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## KEY TO CODED ENVIRONMENTAL PROVISIONS

**TABLE 2 ENVIRONMENTAL PROVISIONS IN US AGREEMENTS**

<b>US Environmental Provision</b>	<b>Provision Description<sup>1</sup></b>
<b>Provisions found in both US and EU Agreements</b>	
<b>1. Regulatory Sovereignty</b>	Recognizes the right of each party to establish its own levels of environmental protection and associated laws and regulations.
<b>2. Continued strengthening of environmental protection</b>	Parties shall ensure that environmental laws provide for and encourage high levels of environmental protection and shall strive to improve environmental laws.
<b>3. Environmental laws will not be relaxed to enhance trade</b>	Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws.
<b>4. Mechanisms to Enhance Environmental Performance in Trade</b>	The parties recognize that flexible, voluntary, and market-based mechanisms can contribute to the achievement and maintenance of high levels of environmental protection and shall encourage the development of such mechanisms as appropriate and in accordance with its law.
<b>5. Environmental Affairs Council</b>	A specialized high-level body responsible for overseeing implementation of Environment Chapters, including procedures for public participation and dispute resolution.
<b>6. Public Participation – Opportunities for Public Participation</b>	Parties shall ensure that procedures exist for dialogue with its public concerning the implementation of Environment Chapters.
<b>7. Environmental Consultations</b>	Establishes a process for resolution of any matters arising under an Environment Chapter through a consultative process (FTAs vary significantly with respect to whether or not Parties may seek recourse through the FTA primary dispute resolution process if environmental consultations fail to resolve an issue under consideration).
<b>8. Environmental Consultation – Obligation to consider covered agreements</b>	Stipulates that issues related to a party’s obligations under a covered agreement must be considered through a consultative procedure under that agreement, unless the procedure could result in an unreasonable delay.
<b>9. Environmental Roster</b>	Establishes a roster of people with environmental expertise to serve as panelists in any disputes arising under an Environment Chapter.
<b>10. Relationship to Multilateral Environmental Agreements</b>	Recognizes the importance of MEAs to achieve international environmental goals, and often reference the WTO’s ongoing paragraph 31(i) discussion on the matter. <sup>2</sup>

<sup>1</sup> Although the aim of provisions 1-19 is common to US and EU agreements, they are separated here because the language used in these provisions differs in some cases between US and EU agreements. Table 2 provides language used in US FTAs and Table 3 provides language used in EU FTAs.

<b>11. Covered Agreements</b>	Parties reaffirm commitment to implement laws and practices of MEAs listed within the agreement. <sup>3</sup>
<b>12. Environmental Cooperation</b>	Parties commit to strengthening their capacity to protect the environment and to promote sustainable development through trade relations by expanding cooperative relationship on environmental matters, in an effort to achieve shared goals. Includes the improvement of environmental protection, practices, and technologies.
<b>13. Biological Diversity</b>	Commits parties to cooperative efforts on matters related to the conservation and sustainable use of biodiversity in achieving sustainable development, including as it relates to preserving traditional knowledge and practices of indigenous communities.
<b>14. Forest Sector Governance</b>	Annexed to Peru's environmental chapter, this provision sets out various activities and policies that Peru agrees to pursue in accordance with its obligations under CITES to improve sustainable management of forests, combat illegal logging, and promote trade in legally harvested forest products. Includes option for public participation.
<b>15. Preamble</b>	Varying language in FTAs. Over time moves from a focus on commitment to enforce domestic environmental laws to one on implementing the FTA in a manner that is consistent with environmental protection.
<b>16. Dispute Settlement – Environmental Expertise</b>	Requires that the dispute settlement panel include members who have experience or expertise relevant to the subject matter under dispute, for any dispute arising under the Environment Chapter.
<b>17. Environmental Exceptions</b>	Agreements apply WTO GATT Article XX environmental exceptions into various chapters, including investment, procurement and general exceptions, in referencing right of parties to adopt measures necessary to implementing MEAs.
<b>18. Enforcement of domestic environmental laws</b>	Parties shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, <i>in a manner affecting trade between the parties</i> (emphasis added).
<b>19. Corporate Stewardship</b>	Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies.
<b>Provisions unique to US Agreements</b>	
<b>20. Public Participation – Procedural Matters</b>	Parties shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law and that judicial, quasi-judicial, or administrative proceedings are available under its law to provide sanctions or remedies for violations of its environmental laws.
<b>21. Public Participation – Submissions on enforcement</b>	Allows for any person of a Party to file a submission asserting that a Party is failing to effectively enforce its environmental laws, which

<sup>2</sup> In US agreements, over time the language changes from 'parties recognize the importance of MEAs...' (US-Chile FTA) to 'Parties recognize that MEAs to which *they are both/ all party* play an important role globally...' (US-Australia FTA through US-Panama TPA.).

<sup>3</sup> All agreements explicitly state that covered agreements include MEAs to which *both Parties are already a party* except for the EU-Colombia and Peru FTAs, and NAFTA. Additionally, the EU-Korea FTA is the only agreement that does not list specific covered agreements after referencing parties' obligations to all MEAs to which *both parties are already a party*.

<b>matters</b>	may, at the discretion of the Secretariat trigger an investigation into the matter and under some circumstances, the publication of a factual record.
<b>22. Dispute Settlement – Restricted to Failure to Enforce</b>	Dispute Settlement procedures do not apply to any matter arising under any provision of the Environment Chapter other than the article (usually 2.1a) stating that “neither Party shall fail to effectively enforce its environmental laws” [full wording found in #18 of this document].
<b>23. Dispute Settlement – No Restrictions</b>	Implementation of entire Environment Chapter subject to formal dispute settlement process as outlined in the Dispute Settlement Chapter.
<b>24. Investment</b>	Parties can enact measures to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

**TABLE 3 ENVIRONMENTAL PROVISIONS IN EU AGREEMENTS**

<b>EU Environmental Provision</b>	<b>Provision Description</b>
<b>Provisions found in both EU and US Agreements<sup>4</sup></b>	
<b>1. Regulatory Sovereignty</b>	Recognizes the right of each Party to establish its own levels of environmental protection and associated laws and regulations.
<b>2. Continued strengthening of environmental protection</b>	Parties shall ensure that environmental laws provide for and encourage high levels of environmental protection and shall strive to improve environmental laws.
<b>3. Environmental laws will not be relaxed to enhance trade</b>	Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws against pollution.
<b>4. Mechanisms to Enhance Environmental Performance in Trade</b>	Parties recognize that flexible, voluntary, and incentive-based mechanisms can create coherence between trade and sustainable development and shall encourage the development of such mechanisms as appropriate and in accordance with its law. Parties strive to promote trade and foreign direct investment in environmental goods and services. <sup>5</sup>
<b>5. Sub-committee on Trade and Sustainable Development</b>	A joint body made up of senior-level officials <sup>6</sup> established to monitor implementation of the sustainable development chapter (through non-binding recommendations), including promotion of public participation and role in dispute resolution.
<b>6. Opportunities for Public Participation</b>	Parties shall ensure that procedures exist for dialogue with civil society concerning the implementation of Environment Chapters. <sup>7</sup>
<b>7. Environmental Consultation</b>	Establishes a process for resolution of any matters of mutual interest

<sup>4</sup> n. 177

<sup>5</sup> Some agreements specifically encourage trade of goods certified under ethical and fair trade schemes and eco-labels.

<sup>6</sup> The terminology used for this body differs in agreements: Subcommittee on Trade and Sustainable Development in the EU-Colombia and Peru FTAs; Committee on Trade and Sustainable Development in the EU-Korea FTA; and Board on Sustainable Development in the EU-Central America FTA.

<sup>7</sup> Requires parties to establish some form of a *domestic advisory group*, consisting of relevant stakeholders that meet with the Sub-committee to share opinions and recommendations regarding the implementation of the sustainable development chapter.

	arising under this Title through a consultative process (agreements vary in next step taken should a Party deems that the matter needs further discussion, usually refer matter to Sub-committee).
<b>8. Environmental Consultation – Obligation to consider covered agreements</b>	Consulting parties required to take relevant MEAs to which they are party into account in consultation process regarding disagreement between parties over matter of mutual interest.
<b>9. Environmental Roster</b>	Establishes a roster of people with environmental law/ international trade expertise to serve as panelists in any disputes arising under the Sustainable Development Chapter.
<b>10. Relationship to Multilateral Environmental Agreements</b>	Parties recognize importance of MEAs to achieving international environmental goals and commit to continuing support and cooperation on issues related to trade and the environment.
<b>11. Covered Agreement</b>	Parties reaffirm commitment to implement laws and practices of MEAs listed in the agreement. <sup>8</sup>
<b>12. Environmental Cooperation</b>	Parties commit to cooperate in activities necessary to implementing agreement, and to improve policies and practices related to environmental protection.
<b>13. Biological Diversity</b>	Commits parties to cooperative efforts on matters related to the conservation and sustainable use of biodiversity in achieving sustainable development, including as it relates to preserving traditional knowledge and practices of indigenous communities.
<b>14. Forest Sector Governance</b>	Parties recognize importance of improving sustainable management of forests, combating illegal logging, and promoting trade in sustainable and legally harvested forest products, including effectively implementing CITES with regard to endangered timber species. Includes option for public participation in forest management.
<b>15. Preamble</b>	Preamble references protection of environment and/or need to pursue sustainable development in all trade relationships.
<b>16. Environmental Consultation – Environmental Expertise</b>	Parties may request a panel of experts to be convened as final stage of monitoring a disagreement over any matter of mutual interest, if disagreement has not been resolved within 90 days through previous government consultations.
<b>17. Environmental Exceptions</b>	Agreements apply WTO GATT Article XX environmental exceptions in referencing right of parties to adopt measures necessary to implementing MEAs <sup>9</sup>
<b>18. Enforcement of domestic environmental laws</b>	Parties shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, <i>in a manner affecting trade between the parties</i> (emphasis added).
<b>19. Corporate Stewardship</b>	Parties shall promote the modernization and restructuring of industry with the objective of strengthening the private sector under conditions promoting environmental protection.
<b>Provisions unique to EU Agreements</b>	
<b>25. Context and objectives</b>	The parties reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of

<sup>8</sup> All agreements explicitly state that covered agreements include MEAs to which *both parties are already a party* except for the EU-Colombia and Peru FTAs, and NAFTA. Additionally, the EU-Korea FTA is the only agreement that does not list specific covered agreements after referencing Parties' obligations to all MEAs to which *both parties are already a party*.

<sup>9</sup> EU agreements include specific reference to GATT Article XX's chapeau sentence, which states that such measures should not be applied in a 'manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade'. GATT, n. **Error! Bookmark not defined.** above, Article XX.

	sustainable development and to ensuring that this objective is integrated and reflected at every level of their trade relationship.
<b>26. Inter-generational equity</b>	‘Context and Objectives’ section beginning the Sustainable Development Chapter recognizes the importance of sustainable development to both present and future generations.
<b>27. Scientific Information</b>	Scientific information is taken into account when preparing and implementing measures aimed at protecting health and safety at work or the environment which affect trade between the Parties.
<b>28. Precautionary Principle</b>	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.
<b>29. Review of Sustainability Impacts</b>	Parties commit to further monitor implementation of agreement by reviewing Trade Sustainability Impact Assessments through domestic and participative processes.
<b>30. Transparency</b>	Commitment to developing and implementing environmental policies affecting trade in a transparent manner, including public consultation and timely communication with non-State actors.
<b>31. Trade in Fish Products</b>	Parties recognize importance of conserving sustainable fisheries and of promoting the sustainable trade in fishery products; of combating illegal, unreported and unregulated fishing; and of cooperation regarding regional fisheries management organizations
<b>32. Climate Change</b>	Parties recognize that climate change is an issue of global concern and commit to cooperate with all countries in fighting its effects, in line with the principles of the UNFCCC and the Kyoto Protocol. Parties specifically resolve to promote domestic policies to mitigate climate change and to develop adaptation efforts, particularly in developing countries. Parties will promote trade and investment measures that facilitate access to best available technologies for clean energy produce and use.
<b>Provisions unique to EU Agreements – Excluded from Table 1<sup>10</sup></b>	
<b>33. Regional Cooperation</b>	Regional Cooperation shall focus on environmental issues.
<b>34. Sustainable Development</b>	Cooperation shall aim at preventing deterioration of the environment, controlling pollution and ensuring the rational use of natural resources, with a view to ensuring sustainable development.
<b>35. Environmental Focus</b>	Cooperation shall focus specifically on outlined environmental issues; varies in agreements but may include: desertification, quality of Mediterranean water and prevention of marine pollution, water resource management, energy management, waste management, salinization, management of sensitive coastal areas, the impact of industrial development, the impact of agriculture on soil and water quality, environmental education and awareness. <sup>11</sup>
<b>36. Tourism</b>	Parties shall ensure that the interaction between tourism and the environment is suitably maintained.

<sup>10</sup> These provisions are environment-relevant but more peripheral to environmental governance and therefore excluded from Table 1 for a lack of space. They are included here to demonstrate the far reach of the EU’s environmental linkages in FTAs in comparison to the US.

<sup>11</sup> Similar but different in the three agreements: Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part [1999] OJ L205/3, Article 57; Euro–Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part [2004] OJ L304/39, Article 44; EU-Chile AA, n. **Error! Bookmark not defined.** above, Article 28.

<b>37. Energy</b>	The priority areas of cooperation shall be the promotion of renewable energies, and the promotion of energy-saving and energy efficiency.
<b>38. Organized Crime</b>	The Parties shall establish cooperation aimed at preventing illegal activities such as ... illegal transactions of various goods, including industrial waste.
<b>39. Mining</b>	The cooperation shall focus in particular on... the adoption and implementation of environmental legislation...in the mining industry and in raw materials.
<b>40. Legislative Cooperation</b>	The approximation of laws shall extend to the following areas in particular: laws and regulations governing ... the environment.