

International Trade, Development and the Environment

A Review of Instruments,
Negotiations, Processes and Actors
Relevant for Latin America

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ACRONYMS

ALBA	Bolivarian Alliance for the Peoples of the Americas - Alianza Bolivariana para los Pueblos de Nuestra América
ALCA	Area de Libre Comercio para las Américas
APEC	Asia-Pacific Economic Cooperation Forum
CAN	Andean Community
CBD	Convention on Biological Diversity
CCAD	Central American Commission on Environment and Development
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DR-CAFTA	Dominican Republic – Central America - USA Free Trade Agreement
EU	European Union
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
MERCOSUR	Southern Common Market
MEAs	Multilateral Environmental Agreements
NAFTA	North American Free Trade Agreement
UNCED	United Nations Conference on Environment and Development
WB	World Bank
WTO	World Trade Organization

INSTITUTIONS

The Regional Programme Energy Security and Climate Change in Latin America (EKLA) of the Konrad Adenauer Foundation (KAS) aims to provide both traditional and new (digital) platforms to initiate a supra-regional dialogue on climate change, energy and environmental policies. We focus on geostrategic analysis, debates and perspectives, emphasizing the close cooperation with German and European actors.

The Peruvian Society of Environmental Law (SPDA) is a non-profit civil association that since its foundation in 1986, has worked continuously in the promotion of environmental policies and legislation and in the design and implementation of instruments that favor sustainable development under the principles of governability, equity and justice.

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INTRODUCTION

During the last four decades, and as a main component of globalization, a generalized liberalization and open market process has taken place in most countries worldwide. Many see liberalization as an essential part of (sustainable) development. Many countries, mainly Asia and Latin America, have gradually begun to emerge from poverty and under development, as a result, among other things, of international trade. However, paradoxically, the openness of international trade has increased the pressure on natural resources and capacities of many countries to address its consequences, including pollution, land degradation, loss of biodiversity, increase in the concentration of greenhouse gases, and negative impacts on natural resources in general.¹

The first policy brief of the series “Trade and Environmental Policy” of the EKLA Program of Konrad Adenauer-Stiftung Foundation and the Peruvian Society for Environmental Law, addressing International Trade, Development and the Environment: A Review of

Instruments, Negotiations, Processes and Actors Relevant for Latin America, presents an overview and synthesis of the debate and current negotiation processes concerning trade, and their relationship with the environment. This brief is a first overview which will lead to more detailed and analysis of specific issues in upcoming numbers of this series, including on the trade relationships with climate change, biodiversity, intellectual property and food security.

The purpose of this series of briefs is to facilitate understanding by negotiators and different actors involved in trade and environment negotiations, about the present history and situation of ongoing negotiation processes. They furthermore seek to present in a simple manner the implications of these negotiations in the context of an increasingly complex institutional and normative architecture on trade and the environment, and the links between them.

1. Part of the current debate on globalization is not only whether economic growth or efficiency in countries is due to trade and open markets, but what does *inequality* mean in a context of growth and concentration of wealth in the hands of a few. This debate is only marginally reaching Latin America, except for a few political movements and research centers that have drawn attention to limitations in contemporary economic liberalism - driven from the Washington Consensus (1989) by U.S.A. and mainly the EU. Some countries such as India have raised the debate in several multilateral forums, and intellectuals like Noam Chomsky have brought to the attention the paradox of economic liberalism: applied dogmatically in developing countries, but selectively in developed countries that subsidize their agriculture, bail out large financial companies and institutions with public funds, and benefit from public goods such as public research to subsequently generate monopoly rights (intellectual property) on innovations based on these goods. See, Stiglitz, J. (2007) *Making Globalization Work*. WW Norton & Company, London.

1. GENERAL CONTEXT AND BRIEF HISTORY

The intensification of discussions over the relationship between international trade and the environment dates back to the 1990s, when the General Agreement on Tariffs and Trade (GATT) was signed, the World Trade Organization (WTO) was created to administrate and manage this Agreement² and a process of increasing environmental concern began with the United Nations Conference on Environment and Development (UNCED).³ GATT Contracting Parties are for the most part the same as those in Multilateral Environmental Agreements (MEAs), with a few exceptions.

In simple terms, in the context of international trade negotiations, trade proponents aim to ensure that environmental measures do not become barriers or distort trade, while in the context of MEAs, there are ongoing discussions about the prevalence which these agreements, their mandates and principles may have or not in terms of environmental protection in general and over international free trade principles.

While Article XX of GAT, sections b) and g) determine that environmental protection shall not constitute a

means of discrimination or a disguised restriction on trade respectively,⁴ different MEAs (e.g. the Convention on International Trade in Endangered Species, the Convention on Biological Diversity, the Cartagena Protocol on Biosafety, etc.), the Aichi Biodiversity Targets (2010), the Rio Declaration Principles (1992), the Sustainable Development Goals (2015), are based on the sovereignty of States to establish certain conditions for, among others, trade on biodiversity components, and recognize the power of Member States to protect the environment and biodiversity in general, under domestic legislation. The principles of most favorable nation and national treatment (GATT Articles I and III respectively), have environmental implications whilst also related to non-discrimination in general.⁵

The WTO and its different agreements have been, to a large extent, the basic “template” for negotiating dozens of bilateral, regional and multilateral trade agreements, mainly as a result of the paralysis suffered by the WTO process due to the impossibility to advance with particularly difficult issues confronted by different countries with each another (e.g. agriculture,

2. To review the history of GATT and the WTO, see, Mindreau, M. (2005) *Del GATT a la OMC: La Economía Política Internacional del Sistema Multilateral de Comercio*. Universidad del Pacífico. Lima, Perú.

3. Important precedents of UNCED are the United Nations Conference on the Human Environment of 1972 and the Brundtland Report (Our Common Future) of 1989.

4. Article XX of the GATT (on General Exceptions) provides that as long as there is no unjustifiable or arbitrary discrimination, or a disguised restriction on international trade, any contracting party may enforce measures “(b) necessary to protect human, animal or plant life or health [...] and (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restriction on domestic production or consumption”. This is the basis on which countries can apply (under certain limitations) environmental restrictions on trade activities.

5. UNEP, IISD. (2005) *Environment and Trade: A Handbook*. Second Edition. UNEP. Canada. Available at http://www.iisd.org/pdf/2005/envirotrade_handbook_2005.pdf.

phytosanitary measures, services), as well as the increasing resistance of organized civil society due to perceived inequality and asymmetry in the negotiation processes. However, agreements under the WTO lack specific and substantive provisions in terms of environmental protection. In contrast, environmental protections and safeguards have been incorporated with detail in many different trade agreements around the world.⁶

However, the WTO does have a Committee on Trade and Environment where matters on trade and environment have been addressed. Furthermore, unlike MEAs, the WTO relies on institutionalized mechanisms in terms of dispute settlements, including those that confront environmental measures versus free trade. Many Dispute Settlement Panels and the Appellate Body of the WTO have ruled on disputes related to the application of environmental standards and their effect on trade.⁷ Their rulings are mandatory and include possible sanctions if not complied with. The GATT/WTO system is very strong and “incentive-based” in terms of its potential sanctions to countries.

As time has gone by, and partly due to the relative “freezing” of multilateralism represented by the WTO as of the Doha Round (2001), aimed at reviewing the advances of trade liberalization and considering development from a perspective of developing countries,

in addition to revising advances in the implementation of some GATT instruments,⁸ several regional and bilateral agreements on trade have given rise to a complex legal and institutional architecture that has gradually been incorporating substantial environmental provisions. These refer to a multiplicity of environmental dimensions such as environmental protection standards, commitments to adopt determined environmental agreements, provisions on intellectual property with implications on the environment and biodiversity, obligations for the protection of forests, and the establishment of consultation bodies among countries for environmental matters.

One way in which trade promotion agreements are usually related to environmental issues is by their norms that suggest, recommend or force the signature and implementation of certain MEAs of particular relevance for the parties. For example, in agreements with the European Union (as illustrated in Box No. 1), the European bloc has a special interest in climate change, and thereby, the focus is on the United Nations Framework Convention on Climate Change and Paris Accord. Other interests may include wildlife trafficking, biodiversity protection or hazardous waste international movement. Box No. 1 also show the “type” of environmental provision included in trade agreements..

6. It is important to indicate that as part of the Doha Round negotiations in July 2014, a group of countries headed by the U.S.A. and European Union introduced under the WTO, negotiations for a plurilateral agreement for the liberalization of environmental goods. The group is composed of 18 countries, the vast majority developed countries. Costa Rica is the only Latin American participant. Background information of this negotiation dates back to the APEC List (Asia-Pacific Economic Cooperation) of environmental goods of 2012. According to estimates, the trade of environmental goods reaches US\$ 1000 million *per* year. The economic potential is enormous, up to US\$ 3000 million by the end of this decade. The opportunities that liberalization of these products represent for mitigation and adaptation to climate change, energy efficiency and transition to a green economy are also very considerable. See, Vosenaar, R. (2014) *El Acuerdo sobre Bienes Ambientales y sus Beneficios Climáticos*. Revista Puentes, ICTSD, available at <https://www.ictsd.org/bridges-news/puentes/news/el-acuerdo-sobre-bienes-ambientales-y-sus-beneficios-clim%C3%A1ticos>.

7. To learn more on the different cases resolved, we recommend you review: OMC (2011) Solución de Diferencias en la OMC: Resúmenes de una Página por Caso – 1995-2011. Available at: https://www.wto.org/spanish/res_s/booksp_s/dispu_summary95_11_s.pdf.

8. Although the Doha Ministerial Declaration promised a number of measures to encourage the development of least developed countries, the reality nearly two decades later is that the WTO as an instrument to encourage free trade directed to development has faced considerable limitations that are reflected in simple terms on issues such as: the impossibility to reduce agricultural subsidies, mainly in developed countries; the impossibility to implement measures on differentiated treatment for developing countries; the costs for dispute settlement procedures are out of reach for developing countries, (more than 95%) of the demand presented come from developed countries; trade has reached high levels of efficiency but has slowly advanced on matters of equality. See, The Guardian. *The WTO has Failed Developing Countries*. Nov. 14th 2014. Available at: <https://www.theguardian.com/global-development/poverty-matters/2011/nov/14/wto-fails-developing-countries>.

Box No. 1 Examples of environmental provisions in trade agreements

Environmental provision	Agreement
Article 10.11: Investment and environment 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 concerns.	Dominican Republic – Central America – USA Free Trade Agreement (2004)
Article 18.1: Levels of Protection Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection.	United States – Peru Trade Promotion Agreement (2007)
Multilateral Environmental Standards and Agreements: Article 270: (2) The Parties reaffirm their commitment to effectively implement in their laws and practices the following multilateral environmental agreements: the Montreal Protocol on Substances that Deplete the Ozone Layer adopted on 16 September of 1987, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal adopted on 22 March 1989, the Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001, the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed on 3 March 1973 (hereinafter referred to as “CITES”), the CBD, the Cartagena Protocol on Biosafety to the CBD adopted on 29 January 2000, the Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted on 11 December 1997 (hereinafter referred to as “Kyoto Protocol”) and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998.	Trade Agreement between Peru and the European Union (2011)
Chapter 2: Protection of Biodiversity and Traditional Knowledge: Article 201: (5) Colombia and the EU Party will collaborate in further clarifying the issue and concept of misappropriation of genetic resources and associated traditional knowledge, innovation and practices so as to find, as appropriate and in accordance with the provisions of international and domestic law, measures to address this issue.	Trade Agreement between Colombia and the European Union (2011)

Often, certain issues and elements in trade agreements are discussed in spaces which are not strictly commercial or trade related, such as the Forum of Ministers of Environment for Latin America and the Caribbean or the Group of Like Minded Megadiverse Countries. Box No. 2 presents certain spaces and fora where environmental and trade issues are discussed and negotiated as part of their ongoing agendas. It includes spaces which are clearly commercial or trade related such as G-20 and MERCOSUR where environmental dimensions also permeate their agendas.

Although these trade agreements vary for obvious reasons, they tend to incorporate this type of consideration. Box No. 3 reflects some of the trade agreements celebrated by countries in Latin America during recent years, and also includes processes underway. This is the most evident reflection of how the WTO multilateralism has provided bilateral and regional versions of trade agreements. To a certain degree, the resistance is not to international trade, but to the WTO and its processes.

Box No. 2 Important landmarks for Latin America in terms of negotiation and discussion processes or forums on international trade, environment and development

Forum or process	Starting year	Countries of Latin America that intervene
Forum of Ministers of Environment for Latin America and the Caribbean (in the scope of the United Nations Environment Programme – Regional Programme for Latin America and the Caribbean)	1998	All Latin American and Caribbean countries
Southern Common Market (MERCOSUR)	1991	Argentina, Brazil, Paraguay, Uruguay
G20	1999	Argentina, Brazil, Mexico
Group of Like-Minded Megadiverse Countries	2002	Brazil, Costa Rica, Colombia, Ecuador, Mexico, Peru and Venezuela
Caribbean		
Bolivarian Alliance for the Peoples of Our America (ALBA-TCP)	2004	Bolivia, Cuba, Ecuador, Nicaragua, Venezuela
Pacific Alliance	2012	Colombia, Chile, Mexico and Peru

Much has changed with regards to trade interests and the development of countries from the 1970s to date. At that time, without exception, Latin American countries were part of the Non-Aligned Countries and G-77 bloc, that represented, in general terms, the underdeveloped countries, and defended their own interests in the face of Northern industrialized countries. At present, specific interests have become fragmented making it difficult to refer to monolithic blocks. Furthermore, depending on the forum or negotiation in question, the interests of Latin American countries converge (or not) to a larger extent.

The cases of Brazil and Mexico are particularly notorious. Although they are part of Latin America, for several reasons⁹ they do not necessarily share the same expectations and geopolitical, commercial and strategic interests with the region. There are spaces, particularly in terms of biodiversity, for example, where as part

of the Group of Like-Minded Megadiverse Countries, Brazil, Bolivia, Colombia, Costa Rica, Ecuador, Peru and Venezuela have maintained similar positions with regard to negotiations under the Convention on Biological Diversity (CBD) or during the Johannesburg World Summit on Sustainable Development (2003). However, in that same area, negotiating the Cartagena Protocol on the Transboundary Movement of Living Modified Organisms confronted countries such as Argentina, Uruguay and to a certain point Brazil, with other countries in the region. The position of these countries has been different regarding negotiations on climate change, resulting in the Paris Agreement or Accord (2016). Countries such as Mexico and Brazil were always more likely to align their interests with China, India, Russia and other emerging economies, reluctant to see their development options affected by excessively high impositions or environmental standards.

9. These include the size of their markets, their geographical and ideological proximity to the U.S.A. and their level of technological development, among others.

Box No. 3 Trade agreements and commercial negotiation processes underway in Latin America

Name of the Free Trade Agreement (TLC)	Countries entering the agreement	Year of entry into force
North American Free Trade Agreement (NAFTA)	United States, Canada and Mexico	1994
FTA Chile-Mercosur	Chile and Mercosur	1996
FTA Chile-Canada	Chile and Canada	1997
FTA Chile-Mexico	Chile and Mexico	1999
FTA Mexico-European Union	Mexico and the European Union	2000
FTA Mexico-EFTA	Mexico and the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland)	2001
FTA Mexico-Israel	Mexico and Israel	2001
FTA Canada-Costa Rica	Canada and Costa Rica	2002
FTA United States – Chile	United States and Chile	2004
FTA Chile-EFTA	Chile and the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland)	2004
FTA Chile-South Korea	Chile and South Korea	2004
FTA Mexico-Uruguay	Mexico and Uruguay	2004
CAFTA-DR	United States, Central America and the Dominican Republic	Signed in 2004, with different dates of entry into force
FTA Mexico-Japan	Mexico and Japan	2005
FTA Chile-China	Chile y China	2006
FTA Chile-Panama	Chile y Panama	2008
FTA Canada-Peru	Canada and Peru	2009
FTA Chile-Colombia	Chile and Colombia	2009
FTA Chile-Peru	Chile y Peru	2009
FTA Peru-United States	Peru and the United States	2009
FTA Peru-China	Peru and China	2010
FTA Canada-Colombia	Canada and Colombia	2011
FTA Chile-Turkey	Chile and Turkey	2011
FTA Colombia-EFTA	Colombia and the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland)	2011

Name of the Free Trade Agreement (TLC)	Countries entering the agreement	Year of entry into force
FTA Peru-South Korea	Peru and South Korea	2011
FTA Peru-EFTA	Peru and the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland)	2011
FTA Costa Rica-China	Costa Rica and China	2011
FTA Colombia-United States	Colombia and the United States	2012
FTA Panama-United States	Panama and the United States	2012
FTA Peru-Japan	Peru and Japan	2012
FTA Mexico-Central America	Mexico and Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua	El Salvador and Nicaragua (2012); Costa Rica, Guatemala and Honduras (2013)
FTA Canada-Panama	Canada and Panama	2013
FTA Central America-European Union	Central America and European Union	2013
FTA Colombia-European Union	Colombia and the European Union	2013
FTA Peru-European Union	Peru and the European Union	2013
FTA Costa Rica-Peru	Costa Rica and Peru	2013
FTA Costa Rica-Singapore	Costa Rica and Singapore	2013
FTA Canada-Honduras	Canada and Honduras	2014
FTA Chile-Vietnam	Chile and Vietnam	2014
FTA Central America EFTA	Central America and the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland)	2014
FTA Chile-Thailand	Chile and Thailand	2015
FTA Colombia-Costa Rica	Colombia and Costa Rica	2016
FTA Colombia-South Korea	Colombia and South Korea	2016
The Pacific Alliance (Additional Protocol to the Framework Agreement of the Pacific Alliance)	Chile, Colombia, Mexico and Peru	2016
Colombia-Mercosur	Colombia and Mercosur	2017
Ecuador-European Union	Ecuador and the European Union	2017
Integral and Progressive Treaty for the Trans-Pacific Partnership (TPP-11)	Australia, Brunei, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore y Vietnam.	Under negotiation

2. MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAS)

Several MEAs in force are, essentially, trade agreements or protect environmental interests in terms of regulations on certain environmental goods and services or biodiversity. Box No. 4 summarizes the main MEAs

that regulate the trade of biodiversity components or are based on trade measures to protect environmental interests.

Box No. 4 Key MEAs with provisions or commercial content

Agreement	Year	Objective and matter
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	1975	Regulates the international trade and traffic in threatened and endangered species of plants and animals, and biological parts. Lists are established to determine the level of threats and dangers, implementing procedures and standardized documentation among countries.
Montreal Protocol on Substances that Deplete the Ozone Layer	1987	The first treaty to take measures aimed to protect global nature from the worldwide emissions of certain substances. The framework eliminated 97% of the production of nearly 100 ozone-depleting substances (ODS) and established national commitments to eliminate the production and remaining consumption ODS towards 2030 or before. It is probably the most successful and effective MEA: The Vienna Convention for the Protection of the Ozone Layers (1985) and Montreal Protocol are the first environmental treaties to be universally ratified.
The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal	1992	Establishes a global notification and consent procedures for the transboundary movement of hazardous wastes and other wastes among Parties. It requires all Parties to manage and dispose of the wastes in an "environmentally sound manner".
United Nations Framework Convention on Climate Change	1992	Recognizes the principle of common but differentiated responsibilities. It requires developed countries (Annex 1) to take actions with the aim to reach 1990 levels of emissions of green-house gases by 2000 without a binding obligation. It is through the Kyoto Protocol that periodic implementation was established to ensure commitments where adequate to achieve the general objective.
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	1998	Regulates the way countries evaluate the risks and approve international trade operations for hazardous chemicals and pesticides. The objective is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm.
Cartagena Protocol on Biosafety regulating the transboundary movement of living modified organisms.	2000	Differentiates the living modified organisms destined for their introduction into the environment from those intended for direct use as food or feed. It establishes a prior informed consent procedure for living modified organisms; for the remainder it only requires labeling.
FAO International Treaty on Plant Genetic Resources for Food and Agriculture	2001	Establishes a special regime for the movement and flow (trade) of plant genetic resources for food and agriculture, through Standard Material Transfer Agreements.
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits	2010	Establishes an international system to regulate the flow and transboundary movement of genetic resources and derived products, and the fair and equitable sharing of benefits from their utilization.

3. SYNTHESIS OF KEY TRADE AGREEMENTS AND PROCESSES UNDERWAY

3.1 Major agreements

Below is an overview of some of the most relevant trade agreements for Latin American countries. In addition, some agreements for the creation of active integration and cooperation blocs are included, given that for different reasons, they have also been important for social, economic and in some cases environmental development. It is a synthesis that once again reflects a complex architecture interests and commitments.

From the review of the main trade agreements, with some obvious differences due to the characteristics of stakeholders and contracting parties, it is possible to identify a general but very clear pattern in terms of “unavoidable” issues in the agreements: non-discrimination principles (national treatment and most favored nation), agriculture, intellectual property, sanitary measures, technical trade barriers, environmental institutional frameworks and environmental issues.

Free Trade Agreement between U.S.A., Central America and the Dominican Republic (CAFTA-DR)¹⁰

CAFTA-DR was one of the first regional trade agreements celebrated, once the ineffectiveness of the WTO became very apparent. CAFTA was agreed in 2004 between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Dominican Republic and the U.S.A. CAFTA-DR was the first agreement of its type to include substantial provisions for environmental protection (Chapter Seventeen – Environmental). It establishes an Environmental Affairs Council and recognizes the right of each Contracting Party to provide its own levels of environmental protection, and

environmental development policies and priorities, as well as adopt or modify consequentially, its environmental norms and policies, guaranteeing high levels of environmental protection. In addition, it recognizes the need to provide public participation mechanisms on environmental matters, generate resources to interpose actions due to non-compliance of environmental legislation and enhance environmental cooperation spaces among countries.

10. See CAFTA-DR text at: http://www.sice.oas.org/Trade/CAFTA/CAFTADR/CAFTADRin_s.asp.

Free Trade Agreement between Canada, U.S.A. and Mexico (NAFTA)

NAFTA was signed in 1994, nearly in parallel to the creation of the WTO, integrating Canada, U.S.A. and Mexico into one of the largest areas of free trade in the world. The objective of NAFTA is to eliminate the trade barriers and investments among its member countries. As a result of NAFTA, a substantial part of tariffs on importations were eliminated (e.g. a third of USA goods imported by Mexico and half of the tariffs of Mexican goods imported by U.S.A). NAFTA was a major milestone in the gradual liberalization of the economy and trade process and was a visible sign of the emerging globalization. Key elements of NAFTA are the provisions on intellectual property, transport infrastructure, agriculture, dispute resolution mechanisms and free movement among citizens. Equally

important although incorporated as separate agreements between the three countries, are their environmental provisions and the creation of a Commission for Environmental Cooperation.

The new administration in the U.S.A. has begun renegotiating NAFTA. Despite the turmoil and the initial resistance by Mexico and Canada, this is an opportunity and at the same time a major challenge to rethink the commercial and strategic relationship with the U.S.A. in terms of market access, rules of origin and norms, including those referred to intellectual property, investment, dispute resolutions and environment, among others.

Trans-Pacific Partnership (TPP)

The TPP was signed by Australia, Brunei, Canada, Chile, U.S.A., Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam in 2016. It pledges to become one of the most important free trade agreements of the world, as it represents nearly 1/3 of the global GDP. After the U.S.A. and its new administration denounced the TTP, all the other countries rewrote the free trade agreement under the denomination of Comprehensive and Progressive Agreement for Trans-Pacific Partnership.¹¹

The TTP addresses trade matters in the areas of agriculture, livestock, intellectual property, automobile

industry and the environment. Chapter 20 on environment is particularly ambitious and seeks to promote compatible trade and environmental policies, based on high levels of environmental protection, the effective application of environmental laws at the national level and capacity building for contracting parties to address environmental matters related to trade, including cooperation. It incorporates general provisions on environmental protection and recognizes the importance of MEAs, including the protection of the ozone layer and the marine environment from ship-source pollution

11. To learn more on the TPP content see: <http://wtocenter.vn/tpp/full-text-comprehensive-and-progressive-agreement-trans-pacific-partnership-cptpp>.

The Group of Twenty (G-20) and BRICS

The G-20 was established in 1999 and is formed by 19 countries, plus the EU. Only Argentina, Brazil and Mexico in Latin America are part of this exclusive group that as a whole brings together the largest economies in the world – including industrialized countries and those with emerging economies. The G-20 represents 85% of the global gross domestic product, 2/3 of the world population and 80% of international trade. Ministers of economy and finance and heads of the central banks participate in the G-20. Representatives of the most important financial institutions in the world also participate in the meetings: World Bank (WB), International Monetary Fund (IMF), among others. Although its mandate was initially confined exclusively to finances, at present, the G-20 debates and policy agendas address a broader spectrum of matters that directly or indirectly affect social and economic stability, including for example, climate change and agriculture. It has increased its importance while other international negotiation spaces (economic and financial) such as the WTO, the G-7 and G-8 have weakened over time, with the suspension of Russia and growing influence and weight of the main emerging economies.¹²

Not only as a specific answer to the G-20, but given their strength as emerging economies (in a process of accelerated consolidation) and in part as the result of the 2008 financial crisis, the BRICS Group (Brazil, Russia, India, China, South Africa) is an intended political balance to the objectives and perspectives of the Group of Eight (G-8) and Seven (G-7), and the prevalence of global financial institutions such as the IMF and WB. From the size of their economies, South Korea, Mexico and Argentina have shown their readiness to become a part of BRICS. In recent years, BRICS countries have suffered strong economic, social and internal political problems that call into question the potential to bring together countries with very different visions for economic and political development. A major development for BRICS was the creation of the BRICS Development Bank in 2013 (with a capital of US\$ 100,000 million) as an institution that competes with the WB and IMF.

12. See G-20 website at <http://g20.org.tr/about-g20/g20-members/>.

3.2 Integration agreements (political, social, economic)¹³

Bolivarian Alliance for the Peoples of Our America – Peoples' Trade Agreement (ALBA-TCP)

The Bolivarian Alliance for the Peoples of Our America – Peoples' Trade Agreement (ALBA-TCP) or more commonly the Bolivarian Alliance for America is a regional organization founded in 2004. It is formed by various countries of Latin America and the Caribbean. Its objective is the fight against poverty and social exclusion on the basis of socialist economic approaches. Similar to BRICS, it is a sort of response to liberalism and prevailing policies for open trade in the region, in particular with the launching of the Free Trade Area of the Americas

(FTAA). It was founded and led by Venezuela and Cuba, and rapidly supported by Socialist (and Populist) inspired governments such as Argentina, Bolivia, Brazil, Ecuador and Nicaragua. The gradual deterioration of the Venezuelan economy, which served to finance ALBA and ensure the participation of various countries in the Caribbean through donation of oil, as well as other changes in the political orientation of countries such as Brazil and Argentine have substantially weakened the convening role, influence and capacity of ALBA.¹⁴

Asia-Pacific Economic Cooperation Forum (APEC)

The APEC is a high-level multilateral and cooperative regional economic forum created in 1989 to stimulate economic approaches between Asia and the Pacific Basin. It was basically aimed to ensure that goods and services moved easily between member countries (called "economies"), generating more favorable and predictable business and investment climates. It is formed by 21 member countries (economies), with only Chile, Mexico and Peru representing Latin America. Yearly sessions

generally take place with the participation of State Leaders, Presidents and high-level officials. Interestingly, it is a forum in which decision-making is reached by consensus and are non-binding in the legal sense. They are recommendations undertaken on a voluntary basis, reached through dialogue and the contrast of views.¹⁵

13. Although important for its emphasis on cooperation on environmental matters (and sustainable development), a summary of the Amazon Cooperation Treaty Organization (OTCA) has not been included for one simple reason: it is strictly a cooperation agreement that does not emerge from political, commercial and economic integration efforts but from a strategic view the countries of the Amazon Basin had in 1978, to envision the possibilities offered by the Amazon and its resources and environment to collaborate in research and joint action for this particular region. See the OTCA website at <http://www.otca-oficial.info/>.

14. See the official ALBA web site at <http://www.portalalba.org/>.

15. See the official APEC web site at <https://www.apec.org/About-Us/About-APEC>.

Pacific Alliance

The Pacific Alliance was created in 2012 and is formed by Colombia, Chile, Mexico and Peru. The objective of the Pacific Alliance is the integration of these countries to progressively seek the free movement of goods, services, capital and people and improve their economies. Likewise, it seeks to boost further growth, development and competitiveness of the economies of their members; as well as becoming a platform to political articulation, economic and trade integration with a projection towards the Asia-Pacific region, mainly in the context of the TPP negotiation.

Based on this common approach by member countries and the reality of a planet where environmental and sustainability considerations are unavoidable due to the amount of agreements/obligations signed by countries and the essential requirements for sustainable development, in 2016 as a result of a Ministerial Declaration, the Environmental and Green Growth Technical Group was created to strengthen growth and

sustainable development among the member countries of the Alliance. This Technical Group has been working on various projects and activities, from the systematization of lessons and experiences of Environmental Performance Evaluations in the four countries, the definition of a system that measures, reports and verifies climate change policies and strategies, in order to design a common system, as well as on a study on the advances and cooperation opportunities for green growth.

In the Ministerial Declaration, the countries also reaffirm their interest in strengthening sustainable production and consumption modalities, contributing to promote investments and environmental goods and services markets, strengthening green jobs and advance towards the better management of natural resources as part of a growing economic process that would benefit from the comparative advantages of these countries in terms of these resources.

Andean Community (CAN)

This agreement for policy and economic integration was signed in 1969. The Andean Community originally consisted of Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela. Chile withdrew early on, followed by Venezuela in 2006. The purpose of CAN is to promote policy and economic integration through a number of measures that include the free flow of people, the reduction of tariffs among member countries, the promotion of intraregional trade, etc. At the beginning it was a mainly economic/trade agreement. In the 1990s, Andean Decisions were formally adopted in terms of biodiversity, natural

disasters and natural resources, among others. The CAN environmental authority is the Andean Committee of Environmental Authorities (CAAA), created in 1998. There have not been specific controversies within the Andean Community with regards to trade and environmental measures as such. Although at the beginning the intention was to negotiate trade agreements as a bloc with the U.S.A. and European Union, political and ideological differences among CAN member led each country to negotiate and protect their individual interests.¹⁶

16. See the official CAN web site at <http://www.comunidadandina.org/>.

Southern Common Market (MERCOSUR)

The Southern Common Market (MERCOSUR) is a regional integration process made up by Argentine, Brazil, Paraguay and Uruguay, later incorporated by Venezuela and Bolivia. The purpose is to generate a dynamic cooperation space and trade opportunities between its members and other countries and regions. Democracy and economic development are its foundational pillars, made operational through different internal agreements that

address labor, cultural, economic and financial matters. In numbers, MERCOSUR constitutes in numbers the world's fifth largest economy with an internal market of more than 300 million people. As with most of the integration processes in Latin America, progress has been slow due to the political and ideological differences and situations marked by the main partners Argentine and Brazil.¹⁷

Central American Commission on Environment and Development (CCAD)

The CCAD created in 1999 is part of the Central American Integration System (SICA) that was in turn created in 1991, during the XI Central American Presidents Summit in Honduras.¹⁸ Countries that make up the SICA and thereby the CCAD are Belize, Costa Rica, El Salvador, Honduras, Nicaragua, Panama and Dominican Republic. The CCAD is the organ of SICA responsible for promoting environmental cooperation and development in the areas of pollution prevention, sustainable use of natural resources and re-establishment of ecological balance in the region. The CCAD seeks to promote cooperation

between countries through projects, programs, and different types of initiatives mainly financed by technical/ financial cooperation from institutions such as GIZ (German Agency for International Cooperation), the Inter-American Development Bank (IDB), the Andean Development Corporation (CAF), among others. The CCAD is not a negotiating authority and does not form a bloc in the international negotiation processes. However, it enables and facilitates capacity-building processes that are later reflected by countries during their environmental negotiations and others.

17. See the official MERCOSUR web site at <http://www.mercosur.int/innovaportal/v/3862/2/innova.front/en-pocas-palabras>.

18. To learn more about CCAD and its operations see <https://www.sica.int/ccad/index.aspx>.

3.3 The case of the Trade Promotion Agreement (FTA) between the United States and Peru: relevant issues

The Trade Promotion Agreement (FTA) between the United States and Peru (or commonly known as Free Trade Agreement),¹⁹ adopted in 2007, was a milestone for Peru in terms of negotiating this type of agreement with environmental matters incorporated into its content. Four substantive issues can be highlighted: a detailed annex on the forestry sector, and commitments by Peru to stop illegal logging and deforestation, with the U.S.A. providing technical and economic assistance for these purposes; a side letter on biodiversity, that proposes “soft” obligations and the recognition of biodiversity and traditional knowledge of indigenous peoples, and the need to protect them; this FTA also establishes a Secretariat for the Compliance of Environmental Matters (that operates within the Organization of American States); finally, there is an Environmental Chapter in the FTA that includes provisions on environmental standards, management of environmental security, contamination, among others.²⁰

The free trade agreement between the EU and Andean Countries, resulted in bilateral negotiations towards 2008 that concluded with separate FTAs between the EU and

Peru and Colombia, instead of a regional agreement. This agreement incorporates a number of environmental provisions on sustainable development. Unlike the FTA with U.S.A. where reference to “the environment” is central, environmental provisions in the FTA with the EU can be found under Title IX, Sustainable Development. Each Contracting Party has sovereignty and may establish its own environmental standards. This FTA is also bound to a system of trade preferences that the EU has with several countries, as long as they meet optimal levels of environmental protection, management and human rights; the latter issue of a particular interest for the EU. At the substantive level, the FTA with the EU incorporates obligations for biodiversity conservation and genetic resources; it contains general references regarding forestry matters; it refers to the compliance of objectives related to climate change; a Sub-Committee on Trade and Sustainable Development is created; finally, the need to promote mechanisms for civil society to participate in the application and implementation processes of the Agreement is highlighted as part of the EU’s concerns on human rights.²¹

19. See Chapter Eighteen, Environment, of the FTA, at: http://www.acuerdoscomerciales.gob.pe/images/stories/eeuu/espanol/Medio_Ambiente_limpio.pdf.

20. Pulgar Vidal, M. El Acuerdo de Promoción Ambiental y el Tratamiento de la Temática Ambiental. In: Cantuarias, F. y Stucchi, P. (Eds.) *El TLC Perú – EEUU: Contenido y Aplicación*. Universidad de Ciencias Aplicadas. Lima, Perú, 2008, p. 340- 358.

21. For further details see: Pulgar Vidal, M. y Ruiz, M. Comercio y Desarrollo Sostenible: Aspectos Medioambientales. En: Cantuarias, F., y Stucchi, P. (2013) *Perú, Colombia y la Unión Europea. Contenido, Análisis y Aplicación*. Universidad del Pacífico, Unión Europea. Lima, Peru. P. 413-430.

Final reflections

At present, and as a result of a long maturing process, reflection and incidence from different fronts, there is a generalized and broad consensus in the sense that there is no way to conceive development and progress by countries without taking the environmental variable into account. This is almost a given in any circle and discussion.

The concept “sustainable” development has permeated each and every one of the international negotiation processes in terms of trade and related matters. On the other hand, the idea of mutual supportiveness among MEAs and trade agreements and those emanating from the GATT and WTO has long been a regular part of the negotiation, interpretation and implementation efforts of these different instruments. However, there is a continued demand to decipher how this can be done in practice, particularly to the extent that globalized trade is also the direct and indirect cause of huge pressure on natural resources, biodiversity and the environment in general.

This sort of paradox begins to be recognized at the very least among negotiators and different stakeholders; likewise, through substantive environmental norms from many agreements on trade (e.g. FTAs), there is a growing effort to harness the strength of trade forces to prevent, mitigate and positively address environmental problems. This can be achieved by analyzing consumer preferences, price fluctuations, generation of waste, industrial

pollution, among others. This is already a significant progress.

International trade is a given factor that exists and shall not be significantly reverted medium-term,²² as the driver for development promoted by nearly all countries (discounting temporary and circumstantial protectionisms). One must identify based on environmental policies and norms, how to face and counter some of the forces this phenomenon triggers and tends to affect the vulnerable populations of developing countries (e.g. cheap seeds and “commodities” that affect the prices and small-scale farmers).

In this regard, it is important to ensure based on the negotiation forums that the rules and principles of trade do not necessarily prevail in the cases of conflicts and disputes. The same international environmental order offers principles (e.g. precaution, environmental impact studies, responsibilities from environmental damage, legitimacy to actuate, etc.) and has recognized fundamental rights that can be found even above the trade interests. This should be defended: there is no regulation that obliges one to “prefer” trade forums or trade principles to resolve dispute settlements where tensions and frictions arise among them and principles and rights of environmental nature recognized in a diversity of international instruments.

22. The Fourth Industrial Revolution (based on information technology applied to all productive sectors and to human activities in general) will change some patterns and ways of dealing with international trade. However, the resulting goods and products from the demands of foods, goods and services shall continue to be very high and increasing. See: Reports on the World Economic Forum. *Fourth Industrial Revolution for the Earth Series* (World Economic Forum). Available at: <https://www.weforum.org/projects/fourth-industrial-revolution-and-environment-the-stanford-dialogues>.

REFERENCES

Mindreau, M. (2005) *Del GATT a la OMC: La Economía Política Internacional del Sistema Multilateral de Comercio*. Universidad del Pacífico. Lima, Peru.

OMC (2011) Solución de Diferencias en la OMC: Resúmenes de una Página por Caso - 1995-2011. Disponible en https://www.wto.org/spanish/res_s/booksp_s/dispu_summary95_11_s.pdf.

Pulgar Vidal, M. El Acuerdo de Promoción Ambiental y el Tratamiento de la Temática Ambiental. En: Cantuarias, F. y Stucchi, P. (Eds.) *El TLC Perú - EEUU: Contenido y Aplicación*. Universidad de Ciencias Aplicadas. Lima, Perú, 2008, p. 340- 358

Pulgar Vidal, M. y Ruiz, M. Comercio y Desarrollo Sostenible: Aspectos Medioambientales. En: Cantuarias, F. y Stucchi, P. (2013) *Perú, Colombia y la Unión Europea. Contenido, Análisis y Aplicación*. Universidad del Pacífico, Unión Europea. Lima, Perú. P. 413-430

Stiglitz, J. (2007) *Making Globalization Work*. WW Norton & Company, London

The Guardian. *The WTO has Failed Developing Countries*. 14 nov. 2014. Disponible en <https://www.theguardian.com/global-development/poverty-matters/2011/nov/14/wto-fails-developing-countries>.

UNEP, IISD. (2005) *Environment and Trade: A Handbook*. Second Edition. UNEP. Canada. Disponible en http://www.iisd.org/pdf/2005/envirotrade_handbook_2005.pdf.

Vosenaar, R. (2014) *El Acuerdo sobre Bienes Ambientales y sus Beneficios Climáticos*. Revista Puentes, ICTSD, disponible en <https://www.ictsd.org/bridges-news/puentes/news/el-acuerdo-sobre-bienes-ambientales-y-sus-beneficios-clim%C3%A1ticos>.

World Economic Forum. *Fourth Industrial Revolution for the Earth Series* (World Economic Forum). Disponibles en <https://www.weforum.org/projects/fourth-industrial-revolution-and-environment-the-stanford-dialogues>.



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