



MEMORANDUM

FOR : **The Directors**
Biodiversity Management Bureau
Environmental Management Bureau
Ecosystems Research and Development Bureau
Forest Management Bureau
Mines and Geosciences Bureau
Climate Change Service
Legal Affairs Service

FROM : **The Director**
Policy and Planning Studies

SUBJECT : **THE CTIF GUIDEBOOK ON MODEL TEXT PROVISIONS ON
NEW AND EMERGING TRADE-RELATED AREAS**

DATE : **18 MAR 2024**

This has reference to the electronic mail dated 14 March 2024 from the Department of Trade and Industry – Bureau of International Trade Relations (DTI-BITR), requesting the DENR's review and feedback on the draft **Guidebook on Model Text Provisions on New and Emerging Trade-related Areas** as part of the ongoing project under the Canadian Trade and Investment Facility (CTIF) Development Project.

The Guidebook is part of a series of outputs prepared in the context of implementing the Technical Assistance on *'Knowledge Sharing on Trade and Development Issues: the Philippines'* under the CTIF Project. It provides an overview of the four new trade areas namely trade and labor, **trade and environment**, digital trade, and trade and inclusiveness. It presents a framework for the Philippine negotiators to consider in preparing for and negotiating provisions concerning these emerging trade issues within trade agreements.

Chapter three (3) of the guidebook (*pages 72-93*) contains the Trade and Environment overview, current trends, and the scope and coverage of the environmental provision in the existing trade agreements. It also provides model texts for various environment-related provisions referencing EU FTAs and CPTPP, among others. Nonetheless, please be informed that the CTIF model text is **not a binding document** and only **serves as a reference** for future Free Trade Agreement (FTA) negotiations and is not intended to be the Philippines' negotiating template.

In this regard, we would like to request your Office to review and provide feedback on the said guidebook. Your feedback and comments would be highly valuable in shaping its content, ensuring its relevance to the challenges and opportunities faced when negotiating the Environment Chapter texts and provisions, and providing a better experience for future similar endeavors.

We would appreciate receiving your feedback **on or before 22 March 2024** through these email addresses: psddivision@gmail.com / policy@denr.gov.ph. You may access a copy of the guidebook using this link: <https://tinyurl.com/CTIFGuidebook>.

For your information and consideration, please.


CHERYL LOISE T. LEAL

Chapter 3: Trade and Environment

3.1. Overview of Environmental Provisions in Trade Agreements

Trade and trade policies may have differentiated impacts, either positive or negative, on the environment and climate change following different pathways. Trade is a source of significant amounts of greenhouse gas (GHG) emissions, with the production and transportation of goods and services accounting for 20-30% of global emissions (WTO, 2021b). The divergences in environmental regulations among trading partners may lead to the reallocation of pollution-intensive industries to countries with more lax standards, leading to carbon leakage and a 'race to the bottom' to attract investment (Felbermayr, et al., 2022). However, trade can also bring positive impacts to the environmental agenda. The positive changes may come from positive changes brought by the sharing and development of 'green' technologies, climate-friendly products, and best practices to mitigate any negative environmental impacts of trade.

Multilateral Environmental Agreements (MEAs) have long used trade-related provisions as measures to control trade in order to prevent any harmful effects on the environment. According to the WTO, about 15 out of the 36 global MEAs include trade-related provisions (WTO, 2023), though some provisions are more explicitly trade-related than others. For example, the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol ban the imports (Article 4.1) and exports (Article 4.2) of controlled substances, as well as products containing controlled substances (Article 4.3). Likewise, international trade has been an integral part of the plans of many Paris Agreement parties to achieve their climate mitigation goals (WTO, 2021a). The United Nations Conference on Trade and Development (UNCTAD) (2016) found that international trade measures were "pervasive" in almost all NDCs submitted by parties to the United Nations Framework Convention on Climate Change (UNFCCC) (Elkahwagy, et al., 2016). Brandt (2017) also found that 45% of the climate contributions submitted in the run-up to the 21st Conference of the Parties (COP21) to the UNFCCC entail a direct reference to trade or trade elements, and 22% include specific trade elements that are geared towards fostering mitigation.

The WTO discussions on trade and the environment have been part of the WTO agenda since the Doha Round (2001). The negotiations focus on three main themes: the relationship between the WTO rules and MEAs, the collaboration between the WTO and MEA secretariats, and the elimination of tariffs and non-tariff barriers on environmental goods and services. These discussions take place in "Special Sessions" of the Committee on Trade and Environment (WTO, n.d.-c)¹². WTO members started negotiating, among others, certain aspects of trade and environment linkages, particularly the "specific trade obligations" (STOs) contained in MEAs, since the 2001 Doha Ministerial Conference (MC) (WTO, n.d.-d). Cooperation and information exchange between WTO and MEA secretariats covers information sessions held by the WTO CTE with MEA Secretariats, exchange of documents, collaboration between the WTO, the United Nations Environment Programme (UNEP) and MEAs in providing technical assistance to developing countries on trade and the environment, etc. Several MEA Secretariats and

¹² The WTO Committee on Trade and Environment (CTE) was established in 1995 as the standing forum dedicated to dialogue between governments on the impact of trade policies on the environment and environmental policies for trade.

international organisations have become observers of the WTO Committee on Trade and Environment (WTO, n.d.-e).

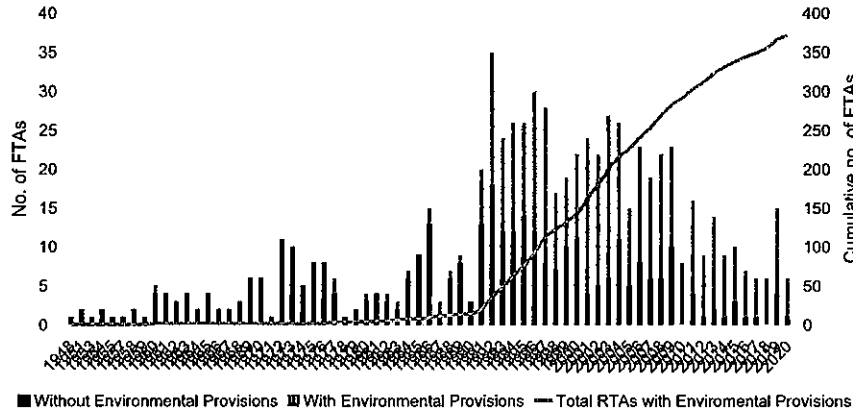
Liberalising trade in environmental goods and services constitutes an important stream of ongoing discussion at the multilateral level, though with slow progress. Following the Work Programme set out in July 2008, WTO members have engaged in broad discussions on the universe of environmental goods that may be subject to liberalisation, such as products related to air pollution control, renewable energy, waste management and water and wastewater treatment. Since 2014, a group of 18 participants (the European Union counts as one) representing 46 WTO members has also engaged in the plurilateral negotiation of the Environmental Goods Agreement (EGA). However, there has been limited progress in the plurilateral discussion since 2016, and no new developments have been reported under the Committee on Trade and Environment in Special Session (CTESS) (WTO, n.d.-f; Committee on Trade and Environment, 2021). In order to intensify work on trade and environmental sustainability, the *Trade and Environmental Sustainability Structured Discussions (TESSD)* was formed to complement the work of the Committee on Trade and Environment. The informality of TESSD might have contributed to a larger participation of WTO members, with 71 co-sponsors representing around 84% of global trade. So far, the TESSD participants have discussed topics such as trade-related climate measures, sustainable supply chains, environmental goods and services, circular economy, green aid for trade, fossil fuel subsidy reform, and sustainable food and agriculture (WTO, n.d.-g).

The recently concluded multilateral trade rules on curbing harmful fisheries subsidies have displayed linkages to the goal of sustainable development. Fisheries resource management is an area closely linked to environmental protection and has been recently addressed at the multilateral level. The issue of fisheries subsidies has been part of the Doha negotiations on trade and the environment. As an outcome of the MC12 in June 2022, the Agreement on Fisheries Subsidies, a multilateral deal responding to the UN Sustainable Development Goal (SDG) 14.6, has finally been adopted. For the first time in WTO history, a multilateral agreement was reached in dealing with environmental sustainability.

Alongside the discussion at the multilateral forum, trade and environment have also become increasingly prevalent in the regional forum. The inclusion of environment-related provisions in FTAs is not a recent phenomenon. As early as 1957, the Treaty of Rome establishing the European Economic Community (EEC) already included a general exception allowing a party to prohibit or restrict imports, exports, or goods in transit on the grounds of protecting the health and life of animals or plants as long as these prohibitions or restrictions were not arbitrary (unreasonably) or discriminatory. According to the Design of Trade Agreements (DESTA), among the 781 agreements signed between 1948-2021 included in the database, 371 incorporate references to environmental protection (Figure 6).¹³ In terms of geographical distribution, by examining 118 new trade agreements signed between 2010-2022, Baker and Le (2022) find that while 35% of these FTAs contain environmental provisions, the share was more significant among FTAs signed by developed countries (55%) than those signed between developing countries (15%) (Figure 7). In terms of country coverage, the United States (US), Canada, the European Union (EU), and the European Free Trade Association (EFTA) are countries with a high average number of environment-related provisions in their respective FTAs (Monteiro & Trachtman, 2020).¹⁴

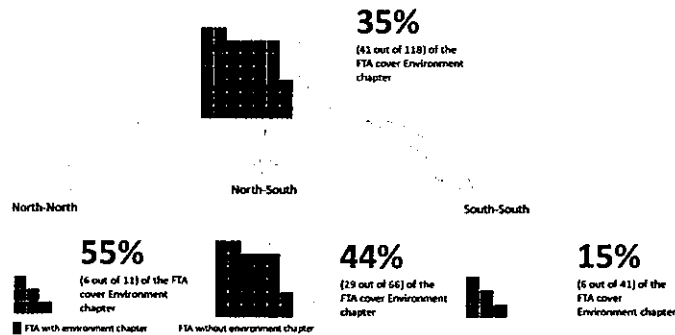
¹³ Including references to protection and preservation of the environment; enforcement of environmental law; sustainable development; renewable energies and energy efficiency and saving; water/waste management; measures against desertification; environment and nuclear safety; references to emission pollutants, toxic substances; general exceptions to GATT Art. XX and XXI. Imprecise phrases such as "protection of human health, animals and plants" are not coded. See Invalid source specified.

Figure 6. Evolution of the number of PTAs with environmental provisions



Source: International Economics (2022), based on DESTA

Figure 7. Inclusions of Environment provisions in FTAs, 2010-2022



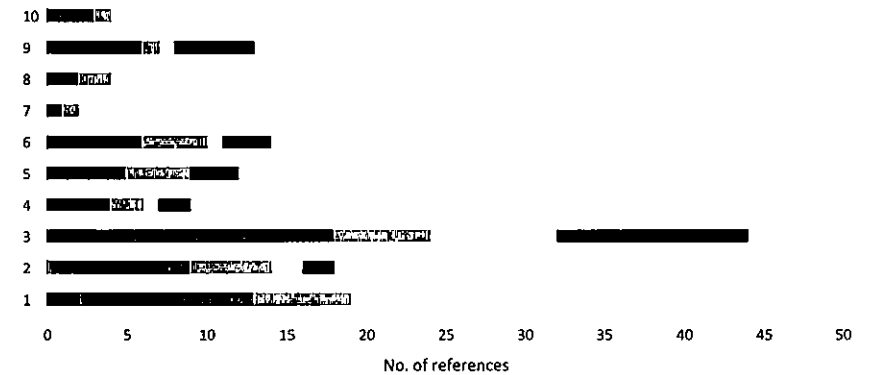
Source: International Economics (2022), based on DESTA

The inclusion of environmental provisions in FTAs has also extended to South-East Asia and the wider Asia-Pacific region. This trend is evidenced in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which is considered to have the most ambitious environmental chapters and to which four Member States of the Association of Southeast Asian Nations (ASEAN) are contracting parties. Aside from the CPTPP, environment and other inclusive trade provisions are still uncommon in many of ASEAN's FTAs. Many ASEAN+ FTAs include references to environment protection, though only

¹⁴ It should be noted that the coding methodology and coverage of FTAs examined under these databases differ, which may lead to discrepancies in the results. For example, Monteiro & Trachtman (2020) use the World Bank Deep Trade Agreement Database, which covers only FTAs that have been notified to the WTO, while other databases may cover unnotified FTAs.

one FTA (the AANZFTA) (updated 2023) has a dedicated chapter on trade and sustainable development (covering the environment). As indicated in Figure 8, ASEAN FTAs cover only 2 to 44 references to the environment, a relatively small number compared to other countries and regions (such as Canada, the EU, and the US). Most agreements show a notable emphasis on balancing environmental concerns with trade and investment interests, while references to specific environmental issues vary. The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) (2009, updated in 2023) stands out as the agreement with the most references across all categories, reflecting a considerable inclusion of environmental norms. The Regional Comprehensive Economic Partnership (RCEP), despite being recently signed, only include fewer than 25 environmental references across all its chapters. On the other hand, Individual ASEAN Member States have concluded other trade agreements containing highly ambitious environmental provisions, such as the CPTPP (Brunei Darussalam, Malaysia, Singapore and Viet Nam).

Figure 8. Environmental references in ASEAN+ FTAs



Notes: Environmental references can be made across the agreement and are not restricted to the environment chapter.

Source: International Economics, based on (Morin, et al., 2018). Trade & Environment Database.

The substance of environmental provisions differs widely. As highlighted by Baker and Le (2022), the least ambitious FTAs address environmental concerns simply in the preamble of the agreement or in a statement of intent. On the other hand, more progressive agreements tend to include at least one provision, or dedicate a whole chapter on environmental protection. While most of these provisions or chapters pledge only best efforts towards compliance with international conventions or cooperation among parties, with a commitment to the progressive development of frameworks to address sustainability issues, a notable number of FTAs now contain legally binding commitments, with recourse to dispute settlement for non-compliance. Generally, environmental provisions of FTAs can be divided into five major categories: Aspiration or Principle for Environmental Protection, Relations with Multilateral Environmental Agreements (MEAs), Balance between Environment and Trade/Investment, Establishing Specific Environmental Protection Areas, and Institutional and Procedural Provisions. The

following sections will discuss the substance of these types of provisions and the consideration of options for various identified environment-related provisions in FTAs.

3.2. Aspiration or Principle for Environmental Protection

Aspirational/principle provisions refer to provisions that specify the Agreement's environmental objectives in the preamble or objectives section; set out general obligations of environmental cooperation to support the achievement of those objectives; encourage or commit the parties to ensure that their domestic laws provide high levels of environmental protection and continue to improve them; or call for regulatory cooperation or harmonisation in environmental regulations. Generally, as the name suggests, these provisions have a weak binding effect, as can be judged from the language used and can be found in the preamble of the FTAs or the Objective provisions of the Environment/ Trade and Sustainable Development Chapter. While this type of provision does not set specific obligations or commitments for Parties, it can be used as a prelude to 'set the scene' for more substantive provisions or to guide the interpretation of other provisions when needed.

Options for Model text:

Box 59. Environment: Preamble

The Parties [...] DETERMINED to strengthen their economic, trade, and investment relations in accordance with the objective of sustainable development in its economic, social and environmental dimensions and to promote trade and investment in a manner mindful of high levels of environmental and labour protection and relevant internationally-recognised standards and agreements to which they are party.

(Modelled after the Preamble of the EU-Singapore FTA)

Box 60. Environment: Objectives

Promote mutually supportive trade and environmental policies

The objectives of this Chapter are to promote mutually supportive trade and environmental policies, promote high levels of environmental protection and effective enforcement of environmental laws, and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.

Strengthen cooperation

Taking account of their respective national priorities and circumstances, the Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development.

Environment measures shall not be used as disguised restrictions on trade or investment.

The Parties further recognise that it is inappropriate to establish or use their environmental laws or other measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

(Modelled after Article 20.2 CPTPP)

3.3. Balance between Environment and Trade/Investment Regimes

Provisions that aim to create a balance between environment and trade/investment can be found first of all in the *general exception* provisions that enable parties to derogate from the RTA's obligations to fulfil environment-related policy objectives, including the protection of animal or plant life or health or the conservation of exhaustible natural resources. This type of provisions are typically included in the FTA general Exception chapter/provisions, and therefore will not be included in this sub-section.

The common provisions to create the balance between Environment and Trade/Investment Regimes and the two so-called provisions on 'Right to Regulate' and 'Non-Derogation' (also 'Upholding level of protection').

Typical language of the 'Right to Regulate' provisions affirms countries' sovereign right to establish their own levels of environmental protection and to modify their environmental laws and policies accordingly. This helps ensure trade liberalisation under the FTA does not prevent governments from regulating in the public interest on environmental matters.

On the other hand, non-derogation clauses in environmental protection are becoming increasingly popular, whereby Parties are required to uphold environmental protection by prohibiting the dilution of environmental protection for promoting investment and/or trade or by specifying that it is inappropriate to encourage investment and/or trade by relaxing, weakening, or reducing the protection afforded in domestic environmental law; or by stipulating that the parties should not or shall not waive or otherwise derogate from their environmental laws or offer to do so as an encouragement for trade and/or investment in their territory; or by requiring that the parties not fail to effectively enforce their environmental laws in a manner that would affect trade or investment between the parties. At the same time, environmental measures must be implemented reasonably and aimed at achieving environmental quality goals rather than disguised protectionism.

Options for Model text:

Box 61. Environment: Right to Regulate

Recognise the right to regulate in establishing a domestic environmental protection framework

The Parties recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly.

Recognise the right to enforce domestic environmental protection framework

The Parties recognise that each Party retains the right to exercise discretion and to make decisions regarding: (a) investigatory, prosecutorial, regulatory and compliance matters; and (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws, a Party is in compliance with commitments made [under this Chapter] if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

Principle of non-interference in environmental law enforcement of another Party

Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

(Modelled after Article 20.3 CPTPP and Article 13.5 EVFTA)

Box 62. Environment: Upholding Levels of Protection

Option 1] Best-endeavour to uphold levels of protection

Each Party shall endeavour to ensure that its laws and policies provide for and encourage high levels of domestic protection in the environmental and social areas and shall continuously endeavour to improve those laws and policies.

The Parties stress that weakening the levels of protection in environmental areas is detrimental to the objectives of this Chapter and that it is inappropriate to encourage trade and investment by weakening the levels of protection afforded in domestic environmental or labour law.

(Modelled after Articles 13.2 and 12.3 EVFTA)

Option 2] Strict obligations to uphold levels of protection

Non-derogation

A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

No failure to enforce

A Party shall not fail to effectively enforce its environmental and labour laws, through a sustained or recurring course of action or inaction, where such failure to effectively enforce would affect trade or investment between the Parties.

Non-constitution of discrimination measures or disguised restrictions on trade

A Party shall not apply environmental and labour laws in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

(Modelled after Article 12.12 EUSFTA and Article 20.3 CPTPP)

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3.4. Relations with Multilateral Environmental Agreements (MEAs)

Provisions requesting compliance with multilateral environmental agreements (MEAs) are increasingly incorporated in FTAs. These commitments are stated as reaffirming the importance of MEAs, reaffirming parties' obligations under MEAs, or calling on the parties to adopt measures required to comply with MEA obligations.

While some of these provisions refer to MEAs in general, others apply to specific MEAs, such as the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol on ozone-depleting substances, and the Basel Convention on the transboundary movement of hazardous waste, etc. Some FTAs also include provisions specifying that the obligations under particular MEAs either are not affected, are covered by the exception clause, or would prevail in case of inconsistency with the respective FTAs.

MEAs can be incorporated directly or indirectly. When MEAs are incorporated directly, the provisions would require Parties to 'adopt, maintain and implement laws, regulations and any other measures' to fulfil their obligations under specific MEAs (see, for example Box 67. Environment: Incorporating CITES). When incorporated indirectly, references are made to specific terminologies or definitions under the

indirectly incorporated MEAs. For example, the CPTPP makes references to the Montreal Protocol for 'substances [that] can significantly deplete and otherwise modify the ozone layer', or to the MARPOL for 'pollution of the marine environment from ships'. It should also be noted that this type of provision can often be supplemented with additional commitments by Parties in the specific environmental protection areas that the MEAs regulate, most often in the form of cooperation, exchange of information, sharing of experience, etc.

Options for Model text:

Box 63. Environment: General Incorporation of Multilateral Environmental Agreements (MEAs)

Recognised the role of MEA

The Parties recognise the value of multilateral environmental governance and agreements as a response of the international community to environmental challenges and stress the need to enhance the mutual supportiveness between trade and the environment. The Parties shall consult and cooperate, as appropriate, with respect to trade-related environmental issues of mutual interest.

Affirm commitments under relevant MEAs

Each Party reaffirms its commitment to effectively implement its domestic law and practice the multilateral environmental agreements to which it is a party.

Right to regulate regarding implementation of MEAs

Nothing in this Agreement shall prevent a Party from adopting or maintaining measures to implement the multilateral environmental agreements to which it is a party, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

(Modelled after Article 13.5 EVFTA)

Encourage mutually supportive actions

The Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.

(Modelled after Article 20.4 CPTPP)

Box 64. Environment: Adopt laws and regulations in line with obligations under specific MEAs

Each Party shall adopt, maintain, and implement laws, regulations, and all other measures necessary to fulfil its respective obligations under the following multilateral environmental agreements:

- (a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended;
- (b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;
- (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;
- (d) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;
- (e) the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra,

May 20, 1980;
(f) the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946; and
(g) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949.
(Modelled after Article 24.8 USMCA)

Box 65. Environment: Incorporating the UNFCCC Agreements

The Parties affirm their commitment to reaching the ultimate objective of the UN Framework Convention on Climate Change (hereinafter referred to as 'UNFCCC'), and to effectively implementing the UNFCCC, its Kyoto Protocol, and the Paris Agreement of 12 December 2015 in a manner consistent with the principles and provisions of the UNFCCC. They commit to work together to strengthen the multilateral, rules-based regime under the UNFCCC building on the UNFCCC's agreed decisions, and to support efforts to develop a post-2020 international climate change agreement under the UNFCCC applicable to all parties.
(Modelled after Article 12.6.3 EUSFTA)

Box 66. Environment: Incorporating Convention on Biological Diversity (CBD)

The Parties recognise the importance of ensuring the conservation and sustainable use of biological diversity in accordance with the Convention on Biological Diversity of 1992 (hereinafter referred to as "CBD") and the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets, adopted at the tenth meeting of the Conference of the Parties in Nagoya on 18 to 29 October 2010.
The Parties recognise, in accordance with Article 15 of the CBD, the sovereign rights of states over their natural resources, and that the authority to determine access to their genetic resources rests with their respective governments and is subject to their domestic law.
The Parties *[shall/shall endeavour]* to create conditions to facilitate access to genetic resources for environmentally sound uses and not to impose restrictions that run counter to the objectives of the CBD. The Parties recognise that access to genetic resources shall be subject to the prior informed consent of the Party providing genetic resources, unless otherwise determined by that Party.
(Modelled after Article 13.7 EVFTA)

Box 67. Environment: Incorporating CITES

The Parties affirm the importance of combating the illegal take of, and illegal trade in, wild fauna and flora, and acknowledge that this trade undermines efforts to conserve and sustainably manage those natural resources, has social consequences, distorts legal trade in wild fauna and flora, and reduces the economic and environmental value of these natural resources. Accordingly, each Party *[shall/shall endeavour to]* adopt, maintain and implement laws, regulations and any other measures to fulfil its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
(Modelled after Article 20.17 CPTPP)

Box 68. Incorporating MEAs on conservation and management of fish stocks

Each Party *[shall/shall endeavour to]*:
a) comply with long-term conservation and management measures and sustainable exploitation of

marine living resources as defined in the United Nations Convention on the Law of the Sea (UNCLOS);
b) *[ensure/encourage]* compliance with the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York on 24 July to 4 August 1995, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, approved by the Food and Agriculture Organization Conference at its 27th Session in November 1993, and the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, approved by the Food and Agriculture Organization Conference on 22 November 2009; and adhere to the principles of the Code of Conduct for Responsible Fisheries, adopted by the Food and Agriculture Organization Conference in Cancun on 31 October 1995;
(Modelled after Article 13.9.2 EVFTA)

3.5. Establishing Specific Environmental Protection Areas

Provisions establishing specific environmental protection areas are closely linked to the MEA compliance provisions, whereby specific environmental issues covered in an increasing number of FTAs include commitments to promote and improve renewable energy, energy efficiency, water management, sustainable forestry management, and biodiversity, as well as to protect and prevent illegal trade of endangered wildlife, the control of hazardous and toxic waste and ozone-depleting substances, and curbing fisheries subsidies.

As mentioned in the previous sub-section, this type of provision on specific environment protection areas can often supplement the Parties' commitments under MEAs to which they are a party. The additional commitments are most often in the form of cooperation, exchange of information, sharing experience, etc. Notably, provisions on sustainable fisheries management and curbing harmful fisheries subsidies have been included in FTAs even before the conclusion of the WTO Agreement of Fisheries Subsidies in 2022 (see, for example, provisions in Box 74). In addition to the specific environmental protection areas covered under MEAs, FTA Parties have also made several commitments to areas without an international treaty, such as in fossil fuel subsidies, environmental goods and services, or corporate social responsibility practices.

Options for Model text:

Box 69. Environment: Protection of the Ozone Layer

The Parties recognise that emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. Accordingly, each Party shall take measures to control the production and consumption of, and trade in, such substances.[FN1]
[FN1] For greater certainty, for each Party, this provision pertains to substances controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987 (Montreal Protocol), including any future amendments thereto, as applicable to it.
The Parties shall cooperate to address matters of mutual interest related to ozone-depleting substances. Cooperation may include but is not limited to exchanging information and experiences in areas related to:
(a) environmentally friendly alternatives to ozone-depleting substances; (b) refrigerant management

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practices, policies and programmes; (c) methodologies for stratospheric ozone measurements; and (d) combating illegal trade in ozone-depleting substances.

(Modelled after 20.5 CPTPP)

Box 70. Environment: Protection of the Marine Environment from Ship Pollution

1. The Parties recognise the importance of protecting and preserving the marine environment. To that end, each Party shall take measures to prevent the pollution of the marine environment from ships.[FN2]

[FN2] For greater certainty, for each Party, this provision pertains to pollution regulated by the International Convention for the Prevention of Pollution from Ships, done at London, November 2, 1973, as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, done at London, February 17, 1978, and the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978 relating thereto, done at London, September 26, 1997 (MARPOL), including any future amendments thereto, as applicable to it.

Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest with respect to pollution of the marine environment from ships. Areas of cooperation may include: (a) accidental pollution from ships; (b) pollution from routine operations of ships; (c) deliberate pollution from ships; (d) development of technologies to minimise ship-generated waste; (e) emissions from ships; (f) adequacy of port waste reception facilities; (g) increased protection in special geographic areas; and (h) enforcement measures including notifications to flag States and, as appropriate, by port States.

(Modelled after 20.6 CPTPP)

Box 71. Environment: Sustainable Forest Management and Trade in Forest Products

1. The Parties recognise the importance of ensuring the conservation and sustainable management of forest resources in contributing to their economic, environmental and social objectives.

2. To that end, the Parties undertake to:

- a) encourage trade in forest products from sustainably managed forests and harvested in accordance with the domestic legislation of the country of harvest; this may include the conclusion of the Forest Law Enforcement Governance and Trade ("FLEGT") Voluntary Partnership Agreement;
- b) exchange information on approaches to promote the trade in, and the consumption of, timber and timber products from legally and sustainably managed forests, and to promote the awareness of such approaches;
- c) promote global forest law enforcement and governance and address trade in illegally harvested timber and timber products through, for example, promoting the use of timber and timber products from legally and sustainably managed forests, including through verification and certification schemes;
- d) cooperate to promote the effectiveness of measures or policies aimed at addressing the trade in illegally harvested timber and timber products; and
- e) promote the effective use of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) with regard to timber species whose conservation status is considered at risk.

(Modelled after Article 12.7 EUSFTA, Article 13.8 EVFTA)

Box 72. Environment: Reducing fossil fuel subsidies

The Parties recognise the need to ensure that, when developing public support systems for fossil fuels,

proper account is taken of the need to reduce greenhouse gas emissions and of the need to limit distortions of trade as much as possible. While subparagraph 2(b) of Article 11.7 (Prohibited Subsidies) does not apply to subsidies to the coal industry, the Parties share the goal of progressively reducing subsidies for fossil fuels. Such reductions may be accompanied by measures to alleviate the social consequences associated with the transition to low-carbon fuels. In addition, both Parties will actively promote the development of a sustainable and safe low-carbon economy, such as through investment in renewable energies and energy-efficient solutions.

(Modelled after Article 12.11.3 EUSFTA)

Box 73. Environment: Trade in fisheries and aquaculture products

1. The Parties recognise the importance of the conservation and the sustainable and responsible management of fisheries and aquaculture and their contribution to providing environmental, economic and social opportunities for present and future generations.

2. To this end, and in a manner consistent with their international obligations, the Parties undertake to:

- a) adopt or maintain effective monitoring, control and surveillance measures, such as observer schemes, vessel monitoring schemes, transshipment control, inspections at sea, port state control, and associated sanctions, aimed at the conservation of fish stocks and the prevention of overfishing;
- b) adopt or maintain actions and cooperate in combating illegal, unreported and unregulated ("IUU") fishing, including, where appropriate, the exchange of information on IUU activities in their waters and the implementation of policies and measures to exclude IUU products from trade flows and fish farming operations;
- c) cooperate with, and where appropriate in, regional fisheries management organisations in which the Parties are either members, observers, or cooperating non-contracting parties, with the aim of achieving good governance, including by advocating for science-based decisions and for compliance with those decisions in these organisations; and
- d) promote the development of an environmentally responsible and economically competitive aquaculture industry.

(Modelled after Article 24.11 EU-Canada CETA)

Box 74. Environment: Coping harmful fisheries subsidies

Eliminate harmful fisheries subsidies

1. No Party shall grant or maintain any of the following subsidies within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM) Agreement that are specific within the meaning of Article 2 of the SCM Agreement:

- (a) subsidies for fishing that negatively affect fish stocks that are in an overfished condition; and
- (b) subsidies provided to any fishing vessel while listed by the flag State or a relevant Regional Fisheries Management Organisation or Arrangement for IUU fishing in accordance with the rules and procedures of that organisation or arrangement and in conformity with international law.

2. Subsidy programmes that are established by a Party before the date of entry into force of this Agreement for that Party and which are inconsistent with <indicate the article number> shall be brought into conformity with that paragraph as soon as possible and no later than three years of the date of entry into force of this Agreement for that Party.

Notification and information sharing on granted fisheries subsidies

1. Each Party shall notify the other Parties, within one year of the date of entry into force of this Agreement for it and every two years thereafter, of any subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement, that the Party grants or maintains to persons engaged in fishing or fishing related activities.
 2. These notifications shall cover subsidies provided within the previous two-year period and shall include the information required under Article 25.3 of the SCM Agreement and, to the extent possible, the following information: (a) programme name; (b) legal authority for the programme; (c) catch data by species in the fishery for which the subsidy is provided; (d) status of the fish stocks in the fishery for which the subsidy is provided (for example, overexploited, depleted, fully exploited, recovering or underexploited); (e) fleet capacity in the fishery for which the subsidy is provided; (f) conservation and management measures in place for the relevant fish stock; and (g) total imports and exports per species.
 3. Each Party shall also provide, to the extent possible, information in relation to other fisheries subsidies that the Party grants or maintains that are not covered by <indicate the article number>, in particular fuel subsidies.
 4. A Party may request additional information from the notifying Party regarding the notifications under <indicate the article number for notification requirements>. The notifying Party shall respond to that request as quickly as possible and in a comprehensive manner.
- (Modelled after Article 20.16 CPTPP)*

Box 75. Environment: Trade and Biodiversity

Promote conservation of biological diversity

The Parties recognise the importance of conservation and sustainable use of biological diversity and their key role in achieving sustainable development.

Accordingly, each Party shall encourage trade in products which contribute to the sustainable use and conservation of biological diversity, in accordance with its domestic laws and regulations.

Recognise the importance of traditional knowledge

The Parties recognise the importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.

Facilitating access to genetic resources

The Parties recognise the importance of facilitating access to genetic resources within their respective national jurisdictions, consistent with each Party's international obligations. The Parties further recognise that some Parties require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.

Cooperation for Trade and Biodiversity

The Parties shall cooperate to address matters of mutual interest. Cooperation may include, but is not limited to, exchanging information and experiences in areas related to: (a) the conservation and sustainable use of biological diversity; (b) the protection and maintenance of ecosystems and ecosystem services; and (c) access to genetic resources and the sharing of benefits arising from their utilisation.

(Modelled after Article 13.7 EVFTA and Article 20.13 CPTPP)

Box 76. Environment: Invasive Alien Species

1. The Parties recognise that the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways can adversely affect the environment, economic activities and development, and human health. The Parties also recognise that the prevention, detection, control and, when possible, eradication, of invasive alien species are critical strategies for managing those adverse impacts.
2. Accordingly, the Committee shall coordinate with the Committee on Sanitary and Phytosanitary Measures established under this Agreement to identify cooperative opportunities to share information and management experiences on the movement, prevention, detection, control and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species.

(Modelled after Article 20.14 CPTPP)

Box 77. Environment: Transition to a Low Emissions and Resilient Economy

The Parties acknowledge that the transition to a low-emissions economy requires collective action. The Parties recognise that each Party's actions to transition to a low emissions economy should reflect domestic circumstances and capabilities and Parties shall cooperate to address matters of joint or common interest. Areas of cooperation may include, but are not limited to: energy efficiency; development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources; sustainable transport and sustainable urban infrastructure development; addressing deforestation and forest degradation; emissions monitoring; market and nonmarket mechanisms; low emissions, resilient development and sharing of information and experiences in addressing this issue. Further, the Parties shall, as appropriate, engage in cooperative and capacity-building activities related to transitioning to a low-emissions economy.

(Modelled after Article 20.15 CPTPP)

Box 78. Environment: Promote trade in environmental goods and services

1. The Parties resolve to make continuing special efforts to facilitate and promote trade and investment in environmental goods and services, including through addressing related non-tariff barriers. The Parties also recognise the usefulness of efforts to promote trade in goods that are the subject of voluntary or private sustainable development assurance schemes, such as eco-labelling or fair and ethical trade.

2. The Parties *[shall/shall endeavour to]* address any potential barriers to trade or investment concerning climate-friendly goods and services, such as sustainable renewable energy goods and related services and energy-efficient products and services, including through the adoption of policy frameworks conducive to the deployment of best available technologies and through the promotion of standards that respond to environmental and economic needs and minimise technical obstacles to trade. The Parties *[shall/may]* develop bilateral and plurilateral cooperative projects on environmental goods and services to address current and future global trade-related environmental challenges.

(Modelled after Article 20.18 CPTPP and Article 12.11.1-2 EUSFTA)

Box 79. Environment: Promote corporate social responsibility practices

When promoting trade and investment, the Parties *[shall/should]* make special efforts to promote corporate social responsibility practices, which are adopted on a voluntary basis. In this regard, each Party *[shall/should]* refer to relevant internationally accepted principles, standards or guidelines to which it has

agreed or acceded, such as the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, the UN Global Compact, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Parties commit to exchanging information and cooperating on promoting corporate social responsibility.

(Modelled after Article 12.11.4 EUSFTA)

Box 80. Environment: Adopting Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognise that flexible, voluntary mechanisms, for example, voluntary auditing and reporting, market-based incentives, voluntary sharing of information and expertise, and public-private partnerships, can contribute to the achievement and maintenance of high levels of environmental protection and complement domestic regulatory measures. The Parties also recognise that those mechanisms should be designed in a manner that maximises their environmental benefits and avoids the creation of unnecessary barriers to trade.

2. Therefore, in accordance with its laws, regulations or policies and to the extent it considers appropriate, each Party shall encourage: (a) the use of flexible and voluntary mechanisms to protect natural resources and the environment in its territory; and (b) its relevant authorities, businesses and business organisations, nongovernmental organisations and other interested persons involved in the development of criteria used to evaluate environmental performance, with respect to these voluntary mechanisms, to continue to develop and improve such criteria.

3. Further, if private sector entities or non-governmental organisations develop voluntary mechanisms for the promotion of products based on their environmental qualities, each Party should encourage those entities and organisations to develop voluntary mechanisms that, among other things: (a) are truthful, are not misleading and take into account scientific and technical information; (b) if applicable and available, are based on relevant international standards, recommendations or guidelines, and best practices; (c) promote competition and innovation; and (d) do not treat a product less favourably on the basis of origin.

(Modelled after Article 20.11 CPTPP)

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3.6. Procedural and Institutional Provisions

Procedural and Institutional provisions refer to provisions in different areas to support the implementation of the RTA environment provisions. These include transparency, public participation, technical assistance, cooperation, institutional arrangement, and dispute avoidance and dispute settlement mechanisms.

Provisions on transparency related to measures such as the publication of environmental laws and regulations and their drafts. Furthermore, many EU-led FTAs also incorporate provisions promoting the use of scientific and technical information in preparing and implementing measures aimed at protecting the environment and the review of the sustainable development impact of the implementation of environmental provisions under the relevant agreements.

Cooperation provisions typically list potential cooperation and technical assistance provisions, especially among FTAs negotiated between developed and developing countries and may cover financial assistance, capacity building on environmental matters, information exchange, training activities, exchange of professionals, joint projects, conferences, technology transfer, etc. The details

related to the type of technical assistance, specific environmental issues, or level of funding may differ among FTAs.

Many FTAs also encourage public participation in environment-related decision-making, environmental impact assessment, mechanisms to ensure access to and remedies for the enforcement of environmental laws and policies, and/or implementation of environment-related activities and programs. This can be done through several mechanisms, such as through contact points or advisory committees comprising representatives of environmental, business, and civil society organisations. The US or Canada-led FTAs often require a mechanism for submission from the public on environment-related matters (see, for example, Box 87) while the EU-led FTAs often require a more official institutional setting for employers' and workers' organisations, business groups, and environmental organisations (i.e., the domestic advisory group) to interact with the government institutional set-up (i.e., the Environment Committee) (see Box 88).

Institutional arrangements often establish specific mechanisms, including institutional bodies or committees, to discuss and oversee the implementation of environment-related commitments. Dispute settlement mechanisms can also be considered as part of the institutional and procedural provisions. For agreements under which the environment is subject to dispute settlement, there have been two approaches: either environment-related disputes shall be subject to the general dispute settlement mechanism (DSM) under FTAs or a separate dispute settlement system for trade and sustainable development provisions. The Parties can choose to apply or not apply a DSM to environment and climate change provisions. Where such provisions are subject to DSM, the mechanism can also lead to different implications for Parties. For example, the EVFTA currently provides a separate dispute settlement mechanism for all matters arising under the trade and environment chapters. The CPTPP, while adopting a firm approach with sanctions, does provide a transitional period for specific members to allow them 'breathing' time to adjust domestic measures.¹⁹ Where DSM is applied, DSM provisions often allow the application of a multi-tier dispute resolution mechanism, whereby Parties go step-by-step through a layered process of dispute resolution. The process usually starts with bilateral consultations, followed by other alternative dispute resolution (ADR) methods, and ends with arbitration/panel of experts with either a binding ruling or a non-binding report on findings. The work protocol and functioning of the arbitration/panel of experts largely follow the general arbitration procedures.

Furthermore, the applicability of the DSM on environment and climate change provisions will differ depending on the way the provisions are structured in combination with the applicability of the DSM. For example, a provision with aspirational language (e.g., Parties 'should', 'shall strive to', 'shall endeavour to', etc.) will be less binding on Parties than a provision with more strongly committed language (e.g., Parties 'shall', 'shall commit to', 'shall not fail to', etc.). A provision subject to DSM is more strongly enforceable than a provision which is not [subject to DSM]. This requires reading the provisions in context and in connection with other provisions/chapters of the agreement. Therefore, a flexible combination of provisions with different levels of enforceability will provide Member States

¹⁹ For example, for the purpose of completing a stock assessment that it has already initiated, Viet Nam may request an extension of two additional years to bring any subsidy programmes into conformity with Article 20.16.5(a) (Marine Capture Fisheries) by providing a written request to the Committee no later than six months before the expiry of the three-year period provided for under Article 20.16.6 CPTPP.

with various options for negotiations while still maintaining a broad scope of coverage for their environment and climate change chapter (see example of options in Box 93).

Options for Model text:

Box 81. Environment: Cooperation on environmental issues

1. The Parties recognise that enhanced cooperation is an important element to advance the objectives of this Chapter, and commit to cooperating on trade-related environmental issues of common interest in areas such as:

- (a) trade and sustainable development in international fora, including the United Nations Environment Programme and under multilateral environmental agreements;
- (b) exchange of information and experience with regard to methodologies and indicators for impact assessments on trade sustainability;
- (c) the impact of environment laws, regulations, norms and standards on trade or investment, as well as the impact of trade or investment rules on the environment, including on the development of strategies and policies on sustainable development;
- (d) sharing experience in promoting the ratification and implementation of multilateral environmental agreements of relevance to trade;
- (e) trade-related aspects of multilateral environmental agreements, including customs cooperation;
- (g) trade-related aspects of the current and future international climate change regime, including means to promote low-carbon technologies and energy efficiency;
- (h) sharing information and experience about certification and labelling schemes, including eco-labelling;
- (i) promoting corporate social responsibility and accountability, including with regard to the internationally agreed instruments that have been endorsed or are supported by each Party;
- (j) trade-related measures to promote the conservation and sustainable use of biological diversity, including the mapping, assessment and valuation of ecosystems and their services, and to combat illegal international trade in wildlife;
- (k) trade-related measures to promote the conservation and sustainable management of forests with a view to reducing deforestation and illegal logging;
- (l) trade-related measures to promote sustainable fishing practices and trade in sustainably managed fish products; and
- (m) sharing information and experience about trade-related aspects concerning the definition and implementation of green growth strategies and policies, including but not limited to sustainable production and consumption, climate change mitigation and adaptation, and environmentally sound technology.

2. Cooperation may be undertaken through various means including: (a) workshops, seminars, training and dialogues to share knowledge, experiences and best practices; (b) studies; and (c) technical assistance and capacity building, as appropriate. The Parties may agree on other forms of cooperation.

(Modelled after Article 13.14 EVFTA)

Box 82. Environment: Transparency

Each Party shall, in accordance with its domestic law, ensure that any measures aimed at protecting the environmental conditions that may affect trade and investment are developed, introduced and

implemented in a transparent manner, with due notice and an opportunity for interested persons to provide their views. *(Article 13.12 EVFTA)*

Box 83. Environment: Scientific Information

Each Party, when preparing and implementing measures aimed at environmental protection which may affect trade or investment between the Parties, shall take account of scientific evidence and relevant international standards, guidelines or recommendations, where available, and of the precautionary principle.

(Modelled after Article 12.9 EUSFTA)

Box 84. Environment: Review of Impact on Sustainable Development

1. The Parties undertake to jointly or independently monitor, assess and review the impact of the implementation of this Agreement on sustainable development through their relevant participative processes and institutions, in accordance with their existing practices.
2. The Parties will exchange views on methodologies and indicators for trade sustainability impact assessments.

(Modelled after Article 12.14 EUSFTA)

Box 85. Environment: Access to remedies and procedural guarantees

1. Each Party shall promote public awareness of its environmental laws and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public.
2. Each Party shall ensure that an interested person residing or established in its territory may request that the Party's competent authorities investigate alleged violations of its environmental laws, and that the competent authorities give those requests due consideration, in accordance with the Party's law.
3. Each Party shall ensure that judicial, quasi-judicial or administrative proceedings for the enforcement of its environmental laws are available under its law and that those proceedings are fair, equitable, transparent and comply with due process of law. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable laws.
4. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to proceedings.
5. Each Party shall provide appropriate sanctions or remedies for violations of its environmental laws for the effective enforcement of those laws. Those sanctions or remedies may include a right to bring an action directly against the violator to seek damages or injunctive relief, or a right to seek governmental action.
6. Each Party shall ensure that it takes appropriate account of relevant factors in the establishment of the sanctions or remedies. Those factors may include the nature and gravity of the violation, damage to the environment and any economic benefit the violator derived from the violation

(Modelled after Article 20.7 CPTPP)

Box 86. Environment: Opportunities for Public Participation

Public participation in specific environmental protection areas

The Parties recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning [the protection of the ozone layer/ the prevention of pollution of the marine environment from ships/ the conservation and sustainable use of biological diversity/ the development and implementation of cooperative activities, etc.]. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to ozone layer protection.

Promoting public participation in implementing environmental commitments under the Agreement

1. Each Party shall seek to accommodate requests for information regarding the Party's implementation of this Chapter.
2. Each Party shall make use of existing or establish new consultative mechanisms, for example, national advisory committees, to seek views on matters related to the implementation of this Chapter. These mechanisms may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.

(Modelled after Article 20.8 CPTPP)

Box 87. Environment: Public Submissions

1. Each Party shall provide for the receipt and consideration of written submissions from persons of that Party regarding its implementation of this Chapter. Each Party shall respond in a timely manner to such submissions in writing and in accordance with domestic procedures and make the submissions and their responses available to the public, for example, by posting on an appropriate public website.
2. Each Party shall make its procedures for the receipt and consideration of written submissions readily accessible and publicly available, for example, by posting on an appropriate public website. These procedures may provide that to be eligible for consideration, the submission should: (a) be in writing in one of the official languages of the Party receiving the submission; (b) clearly identify the person making the submission; (c) provide sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based; (d) explain how, and to what extent, the issue raised affects trade or investment between the Parties; (e) not raise issues that are the subject of ongoing judicial or administrative proceedings; and (f) indicate whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any.
3. Each Party shall notify the other Parties of the entity or entities responsible for receiving and responding to any written submissions referred to in paragraph 1 within 180 days of the date of entry into force of this Agreement for that Party.
4. If a submission asserts that a Party is failing to effectively enforce its environmental laws and following the written response to the submission by that Party, any other Party may request that the Committee on Environment (Committee) discuss that submission and written response with a view to further understanding the matter raised in the submission and, as appropriate, to consider whether the matter could benefit from cooperative activities.
5. At its first meeting, the Committee shall establish procedures for discussing submissions and responses that are referred to it by a Party. These procedures may provide for the use of experts or existing institutional bodies to develop a report for the Committee comprised of information based on facts relevant to the matter.

6. No later than three years after the date of entry into force of this Agreement, and thereafter as decided by the Parties, the Committee shall prepare a written report for the Commission on the implementation of this Article. For the purposes of preparing this report, each Party shall provide a written summary regarding its implementation activities under this Article.

(Modelled after Article 20.9 CPTPP)

Box 88. Environment: Domestic Advisory Group

1. Each Party shall convene a new or consult an existing domestic advisory group or groups on sustainable development with the task of advising on the implementation of this Chapter. Each Party shall decide on its domestic procedures for the establishment of its domestic advisory group or groups and the appointment of the members of such group or groups. The group or groups shall comprise independent representative organisations, ensuring a balanced representation of economic, social and environmental stakeholders, including, among others, employers' and workers' organisations, business groups, and environmental organisations. Each domestic advisory group may, on its own initiative, submit views or recommendations to its respective Party on the implementation of this Chapter.
2. Members of the domestic advisory group or groups of each Party shall meet in a joint forum to conduct a dialogue on sustainable development aspects of trade relations between the Parties. By joint agreement, domestic advisory groups of both Parties may involve other stakeholders in meetings of the joint forum. The forum shall be based on a balanced representation of economic, social and environmental stakeholders. The report of each meeting of the joint forum shall be submitted to the [Committee on Trade and Sustainable Development/ Environment Committee] and thereafter be made publicly available.
3. Unless the Parties agree otherwise, the joint forum shall meet once a year and in conjunction with the meetings of the Committee on Trade and Sustainable Development. On such occasions, the Parties shall present to the joint forum an update on the implementation of this Chapter. The Parties shall agree on the operation of the joint forum no later than one year after the date of entry into force of this Agreement.

(Modelled after Article 13.15 EVFTA)

Box 89. Environment: Institutional Provisions – Contact Points

Each Party shall designate and notify a contact point from its relevant authorities within 90 days of the date of entry into force of this Agreement for it, in order to facilitate communication between the Parties in the implementation of this Chapter. Each Party shall promptly notify the other Parties in the event of any change to its contact point.

(Modelled after Article 20.19.1 CPTPP)

Box 90. Institutional Provisions – Environment Committee

1. The Parties shall establish an Environment Committee composed of senior government representatives, or their designees, of the relevant trade and environment national authorities of each Party responsible for the implementation of this Chapter.
2. The purpose of the Committee is to oversee the implementation of this Chapter and its functions shall be to: (a) provide a forum to discuss and review the implementation of this Chapter; (b) provide periodic reports to the Commission regarding the implementation of this Chapter; (c) provide a forum to discuss

and review cooperative activities under this Chapter; (d) consider and endeavour to resolve matters referred to it; (e) coordinate with other committees established under this Agreement as appropriate; and (f) perform any other functions as the Parties may decide.

3. The Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Committee shall meet every two years unless the Committee agrees otherwise. The Chair of the Committee and the venue of its meetings shall rotate among each of the Parties in English alphabetical order, unless the Committee agrees otherwise.

4. All decisions and reports of the Committee shall be made by consensus, unless the Committee agrees otherwise or unless otherwise provided in this Chapter. 6. All decisions and reports of the Committee shall be made available to the public, unless the Committee agrees otherwise.

(Modelled after Article 20.19 CPTPP)

Box 91. Environment: Institutional Provisions – Built-in Review

During the fifth year after the date of entry into force of this Agreement, the Committee shall: (a) review the implementation and operation of this Chapter; (b) report its findings, which may include recommendations, to the Parties; and (c) undertake subsequent reviews at intervals to be decided by the Parties.

(Modelled after Article 20.19.1 CPTPP)

Box 92. Environment: Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through dialogue, consultation, exchange of information and, if appropriate, cooperation to address any matter that might affect the operation of this Chapter.

2. A Party (the requesting Party) may request consultations with any other Party (the responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis for the request. The requesting Party shall circulate its request for consultations to the other Parties through their respective contact points.

3. A Party other than the requesting or the responding Party that considers it has a substantial interest in the matter (a participating Party) may participate in the consultations by delivering a written notice to the contact point of the requesting and responding Parties no later than seven days after the date of circulation of the request for consultations. The participating Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the requesting and the responding Parties (the consulting Parties) agree otherwise, the consulting Parties shall enter into consultations promptly, and no later than 30 days after the date of receipt by the responding Party of the request.

5. The consulting Parties shall make every effort to arrive at a mutually satisfactory resolution to the matter, which may include appropriate cooperative activities. The consulting Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

(Modelled after Article 20.20 CPTPP)

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Box 93. Environment: Dispute Avoidance and Dispute Resolution

[Option 1] Non-Application of Dispute Settlement

Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter.

[Option 2] Chapter-specific Dispute Settlement

1. For any dispute that arises under this Chapter, the Parties shall only have recourse to the rules and procedures provided for in this Chapter.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a dispute. At any time, the Parties may have recourse to good offices, conciliation, or mediation to resolve that dispute.

[Option 3] Build-in review mechanism for inclusion of environment provisions under DSM

As part of any general review of this Agreement, the Parties shall review the application of the Dispute Settlement mechanism to this Chapter <identify chapter number>. Following the completion of the review, the Dispute Settlement mechanism provided under in <specify the Annex/Chapter/Provision on Dispute Settlement> shall apply to this Chapter between those Parties that have agreed to its application.

[Option 4] Application of specific DSM for Trade and Environment

Except for <specify provisions to be excluded from dispute settlement, if any>, the Dispute Settlement Mechanism provided in <specify the Annex/Chapter/Provision on Dispute Settlement> shall apply:

(a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement; or

(b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement, or that another Party has otherwise failed to carry out an obligation under this Agreement

[Option 5] Transitional period for certain Parties

<Specify Party/Parties> shall not be subject to dispute settlement under Chapter <specify chapter number> (Dispute Settlement) regarding its obligations under Article <specify article number> for a period of <specify number of transitional years> years after the date of entry into force of this Agreement for <specify Party/Parties>.



Request for Comments on the CTIF Guidebook on Model Text Provisions on New and Emerging Trade-related Areas

1 message

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Thu, Mar 14, 2024 at 11:40 AM

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Sent on behalf of OIC-Director Marie Sherylyn D. Aquia, DTI-BITR

Dear Sirs/Mesdames:

Following our ongoing project under the Canadian Trade and Investment Facility (CTIF) Development Project, the Bureau requests your review and feedback on the CTIF Guidebook on Model Text Provisions on New and Emerging Trade-related Areas.

The Guidebook is part of a series of outputs prepared in the context of implementing the Technical Assistance on 'Knowledge Sharing on Trade and Development Issues: the Philippines' under the CTIF Project. It provides an overview of the four new trade areas namely trade and labor, trade and environment, digital trade, and trade and inclusiveness. It presents a framework for the Philippine negotiators to consider in preparing for and negotiating provisions concerning these emerging trade issues within trade agreements.

Notwithstanding the above, the CTIF model text is not a binding document and only serves as a reference for Free Trade Agreement (FTA) negotiations and is not intended to be the Philippines' negotiating template. Thus, as a reference document, we encourage agencies to raise any questions should any provisions appear unclear or if there are any concerns on the proposals.

The CTIF Guidebook on Model Text Provisions is attached for your reference and perusal.

We hope to receive your comments by **27 March 2024 (Wednesday)**.

Thank you.

Best regards,
Cha Gyu

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