Arrangement on Environment Section 2(3): "2.3 Cooperative activities may be in areas of environmental expertise and technology and natural resource management including but not limited to [...] climate change-related technologies [...]."*

*COMESA, art. 94(2): "2. The Member States shall co-operate and support each other in all activities of the World Meteorological Organization affecting the interests of the Common Market especially the monitoring of the atmosphere and climatic changes on the planet."*

*Cotonou Agreement, art. 32(2): "2. Cooperation shall also take account of: the vulnerability of small island ACP countries, especially to the threat posed by climate change;"*

*Central America-EC, art. 65(2): "(d) promotion of the application of clean development mechanisms to support the climate change initiatives and its variability."*

*EC-Georgia, art. 308: "Cooperation shall aim at mitigating and adapting to climate change, as well as promoting measures at international level, including in the areas of: (d) research, development, demonstration, deployment and diffusion of safe and sustainable low carbon and adaptation technologies,"*

#### **10.14.02.01 Cooperation for climate change adaptation**

*Central America-EC, art. 50(3): 3. Cooperation shall in particular address: [...]*

*(d) in this context, cooperation shall seek to facilitate joint initiatives in the area of climate change mitigation and adaptation to its adverse effects, including the strengthening of carbon market mechanisms.*

### **10.15 Ozone layer and CFC**

- Can refer to a specific pollutant or to substances that deplete the ozone layer in general, but cannot be a GHG. For GHGs, see 10.14.02.01.

### **10.16 Air pollution**

- The emission of GHGs (climate change) and CFCs (ozone layer) are not considered as air pollution. See 10.14 and 10.15 instead.
- Excludes standards regarding vehicle emissions. See 10.17 instead.
- Includes any norms related acid rain (sulfur) and haze.

Chile-Turkey, art. 37(8): “La cooperación en materia medioambiental podrá incluir, pero no estará limitada, a: d) calidad del aire;”

### **10.17 Environmental standards on vehicle emissions**

- Includes emissions from vehicles unless it’s clear that the provision only refers to GHGs, in which case it is found in 10.14.02.01.

*Bosnia and Herzegovina-EC SAA, art. 11: “If the Community establishes rules aiming to reduce pollution caused by heavy goods vehicles registered in the European Union and to improve traffic safety, a similar regime shall apply to heavy goods vehicles registered in Bosnia and Herzegovina”*

### **10.18 Soil erosion**

*Bulgaria-EC, Protocol 8 on Transboundary Watercourses: “[...] - promoting with joint efforts the combat against soil erosion due to transboundary watercourses,[...]”*

### **10.19 Desertification, degradation, salinisation and acidification**

*Bulgaria-EC, art. 81(2): “2. Cooperation shall concern: soil degradation, salinity and acidification,”*

*Algeria-EC Euro-Med, art. 32(2): “2. Cooperation shall in particular focus on: – salinisation, – the impact of agriculture on soil and water quality,”*

*COMESA, art. 124(1): “(a) develop a common environmental management policy that would [...] prevent, arrest and reverse the effects of [...] land degradation;”*

### **10.20 Biosafety and genetically modified organisms**

- Included even if not clearly related to the environment.

#### **10.20.01 Biosafety, excluding GMOs**

- Includes biosecurity.

*Chile-India, art. XIII: “The Parties agree to exchange information on [...] biosecurity,”*

*Trans Pacific Strategic EPA, Schedule of New Zealand: “New Zealand reserves the right to adopt or maintain any nationality or residency measures in relation to: biosecurity.”*

*China-Costa Rica, art. 123(2): “(h) encourage capacity building, technology transfer, and research and development of agricultural and livestock biotechnology and bio-safety;”*

#### **10.20.02 Genetically modified organisms**

*Canada-Colombia, Agreement on the Environment Annex I: “The priority areas identified by the Republic of Colombia for consideration in the initial Work Program include, inter alia: national institutional strengthening, including: monitoring and alert system of genetically modified organisms;”*

*CARIFORUM-EC EPA, art. 45(c): “Compliance with and adoption of quality standards relating to food production and marketing, including standards relating to environmentally and socially sound agricultural practices and organic and non-genetically modified foods;”*

*EFTA Services, art. 6(3): “In the case of genetically modified varieties, the Member States shall inform each other of the results of risk assessments for the release of such varieties into the environment.”*

### **10.21 Disaster management or prevention**

- Does not include norms on climate change. See 10.14 instead.
- All “natural disasters” are considered environmentally-related.

#### **10.21.01 Oil spill**

*Lomé IV, art. 159: “[T]he scope of regional cooperation shall include the following: (d) preservation and improvement of the environment, especially through programmes to combat [...] the consequences of large-scale marine pollution, including large accidental discharges of petroleum or other pollutants.”*

### 10.21.02 Nuclear safety and radiation

- Excludes nuclear or radioactive waste. See 10.23 instead.
- Includes nuclear safety and emergencies, radiation, decontamination, decommissioning, liability, etc.

*EC-Latvia, art. 83(2): "2. Cooperation shall concern in particular: safety of industrial plants (including nuclear power stations),"*

*EC-Lithuania, art. 82(2): "Cooperation in the nuclear field shall mainly cover the following topics: nuclear safety, preparation for nuclear emergencies and accident management;"*

*Bulgaria-EC: 2. "Cooperation shall mainly cover the following topics: - radiation protection, including environmental radiation monitoring,"*

*Belarus-Russia Union State, art. 18: "Joint action in the sphere of environmental security, prevention of natural and man-made disasters and elimination of their consequences, including the consequences of the accident at the Chernobyl nuclear power station;"*

### 10.21.03 Other norms on disasters

- Other natural disasters include environmental accidents, catastrophes and emergencies, bush or forest fires, droughts, floods, etc.
- Includes natural disaster prevention, consequences, extenuating circumstance, etc.
- As a reminder, climate change is excluded and is found in 14 instead.
- Financial aid for natural disasters are found both in here and in 9.03.

*Belarus-Russia Union State, art. 18: "Joint action in the sphere of environmental security, prevention of natural and man-made disasters and elimination of their consequences."*

*Canada-Chile, Agreement on Environmental Cooperation art. 2(1): "1. Each Party shall, with respect to its territory: b. develop and review environmental emergency preparedness measures;"*

*Cotonou Agreement, art. 29(3): "1. Cooperation shall, in the area of regional cooperation, support a wide variety of functional and thematic fields [...] including: regional initiatives for disaster preparedness and mitigation;"*

*Cotonou Agreement, art. 60: "1. Humanitarian and emergency assistance shall be accorded to the population in ACP States faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters."*

*CARICOM revised, art. 1: "[D]isadvantaged countries" means: (b) Member States that may require special support measures of a transitional or temporary nature by reason of: (i) impairment of resources resulting from natural disasters;"*

*EC-Amsterdam, art. 100(2): "2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by exceptional occurrences beyond its control, the Council may [...] grant, under certain conditions, Community financial assistance to the Member State concerned. Where the severe difficulties are caused by natural disasters, the Council shall act by qualified majority."*

### 10.22 Domestic waste

- Includes reduction and management of domestic waste and recycling.
- Any waste that is not specified to be toxic or hazardous is considered to be domestic.
- Excludes sewage and sewage waters, see 10.01.09 instead.

*Bulgaria-EC, art. 81(2): "2. Cooperation shall concern: - waste reduction [...] and safe disposal."*

*Chile-Turkey, art. 37(8): "La cooperación en materia medioambiental podrá incluir, pero no estará limitada, a: f) manejo de desechos;"*

### 10.23 Hazardous waste

- Includes nuclear and radioactive waste.
- Excludes domestic waste. See 10.22 instead.
- Only toxic or hazardous waste, not products. Toxic products or chemicals are found in 10.24.

#### 10.23.01 Restrictions on export, import or transportation of hazardous waste

Bolivia-Mexico, art. 9-12(3) : "3. Cada Parte regulará, de conformidad con su legislación, la introducción, aceptación, depósito, transporte y tránsito por su territorio de desechos peligrosos, radioactivos u otros de origen interno o externo que, por sus características, constituyan un peligro para la salud de la población o para el ambiente."

CARICOM revised, art. 65(2): "(f) the need to protect the Region from the harmful effects of hazardous materials transported, generated, disposed of or shipped through or within the Community."

EC-Estonia, art. 100(1): "1. The Parties shall cooperate, within the scope of their powers and competences, with the aim of preventing the following illegal activities in particular: – illegal transactions involving industrial waste and counterfeit products,"

EC-Lebanon, Joint Declaration relating to Article 27 of the Agreement: "The Parties confirm their intention to prohibit the export of toxic waste and the European Community confirms its intention to assist Lebanon in seeking solutions to the problems posed by such waste."

#### **10.23.02 Other norms on hazardous waste**

- Restrictions on investment or liberalization of hazardous waste are also found in section 8.

Bolivia-Mexico, art. 9-01(2): "[D]esechos peligrosos: cualquier material [...] cuya calidad no permite usarlo nuevamente en el proceso que lo generó y que, por sus características [...], representan un peligro para la salud o el ambiente;"

Bulgaria-EC, art. 80(2): "2. Cooperation shall mainly cover the following topics: - radioactive waste management,"

Canada-Colombia Agreement on the Environment, Annex I: "The priority areas identified by the Republic of Colombia for consideration in the initial Work Program include, inter alia: integrated [...] hazardous wastes management;"

CARICOM revised, art. 60(3): "3. The Community shall collaborate with the Member States in: (d) safeguarding their marine environment from pollutants and hazardous wastes."

COMESA, art. 125(1): "1. The Member States undertake to co-operate and adopt common positions against illegal dumping of toxic and undesirable wastes within the Common Market from either a Member State or third country."

#### **10.24 Pesticides, fertilizers, toxic products, chemicals**

EC-Macedonia SAA, art. 103(2): "Cooperation could centre on the following priorities:[...] soil erosion and pollution by agricultural chemicals;"

Israel PLO Annex II, art. II: "Israel and the Palestinian Authority shall respectively adopt, apply and ensure compliance with internationally-recognized standards [...] for the use and handling of hazardous substances, including pesticides, insecticides and herbicides,"

Canada-Chile Agreement on Environmental Cooperation, art. 2(3): "3. Each Party shall consider prohibiting the export to the territory of the other Party of a pesticide or toxic substance whose use is prohibited within the Party's territory."

COMESA, art. 124(1): "The Member States undertake to co-operate in the management of the environment and agree to: (b) develop special environmental management strategies to manage [...] hazardous toxic substances;"

EC-Estonia, art. 82(2): "[...] – classification and safe handling of chemicals,[...]"

Mexico-Nicaragua, art. 14-14(2): "Cada Parte regulará y controlará la producción, introducción y comercialización de productos farmacéuticos, agrotóxicos y cualquier otra sustancia peligrosa a la salud humana, animal o vegetal o al ambiente, de acuerdo con su legislación y las disposiciones de este Tratado."

East African Community, art. 113(2): "The Partner States shall harmonise their legal and regulatory framework for the management, movement, utilisation and disposal of toxic substances."

#### **10.25 Organic foods**

CARIFORUM-EC EPA, art. 45(c): "Compliance with and adoption of quality standards relating to food production and marketing, including standards relating to environmentally and socially sound agricultural practices and organic [...] foods;"

*EC-Estonia, art. 78: “[...]– promote development of organic agriculture, processing, marketing of production,”*

## **10.26 Mercury**

### **10.27 Noise pollution**

- Included even if not explicitly related to the environment.

*Bosnia Herzegovina-EC SAA, art. 15(1): “1. In order to protect environment, the Parties shall endeavour to introduce standards on [...] noise levels for heavy goods vehicles, which ensure a high level of protection.”*

### **10.28 Scenery preservation**

*Trans Pacific Strategic EPA, Schedule of New Zealand: “New Zealand reserves the right to adopt or maintain any measure regarding the control, management or use of: Protected areas, including resources on land, interests in land or water, that are set up for [...] scenery preservation;”*

### **10.29 Other specific environmental issues**

- Includes environmental remediation, risk management, general liability, etc.
- General terms like “conservation of natural resources” and so on are not aimed at specific environmental issues and are found in either 7.09 (joint measures) or 15 (independent measures).

## **11. Implementation of the agreement**

Issues related to implementation should not be confused with enforcement (see 5).

These norms could be implemented by each Party individually, jointly, or by an institution created by the Parties.

Excludes general norms that implicitly apply to any issues-areas without being explicitly related to the environment norms found in a chapter on environment or in parallel agreement on the environment are considered as environmental norms.

### **11.01 Contact point on environmental matters**

- Contact point or focal point nominated by a Party for communication with the other Party or third Parties regarding environmental issues, including request for consultations and request for information.
- Includes establishment of a contact point or inquiry point on environmental matter.
- Includes the use of contact point for notification or request in matters related to environment.
- Includes identification of a specific national coordinators to implement the trade agreements’ environmental norms.

*New Zealand-Taiwan, art. 6: “Each Party shall designate a contact point or contact points to facilitate communication between the Parties and to assist in the implementation of this Chapter, including coordination of environmental cooperation activities pursuant to Article 5.”*

*Malaysia-New Zealand, art. 7.8: “Where goods are covered by an Annex or an Implementing Arrangement to this Chapter and a Party takes a measure to manage an immediate risk that it considers those goods may pose to health, safety or the environment, it shall immediately notify the other Party, through the Contact Points established under Article 7.10 (Implementation), of the measure and the reasons for the imposition of the measure.”*

*Morocco-US, art. 17.7: “A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point designated by the other Party for this purpose. The Parties shall begin consultations promptly after delivery of the request.”*

### **11.02 Commitment to communicate with the public on the implementation**

- Includes commitment to communicate information to the public.
- Excludes commitment to communicate with the other Party on implementation. See 7.03 instead.



- Excludes communications with the public on the environmental impact assessment. See 11.04 instead.
- The possibility of the public to comment is found in 11.03.02

#### **11.02.01 Communication on actions undertaken pursuant to this agreement**

- Includes commitment to communicate on cooperative activities undertaken under the agreement.
- Includes publication of a report on the implementation of the agreement.

*Canada-Costa Rica, art. 11: "[t]he Parties will develop mechanisms to inform the public of activities undertaken pursuant to this Agreement, and will make efforts to create opportunities to engage the public, as appropriate, in such activities";*

*CAFTA Agreement on Environmental Cooperation, art. V(3): "As the Commission periodically examines and evaluates cooperative programs, projects and activities, it shall seek and consider input from relevant local, regional, or international organizations regarding how best to ensure that it is accurately monitoring progress. Each Party shall periodically share with its public information regarding the progress of cooperative activities."*

*Oman-US, art. 17.5(2): "The Parties, when they consider appropriate, shall jointly prepare reports on matters related to the implementation of this Chapter, and shall make such reports public."*

#### **11.02.02 Commitment to communicate the decisions or recommendations of joint institutions.**

- Includes commitment to communicate decisions or recommendations of a council, a committee or a commission.
- Excludes publication of a summary of discussions held during public sessions. See 11.02.04 instead.

*NAFTA, art. 9(7): "All decisions and recommendations of the Council shall be made public, except as the Council may otherwise decide or as otherwise provided in this Agreement."*

#### **11.02.03 Commitment to make available communications received from the public**

- Includes commitment by a Party or a joint institution.
- Includes making available, publish, etc.
- Possibility to submit communications or request is found in 11.03.02

*Panama-US, art. 17.7(1): "Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Party and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures."*

#### **11.02.04 Public sessions of joint institutions**

- Includes right to assist to session.
- Excludes right to discuss or meet to discuss with the public. See 11.03.02.

*CAFTA Agreement on Environmental Cooperation, art. VI(1): "Unless otherwise agreed, the Commission shall include a public session in the course of its regular meetings."*

### **11.03 Public involvement in the implementation of the agreement**

- Refers to the capacity of the public to provide comments on the implementation of the agreement.
- Means to provide comments include advisory committees, dialogues, exchange of view, mechanisms for discussion, internet consultations, workshops, commitments to respond to request, designation of a contact point to receive comments forum the public, etc.
- The public can be defined broadly (such as foreign citizens) or restrictively (ex: a selected group of a domestic stakeholders that sit on an advisory committee), as long as they are non-state actors.
- Comments "on any activities undertaken pursuant to the agreement" or "any matters related to the agreement" is considered to include "implementation".

- Informing the public about the implementation of the agreement is not sufficient. See 11.02 instead.
- Excludes norms strictly related to participation of the public in the adoption of domestic measures (see 3.02) or in the enforcement of these measures (see 5.03 or 5.04)
- Excludes participation of the public to environmental assessment procedure and to adoption of environmental measures.

#### **11.03.01 Public participation in the implementation of the agreement**

- Includes engagement of the public in activities undertaken to implement the agreement.
- Includes consultation and procedure to receive comments.
- Includes exchange of views, considering input and taking advice.
- Includes meetings of joint institutions with the public to discuss.
- Includes publication of a summary of discussions held during public sessions.
- Includes national advisory committee.

*Canada-Peru, art. 4(8) & (9): "The Parties shall endeavour to engage the public in activities undertaken to implement this Agreement."*

*Canada-Colombia, art.4(9): The Parties shall strive to cooperate to strengthen public participation in all matters related to the implementation of this Agreement.*

*Australia-US, art. 19.5 (2): "[...] 3. Each Party shall provide an opportunity for its public, which may include national advisory committees, to provide views, recommendations, or advice on matters related to the implementation of this Chapter, and shall make available such views, recommendations, or advice to the other Party and, as appropriate, to the public in accordance with its law."*

*Chile-US, art. 19.4: "1. Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Party and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures. 2. Each Party shall make best efforts to respond favorably to requests for consultations by persons or organizations in its territory regarding the Party's implementation of this Chapter. 3. Each Party may convene, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, and other persons, to advise it on the implementation of this Chapter."*

*CETA, art. X.13(4): "Each Party shall make use of existing, or establish new, consultative mechanisms, such as domestic advisory groups, to seek views and advice on issues relating to this Chapter. Such mechanisms shall involve independent representative organisations of civil society in a balanced representation of environmental groups, business organisations, as well as other relevant stakeholders as appropriate. Through such mechanisms, stakeholders may submit views and make recommendations on any matter related to this Chapter on their own initiative."*

*CAFTA Agreement on Environmental Cooperation, art V(3): "As the Commission periodically examines and evaluates cooperative programs, projects and activities, it shall seek and consider input from relevant local, regional, or international organizations regarding how best to ensure that it is accurately monitoring progress."*

*Korea-US, art. 20.6(2): "Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters related to the implementation of this Chapter, including views received from the national advisory committees referred to in Article 20.7.3. The Council shall make public a written summary of discussions held during the public session."*

#### **11.03.02 Direct contact between non-state actors of both Parties**

*China-New Zealand, art. 2(4): "Each Party may, as appropriate, invite the participation of other organisations in identifying potential areas for cooperation and in undertaking cooperative activities. To implement this Agreement both Parties shall encourage environmental protection organisations, enterprises and municipalities as well as research institutions and other entities on*

*both sides to establish and develop direct contacts with each other in the field of environmental protection and sustainable development.”*

#### **11.04 Environmental impact assessment of the agreement**

- Commitment to assess the environmental impact of the trade agreement.
- The assessment could be done by a consultant or an expert mandated by the Party.
- Sustainability impact assessments are considered to be environmental impact assessments
- Includes communications with the other Party and the public on the environmental impact assessment.
- Includes participation of the public to the environmental impact assessment.
- Includes ex ante and ex post assessments.
- Excludes reviews limited to the implementation of environmental norms. The assessment must cover the impact of trade provisions.
  - Simply receiving comments from the public on the impacts of the agreement is not considered sufficient to be an impact assessment study. See 11.03 instead.

*EC-Korea, art. 13.10: “Review of sustainability impacts The Parties commit to reviewing, monitoring and assessing the impact of the implementation of this Agreement on sustainable development, including the promotion of decent work, through their respective participative processes and institutions [...]”*

## **12. Institutions created**

As a reminder, these institutions should explicitly (but not necessarily exclusively) deal with environmental matters.

These institutions could be part of a broader institution, such as a commission or a council.

This institutions can be have various names, including councils, sub-committees, working-groups, sub-committees, commissions, forums, organizations, etc. The name of the institutions does not reveal its structure and its function.

Includes all information on the composition, budget, function, mandates of these institutions.

Excludes norms dealing in general with any issue-areas related to the trade agreement, unless the environment explicitly mentioned as one their subject-matter.

For greater clarity, it can include norms dealing with a subset of issue-areas (for example cooperation) as long as the environment is explicitly included in this subset. This explicit mention could be found in another article (defining areas of cooperation). Also, norms found in a chapter on environment or in parallel agreement on the environment are considered as environmental norms.

#### **12.01 Intergovernmental committee**

- Commitment of the Party to meet punctually (for example once every year).
- The committee is not a permanent organization with its own budget, its own personnel, its own headquarters. It might not even have a name.
- Members of this committee represent governments/administrations/Parties. They could be cabinet level members, representatives, designees, officials, contact points or civil servants.

*Chile-US Environmental Co-operation Agreement, art. II: “1. The Parties hereby establish a Joint Commission for Environmental Cooperation (the “Commission”) that is co-chaired by designated high level officials of the Department of State of the United States and the Ministry of Foreign Affairs of Chile. The Chair from each Party shall designate up to five representatives from its government agencies to serve on the Commission, as appropriate. [...]”*

*Japan-Thailan, art. 157: “For the purposes of the effective implementation and operation of this Chapter, Sub-Committee(s) and Special Sub-Committee(s) as a subsidiary body to the Sub-Committee(s) may be established for each field of cooperation specified in Article 153 pursuant to Article 13”*

*Japan-Vietnam, art. 30(1): “Pursuant to Article 114 of the Basic Agreement, the Working Group on Environment (hereinafter referred to in this Article as “the Working Group”) shall be established under the Sub-Committee.”*

*EC-Korea, art. 2: “The Committee on Trade and Sustainable Development established pursuant to Article 15.2.1 (Specialised Committees) shall comprise senior officials from within the administrations of the Parties.”*

*Brunei-Japan, art. 105: "For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Cooperation (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement. Article 102. The fields of cooperation under this Chapter shall include: (h) environment"*

*New Zealand-Thailand, Arrangement on Environment, Section 3(1): "The Participants establish an Environment Committee comprising senior officials of their government agencies responsible for environmental matters."*

*US-Peru, art. 18.6: "The Parties hereby establish an Environmental Affairs Council (Council). Each Party shall designate a senior level official with environmental responsibilities to represent it on the Council and an office in its appropriate ministry or government entity to serve as its contact point for carrying out the work of the Council."*

## **12.02 International secretariat**

### **12.02.01 Establishment of an international secretariat to administer environmental norms of the treaty**

- Creates a new permanent secretariat.

*NAAEC, art. 8: "the Parties hereby establish the Commission for Environmental Cooperation. The Commission shall comprise a Council, a Secretariat and a Joint Public Advisory Committee. Art. 11 The Secretariat shall be headed by an Executive Director, who shall be chosen by the Council for a three-year term, which may be renewed by the Council for one additional three-year term."*

### **12.02.02 Establishment of specialized organization on specific environmental issue**

- Includes international agencies, institutes or any other autonomous international organization.

*CARICOM revised, art. 21: "The following entities established by or under the auspices of the Community shall be recognised as Institutions of the Community: Caribbean Disaster Emergency Response Agency (CDERA); Caribbean Meteorological Institute (CMI); Caribbean Meteorological Organisation (CMO); Caribbean Environmental Health Institute (CEHI);"*

## **12.03 Stakeholders international committee**

- The committee should clearly be international, not national (otherwise see 11.3).
  - Stakeholders can include NGO, businesses, academics, scientists, or other non-state actors or member of the public, including members of domestic advisory groups or stakeholder forums.
  - The committee can be managed by an international secretariat or an intergovernmental council.
- EC-Korea, art. 13.13: "Members of Domestic Advisory Group(s) of each Party will meet at a Civil Society Forum in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties. The Civil Society Forum will meet once a year unless otherwise agreed by the Parties."*

## **13. Dispute settlement mechanisms**

### **13.01 Environmental experts as panelists or mediators**

- The roster of experts can be appointed to settle a dispute related to specific environmental measures and/or available for more general trade disputes.
- Could act as arbitrators or mediators or offer their good services. Could form the entire panel or not.
- Excludes domestic judiciary matter.
- Excludes norms referring to experts in general and not specifically (although not necessarily exclusively) on the environment.
- Experts should not only make a report to the panel. See 13.02 instead.
- If the appointment of environmental experts is included in a specific DSM for environmental provisions, it is found in section 13.04.01.

**13.01.01 Environmental experts for state-state dispute over failure to enforce environmental measures or other environmental provisions of the trade agreement**

*Chile-US, art. 19.7: "1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of at least 12 individuals who are willing and able to serve as panelists in disputes arising under Article 19.2(1) (a). [...] Environment roster members shall be appointed by mutual agreement of the Parties, and may be reappointed [...]."*

**13.01.02 Environmental experts in state-state dispute over trade provisions of the trade agreement**

*EU-CARIFORUM, art. 189: "6. The Committee of Experts shall comprise three members with specific expertise in the issues covered by this Chapter."*

**13.01.03 Environmental experts in investor-state dispute**

**13.02 Reports from environmental experts or scientific review board**

- Refers to the capacity of the Parties, tribunal, panel or appellate body to appoint environmental experts to produce a report, a review, or opinions.
- For the obligation to name environmental experts on the panel see 13.01.
- Excludes norms referring to experts in general and not specifically (although not necessarily exclusively) on the environment.
- Could be for dispute over specific environmental measures and/or for more general trade disputes.
- As opposed to non solicited amicus curiae with expert's report.

**13.02.01 Environmental report in state-state dispute over failure to enforce environmental measures or other environmental provisions of the trade agreement**

*CAFTA, art. 10.24 "Tribunal, at the request of a disputing Party or, unless the disputing Parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, [...]"*

**13.02.02 Environmental report in state-state dispute over trade provisions of the trade agreement**

*Chile-Canada, N14: "On request of a Party or, unless the Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, [...]"*

**13.02.03 Environmental report in investor-state dispute**

*Chile-Canada, G-34: "Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing Party or, unless the disputing Parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, [...]"*

**13.03 State-state DSM in case of failure to enforce domestic environmental measures**

- Refers only to dispute settlement mechanism that solely applies in case of failure to enforce domestic environmental measures.
- In the event that the general DSM of the trade agreement can be used for any matters arising under the environment chapter, it is only found in 13.04.02 even though the environment chapter could include a norm on the enforcement of national environmental measure

**13.03.01 Non-jurisdictional mechanism for failure to enforce**

- Includes dispute settlement mechanism such as mediation, consultation, good offices, etc.
- Here are only found the non-jurisdictional mechanism applying in case of failure to enforce. Norms applying to the complete environmental chapter are found in 13.04.01.01.

*Central America-Panama, art. 10.15(1)(2): "Si una Parte estima que la otra Parte ha alentado una inversión de tal manera, podrá solicitar consultas con esa otra Parte"*

#### **13.03.02 Monetary enforcement assessments for failure to enforce**

- Remedy in case of failure of a Party to enforce its environmental measures.
- Also includes details such as maximum amount and possible uses of the remedy.  
*Canada-Chile Agreement on Environmental Cooperation, art. 33 5(b): "[...]may, where warranted, impose a monetary enforcement assessment within 90 days after the panel has been reconvened or such other period as the Parties may agree.[...]"*

#### **13.03.03 Suspension of benefits in case of failure to enforce or to pay**

- Suspension of trade benefits in case of failure to enforce or failure to pay monetary enforcement.  
*NAAEC, art. 36: "1.Subject to Annex 36A, where a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by a panel: (a) under Article 34(4)(b), or (b) under Article 34(5)(b), except where benefits may be suspended under paragraph 2(a), any complaining Party or Parties may suspend, in accordance with Annex 36B, the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment."*

### **13.04 State-State DSM in case of non-compliance with trade provisions**

- Applicable to one or several substantive environmental commitment such as those found here in sections 2 and 10.
- A commitment to cooperate is not a substantive commitment.
- Does not include dispute for failure to enforce domestic measures.
- Excludes DSM for failure to enforce. See 13.03 instead.
- However, when the general DSM of the trade agreement can be used for matters arising under the environment chapter, it is only found in 13.04.02 even though the environment chapter could include a norm on the enforcement of national environmental measures.

#### **13.04.01 Specific DSM for environmental provisions**

- Includes DSM in environment chapter or annex or specifically applying to the environment
- Provisions of general DSM applying to environmental norms are found in 13.04.02
- Do not include norms excluding environmental dispute of general DSM. The lack of norms found in 13.04.02 should be sufficient to establish that the general DSM does not specifically apply to environmental norms.

##### **13.04.01.01 Non-jurisdictional DSM**

- Includes mediation, consultation, good offices, etc.
- It includes the articles providing for the creation of a panel of experts or a joint committee when consultation has failed if they can't adopt a binding decision.
- Norms applying to the whole environment chapter are found here even though they could cover an article on enforcement.

*Canada-Chile Agreement on Environmental Cooperation, art. 12: "1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement. 2. The Parties shall make every attempt, through consultations and the exchange of information with an emphasis on cooperation to address any matter that might affect the interpretation and application of this Agreement."*

*CAFTA, art. 17.10: "Collaborative Environmental Consultations 1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 17.5.1."*

CARIFORUM-EC, art. 189: "4. A Party may request consultations with the other Party on matters concerning the interpretation and application of Articles 183 to 188. [...]. 5. If the matter has not been satisfactorily resolved through consultations between the Parties pursuant to paragraph 3 any Party may request that a Committee of Experts be convened to examine such matter. 6. The Committee of Experts shall comprise three members with specific expertise in the issues covered by this Chapter. The Chairperson shall not be a national of either Party. The Committee of Experts shall present to the Parties a report within three month of its composition. The report shall be made available to the CARIFORUM-EC Consultative Committee."

#### **13.04.01.02 State-State arbitrage**

- It should not include arbitration procedure provided under the general DSM of the trade agreement. See 13.04.02 instead.

#### **13.04.02 General DSM applying to environmental provisions**

- Excludes general DSM indicating that it applies to the whole agreement.
- The general DSM should specifically refers to an environmental norms, the environment chapter or another environment document (annex, side letter, etc.).
- Includes provisions indicating that when specific environmental mediation or consultation failed, the general DSM can be used by the Parties for environmental provisions.

#### **13.04.02.01 General DSM procedures**

- All the provisions related to the general DSM are found here with the exception of norms on the suspensions of benefits. See 13.04.02.02 instead.

*Chile-US, art. 22.5: "A Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 18.6 (Cooperative Consultations), Article 19.6 (Environmental Consultations) or Article 7.8 (Committee on Technical Barriers to Trade)."*

*Group of three, art. 19-06: "2. Una Parte también podrá solicitar por escrito que se reúna la Comisión cuando se hayan realizado consultas conforme al artículo 5-30 o al artículo 14-18."*

*Korea-US, art. 22.8& 22.9: "2. If the Parties fail to resolve a matter within 60 days of the delivery of a request for consultations under Article 19.7 (Labor Consultations) or 20.9 (Environmental Consultations and Panel Procedure), either Party may also refer the matter to the Joint Committee by delivering written notification to the other Party. [...]1. If the Joint Committee has not resolved a matter within 60 days after delivery of a notification described in Article 22.8, within 30 days where the matter concerns perishable goods, or within such other period as the Parties may agree, the complaining Party may refer the matter to a dispute settlement panel by delivering written notification to the other Party."*

#### **13.04.02.02 Suspension of benefits**

- Refers to the possibility of one Party to suspend some benefits from the agreement in case the other Party does not comply with the decision taken under the general DSM procedures.
- Applicable to one or several substantive environmental provisions such as those found here in sections 2 and 10.
- Does not include dispute for failure to enforce domestic measures.  
*Korea-US, art. 22.13: "1. If a panel has made a determination of the type described in Article 22.12.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 22.12.1 within 45 days of receiving the final report, or such*

*other period as the Parties agree, the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation. [...]4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.”*

### **13.05 Multilateral environmental agreements relation with trade agreement’s DSM**

#### **13.05.01 Exclusion of multilateral environmental agreements’ DSM**

- Includes norms providing that the DSM under the trade agreement should be the only DSM used.
- Includes norms that would explicitly exclude the DSM of a multilateral environmental agreements.

*Canada-Chile, art. N-05: “2. In any dispute referred to in paragraph 1 where the responding Party claims that its action is subject to Article A-04 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.”*

*Canada-Jordan, art. 14.3: “2. In any dispute referred to in paragraph 1 where the Party complained against claims that its measures are subject to Article 1-5 and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.”*

#### **13.05.02 Consent to use the DSM of a multilateral environmental agreements**

- Includes articles merely offering the possibility to use the multilateral environmental agreements’ DSM.

*Chile-US, art 19.6: “10. In cases where the Parties agree that a matter arising under this Chapter is more properly covered by another agreement to which the Parties are Party, they shall refer the matter for appropriate action in accordance with that agreement.”*

#### **13.05.03 Panel shall consult or defer to any relevant entity the interpretation of a Party’s obligation under a multilateral environmental agreement**

- Includes all the panel’s obligations in regards to the interpretation of a Party’s obligation under a multilateral environmental agreement.

*Korea-US, art. 20.09: “In a dispute arising under Article 20.2, [...] a panel convened under Chapter Twenty-Two (Dispute Settlement) shall [...]: a) consult fully, through a mechanism that the Environmental Affairs Council establishes, concerning that issue with any entity authorized to address the issue under the relevant environmental agreement; b) defer to any interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party’s relevant laws, regulations, and other measures are in accordance with its obligations under the agreement;(c) where the agreement admits of more than one permissible interpretation relevant to an issue in the dispute and the Party complained against relies on one such interpretation, accept that interpretation for purposes of its findings and determination under Article 22.11.”*

## **14. Relations with international institutions**

Protocols and their framework conventions are considered as separate agreements.

Decisions taken by a body (conference of the Parties, commission, etc.) created by an agreements are considered as part of the agreement.

Agreements refers to treaties, conventions, protocols, annexes, decision, declaration, action plans, understanding, guidelines concluded by states. For greater clarity, “FLEGT voluntary partnership agreement” are considered as agreements.



This section covers institutions that have environmental protection (or a more specific environmental objective) as one of their objectives. Domestic measures and European regulations and directives are not considered as international institutions.

#### **14.01 Ratification of environmental agreements**

- Refers to the obligation or commitment to accede, join or ratify a specific environmental agreement.

##### **14.01.01 Ratification CITES**

- Convention on International Trade in Endangered Species of Wild Fauna and Flora, also called the Washington Convention, concluded on March 3, 1973.

##### **14.01.02 Ratification Montreal Protocol**

##### **14.01.03 Ratification Basel Convention**

##### **14.01.04 Ratification MARPOL**

##### **14.01.05 Ratification Rotterdam Convention**

##### **14.01.06 Ratification Stockholm Convention**

##### **14.01.07 Ratification Ramsar Convention**

##### **14.01.08 Ratification CCAMLR**

##### **14.01.09 Ratification Whaling Convention**

##### **14.01.10 Ratification UNFCCC**

##### **14.01.11 Ratification Kyoto Protocol**

##### **14.01.12 Ratification CBD**

##### **14.01.13 Ratification Cartagena Protocol**

##### **14.01.14 Ratification Nagoya Protocol**

##### **14.01.15 Ratification other agreements related to the environment**

#### **14.02 Implementation of obligations found in agreements**

- Refers to the explicit commitment to implement an agreement.
- Includes commitments to implement the complete agreement or only some of its substantive obligations. However, referring only to definitions found in an agreement, referring only to the objectives of an agreement, referring only to species listed in an appendix of an agreement is not sufficient, as definitions are not “substantive obligations”. See 14.04 instead.
- Includes the Parties’ commitment to make their best efforts to join, accede or ratify an environmental agreement.
- Includes wordings such as “reaffirm their commitment to implement X”, “reconfirm their obligations under X”, “reiterate their commitments as established by X”, “recognize that the implementation of X is critical or important”, “ensure that their laws and practices are in harmony with X”, “should be guided by the obligations of X”, “should adopt laws in line with

X”, “have the intention to fulfill its obligation under X”, “shall adopt laws to fulfill its obligations under X”, “reaffirms their rights and obligations under X”.

- “Recalling”, “recognizing” or “considering” the obligations of agreement, “affirming the importance of an agreement” or “acknowledging the adoption of an agreement” is not sufficient to be considered as a commitment to implement. See 14.04 instead.
- Norms referring to international norms, standards or methods are found in 14.07.

#### **14.02.01 Implementation CITES**

- Convention on International Trade in Endangered Species of Wild Fauna and Flora, also called the Washington Convention, concluded on March 3, 1973.

##### **14.02.01.01 Implementation of the whole treaty**

##### **14.02.01.02 Implementation of a specific part**

#### **14.02.02 Implementation Montreal Protocol**

- On ozone layer.

*Peru-US, art. 18.2 and Annex 18.2(1)(b): “A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the [...] the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;”*

##### **14.02.02.01 Implementation of the whole treaty**

##### **14.02.02.02 Implementation of a specific part**

#### **14.02.03 Implementation Basel Convention**

- On the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
- As opposed to the Bamako Convention and the OAU Resolution on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in Africa.

*EC-Columbia-Peru, art. 270(2): “2. The Parties reaffirm their commitment to effectively implement in their laws and practices the [...] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal adopted on 22 March 1989”*

##### **14.02.03.01 Implementation of the whole treaty**

##### **14.02.03.02 Implementation of a specific part**

#### **14.02.04 Implementation MARPOL**

- Relating to the Convention for the Prevention of Pollution from Ships.
- Also called Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships.

*Panama-US, Art. 17.2 and Annex 17.2(1)(d): “Each Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the [...] (c) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended;”*

##### **14.02.04.01 Implementation of the whole treaty**

##### **14.02.04.02 Implementation of a specific part**

#### **14.02.05 Implementation Rotterdam Convention**

- on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
  - Also called the PIC Convention.
- EC-Columbia-Peru, art. 270(2): "2. The Parties reaffirm their commitment to effectively implement in their laws and practices [...] the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998"*

#### **14.02.05.01 Implementation of the whole treaty**

#### **14.02.05.02 Implementation of a specific part**

### **14.02.06 Implementation Stockholm Convention**

- Also called the POP Convention of 2001.
- EC-Columbia-Peru, art. 270(2): "2. The Parties reaffirm their commitment to effectively implement in their laws and practices [...] the Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001,"*

#### **14.02.06.01 Implementation of the whole treaty**

#### **14.02.06.02 Implementation of a specific part**

### **14.02.07 Implementation Ramsar Convention**

- on Wetlands of International Importance Especially as Waterfowl Habitat.
- Panama-US, art. 17.2 and Annex 17.2(1)(d): "Each Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under[...] the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;"*

#### **14.02.07.01 Implementation of the whole treaty**

#### **14.02.07.02 Implementation of a specific part**

### **14.02.08 Implementation CCAMLR**

- Also called Convention on the Conservation of Antarctic Marine Living Resources, signed in Canberra in 1980.
  - As opposed to the Madrid Protocol on Environmental Protection to the Antarctic Treaty of 1991.
- Korea-US, art. 20.2 and annex 20-A(1)(e): "A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the [...]Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980;"*

#### **14.02.08.01 Implementation of the whole treaty**

#### **14.02.08.02 Implementation of a specific part**

### **14.02.09 Implementation Whaling Convention**

- Convention for the Regulation of Whaling, Also called the IWC, created in Washington in 1946.
  - Also includes the International Whaling Commission and the 1982 Moratorium of whaling.
- Korea-US, art. 20.2, Annex 20-A: "A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the [...] the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946;"*

#### **14.02.09.01 Implementation of the whole treaty**

#### **14.02.09.02 Implementation of a specific part**

#### **14.02.10 Implementation UNFCCC**

- United Nation Framework Convention on Climate Change of 1992.
- Includes reference to the UNCED agreements since the UNFCCC was adopted at the United Nations Conference on Environment and Development.

#### **14.02.10.01 Implementation of the whole treaty**

#### **14.02.10.02 Implementation of a specific part**

#### **14.02.11 Implementation Kyoto Protocol**

- Including the Clean Development Mechanism.  
*EC-Columbia-Peru, art. 270(2): "2. The Parties reaffirm their commitment to effectively implement in their laws and practices [...] the Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted on 11 December 1997."*

#### **14.02.11.01 Implementation of the whole treaty**

#### **14.02.11.02 Implementation of a specific part**

#### **14.02.12 Implementation CBD**

- Convention on Biological Diversity of 1992.
- Includes reference to the UNCED agreements since the CBD was adopted at the United Nations Conference on Environment and Development.  
*EC-Columbia-Peru, art. 270(2): "2. The Parties reaffirm their commitment to effectively implement in their laws and practices [...] the Convention on biological diversity [...]."*  
*Canada-Panama Agreement on Environment, art. 10: "The Parties also reiterate their commitment, as established by the Convention on Biological Diversity, to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities that contribute to the conservation and sustainable use of biodiversity, subject to national legislation."*

#### **14.02.12.01 Implementation of the whole treaty**

#### **14.02.12.02 Implementation of a specific part**

#### **14.02.13 Implementation Cartagena Protocol on Biosafety**

- *EC-Columbia-Peru, art. 270(2): "2. The Parties reaffirm their commitment to effectively implement in their laws and practices [...] the Cartagena Protocol on Biosafety to the CBD adopted on 29 January 2000 [...]."*

#### **14.02.13.01 Implementation of the whole treaty**

#### **14.02.13.02 Implementation of a specific part**

#### **14.02.14 Implementation Nagoya Protocol**

- on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, on October 9 2010.

#### **14.02.14.01 Implementation of the whole treaty**

#### 14.02.14.02 Implementation of a specific part

#### 14.02.15 Implementation Stockholm declaration

#### 14.02.16 Implementation Rio declaration of 1992

#### 14.02.17 Implementation Agenda 21 of 1992

#### 14.02.18 Implementation Johannesburg declaration of 2002

#### 14.02.19 Implementation other agreements related to the environment

- Could be bilateral, regional or multilateral.
- Includes agreements that are not exclusively devoted to environmental protection.
- Excludes WTO and WTO agreements.
- Includes agreements to be concluded, agreements in general, agreements that are not named explicitly and unnamed agreements.
- Includes open-ended reference to the agreements to which States are Party.
- Excludes parallel agreements included in the database.
- “international obligations concerning the conservation and sustainable use of biological diversity”.
- “commitments made at the Rio Summit”.

*Korea-US, Annex 20-A(1)(g): “A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under [...] (g) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949.”*

*COMESA, art. 124: “1. The Member States [...] agree to: [...] (d) accede to the UNEP Convention for Eastern and Southern Africa on water and marine resources”*

*Cameroon-EPA Interim Agreement, art. 53: “Without prejudice to the provisions of this Chapter, trade in timber and forest products shall be governed in line with [...] any voluntary partnership agreements to which signatory Central African States might adhere individually or collectively with the European Community [...].”*

*EC-Korea, art. 13.5 “2. The Parties reaffirm their commitments to the effective implementation in their laws and practices of the multilateral environmental agreements to which they are Party”*

*EC-Moldavia, art. 370: “the Parties commit to: [...] (c) ensuring full compliance with applicable conservation and control measures, adopted by Regional Fisheries Management Organisations;”*

*Chili-US, art. 19: “[...]effective implementation of multilateral environmental agreements to which both Parties are Party;”*

*New Zealand-Malaysia, art 2(2): “2. The Parties reaffirm their intention to fulfil their international commitments made at the Earth Summit at Rio de Janeiro in 1992”*

#### 14.03 Prevalence of environmental agreements in case of inconsistency

- Refers to the prevalence of environment agreements (or only some of their obligations) over the trade agreements (or only some of its obligations), in case of conflict or inconsistency.
- Does not include the prevalence of the trade agreement over an environmental agreement. If this norm appears, it should be other in “other references”. See 14.06 instead.
- The prevalence can be conditioned on the fact that the environmental agreement is not applied in a manner that would constitute, where the same conditions prevail, arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.
- Is considered as prevalence of environmental agreements: “In the event of any inconsistency between a Party’s obligations under this Agreement and a [environmental] agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the [environmental] agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade”.

- Is considered as prevalence of environmental agreements: “nothing in this agreement shall be constructed to affect the existing rights and obligations of the Parties under agreement X” (This guides the interpretation of the trade agreement but not the interpretation of the environmental agreement= asymmetric interpretation.
- A statement that is symmetric, claiming that two treaties are compatible, are not in conflict or that do not prevent the implementation of each other is not a statement on the prevalence of the environmental treaty. See 14.04 instead.

#### **14.03.01 Prevalence CITES**

- Also called the Washington Convention, March 3, 1973.

*NAFTA, art. 104(1)(a): “1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in [...] the Convention on international Trade in Endangered Species of Wild Fauna and Flora [...], such obligations shall prevail to the extent of the inconsistency. [...]”*

#### **14.03.02 Prevalence Montreal Protocol**

- This Protocol is also called the Montreal Protocol on Ozone Layer to the Vienna Convention.

*NAFTA, art. 104(1)(b): “1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in [...] the Montreal Protocol on Substances that Deplete the Ozone Layer [...], such obligations shall prevail to the extent of the inconsistency, [...]”*

#### **14.03.03 Prevalence Basel Convention**

- On the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.
- As opposed to the Bamako Convention and the OAU Resolution on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in Africa.

*NAFTA, art. 104(1)(c): “1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in [...] the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal [...] such obligations shall prevail to the extent of the inconsistency, [...]”*

#### **14.03.04 Prevalence MARPOL**

- Protocol Relating to the International Convention for the Prevention of Pollution from Ships.

#### **14.03.05 Prevalence Rotterdam Convention**

- on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.
- This Convention is also called the PIC.

*Canada-Jordan, article 1-5 and Annex 1-5 (d): “1. In the event of any inconsistency between this Agreement and a Party's obligation in [...] the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade [...] such obligation shall prevail to the extent of the inconsistency, provided that the measure taken is necessary to comply with that obligation, and is not applied in a manner that would constitute arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”*

#### **14.03.06 Prevalence Stockholm Convention,**

- on Persistent Organic Pollutants.
- This Convention is also called the Convention POP.

*Canada-Korea, art. 1.3 and Annex 1-A: “In the event of an inconsistency between a Party's obligations under this Agreement and the Party's obligations under an agreement listed in Annex 1-A, a Party is not precluded from taking a particular measure necessary to comply with its obligations under [...] the Stockholm Convention on Persistent Organic Pollutants [...] provided*

*that the measure is not applied in a manner that would constitute, where the same conditions prevail, arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.”*

#### **14.03.07 Prevalence Ramsar Convention**

- of Wetlands of International Importance Especially as Waterfowl Habitat.

#### **14.03.08 Prevalence CCAMLR**

- Convention on the Conservation of Antarctic Marine Living Resources

#### **14.03.09 Prevalence International Convention for the Regulation of Whaling**

- This Convention is also called the IWC, created in Washington.

#### **14.03.10 Prevalence UNFCCC**

- United Nation Framework Convention on Climate Change of 1992
- Includes reference to the UNCED agreements since the UNFCCC was adopted at the United Nations Conference on Environment and Development.

#### **14.03.11 Prevalence Kyoto Protocol**

#### **14.03.12 Prevalence CBD**

- Convention on Biological Diversity of 1992.
- Includes reference to the UNCED agreements since the CBD was adopted at the United Nations Conference on Environment and Development.

#### **14.03.13 Prevalence Cartagena Protocol**

- on Biosafety to the CBD.

#### **14.03.14 Prevalence Nagoya Protocol**

- on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

#### **14.03.15 Prevalence other agreements related to the environment**

- Could be bilateral, regional or multilateral.
- Includes agreements that are not exclusively devoted to environmental protection.
- Excludes WTO and WTO agreements.
- Includes agreements to be concluded, agreements in general, agreements that are not named explicitly and unnamed agreements.
- Includes open-ended reference to the agreements to which States are Party.
- *“international obligations concerning the conservation and sustainable use of biological diversity”.*
- *“commitments made at the Rio Summit”.*

NAFTA, art. 104(1)(d) and annex 103.1(1) and (2): *“1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in: [...]d) the agreements set out in Annex 104.1, such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement. NAFTA (1992), Annex 104.1: “1. The Agreement between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste [...]. 2. The Agreement between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area [...].”*

### **14.04 Other references to international environmental institutions**

- Institutions includes treaties (agreements, conventions, protocols, etc), political texts and instruments (declarations, action plans, resolutions, guidelines, etc.), norms, and organizations.
- Excludes calls for ratification, implementation and prevalence.
- A simple reference is the minimal requirement, including “Recalling X” in a protocol.

#### **14.04.01 Other references CITES**

- This Convention is also called the Washington Convention, March 3, 1973.
- Norms providing for a ban on whale products on the basis of CITES are found here.

#### **14.04.02 Other references Montreal Protocol**

- on the Ozone Layer.

#### **14.04.03 Other references Basel Convention**

- on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.
- As opposed to the Bamako Convention and the OAU Resolution on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in Africa.

#### **14.04.04 Other references MARPOL**

- 1978 Protocol Relating to the International Convention for the Prevention of Pollution from Ships.

#### **14.04.05 Other references Rotterdam Convention**

- on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.
- Also called the Rotterdam Convention or PIC Convention.

#### **14.04.06 Other references Stockholm Convention**

- on Persistent Organic Pollutants
- Also called the Convention on POP.

#### **14.04.07 Other references RAMSAR Convention**

- of Wetlands of International Importance Especially as Waterfowl Habitat.

#### **14.04.08 Other references CCAMLR**

- Convention on the Conservation of Antarctic Marine Living Resources, created in Canberra in 1980.
- As opposed to the Madrid Protocol on Environmental Protection to the Antarctic Treaty of 1991.

#### **14.04.09 Other references Whaling Convention**

- Also called the IWC, created in Washington in 1946.
- Also includes the International Whaling Commission and the 1982 Moratorium of whaling.

#### **14.04.10 Other references UNFCCC**

- United Nation Framework Convention on Climate Change of 1992.
- Includes reference to the UNCED agreements since the UNFCCC was adopted at the United Nations Conference on Environment and Development.
- Does not include REDD. See 14.03.24 instead.

#### **14.04.11 Other references Kyoto Protocol**

- Including the Clean Development Mechanism.



#### **14.04.12 Other references CBD**

- Convention on Biological Diversity of 1992.
- Includes reference to the UNCED agreements since the CBD was adopted at the United Nations Conference on Environment and Development.

*Canada-Peru Agreement on the Environment, art. 2(8): "The Parties affirm the importance of the Convention on Biological Diversity, done at Rio de Janeiro on 5 June, 1992 ("Convention on Biological Diversity"), and agree to work together to advance the objectives of that Convention."*  
*China-Switzerland, art. 11.9: "The Parties encourage the effort to enhance a mutually supportive relationship between the TRIPs agreement and the convention on Biological diversity, regarding genetic resources and traditional knowledge"*

#### **14.04.13 Other references Cartagena Protocol**

- On Biosafety to the CBD.

#### **14.04.14 Other references Nagoya Protocol**

- On Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

*Colombia-Korea, art. 16.5 (6): "The Parties acknowledge the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity and agree to further discuss relevant issues on genetic resources subject to future developments of multilateral agreements or their respective legislations."*

#### **14.04.15 Other references Stockholm Declaration**

- On the Human Environment of 1972.

*NAAEC, Preamble: "Reaffirming the Stockholm Declaration on the Human Environment of 1972"*

#### **14.04.16 Other references to World Commission on environment and development**

- Includes references to Brundtland report, Brundtland Commission, the report "*Our Common Future*", and the report of the World Commission on environment and development of 1985.
- As opposed to "The Future we Want" at 14.03.21.

#### **14.04.17 Other references Rio Declaration of 1992**

- Includes reference to the UNCED agreements since the Rio Declaration was adopted at the United Nations Conference on Environment and Development.
- "commitment made at Rio" is unspecific and is found at 14.03.25

*NAAEC, Preamble: "reaffirming the Rio Declaration on Environment and Development of 1992"*

#### **14.04.18 Other references Agenda 21 of 1992**

- Includes reference to the UNCED agreements since the Rio Declaration was adopted at the United Nations Conference on Environment and Development.

*EC-Columbia-Peru, art. 267(1): "1. Recalling the Agenda 21 adopted by the United Nations Conference on Environment and Development on 14 June 1992 [...]."*

#### **14.04.19 Other references Johannesburg Declaration 2002**

*Canada-Panama Agreement on Environment, Preamble "Affirming [...] the Johannesburg Declaration on Sustainable Development"*

#### **14.04.20 Other references Johannesburg Plan of Implementation 2002**

*Canada-Honduras Agreement on Environmental Co-operation, Preamble: "Affirming [...] [the] Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002"*

#### **14.04.21 Other references Rio+20 outcome document**

- "The Future We Want" of 2012.
- As opposed to "our common future" at 14.03.16

#### **14.04.22 Other references UNEP**

#### **14.04.23 Other references Commission on sustainable development**

#### **14.04.24 Other references REDD**

- Reducing Emissions from Deforestation and Forest Degradation.

#### **14.04.25 Other references to other institutions related to the environment**

- Includes bilateral, regional or multilateral institutions. However, reference to institutions which are not clearly linked to the environment are not included. Includes agreements that are not exclusively devoted to environmental protection. They should nonetheless be partly devoted to it.
- Reference to regional integration treaties (Cotonou, Cartagena, Montevideo, etc.) are not found here.
- Excludes WTO and WTO agreements.
- Includes reference to "any other agreements" as it can include environment treaties.
- Includes institutions to be concluded, institutions in general, agreements that are not named explicitly and unnamed institutions.
- Excludes side or parallel agreements included in the database.
- All references to international norms and standards are found in 14.07.

*Chili-US, art. 19: "The Parties recognize the importance of multilateral environmental agreements, including the appropriate use of trade measures in such agreements to achieve specific environmental goals"*

*EC-Korea, art. 13(12)(2): "The Parties shall ensure that the resolution reflects the activities of the ILO or relevant multilateral environmental organisations"*

*US-Peru, art. 18.13: "The Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all Party and trade agreements to which they are all Party"*

*Jordan-Singapore, Preamble: "Building on their rights, obligations and undertakings at the World Trade Organisation and other multilateral, regional and bilateral agreements and arrangements"*

#### **14.05 Any inconsistency between a trade agreement and any other agreement shall be resolved by consultation**

- Refers to the Parties' obligation to consult each other when a provision of the trade agreement is inconsistent with a provision of any other agreement.
- Includes norms referring to any other agreements as it can include environmental treaties.

*Brunei-Japan, art. 9: " In the event of any inconsistency between this Agreement and the WTO Agreement or any other agreements to which both Parties are Parties, the Parties shall immediately consult with each other [...]"*

#### **14.06 Prevalence of the trade agreement in case of inconsistency with any other agreement**

- Includes norms referring to any other agreements as it can include environmental treaties.
- Canada-Chile, art. A-03: "2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement."*

#### **14.07 International standards or methods**

- Refers to the obligation to use or take into account standards or methods developed by international organization.
- The critical element of a norm found under 14.07 is its link with the work of an international organization.
- The link with the environment is often implicit in the definition of legitimate objectives.
- Norms only referring to the obligation to use or take into account scientific data are found in section 3.
- Norms only referring to the obligation to not lower its standard or maintain high level of protection are found in section 2.

##### **14.07.01 International standards are presumed to be in conformity with the trade agreement's obligations**

- Includes norms providing that the adoption of an international standard should not be viewed as an unnecessary obstacle to commerce.

*Chile-Mexico, art. 8-04: "4. To that end, standards-related measures shall not restrict trade more than is necessary to fulfil a legitimate objective, taking into account the risks that not fulfilling it would create. An unnecessary obstacle to trade shall not be deemed to be created where: [...] (b) it conforms to an international standard; [...]"*

##### **14.07.02 International standards or risk assessments carried out by international organizations should be used or taken into account when designing environmental measures**

- Includes the mere recognition by the Parties of the importance of relevant international standards.
- Includes the obligation to use risk assessments carried out by international organizations.
- Norms providing that a Party should use international standards, unless they are not effective to fulfill its legitimate objective are also found at 14.07.03.

*EC-CARIFORUM, art. 186: "The Parties recognise the importance, when preparing and implementing measures aimed at protecting the environment and public health that affect trade between the Parties, of taking account of scientific and technical information, the precautionary principle, and relevant international standards, guidelines or recommendations."*

*Panama-Taiwan, art. 9.05: "In pursuing its legitimate objectives, each Party conducting risk assessments shall take into account: (a) risk assessments carried out by international standardizing or metrological bodies."*

*Nicaragua-Taiwan, art. 9.05: "1. Without prejudice to the rights of any Party under this Chapter, and taking into account international standardization and metrology activities, the Parties shall, to the greatest extent practicable, make compatible their respective standardization and metrology measures, without thereby reducing the level of safety or protection of human, animal and plant life or health, the environment or consumers."*

##### **14.07.03 Right to adopt stringer standards than international ones**

- Refers to the Parties' capacity to adopt more restrictive standards in order to achieve environmental objectives or legitimate objectives. In the latter case, the definition of legitimate objective should include the environment.
- Norms providing that a Party should use international standards, unless they are not effective to fulfill its legitimate objective are also be found at 14.07.02.

*Bolivia-Mexico, art. 13-06: "3. 3. En la prosecuci3n de sus objetivos leg3timos, cada Parte podr3 adoptar, mantener o aplicar cualquier medida de normalizaci3n que tenga por resultado un nivel de protecci3n superior que el que se hubiera obtenido si la medida se basara en una norma internacional debido, entre otros, a factores fundamentales de naturaleza clim3tica, geogr3fica, tecnol3gica o de infraestructura."*

*Chile-Mexico, art. 8-04: "5. Each Party shall use existing international standards or standards whose adoption is imminent as the basis for its own standards-related measures, unless such standards are not an effective or appropriate means of fulfilling its legitimate objectives."*

**14.07.04 Party should use methods of risk assessment developed by international organizations**

*Bolivia-Mexico, art. 13-07: "1. Cada Parte podrá llevar a cabo evaluaciones del riesgo en su territorio [...] Al hacerlo, tomará en consideración los métodos de evaluación del riesgo desarrollados por organizaciones internacionales y se asegurará de que sus medidas de normalización se basen en evaluaciones del riesgo a la salud y la seguridad humana, animal, vegetal y del ambiente."*

**15. Other environmental norms**